

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



November 27, 2001

STID 4903

Mr. K. C. Ma
C/O John Kao, Attorney
650 California Street, 29th
San Francisco, CA 94108
(415)-392-5600

RE: Property at 2714 Broadway, Oakland, CA 94612

Dear Mr. K. C. Ma:

I have attempted to inform you of your legal obligations regarding the above referenced site in the past. As you are aware, several underground storage tanks (USTs) have been removed in the past from the above referenced site and contaminants were detected in Soil around former tank pits. There were TPH, BTEX, Total Petroleum Hydrocarbon, Benzene, Toluene, Ethyl Benzene, and Xylenes among the constituents.

Mr. John N. Alt of Epigene International Consulting Geologists, your former consultant, submitted a report dated May 7, 1995, where he proposed a plan for the required subsurface investigation subsequent to the USTs removal.

According to our records, you have not implemented the above workplan nor have you responded to correspondences from this office. This office has so far sent you two "Notices of Violations" due to lack of compliance with the mandated clean up requirements.

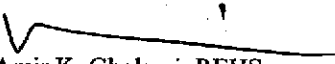
However, I discussed the above issue with John Kao, your Attorney, and provided him with some information as to how to bring this site into compliance with Title 23 California Code of Regulations.

This is a formal request for technical reports pursuant to Title 23, CCR, Section 2722(c).

You must submit a work plan to proceed further with the mandated clean up requirement within 30 days or by December 27th, 2001.

Should you have any questions, please do not hesitate to call me at (510)-567-6876.

Sincerely,


Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Mr. John N. Alt, Epigene International Consulting Geologists, 38750 Paseo Padre
Parkway, Suite A-11, Fremont, CA 94536
files

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

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



May 24, 2001

STID 4903

Mr. K. C. Ma
C/O John Kao, Attorney
650 California Street, 29th
San Francisco, CA 94108

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

RE: 2417 Broadway, Oakland, CA 94612

Dear Mr. K. C. Ma:

As you are aware, several underground storage tanks (USTs) were removed earlier from the above referenced site. Some contaminants were detected in Soil around former tank pits. The contaminants included TPH, BTEX, Total Petroleum Hydrocarbon, Benzene, Toluene, Ethyl Benzene, and Xylenes respectively. Subsequent to the USTs removal, your consultant, Mr. John N. Alt of Epigene International Consulting Geologists submitted a report dated May 7, 1995, where he proposed a plan for the required subsurface investigation. However, our record indicates that you have not implemented nor responded to this office in spite of having formerly received two Notices of Violations from this office due to lack of compliance with the mandated clean up requirements.

Please be advised that this is a formal request for technical reports pursuant to Title 23, CCR, Section 2722(c).

Please submit a work plan to proceed further with the mandated clean up requirement by June 24, 2001.

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

Sincerely,

Amir K. Gholami, REHS
Hazardous Materials Specialist

C: Mr. John N. Alt, Epigene International Consulting Geologists, 38750 Paseo Padre
Parkway, Suite A-11, Fremont, CA 94536
files

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



October 25, 1999

STID 4903

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

Mr. K. C. Ma
C/O John Kao, Attorney
650 California Street, 29th
San Francisco, CA 94108

RE: Property at 2417 Broadway, Oakland, CA 94612

LANDOWNER NOTIFICATION AND PARTICIPATION REQUIREMENTS

Dear Mr. K. C. Ma:

This letter is to inform you of new legislative requirements pertaining to cleanup and closure of sites where an unauthorized release of hazardous substance, including petroleum, has occurred from an underground storage tank (UST). Section 25297.15(a) of Ch. 6.7 of the Health & Safety Code requires the primary or active responsible party to notify all current record owners of fee title to the site of: 1) a site cleanup proposal, 2) a site closure proposal, 3) a local agency intention to make a determination that no further action is required, and 4) a local agency intention to issue a closure letter. Section 25297.15(b) requires the local agency to take all reasonable steps to accommodate responsible landowners' participation in the cleanup or site closure process and to consider their input and recommendations.

For purposes of implementing these sections, you have been identified as the primary or active responsible party. Please provide to this agency, within twenty (20) calendar days of receipt of this notice, a complete mailing list of all current record owners of fee title to the site. You may use the enclosed "list of landowners" form (sample letter 2) as a template to comply with this requirement. If the list of current record owners of fee title to the site changes, you must notify the local agency of the change within 20 calendar days from when you are notified of the change.

If you are the sole landowner, please indicate that on the landowner list form. The following notice requirements do not apply to responsible parties who are the sole landowner for the site.

LANDOWNER NOTIFICATION

Re: 2417 Broadway, Oakland

October 25, 1999

Page 2 of 2

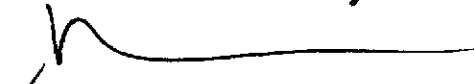
In accordance with Section 25297.15(a) of Ch. 6.7 of the Health & Safety Code, you must certify to the local agency that all current record owners of fee title to the site have been informed of the proposed action before the local agency may do any of the following:

- 1) consider a cleanup proposal (corrective action plan)
- 2) consider a site closure proposal
- 3) make a determination that no further action is required
- 4) issue a closure letter

You may use the enclosed "notice of proposed action" form (sample letter 3) as a template to comply with this requirement. Before approving a cleanup proposal or site closure proposal, determining that no further action is required, or issuing a closure letter, the local agency will take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup and site closure process and will consider all input and recommendations from any responsible landowner.

Please call me at (510) 567-6876 if you have any questions about the content of this letter.

Sincerely,


✓ Amir K. Gholami, REHS
Hazardous Materials Specialist

cc: Chuck Headlee, RWQCB

Attachments: Sample letter 2 and Sample letter 3, which must be filled out by the Responsible Party and mailed to Alameda County.

Alameda County Health care Services Agency
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

**"List of Landowners" form
(Sample Letter 2)**

**SUBJECT: CERTIFIED LIST OF RECORD FEE TITLE OWNERS FOR (Site
name and address)
(to be filled in by the primary responsible party and mailed to
Alameda County)**

(Note: Fill out item 1 if there are multiple site landowners. If
you are the sole site landowner, skip item 1 and fill out item 2)

1. In accordance with section 25297.15(a) of Chapter 6.7 of
the Health & Safety Code, I, (name of primary responsible
party), **certify that the following is a complete list of
current record fee title owners and their mailing addresses
for the above site:**

2. In accordance with section 25297.15(a) of Chapter 6.7 of
the Health & Safety Code, I, (name of primary responsible
party), **certify that I am the sole landowner for the above
site.**

Sincerely,

Signature of primary responsible party

Name of primary responsible party

Alameda County Health care Services Agency
Environmental Health Services
1131 Harbor Bay Parkway, Suite 250
Alameda, CA 94502-6577

**"Notice of Proposed Action" form
(Sample Letter 3)**

**SUBJECT: NOTICE OF PROPOSED ACTION SUBMITTED TO LOCAL AGENCY FOR
(site name and address)
(to be filled in by the primary responsible party and mailed to
Alameda county)**

In accordance with section 25297,15(a) of Chapter 6.7 of the Health & Safety Code, I, (name of primary responsible party), certify that I have notified all responsible landowners of the enclosed proposed action. Check space for applicable proposed action(s):

- cleanup proposal (corrective action plan)
- site closure proposal
- local agency intention to make a determination that no further action is required
- local agency intention to issue a closure letter

Sincerely,

Signature of primary responsible party

Name of primary responsible party

cc: Names and addresses of all record fee title owners

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



May 28, 1999

STID 4903

K. C. Ma
c/o John Kao, attorney
650 California St., 29th Floor
San Francisco, CA 94108

ENVIRONMENTAL HEALTH SERVICES

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

RE: 2417 Broadway, Oakland, CA 94612

LANDOWNER NOTIFICATION AND PARTICIPATION REQUIREMENTS

Dear Mr. Ma:

This letter is to inform you of new legislative requirements pertaining to cleanup and closure of sites where an unauthorized release of hazardous substance, including petroleum, has occurred from an underground storage tank (UST). Section 25297.15(a) of Ch. 6.7 of the Health & Safety Code requires the primary or active responsible party to notify all current record owners of fee title to the site of: 1) a site cleanup proposal, 2) a site closure proposal, 3) a local agency intention to make a determination that no further action is required, and 4) a local agency intention to issue a closure letter. Section 25297.15(b) requires the local agency to take all reasonable steps to accommodate responsible landowners' participation in the cleanup or site closure process and to consider their input and recommendations.

For purposes of implementing these sections, you have been identified as the primary or active responsible party. Please provide to this agency, within twenty (20) calendar days of receipt of this notice, a complete mailing list of all current record owners of fee title to the site. You may use the enclosed "list of landowners" form (sample letter 2) as a template to comply with this requirement. If the list of current record owners of fee title to the site changes, you must notify the local agency of the change within 20 calendar days from when you are notified of the change.

If you are the sole landowner, please indicate that on the landowner list form. The following notice requirements do not apply to responsible parties who are the sole landowner for the site.

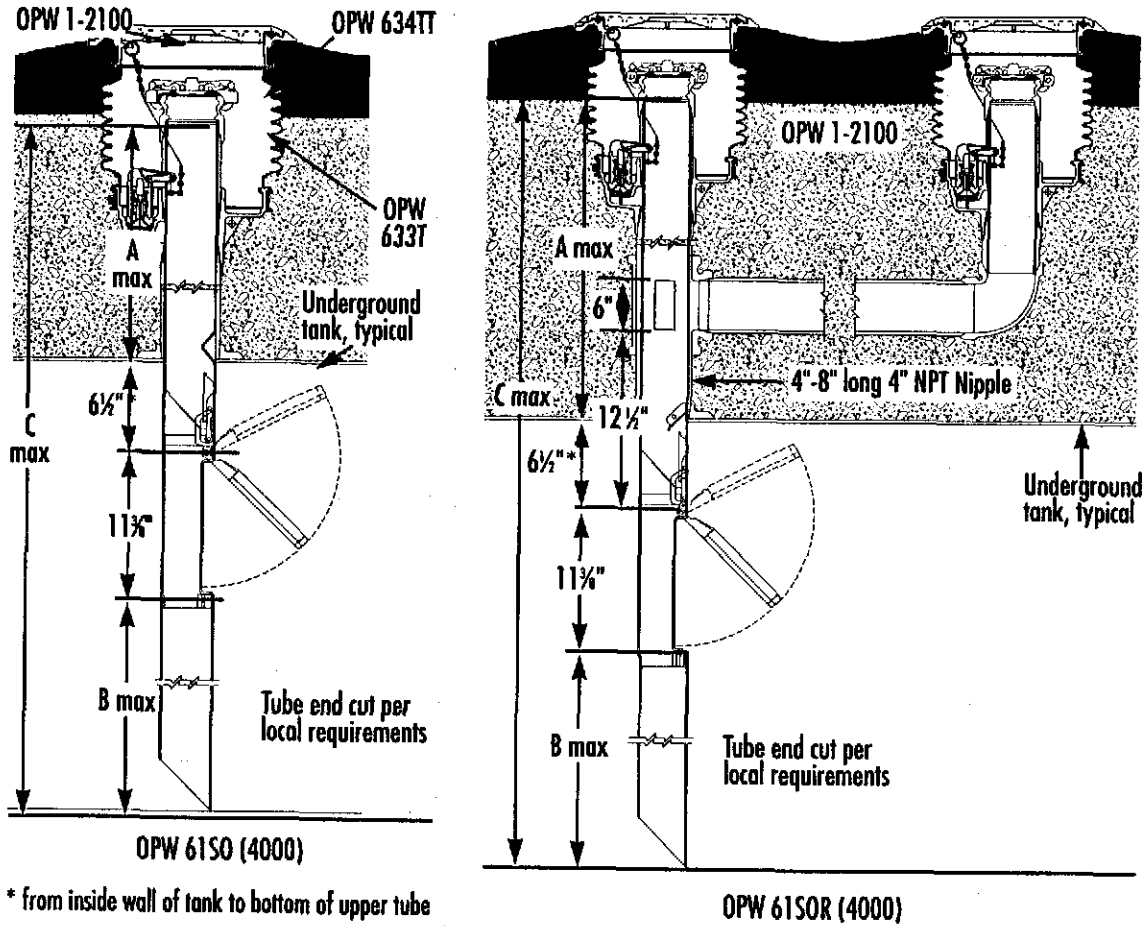
In accordance with Section 25297.15(a) of Ch. 6.7 of the Health & Safety Code, you must certify to the local agency that all current record owners of fee title to the site have been informed of the proposed action before the local agency may do any of the following:

LANDOWNER NOTIFICATION

OPW 6150 OVERFILL PREVENTION VALVES

Typical Application Assembly

Installation schematic typical; exact dimensions will vary with tank configuration.



* from inside wall of tank to bottom of upper tube

Ordering Specifications and Dimensions

Product/Suffix Number	Description	A-Upper Tube Length		B-Lower Tube Length		C-Overall Length		Max. Tank Riser Length		Max. Nominal Tank Dia.		Max. Actual Tank Dia.		lbs.	kg.
		in	m	in	m	in	m	in	m	in	m	in	m		
6150-3000	3" two-point	60"	1.5	83"	2.1	155 1/2"	4.0	53 1/2"	1.4	96"	2.5	108"	2.7	13	6
6150-1000	Grooved tube	60"	1.5	83"	2.1	154 1/2"	3.9	53 1/2"	1.4	96"	2.4	107"	2.7	17	8
6150-100C	CARB, Grooved tube	60"	1.5	83"	2.1	154 1/2"	3.9	53 1/2"	1.4	96"	2.4	107"	2.7	17	8
6150-4000	4" two-point	60"	1.5	83"	2.1	154 1/2"	3.9	53 1/2"	1.4	96"	2.4	107"	2.7	16	7
6150-4010	4" two-point	120"	3.1	102"	2.6	233 1/2"	5.9	113 1/2"	2.9	120"	3.1	126"	3.2	25	11
6150-400C	CARB 4", two-point	60"	1.5	83"	2.1	154 1/2"	3.9	53 1/2"	1.4	96"	2.4	107"	2.7	16	7
6150-410C	CARB 4", two-point	120"	3.1	102"	2.6	233 1/2"	5.9	113 1/2"	2.9	120"	3.1	126"	3.2	25	11
6150M-4121*	Two-point methanol	120"	3.1	102"	2.6	233 1/2"	5.9	113 1/2"	2.9	120"	3.1	126"	3.2	25	11
6150-412C*	CARB 4", two-point	120"	3.1	102"	2.6	233 1/2"	5.9	113 1/2"	2.9	120"	3.1	126"	3.2	25	11
6150C-4001	Coaxial	60"	1.5	83"	2.1	154 1/2"	3.9	53 1/2"	1.4	96"	2.4	107"	2.7	16	7
6150C-4011	Coaxial	120"	3.1	102"	2.6	233 1/2"	5.9	113 1/2"	2.9	120"	3.1	126"	3.2	25	11
6150P-4002	CARB, pop. coaxial	60"	1.5	83"	2.1	154 1/2"	3.9	53 1/2"	1.4	96"	2.4	107"	2.7	20	9
6150P-4012	CARB, pop. coaxial	108"	2.7	102"	2.6	221 1/2"	5.6	101 1/2"	2.6	120"	3.1	126"	3.2	27	12
6150CM-4000*	Coaxial, methanol	120"	3.1	102"	2.6	233 1/2"	5.9	113 1/2"	2.9	120"	3.1	126"	3.2	25	11
6150-48YT	Valve only, no tubes supplied														
6150C-48YT	Coaxial, valve only, no tubes supplied														
6150R-4000**	Remote	72"	1.8	83"	2.1	166 1/2"	4.2	65 1/2"	1.7	96"	2.4	107"	2.7	19	9
6150RM-4000***	Remote, methanol	72"	1.8	102"	2.6	185 1/2"	4.7	65 1/2"	1.7	120"	3.1	126"	3.2	19	9

*For use with M85 & M100 methanol fuels **Remote fill applications ***Remote fill, methanol

Re: 2417 Broadway, Oakland, CA 94612
May 28, 1999
Page 2 of 2

- 1) consider a cleanup proposal (corrective action plan)
- 2) consider a site closure proposal
- 3) make a determination that no further action is required
- 4) issue a closure letter

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Please call Amir Gholami at (510) 567-6876 should you have any questions about the content of this letter.

Sincerely,



Thomas Peacock, Manager
Environmental Protection Division

Attachments

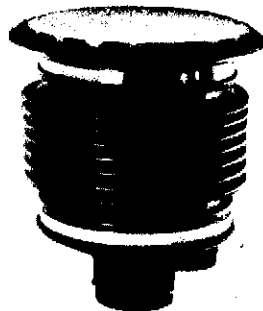
c: Chuck Headlee, RWQCB

OPW 1-2100 SERIES THREAD-ON SPILL CONTAINERS

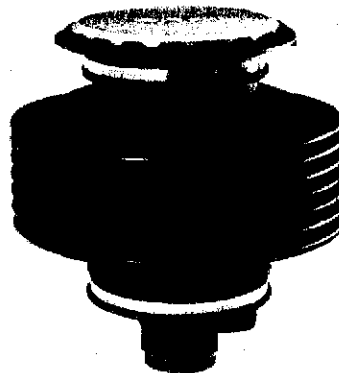
The OPW 1-2100 Spill Container Series represents the new standard for spill containment technology, today and into the 21st century. This series is designed to prevent products from entering the soil near the fill or vapor connection on underground storage tanks during normal tank filling operation or in the event of tank overfill. The OPW 1-2100 spill container catches this spillage and helps prevent soil contamination and groundwater pollution.

OPW 1-2100 Series Thread-On Spill Containers feature:

- ◆ **Pull-to-Open Drain Valve** - Allows high speed drainage of excess product into the tank. Designed with a convenient self-cleaning seal and removable screen for easier component cleaning.
- ◆ **Capacity** - Available in a true 5-gallon capacity and an all-new 15-gallon capacity.
- ◆ **Newly Designed Cover** - Available in either cast aluminum or cast iron, this new design incorporates a seal in the cover to help prevent water from entering the spill container.
- ◆ **Fuel Compatibility** - Designed to accommodate the fuels of the future, including methanol, ethanol and fuels with MTBE additives.
- ◆ **Easy Installation** - Reduces job-site time and installation costs. Simply cut to length and thread a 4" riser pipe. The OPW 1-2100 screws directly onto the riser. No external connections to make, adjust the final grade height and support the unit with backfill.
- ◆ **New and Improved Mounting Ring** - This new design offers better protection against snow plows and provides for easier concrete sloping.
- ◆ **Highway 20 Rated (H20)** - All OPW spill containers and manholes are Highway 20 rated.
- ◆ **CARB Certified**



OPW 1-2100, 5-Gallon



OPW 1-2115, 15-Gallon

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 28, 1999

STID 4903

K. C. Ma
c/o John Kao, attorney
650 California St., 29th Floor
San Francisco, CA 94108

re: 2417 Broadway, Oakland, CA 94612

SECOND NOTICE OF VIOLATION

Dear K. C. Ma:

This office has not received any correspondence or communication concerning the contamination at the above site subsequent to a letter from this office, dated November 7, 1996. Although you had a workplan submitted that was approved by this office prior to that date, it was not implemented. A new workplan must be submitted as this one is over a year old.

You are in violation of Section 25298(a)(5) of CH&SC, Division 20, Chapter 6.7, failure to investigate a leak from an underground tank system and to take appropriate corrective or remedial actions.

You are directed to submit, within 30 days, a new workplan for soil and groundwater investigation at the above site.

You were told of this violation in a nitice dated 17 June, 1998 and you did not respond.

Please call Amir Gholami of this office with any questions at (510) 567-6876.

Sincerely,

Thomas F. Peacock, Manager
Environmental Protection Division

c: Bob Chambers, Alameda County District Attorney's Office
Dick Pantages, Chief - files
LeRoy Griffin, City of Oakland Hazardous Material Division

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director

May 28, 1999



STID 4903

K. C. Ma
c/o John Kao, attorney
650 California St., 29th Floor
San Francisco, CA 94108

ENVIRONMENTAL HEALTH SERVICES

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

re: 2417 Broadway, Oakland, CA 94612

SECOND NOTICE OF VIOLATION

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You are directed to submit, within 30 days, a new workplan for soil and groundwater investigation at the above site.

You were told of this violation in a nitice dated 17 June, 1998 and you did not respond.

Please call Amir Gholami of this office with any questions at (510) 567-6876.

Sincerely,

Thomas F. Peacock, Manager
Environmental Protection Division

c: Bob Chambers, Alameda County District Attorney's Office
Dick Pantages, Chief - **files**
LeRoy Griffin, City of Oakland Hazardous Material Division

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



17 June, 1998

STID 4903

K. C. Ma
c/o John Kao, attorney
650 California St., 29th Floor
San Francisco, CA 94108

ENVIRONMENTAL HEALTH SERVICES

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

re: 2417 Broadway, Oakland, CA 94612

NOTICE OF VIOLATION

Dear K. C. Ma:

This office has not received any correspondence or communication concerning the contamination at the above site subsequent to a letter from this office, dated November 7, 1996. Although you had a workplan submitted that was approved by this office prior to that date, it was not implemented. A new workplan must be submitted as this one is over a year old.

You are in violation of Section 25298(a)(5) of CH&SC, Division 20, Chapter 6.7, failure to investigate a leak from an underground tank system and to take appropriate corrective or remedial actions.

You are directed to submit, within 30 days, a new workplan for soil and groundwater investigation at the above site.

Please call this office with any questions at (510) 567-6782.

Sincerely,

Thomas F. Peacock, Manager
Environmental Protection Division

c: Bob Chambers, Alameda County District Attorney's Office
Dick Pantages, Chief - **files**
LeRoy Griffin, City of Oakland Hazardous Material Division

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY



DAVID J. KEARS, Agency Director

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

November 7, 1996
STID 4903
page 1 of 2

K.C. Ma
c/o John Kao, attorney
650 California ST., 29th Floor
San Francisco CA 94108

re: Former Chrysler Dealership, 2417 Broadway, Oakland CA 94612

Dear Mr. K.C. Ma,

I have not received any correspondence or phone calls from you or your consultant, since my last letter, dated 8/7/95, in which I conditionally approved the 5/7/95 workplan prepared by Epigene International for three soil borings and three monitoring wells, for a total of six borings. I phoned John Alt of Epigene on 10/15/96 to check on the status of the workplan. He indicated that he did not implement the workplan.

Please be advised that "no person shall close an underground tank system unless that person . . . demonstrates to the appropriate agency . . . that the site has been investigated to determine if there are any present, or were past releases, and if so, that appropriate corrective or remedial actions have been taken," as per Section 25298 (c) (4) of the California Health & Safety Code, (CH&SC) Division 20, Chapter 6.7. Further, "any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) for each underground storage tank for each day of violation for. . . failure to properly close an underground tank system," as per Section 25299 (a) (5) of CH&SC, Division 20, Chapter 6.7.


You are required to implement the workplan within 30 days, or by December 7, 1996. In order to do this, you will need to sign a contract with your environmental consultant. Please submit a copy of the signed contract to this office within 15 days, or by November 22, 1996. Please notify me at least 3 business days prior to the field work. If these requirements are not met, the next letter from this office will be a Notice of Violation, which will impede your collection of funds from the State Water Resources Control Board's UST Clean Up Fund.

November 7, 1996
STID 4903
page 2 of 2
K.C. Ma
c/o John Kao, attorney

I believe our mutual goal is the closure of this case, at which point a closure letter will be issued from this office, and signed by the Director of this Department. As you probably know, the closure letter is usually paramount in importance when doing a property transfer or refinancing a property loan.

Until the above requirements are met, this case remains open. If you have questions, you may contact me at 510-567-6700, ext 6761.

Sincerely,



Jennifer Eberle
Hazardous Materials Specialist

cc: John Alt, Epigene International, 38750 Paseo Padre Pky, suite A-11, Fremont CA 94536
Bob Chambers, Alameda County District Attorney's Office of Environmental and
Consumer Protection
J. Eberle/file

je.4903-C

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY



DAVID J. KEARS, Agency Director

RAFAT A. SHAHID, DIRECTOR

August 7, 1995
STID 4903

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

K.C. Ma
c/o John Kao, attorney
650 California ST., 29th Floor
San Francisco CA 94108

re: Former Chrysler Dealership, 2417 Broadway, Oakland CA 94612

Dear Mr. K.C. Ma,

On 8/2/95, we received the "Proposed Workplan for Subsurface Investigation of Potential Soil and Groundwater Contamination for Site Located at 2417 Broadway, Oakland," prepared by Epigene International, dated 5/7/95. This workplan involves the installation of three soil borings and three monitoring wells, for a total of six borings. **This workplan is acceptable on the following conditions:**

- 1) There is no need to analyze for LUFT Metals, semi-VOCs (by 8270), or total lead. The Total Oil and Grease should be done either by method 418.1 with silica gel cleanup, or by method 5520.
- 2) At least one soil sample from each of the six borings should be collected and analyzed from the capillary fringe.
- 3) A minimum of 72 hours should elapse between well construction and development, as per 23 CCR, Div 3, Ch 16, Section 2649 (d)(8).
- 4) A minimum of 24 hours should elapse between well development and sampling.

Please contact me by telephone at least 2 business days prior to commencement of field work. It is assumed that field work will commence within 30 days from the date of this letter. You may contact me at 510-567-6700, ext 6761. You are encouraged to submit reports on double-sided paper in order to save precious trees.

Sincerely,

Jennifer Eberle
Hazardous Materials Specialist

cc: John Alt, Epigene International, 38750 Paseo Padre Pky, suite A-11, Fremont CA 94536
Tom Peacock/file

je.4903-B

JOHN K. KAO & COMPANY
ATTORNEYS AT LAW
650 California Street, 29th Floor
San Francisco, California 94108

Telephone (415) 392-5600

Facsimile (415) 981-5027

ENVIRONMENTAL
PROTECTION
95 AUG -2 PM 2:48

August 1, 1995

Jennifer Eberle
Hazardous Materials Specialist
Alameda County Health Care Services Agency
Department of Environmental Health
Environmental Protection Division
1131 Harbor Bay Parkway, #250
Alameda, California 94502-6577

Re: STID 4903
2417 Broadway, Oakland, CA 94612

Dear Ms. Eberle:

Further to our telephone conversation this morning, herewith is a copy of the work plan prepared by John Alt of Epigene International Consulting Geologists in the above referenced matter. Thank you.

Very truly yours,


John K. Kao

JKK:cf

44694.250

F95C.250L3

cc: T.K. Cheung (w/enc)

**JOHN K. KAO & COMPANY
ATTORNEYS AT LAW
650 California Street, 29th Floor
San Francisco, California 94108**

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March 8, 1995

**To: Jennifer Eberle
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From: John K. Kao

Re: KFC v Meghrig

Number of Pages: 6 (INCLUDING COVER SHEET)

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Enclosed is a copy of the 9th Circuit case (KFC v. Meghrig) that you requested. Additionally, a local mailing address for K. C. Ma may be c/o T. K. Cheung, 386 Michelle Lane, Daly City, California 94015. Thank you.



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low a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

Clearly, the language of this provision, does not explicitly authorize a prevailing party to recover attorney's fees from the United States. An action under § 1324b can be initiated by a private individual, and thus "the losing party" in an administrative adjudication might often be a party other than the United States.

Our review of fee provisions from statutes similar in purpose and structure to § 1324b reveals that when Congress intended to make the United States liable for attorney's fees it did so expressly. For instance, the fee provision of the Equal Opportunity for Individuals with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, states with clarity Congress's intent to waive sovereign immunity:

In any action or administrative proceeding commenced pursuant to this chapter, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable for the foregoing the same as a private individual.

42 U.S.C. § 12205 (Supp. III 1991) (emphasis added). Similarly, the fee provision of Title VII states: "the Commission and the United States shall be liable for costs the same as a private person." 42 U.S.C. § 2000e-5(k). These examples provide ample support for the proposition that without an express waiver of sovereign immunity the United States is not liable for attorney's fees.

General Dynamics asks us to imply a waiver, arguing that because § 1324b(h) allows attorney's fees to be awarded in "any complaint" where the losing party's position is unreasonable, the provision necessarily encompasses complaints filed by the United States. A showing of ambiguity, however, is insufficient to support a claim that Congress waived sovereign immunity.¹

The Supreme Court consistently has held that liability attaches to the United States only if Congress's intent to waive the government's immunity is "unequivocally expressed." See, e.g., *United States Dep't of Energy v. Ohio*, 503 U.S. 607, ___, 112 S. Ct. 1627, 1633-40 (1992) (requiring an express waiver in the text of the statute); *United States v. Nordic Village, Inc.*, 503 U.S. 30, ___, 112 S. Ct. 1011, 1014-16 (1992) (insisting that waivers of immunity be expressed in the statutory text); *Library of Congress v. Shaw*, 478 U.S. 310, 320 (1986) ("The Court consistently has refused to impute an intent to waive immunity from interest into the ambiguous use of a particular word or phrase in a statute."). We can unearth no such expression in the statutory scheme governing § 1324b, and we therefore conclude that the United States is immune from General Dynamics's claim for attorney's fees.

The PETITION is DENIED.

Cite as 95 C.D.O.S. 1522

KFC WESTERN, INC., Plaintiff-Appellant,

v.

**ALAN MEGHRIG; MARGARET MEGHRIG,
Defendants-Appellees.**

No. 92-56597

United States Court of Appeals for the Ninth Circuit
D.C. No. CV-92-03269 HLH

Appeal from the United States District Court for the Central District of California Harry L. Hupp, District Judge, Presiding
Argued and Submitted April 5, 1994—Pasadena, California
Before: James R. Browning, Harry Pregerson, and Melvin Brunetti,
Circuit Judges.

COUNSEL

Daniel Romano, Santa Monica, California, attorney for the plaintiff-appellant.

1. The legislative history accompanying the passage of § 1324b gives no indication that Congress intended to effect a waiver when adopting the "any complaint" language.

John P. Zaines, McClintock, Weston, Benshoof, Rochefort, Rubalcava & MacCuish, Los Angeles, California, attorney for the defendants-appellees.

Filed March 1, 1995

PREGERSON, Circuit Judge:

KFC Western, Inc. ("KFC") appeals the district court's dismissal of its action under the Resource Conservation and Recovery Act ("RCRA") to recover environmental clean-up costs from the prior owners of contaminated property sold to KFC. The district court dismissed KFC's action under Federal Rule of Civil Procedure 12(b)(6) because it concluded that RCRA § 7002, codified at 42 U.S.C. § 6972(a)(1)(B), does not authorize private plaintiffs to collect a restitutionary remedy. We have jurisdiction under 28 U.S.C. § 1291. We reverse and remand.

BACKGROUND

In September 1975, Alan and Margaret Meghrig (the "Meghriks") sold real property to KFC, which continues to own and operate a Kentucky Fried Chicken franchise on the property. Unbeknown to KFC, underground soil at the property was contaminated with elevated levels of refined petroleum products (lead and benzene) at the time of the sale. The contamination allegedly resulted from the Meghriks' negligence in operating a gasoline station on the property. The Meghriks never informed KFC about the contamination.

In October 1988, in the course of improving the property, KFC discovered the contaminated soil. The City of Los Angeles Department of Building and Safety issued a corrective notice ordering KFC to stop all construction on the property pending analysis of the soil and clearance from the County of Los Angeles Department of Health Services (the "DHS"). Analysts confirmed the presence of elevated levels of refined petroleum in the soil. Although KFC neither caused the contamination nor owned the property when the contamination occurred, the DHS ordered KFC to clean up the property. KFC spent over \$211,000.00 to assess and remove the contaminated soil for off-site disposal. KFC completed the clean-up in 1989 and, in June 1990, asked the Meghriks to reimburse the costs. The Meghriks refused.

On May 29, 1992, KFC filed a complaint in district court against the Meghriks under RCRA § 7002, codified at 42 U.S.C. § 6972(a)(1)(B), for restitution of the expended clean-up costs. The Meghriks filed a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss the complaint, offering two reasons why KFC's action did not come within the RCRA citizen suit provision: (1) there was no "imminent and substantial endangerment" because KFC had completed the clean-up three years before filing, and (2) RCRA authorized suits for injunctive relief only, not for damages. The district court granted the Meghriks' motion and granted KFC leave to amend its complaint.

KFC filed an amended complaint which alleged that the contaminated soil, at the time of clean-up, presented an "imminent and substantial endangerment" to public health and the environment by threatening surrounding groundwater and potentially risking the health of people expected to use the property and the KFC franchise. RCRA § 7002, codified at U.S.C. § 6972 (a)(1)(B). Also, KFC stated that its damages claim was actually a claim for "equitable restitution." Upon the Meghriks' renewed motion, the district court dismissed the amended complaint. In its dismissal order, the district court stated that 42 U.S.C. § 6972(a)(1)(B) authorizes only injunctive or other equitable relief and only in cases involving an existing, imminent danger to public health or the environment. KFC appeals.

ANALYSIS

We review *de novo* a dismissal for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). *Oscar v. University Students Co-op. Ass'n*, 965 F.2d 783, 785 (9th Cir.) (*en banc*), cert. denied, 113 S. Ct. 655, 656 (1992). In reviewing such a dismissal, our review is limited to the contents of the complaint, *Buckey v. County of Los Angeles*, 968 F.2d 791, 794 (9th Cir.), cert. denied, 113 S. Ct. 599 (1992), and we must take as true all allegations of material fact and construe them in the light most favorable to the plaintiff, *Oscar*, 965 F.2d at 785.

This appeal presents us with a question of first impression—

whether the RCRA citizen suit provision authorizes a private plaintiff to collect restitution of clean-up costs. The RCRA citizen suit provision provides:

[A]ny person may commence a civil action on his own behalf . . . against any person . . . including any . . . past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment[.]

The district court shall have jurisdiction . . . to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in [§ 6972(a)(1)(B) (the endangerment provision)] [and] to order such person to take such other action as may be necessary, or both.

RCRA § 7002, codified at 42 U.S.C.A. § 6972(a)(1)(B) and § 6972(a) (West 1984 & Supp. 1993) (emphasis added).

The parties dispute initially whether, for purposes of § 6972(a)(1)(B), "imminent and substantial endangerment" must exist at the time the plaintiff files a complaint or may exist at the time of clean-up. The Meghrihs urge us to adopt the district court's reasoning that § 6972(a)(1)(B) authorizes citizen suits only if contamination poses an imminent and substantial endangerment at the time the plaintiff files the complaint. Because KFC completed the clean-up of the property three years before commencing this lawsuit, the Meghrihs argue that KFC has no remedy under RCRA. The result urged by the Meghrihs is supported by certain comments in the legislative history that explain the meaning of the term "imminence." "Imminence in this section applies to the nature of the threat. . . . The section, therefore, may be used for events which took place at some time in the past but which continue to present a threat to the public health or the environment." Staff of House Subcommittee on Oversight and Investigation, Committee on Interstate and Foreign Commerce, 96th Cong., 1st Sess., Hazardous Waste Disposal 32 (Comm. Print 96-IFC 31, 1979) ("Eckhardt Report") (emphasis added). See *Dague v. City of Burlington*, 935 F.2d 1343, 1356 (2d Cir. 1991) (finding an "imminent hazard" requires proof that a risk of harm is present), *rev'd in part on other grounds*, 112 S. Ct. 2638 (1992); *United States v. Price*, 688 F.2d 204, 214 (3d Cir. 1982) (noting that imminent danger existed at the time of the district court's hearing).¹

Nonetheless, we agree with KFC that RCRA authorizes citizen suits with respect to contamination that in the past posed imminent and substantial danger. We choose to follow the Eighth Circuit's interpretation of RCRA § 7003, codified at 42 U.S.C. § 6973, which authorizes suits by the Administrator of the Environmental Protection Agency ("EPA"), and which is worded virtually identically to § 6972(a)(1)(B).² The Eighth Circuit reads the imminent endangerment requirement as "limit[ing] the reach of RCRA to sites where the potential for harm is great" but not as limiting the time for filing

1. The Meghrihs also cite *Gwaliney of Smithfield, Ltd. v. Chesapeake Bay Found.*, 484 U.S. 49 (1987) (Clean Water Act case) and *McClellan Ecological Seepage Situation v. Weinberger*, 707 F. Supp. 1182, 1187 (E.D. Cal. 1988) (dismissing for mootness a RCRA action under § 6972(a)(1)(A)), which are inapposite. Both cases explain only that citizen suit provisions not at issue here do not apply retroactively to allow an action against a defendant who violated a statutory obligation in the past, if the defendant no longer allegedly is "in violation." In contrast, § 6972(a)(1)(B) applies both prospectively and retrospectively, to persons who contributed in the past to current endangerment. See *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1159 (9th Cir. 1989) (citing *Gwaliney*, 484 U.S. at 57 & 58 n.2, wherein the Supreme Court described the section as one where "Congress has demonstrated . . . that it knows how to avoid [limiting a statute to prospective application] by using language that expressly targets past violations").

2. Specifically, § 6973 provides:
[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit . . . against any person . . . who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from [such activity], to order such person to take such other action as may be necessary, or both. . . .

42 U.S.C.A. § 6973 (West 1984 & Supp. 1993) (emphasis added).

an action. *United States v. Aceto Agric. Chemicals Corp.*, 872 F.2d 1373, 1383 (8th Cir. 1989).

In *Aceto Agric. Chemicals Corp.*, the Eighth Circuit, when it reversed a Federal Rule of Civil Procedure 12(b)(6) dismissal order, addressed and rejected the same arguments that the Meghrihs make here. The defendants in the Eighth Circuit case argued that because the plaintiff (EPA) cleaned up the site before bringing suit, the required "imminent and substantial endangerment" did not exist. The court concluded that the language of RCRA "does not require the EPA to file and prosecute its RCRA action while the endangerment exists." *Id.* The court explained that RCRA's purpose "is to give broad authority to the courts to grant all relief necessary to ensure complete protection of the public health and the environment. The limitation urged by defendants would defeat this purpose," "would be an "abundant and unnecessary" requirement. *Id.* (citations to quoted material omitted).

We also agree with KFC that RCRA authorizes a restitutionary remedy under these circumstances. KFC's action to collect restitution of clean-up costs falls within the statutory allowance for district court orders that defendants take "such other action as may be necessary . . ." 42 U.S.C. § 6972(a) ("The district court shall have jurisdiction . . . to restrain any person who has contributed or who is contributing to [an imminent and substantial endangerment], to order such person to take such other action as may be necessary, or both. . . .") (Emphasis added). We reject the Meghrihs' contention that the statute entitles citizens to obtain only an injunction or other equitable relief that is not the equivalent of compensatory money damages.

Because Congress intended that citizen suits be governed by the same standards of liability as governmental actions,³ and because it worded the provisions almost identically, we choose to interpret similarly the relief available under the two provisions. The Eighth Circuit has recognized the Administrator's right to sue under § 6973 for restitution of costs incurred. See, e.g., *Aceto Agric. Chemicals Corp.*, 872 F.2d at 1383 (Administrator may collect reimbursement after government cleaned up contaminated property); *United States v. Northeastern Pharmaceutical & Chem. Co.*, 810 F.2d 726 (8th Cir. 1986) (Administrator may collect an equitable award of abatement costs from persons who non-negligently contributed to endangerment), *cert. denied*, 484 U.S. 843 (1987). The Third Circuit also has stated that "[r]eimbursement could . . . be directed against those parties ultimately found to be liable" after the EPA itself funded a diagnostic study of contaminated property. *Price*, 688 F.2d at 214 (holding that district court could have granted the Administrator a preliminary injunction to obtain funding for diagnostic study).

We are not persuaded by the Meghrihs' contention that material differences exist between the substantially identical citizen suit provisions in § 6972(a)(1)(B) and § 6973, so as to justify affording restitutionary relief only to the Administrator. The Meghrihs focus first on the different notice requirements for filing actions.⁴ The Administrator may bring an action "upon receipt of evidence" of the requisite endangerment, and the statute does not preclude actions filed by the Administrator without notice. See 42 U.S.C. § 6973(a). On the other hand, a private plaintiff cannot commence an action without giving ninety days' notice to the Administrator, the State, and to any alleged contributor to the endangerment. See 42 U.S.C. §

3. H.R. Rep. No. 198, 98th Cong., 2d Sess., pt. 1, 53 (1983), reprinted in 1984 U.S.C.A.N. 5576, 5612. The legislative history for the 1984 RCRA Amendments suggests that when Congress added the endangerment provision it did not intend to grant a narrower right of action to citizens than to the Administrator, who is authorized (according to persuasive out-of-circuit case law, discussed *infra*) to bring reimbursement actions. Nothing indicates that Congress intended citizen suits to serve a purpose different from that served by governmental actions. The House Committee on Energy and Commerce explained in its report that citizens have a limited right to sue in endangerment cases "pursuant to the standards of liability established under Section 7003 [42 U.S.C. § 6973, Administrator's right of action] and only if the Administrator, after receiving notice, fails to file an action. *Id.* "The Committee believes [the] expansion of the citizen suit provision will complement . . . the Administrator's efforts to eliminate threats as to public health and the environment, particularly where the Government is unable to take action because of inadequate resources." *Id.*

Still, the legislative history cuts both ways because other language supports the Meghrihs' contention that Congress intended to allow citizens to sue only for injunctions when it added the endangerment provision. The House Committee stated that citizens have a "limited right . . . to sue to abate an imminent and substantial endangerment." *Id.* (emphasis added).

4. Compliance with the citizen suit notice requirement, *infra*, is not an issue on appeal.

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6972(b)(2)(A); *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1159 (9th Cir. 1989). Notice by a private plaintiff might encourage certain polluters to abate harmful conduct to obviate an expensive lawsuit. Still, there is no inconsistency between a notice requirement and the recovery of clean-up costs from past polluters.⁵ Requiring notice of a citizen suit restitution action still serves certain interests of the EPA and the states by notifying them that endangerment was corrected and that the polluters are being held accountable. Furthermore, even the Administrator must provide immediate notice of hazardous waste endangerment to the appropriate local governmental agencies, see 42 U.S.C. § 6973(c), and no courts have treated this notice requirement as a basis for refusing to allow governmental restitution actions.

The Meghrihs also argue that the lack of a limitations period for RCRA citizen suits is evidence of the unavailability of reimbursement actions under RCRA. They argue that it would be problematic for us to conclude that private citizens can file suit many years after they complete clean-up of once-imminent endangerment. Congress provided a limitations period in other statutes, such as the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), when it expressly authorized actions to recover response costs, 42 U.S.C. § 9612(d)(1) (West 1986 & Supp. 1993) (claim to recover clean-up costs must be made within six years after the completion of all response action). Instead, in RCRA, Congress provided that private plaintiffs retain the right "to seek any other relief" available "under any statute or common law . . ." See 42 U.S.C. § 6972(f). We do not see this as a problem. By applying equitable defenses such as laches, courts can alleviate any unfairness that might be created by the lack of a limitations period for RCRA citizen suits.

We have found no principled reason to distinguish between the relief available to the Administrator and that available to private plaintiffs under the virtually identical statutory provisions. Nor are we persuaded by the case law cited by the Meghrihs. Some circuit courts have held that citizens cannot bring reimbursement actions because RCRA authorizes only preventive, rather than compensatory relief. See *Walls v. Waste Resource Corp.*, 761 F.2d 311, 316 (6th Cir. 1985) (refusing to imply a private right of action for damages); *Environmental Defense Fund, Inc. v. Lamphier*, 714 F.2d 331, 337 (4th Cir. 1983) (affirming award of injunctive relief because plaintiffs were "acting as private attorneys general rather than pursuing a private remedy [for damages]"). These decisions are inapposite because they do not address private actions like KFC's action, brought under § 6972(a)(1)(B). Rather, they concern actions brought under the predecessor to § 6972(a)(1)(A), formerly 42 U.S.C. § 6972(a), which authorized actions to "enforce" a requirement against any person alleged to be currently "in violation" of the requirement. Cf. § 6972(a)(1)(B) (allowing actions against any contributor, past or present, to an imminent and substantial endangerment).

Furthermore, we disapprove of the reasoning used by district courts that have dismissed complaints brought under § 6972(a)(1)(B) to the extent the plaintiffs sought reimbursement of clean-up costs. See *Kaufman and Broad-South Bay v. Unisys Corp.*, 822 F. Supp. 1468 (N.D. Cal. 1993) (refusing to follow cases interpreting § 6973 to afford a restitution remedy to the Administrator, and relying on *Walls*, and *Commerce Holding Co. v. Buckstone*, 749 F. Supp. 441 (E.D.N.Y. 1990)); *Commerce Holding Co.*, 749 F. Supp. at 445 (Although plaintiff characterized complaint as a request for "equitable relief in the form of [clean-up cost] reimbursement," court construed it as one for damages, stating that the complaint failed even if treated as a request for equitable relief because the plaintiff "would be the direct beneficiary of the substantive relief."). Because we choose to follow the Eighth Circuit's rule that the Administrator may sue for equitable restitution of costs, we

5. Section 6972(a)(1)(B) permits private actions against persons who in the past contributed to current endangerment, even though they no longer engage in conduct that requires abatement. Because § 6972(a)(1)(B) applies retroactively in some cases, we do not import into our analysis the Supreme Court's discussion in *Gwaltney* on the significance of a notice requirement, 484 U.S. at 60-61 (rejecting a statutory interpretation that would render notice gratuitous because one purpose of notice is to give an alleged violator an opportunity to bring itself into compliance with federal requirements and thereby render unnecessary a citizen suit). As explained *supra* in note 1, the *Gwaltney* case concerned a different statute which only applies to persons alleged to be currently in violation of federal obligations.

now allow such suits by private plaintiffs under § 6972(a)(1)(B).

It would be unfair and poor public policy to interpret § 6972(a)(1)(B) as barring restitution actions. By doing so, we would make the citizen suit remedy meaningless in most cases for the very citizens who most deserve the remedy, namely innocent citizens, like KFC, who have a financial stake in the contaminated property as well as potential and actual clean-up liability. As in this case, the government often orders innocent parties, so-called "responsible parties" under the statute, to remedy discovered contamination on their property even though they did not cause the contamination or have any ties to the property when the contamination occurred. When the government orders clean-up, the innocent citizen must respond expeditiously to the order. There is no time to sue for "other equitable relief" in the form of a mandatory clean-up injunction against past polluters who may or may not still be on the scene.

CERCLA and state law do not provide an adequate substitute source of relief for these innocent citizens.⁶ In practice, an interpretation of § 6972(a)(1)(B) that afforded only injunctive relief, not compensation, would make the remedy available only to concerned outsiders, who can never be held responsible for environmental clean-up. We would foreclose a RCRA remedy for the innocent buyers who clean up contaminated property.

In fact, it is even more important for private citizens, as compared to the BPA Administrator, to have a restitutionary remedy under RCRA. A private citizen often cannot control the timing of clean-up actions but, rather, must clean the contaminated property whenever the government obtains an appropriate order. Even the innocent private party, like KFC, who purchases already-contaminated property, often must clean the property immediately and recover secondarily from the actual polluter. The Administrator, on the other hand, can control the timing of clean-up actions and impose the clean-up burden on the polluters or other "responsible parties" in the first instance. The right to reimbursement becomes important to the Administrator only when contamination requires prompt attention, which is always the case for private citizens who are ordered to remedy contamination. As the Third Circuit has recognized, public policy concerns might favor allowing a plaintiff to clean contaminated property first and seek reimbursement later. See *Price*, 688 F.2d at 214 ("Prompt preventive action [is] the most important consideration."). We therefore hold that § 6972(a)(1)(B) entitles KFC to bring a restitution action. REVERSED AND REMANDED.

Brunetti, Circuit Judge, dissenting:

Because I believe that RCRA § 7002, 42 U.S.C. § 6972(a)(1)(B), does not contemplate actions for restitution when there is no "imminent and substantial endangerment" at the time of suit, I must dissent from the majority's opinion.

The majority's main argument is that because the Eighth Circuit allowed the administrator to bring an action for restitution under § 6973, private citizens should be permitted to bring actions for restitution under § 6972(a)(1)(B) since those two sections are worded virtually identically. In *United States v. Aceto Agric. Chemicals Corp.*, 872 F.2d 1373, 1383 (8th Cir. 1989) (emphasis in original), the Eighth Circuit held that "RCRA's 'imminent and substantial endangerment' language does not require the EPA to file and prosecute its RCRA action while the endangerment exists." The court found that "in the context of a reimbursement action, this would be an 'absurd and unnecessary' requirement. The endangerment language is plainly intended by Congress to limit the reach of RCRA to sites where the potential for harm is great." *Id.* at 1383. The court

6. KFC has no remedy under CERCLA because CERCLA's petroleum exclusion covers refined petroleum products such as gasoline and therefore bars a lawsuit to recover response costs occasioned by its release. See *Cose v. Getty Oil Co.*, 4 F.3d 700, 704 (9th Cir. 1993) (CERCLA excludes refined petroleum from its definition of "hazardous substance"); *Wiltshire Westwood Assoc. v. Atlantic Richfield Corp.*, 821 F.2d 801, 810 (9th Cir. 1989) (same). Due to a similar petroleum exclusion in California's Hazardous Substance Account Act, KFC also has no statutory state law remedy. *KFC Western, Inc. v. Meghrih*, 28 Cal. Rptr. 2d 676, 682 (Ct. App. 1994). KFC might be able to state common law claims for private continuing nuisance and continuing trespass based on the Meghrihs' allegedly tortious contamination of the soil. See *id.* at 685 (reversing dismissal and remanding to allow KFC to amend its complaint). Even though causes of action for nuisance, trespass, and potential negligence are available to plaintiffs such as KFC, tort remedies are generally inadequate because of the difficulties of proof and attendant court delays.

concluded that requiring an "imminent and substantial endangerment" at the time of suit would defeat RCRA's purpose to "give broad authority to the courts to grant all relief necessary to ensure complete protection of the public health and the environment." *Id.* (quotations omitted).

The Eighth Circuit's decision *assumes* without deciding that RCRA § 6973 provides for reimbursement actions. Looking at the two issues presented in the instant action makes this clear. Those two issues are: (1) whether RCRA requires an "imminent and substantial endangerment" at the time of filing suit, and (2) whether § 6972 is limited to injunctive, rather than restitutionary, relief. Although the two issues are intertwined, allowing an action for restitution *after* a site has been cleaned up requires an affirmative answer to both questions. If the answer to either question is no, then the answer to the other question should also be no. Instead of addressing both questions under the statute, the Eighth Circuit assumed that RCRA permits reimbursement actions.

The majority adopts the Eighth Circuit's decision in *Aceto* without discussing its assumption that § 6973 permits reimbursement actions. This approach undermines the plain language of § 6972(a)(1)(B). Therefore, I disagree with the majority's unquestioning adoption of *Aceto*.¹

The majority relies on the language in § 6972(a)(1)(B), allowing the district court to "restrain any person . . . [or] order such person to take such other action as may be necessary, or both . . ." to conclude that actions for reimbursement are contemplated by the statute. The majority finds KFC's action for restitution permissible, because it concludes that the language, "such other action as may be necessary," allows the district court to award whatever relief it deems necessary.

I disagree, however, because I believe that the language, "such other action as may be necessary," does not contemplate actions for reimbursement. The legislative history suggests that reimbursement actions are not permitted and that an "imminent and substantial endangerment" must exist at the time of filing suit. The House Committee stated that citizens have "a limited right under Section 7002 to sue to abate an imminent and substantial endangerment." H.R. Rep. No. 198, 98th Cong., 2d Sess. (1984), reprinted in, 1984 U.S.C.C.A.N. 5576, 5612 (emphasis added). It also explains the primary goal of § 6972(a)(1)(B) as "the prompt abatement of imminent and substantial endangerments." *Id.* (emphasis added). Therefore, the majority's decision contravenes the plain language of the statute and the legislative history.

As to the "imminent and substantial endangerment requirement," the language of the statute suggests that it must exist at the time the private citizen files suit. Section 6972(a)(1)(B) allows suit against "any person . . . who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." This unambiguous language requires that the endangerment must be occurring at the time of filing suit. Only if the statute had read "may or may have presented" would it have implied that § 6972(a)(1)(B) permits reimbursement actions for an endangerment that someone had already cleaned up.

Moreover, the notice requirement under § 6972 supports the requirement that an "imminent and substantial endangerment" must be present at the time of filing suit. Under § 6972(b)(2)(A)(i), a private citizen seeking to file suit under § 6972(a)(1)(B) must give notice to the administrator and cannot file suit for 90 days after giving such notice. The purpose of this notice requirement is to give the administrator the opportunity to bring suit itself, since under § 6972(b)(2)(B), a private citizen cannot bring suit if the administrator has initiated its own suit. Thus, the notice requirement and the fact that the administrator has the first and exclusive opportunity to bring suit suggest that § 6972 does not permit reimbursement actions and requires an "imminent and substantial endangerment" at

¹ I agree with the majority that § 6973 and § 6972(a)(1)(B), which are worded identically, should be interpreted the same. The legislative history supports this conclusion. See H.R. Rep. No. 198, 98th Cong., 2d Sess. 53 (1984) (citizens have right to sue "pursuant to the standards of liability established under Section 7003 [42 U.S.C. § 6973]"). However, because *Aceto* does not address the issue of reimbursement, I do not believe that the majority should rely on it to include actions for restitution within the scope of § 6972(a)(1)(B).

the time of filing suit.

The majority argues that "there is no inconsistency between a notice requirement and recovery of clean-up costs from past polluters." See Opinion at 2274-75. It finds that notice in a reimbursement action "still serves certain interests of the EPA and the states by notifying them that endangerment was corrected and that the polluters are being held accountable." *Id.* However, the majority stretches the effects of the notice requirement too far, since all notice according to the majority's policy rationales really accomplishes is informing the EPA that *certain alleged polluters are being sued by a private citizen*. In addition, the majority states that "the Administrator must provide immediate notice of hazardous waste endangerment to the appropriate local governmental agencies, see 42 U.S.C. § 6973(c), and no courts have treated this notice requirement as a basis for refusing to allow governmental restitution actions." See Opinion at 2275. However, this rationale is inapposite, since the purpose of the notice requirement in § 6972(a)(1)(B) is to allow the administrator to bring suit instead of the private citizen. See H.R. Rep. No. 198, 98th Cong., 2d Sess. 53 (1984), reprinted in 1984 U.S.C.C.A.N. 5576, 5612 (The private citizens' right to sue "can only be exercised if the Administrator (following notice of the intended litigation) fails to file an action under 7003."). In contrast, the purpose of the notice requirement in § 6973(c) is not to have the local government agencies bring suit before the administrator. Thus, I believe that the majority uses faulty reasoning to obfuscate the fact that the notice requirement for private citizens shows that § 6972(a)(1)(B) does not permit reimbursement actions and requires an "imminent and substantial endangerment" at the time of filing suit.

The majority also dismisses without support the fact that RCRA lacks any statute of limitations for actions under § 6972(a)(1)(B). Because no statute of limitations exists under § 6972(a)(1)(B), if reimbursement actions are allowed, private citizens, like the KFC owners in this case, can bring suit against past contributors many years after cleaning up the contamination. This case is a prime example. The KFC owners brought the property from the Meghrihs in 1975. KFC did not discover the contamination until October 1988. KFC cleaned up the property in 1989. Then in June 1990, it asked the Meghrihs to reimburse its costs. Not until 1992 did KFC bring suit under RCRA. This course of events illustrates the problem that if reimbursement actions are permitted, private citizens will be able to sue past contributors many years after the contamination and clean-up. Thus, the lack of a statute of limitations supports the fact that § 6972(a)(1)(B) does not contemplate reimbursement actions when there is no "imminent and substantial endangerment."

The majority recognizes the lack of limitations period and attempts to reconstruct Congressional intent to conclude that Congress did not intend for RCRA to have a statute of limitations. It notes that "Congress provided a limitations period in other statutes such as [CERCLA] when it expressly authorized actions to recover response costs . . ." See Opinion at 2275. It uses this fact to conclude that "[i]nstead, in RCRA Congress provided that private plaintiffs retain the right 'to seek any other relief' available 'under any statute or common law' [under § 6972(f)]." This conclusion is illogical — this is not an "instead" and does not indicate that Congress chose a statute of limitations period for CERCLA but not for RCRA. As the majority concedes, CERCLA included a statute of limitations "when it expressly authorized actions to recover response costs." *Id.* (emphasis added). This does not imply that because Congress included no statute of limitations in § 6972(a)(1)(B), it provided for reimbursement actions brought by private citizens at any time, unless barred by laches. *Id.* In fact, the lack of limitations period in RCRA in contrast to the limitations period in CERCLA and the express authorization for recovery of response costs suggests that Congress did not contemplate reimbursement actions in RCRA.

Furthermore, the majority finds support in § 6972(f), which provides that

[n]othing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including re-

relief against the Administrator or a state agency).

§ 6972(f) (emphasis added). This section does not limit the type of relief available; however, it in no way suggests that a private citizen has a cause of action under RCRA for reimbursement of clean-up costs from a prior "imminent and substantial endangerment." It simply gives a person the right to bring any claim allowable under state or federal law.

The majority then states that it has "found no principled reason to distinguish between the relief available to the Administrator and that available to private plaintiffs under the virtually identical statutory provisions." See Opinion at 2276. However, other than the Eighth Circuit's decision in *Aceto*, which assumes reimbursement actions are permissible, the majority has offered no support for its conclusion that an "imminent and substantial endangerment" need not exist at the time of filing suit.

The majority's citation to *United States v. Price*, 688 F.2d 204 (3d Cir. 1982) is wholly unpersuasive. In *Price* the court did state that in the case before it "[p]rompt preventive action was the most important consideration. Reimbursement could thereafter be directed against those parties ultimately found to be liable." *Id.* at 214. However, the court did not state that reimbursement would be available under RCRA § 6973. In addition, the court also stated that RCRA "authorizes the clean-up of a site, even a dormant one, if that action is necessary to abate a present threat to the public health or the environment." *Id.* (emphasis added). It also cited the Eckhardt Report which describes § 6973:

The section's broad authority to "take such other actions as may be necessary" includes both short- and long-term injunctive relief, ranging from the construction of dikes to the adoption of certain treatment technologies, upgrading of disposal facilities, and removal and incineration. Imminence in this section applies to the nature of the threat rather than identification of the time when the endangerment initially arose. The section, therefore, may be used for events which took place at some time in the past but which continue to present a threat to the public health or the environment.

Id. at 213. Therefore, *Price* does not support suits under § 6973 for reimbursement when no "imminent and substantial endangerment" exists at the time of filing.

The majority also summarily rejects district court cases which have dismissed cases for reimbursement under § 6972(a)(1)(B). See *Kaufman and Broad South Bay v. Unisys Corp.*, 822 F. Supp. 1468, 1477 (N.D. Cal. 1993) ("While injunctive relief is available under § 6972(a)(1)(B), the statute does not provide a private action for damages. Nor should one be implied. . . . [A]lthough the Eighth Circuit allowed a reimbursement action under § 6973, other cases persuasively argue against implying a private remedy for damages or restitution."); *Commerce Holding Co. v. Buckstone*, 749 F. Supp. 441 (E.D. N.Y. 1990) (injunctive relief available under § 6972(a)(1)(B) not damages and court will not imply right to private action for damages). Although these cases are more directly on point because they interpret § 6972(a)(1)(B), the statute at issue in this case, the majority dismisses them and chooses to follow *Aceto* from the Eighth Circuit which involved § 6973.

The majority also finds *Walls v. Waste Resource Corp.*, 761 F.2d 311 (6th Cir. 1985), and *Environmental Defense Fund, Inc. v. Lamphier*, 714 F.2d 331 (4th Cir. 1983), unpersuasive because they addressed actions brought under the predecessor to § 6972(a)(1)(A), "which authorized actions to 'enforce' a requirement against any person alleged to be currently 'in violation' of the requirement." See Opinion at 2276. While the majority is correct that these cases did interpret another subsequently amended statute, it fails to recognize that the main difference between the prior statute and § 6972(a)(1)(B), the statute at issue in this case, is that under § 6972(a)(1)(B), private citizens can sue past contributors. This allows private citizens to require past contributors to clean-up sites, even if those past contributors are no longer contributing to the "imminent and substantial endangerment." It does not, however, imply that private citizens can sue past contributors for reimbursement. Thus, while *Walls* and *Environmental Defense Fund* do not directly support the fact that § 6972(a)(1)(B) does not contemplate reimbursement actions, the fact that courts under § 6972(a) (now amend-

ed and § 6972(a)(1)(A)) would not imply private rights of action for damages indirectly could lend credence to the theory that those actions should not be permitted under either § 6972(a)(1)(B) or § 6973.

The majority's final arguments in favor of reimbursement actions under § 6972(a)(1)(B) are based on public policy. It recognizes that private citizens may not have time to bring actions for a mandatory clean-up injunction against past polluters before cleaning up as ordered by the government. This may be true, but we should not make a legislative determination that because some private citizens will not have time to bring suit before cleaning up as ordered, reimbursement actions should be implied under § 6972(a)(1)(B). In addition, there is nothing in the record in this case that indicates that KFC could not bring suit against the Meghrigs before clean-up at the time they discovered the contamination. The majority speculates — theoretically, one could say just as easily that had KFC provided the EPA with notice at the time it discovered the contamination, the EPA would have brought suit against the Meghrigs and ordered them to clean-up. Finally, the majority's policy considerations do not apply at all to § 6973. While normally policy considerations need not support another statutory provision, in this case, in which the majority heavily relies on the Eighth Circuit's decision to allow the administrator to sue for reimbursement under § 6973, it seems that some of the majority's policy concerns should apply to § 6973 as well, especially since the Eighth Circuit simply assumes that reimbursement actions are permitted under § 6973.

In conclusion, I understand the majority's desire to hold contaminators accountable. In this case, however, in which KFC failed to bring suit before clean-up, RCRA does not offer them a remedy. It is unfortunate in a case such as this that neither CERCLA nor state statutory schemes provide relief for KFC because the substance found at the site was petroleum. But, this is an issue that Congress should address. Maybe restitutionary actions under RCRA are necessary and practical, but it is not something that Congress has thus far enacted into legislation.

I would affirm the district court's dismissal of the amended complaint.

Cite as 95 C.D.O.S. 1526

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

CLARKE DEXTER WEEMS, Defendant-Appellant.

No. 93-30151

United States Court of Appeals for the Ninth Circuit
D.C. No. CR-92-00020-(Z)T

Appeal from the United States District Court for the Western District of Washington Jack E. Tanner, District Judge, Presiding
Argued and Submitted February 1, 1994 Submission Vacated February 8, 1994 Resubmitted March 15, 1994 Seattle, Washington
Before: Alfred T. Goodwin, Mary M. Schroeder and William A. Norris, Circuit Judges.

COUNSEL

C. James Frush, Helsell, Fetterman, Martin, Todd & Hokanson, Seattle, Washington, for the defendant-appellant.

Deborah Watson and Cynthia A. Young, United States Department of Justice, Washington, D.C., for the plaintiff-appellee.
Filed March 1, 1995

SCHROEDER, Circuit Judge:

This is an appeal from a conviction and sentence for structuring financial transactions in violation of 31 U.S.C. § 5324(3). The government concedes that appellant's conviction must be reversed in light of the Supreme Court's recent decision in *United States v. Ratzlaf*, 114 S. Ct. 655 (1994), which held that in a prosecution for structuring financial transactions to avoid a bank's reporting requirements, the government must prove that the defendant knew

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH

March 7, 1995
STID 4903

K.C. Ma
c/o John Kao, attorney
650 California ST., 29th Floor
San Francisco CA 94108

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

SECOND REQUEST FOR WORKPLAN

re: Former Chrysler Dealership, 2417 Broadway, Oakland CA 94612

Dear Mr. K.C. Ma,

We are in receipt of the tank removal report for the above referenced site, dated 10/10/94, prepared by Epigene International (Epigene). As you know, two underground storage tanks (USTs) were removed from this site on 7/28/94. As per the Epigene report, the soil sample taken from below the waste oil UST at 8'bgs contained the following: 3900 ppm TOG, 570 ppm TPH-diesel, 910 ppm TPH-gasoline, (ND benzene), and some 8010 compounds. The four wall samples taken from the gasoline UST excavation between 8.5' and 10'bgs contained the following: up to 1500 ppm TPH-gasoline, and up to 7.4 ppm benzene. In addition, up to 1800 ppm TPH-hydraulic fluid was detected in the hydraulic lift excavations.

These "residual" concentrations were left in place. Groundwater was observed entering the gasoline UST pit at approximately 11.5'bgs. The impact to groundwater from these soil concentrations will need to be assessed. However, the extent of the soil contamination must first be assessed. **Therefore, we request a workplan for a subsurface investigation to assess the lateral and vertical extent of soil contamination within 30 days, or by April 7, 1995. The first request for this workplan was dated 11/8/94; the deadline was 12/23/94. It would be acceptable to incorporate monitoring wells in this phase of work.**

All work should adhere to a) the Tri-Regional Board Staff Recommendations for Preliminary Evaluation and Investigation of Underground Tank Sites, dated 8/10/90; and b) Article 11 of Title 23, California Code of Regulations. Reports and proposals must be submitted **under seal** of a California-Registered Geologist, - Certified Engineering Geologist, or -Registered Civil Engineer.

There are state funds available for remediation of UST sites. These funds reimburse responsible parties, such as yourselves, for the costs associated with remediation. I have enclosed a brochure outlining this program. Included are phone numbers for people to help you with this process.

March 7, 1995
STID 4903
K.C. Ma
page 2 of 2

Please also bear in mind that, in order to maintain SB2004 fund eligibility, specific bidding requirements and contracting criteria must be met. You are encouraged to contact your SWRCB fund representative (916-227-4529) for more case-specific information.

Please be advised that "no person shall close an underground tank system unless that person . . . demonstrates to the appropriate agency . . . that the site has been investigated to determine if there are any present, or were past releases, and if so, that appropriate corrective or remedial actions have been taken," as per Section 25298 (c) (4) of the California Health & Safety Code, (CH&SC) Division 20, Chapter 6.7. Further, "any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) for each underground storage tank for each day of violation for. . . failure to properly close an underground tank system," as per Section 25299 (a) (5) of CH&SC, Division 20, Chapter 6.7.

Please be advised that this is a formal request for technical reports pursuant to California Water Code Section 13267(b). Any extensions of the stated deadlines, or modifications of the required tasks, must be confirmed in writing by either this agency or the RWQCB.

Kindly submit a cover letter on your own letter head with your consultant's reports. If you have any questions, please contact me at 510-567-6700, ext 6761. You are encouraged to submit reports on double-sided paper in order to save precious trees.

Sincerely,



Jennifer Eberle
Hazardous Materials Specialist

cc: John Alt, Epigene International, 38750 Paseo Padre Pky,
suite B-4, Fremont CA 94536
Gordon Coleman/file

je.4903-A

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



November 8, 1994
STID 4903

K.C. Ma
c/o John Kao, attorney
650 California ST., 29th Floor
San Francisco CA 94108

ALAMEDA COUNTY CC4580
DEPT. OF ENVIRONMENTAL HEALTH
ENVIRONMENTAL PROTECTION DIVISION
1131 HARBOR BAY PKWY., #250
ALAMEDA CA 94502-6577

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These "residual" concentrations were left in place. Groundwater was observed entering the gasoline UST pit at approximately 11.5'bgs. The impact to groundwater from these soil concentrations will need to be assessed. However, the extent of the soil contamination must first be assessed. Therefore, we request a workplan for a subsurface investigation to assess the lateral and vertical extent of soil contamination within 45 days, or by December 23, 1994. If you would like to incorporate monitoring wells in this phase of work, that would be acceptable.

All work should adhere to a) the Tri-Regional Board Staff Recommendations for Preliminary Evaluation and Investigation of Underground Tank Sites, dated 8/10/90; and b) Article 11 of Title 23, California Code of Regulations. Reports and proposals must be submitted under seal of a California-Registered Geologist, -Certified Engineering Geologist, or -Registered Civil Engineer.

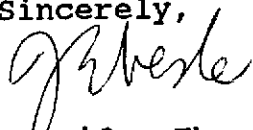
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November 8, 1994
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K.C. Ma
page 2 of 2

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Kindly submit a cover letter with your consultant's reports. If you have any questions, please contact me at 510-567-6700, ext 6761. This is our new permanent phone number; our new fax number is 510-337-9335. **Feel free to submit reports on double-sided paper in order to save precious trees.**

Sincerely,



Jennifer Eberle
Hazardous Materials Specialist

cc: John Alt, Epigene International, 38750 Paseo Padre Pky,
suite B-4, Fremont CA 94536
Ed Howell/file

je 4903

Site ID 4903

Mr. K.C. Ma
386 Michelle Ln.
Daly City CA 94015

DATE: 10/17/94

TO : Local Oversight Program

FROM: BC for JE

SUBJ: Transfer of Eligible Local Oversight Case

Site name: Former Chrysler Dealership

Address: 2417 Broadway city Oak zip 94612

TO BE ELLIGIBLE FOR LOP A CASE MUST MEET 3 QUALIFICATIONS:

1. Number of Tanks: 2 removed? Y N Date of removal 7/28/94
2. Samples received? Y N Contamination level: gas 1500 ppm
(ppm and type of test) diesel 570 ppm
waste oil 3900 ppm
hydraulic oil 1800 ppm

Contamination should be over 100 ppm TPH to qualify for LOP

3. Petroleum Y N Types: Avgas Jet leaded unleaded Diesel
fuel oil waste oil kerosene solvents

DepRef remaining \$ _____ Closed with Candace/Leslie? Y N
(If no explain why?)

IF YOUR SITE MEETS ALL OF THE ABOVE QUALIFICATIONS YOU SHOULD DO THE FOLLOWING TO TRANSFER THE SITE:

1. YOU MUST CLOSE THE DEPOSIT REFUND CASE AT THIS TIME. YOU MUST ACCOUNT FOR ALL TIME YOU HAVE SPENT ON THE CASE AND TURN IN THE ACCOUNT SHEET TO LESLIE. IF THERE ARE FUNDS STILL REMAINING IT IS STILL BETTER TO TRANSFER THE CASE TO LOP AS THE RATE FOR LOP ALLOWS THE ADDITION OF MANAGEMENT AND CLERICAL TIME. DO NOT ATTEMPT TO CONTINUE TO OVERSEE THE SITE SIMPLY BECAUSE THERE ARE FUNDS REMAINING!
2. COMPLETE THE A AND B PERMIT APPLICATION FORMS AND GIVE TO NORMA ~~CONNIE/BLANKI~~
3. GIVE THE ENTIRE CASE TO THE PROPER LOP STAFF UPSTAIRS FOR THEM TO DO THE REST OF THE TRANSFER AND YOU ARE DONE!

8/17 Can 1 J. Alt - Epuzeni
 T-2500 breath gas tank

	B	T	E	X	4 sples
1500 ppm	7.4	60	32	190	ppb
910 ppm	0.49	1.45	9	22	
1500 ppm	NO	15	15	81	
280 ppm	0.6	4.3	2.6	12	

soil breath waste oil

T-1 900 g
 NO B
 570 d.
 TOG 3700
 CHC } 1.2 dichlorobenz Suppb
 +VOA } 1.4 " 10 ppb

Pb 28 ppm - spoils

hydraulic lifts - ~ 8' BGS sples
 TPH to 450 , 1800

Taken on 7/29/74.

- Soil approved by Keller Cyanex Class II -
 in Contra Costa BFT.

ALAMEDA COUNTY, DEPARTMENT OF ENVIRONMENTAL HEALTH

pl

80 Swan Way, #200
Oakland, CA 94621
(415) 271-4320

Hazardous Materials Division Inspection Form

Site ID# _____ Site Name Former Chrysler Dealership Today's Date 7/28/94
 Site Address 2417 Broadway EPA ID# _____
 City Oak Zip 94612 Phone _____

MAX Amt. Stored > 500lbs/55g/200cf? Y N
 Hazardous Waste generated per month? _____

Inspection Categories:

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

The marked items represent violations of the Calif. Administration Code (CAC) or the Health & Safety Code (HS&C)

I.A GENERATOR (Title 22)

- | | | |
|-------------------|-----------------------------|---------|
| Manifest | 1. Waste ID | * 66471 |
| | 2. EPA ID | 66472 |
| | 3. > 90 days | 66508 |
| | 4. Label dates | 66508 |
| | 5. Biennial | 66493 |
| Manifest | 6. Records | 66492 |
| | 7. Correct | 66484 |
| | 8. Copy sent | 66492 |
| | 9. Exception | 66484 |
| | 10. Copies Rec'd | 66492 |
| Misc. | 11. Treatment | 66371 |
| | 12. On-site Disp. (H.S.&C.) | 26189.5 |
| | 13. Ex Haz. Waste | 66570 |
| Prevention | 14. Communications | 67121 |
| | 15. Aisle Space | 67124 |
| | 16. Local Authority | 67126 |
| | 17. Maintenance | 67120 |
| | 18. Training | 67105 |
| Contn. gency | 19. Prepared | 67140 |
| | 20. Name List | 67141 |
| | 21. Copies | 67141 |
| | 22. Emg. Coord. Trng. | 67144 |
| Containers, Tanks | 23. Condition | 67241 |
| | 24. Compatibility | 67242 |
| | 25. Maintenance | 67243 |
| | 26. Inspection | 67244 |
| | 27. Buffer Zone | 67246 |
| | 28. Tank Inspection | 67259 |
| | 29. Containment | 67245 |
| | 30. Safe Storage | 67261 |
| | 31. Freeboard | 67257 |

Comments:

Mr. John Kao repres Mr Ma prep over present
 Witness the removal of 2 approx 200
 gallon USTs from side of 2417 Broadway Blvd
 Contractor - Bernabe C Brindley
 Spkr - J. Alt - Epique
 N
 Broadway
 24th St
 Lexus
 Dealership
 Tank 1
 Hydraulic lift →
 Tank 2
 Stackpile
 Tank 1 = waste oil tank - 200 gallon
 Tank 2 = 500 gallon gasoline, single walled
 nested steel tank w/ obvious holes on top
 Erickson: Purpled - 500 gal dig from both
 tanks. Hauler # 430345 exp 5/95

Rev 6/88

Contact: John N. Alt
 Title: Geologist
 Signature: [Signature]

Inspector: B Chan
 Signature: _____

ALAMEDA COUNTY, DEPARTMENT OF ENVIRONMENTAL HEALTH

80 Swan Way, #200
Oakland, CA 94621
(415) 271-4320

Hazardous Materials Division Inspection Form

Site ID# _____ Site Name Former Chrysler Dealership Today's Date 7/28/94
 Site Address 2417 Broadway EPA ID# _____
 City _____ Zip 94612 Phone _____

MAX Amt. Stored > 500lbs/55g/200cf? Y N
 Hazardous Waste generated per month? _____

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- | | | |
|-------|-----------------------------|---------|
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| ___ | 2. EPA ID | 66472 |
| ___ | 3. > 90 days | 66508 |
| ___ | 4. Label dates | 66508 |
| ___ | 5. Biennial | 66493 |
| <hr/> | | |
| ___ | 6. Records | 66492 |
| ___ | 7. Correct | 66484 |
| ___ | 8. Copy sent | 66492 |
| ___ | 9. Exception | 66484 |
| ___ | 10. Copies Rec'd | 66492 |
| <hr/> | | |
| ___ | 11. Treatment | 66371 |
| ___ | 12. On-site Disp. (H.S.&C.) | 26189.5 |
| ___ | 13. Ex Haz. Waste | 66570 |
| <hr/> | | |
| ___ | 14. Communications | 67121 |
| ___ | 15. Aisle Space | 67124 |
| ___ | 16. Local Authority | 67126 |
| ___ | 17. Maintenance | 67120 |
| ___ | 18. Training | 67105 |
| <hr/> | | |
| ___ | 19. Prepared | 67140 |
| ___ | 20. Name List | 67141 |
| ___ | 21. Copies | 67141 |
| ___ | 22. Emg. Coord. Trng. | 67144 |
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| ___ | 28. Tank Inspection | 67259 |
| ___ | 29. Containment | 67245 |
| ___ | 30. Safe Storage | 67261 |
| ___ | 31. Freeboard | 67257 |

Comments:

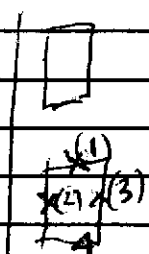
OPD Ms Johnson confirmed that inspector would not be coming to Alameda County calling removal

2 hydraulic lifts removed w/ bleeding. Spools from all excavators stacked together w/ bleeding, approx 10-15 cys Tank 1: (oil), O₂ - 3%, LEL - 0% Single walled, riveted steel tank, no observed leaks Pit approx 4x8x8, it has concrete walls on 5 sides (vault), Soils w/ vault obviously contaminated.

Tank 2: O₂ - 5% LEL - 3%, obvious steel large & small holes on top & bottom of tank pit ~ 6x10x8, GW cap it

I.B TRANSPORTER (Title 22)

- | | | |
|-------|---------------------------|-------|
| ___ | 32. Applic./Insurance | 66428 |
| ___ | 33. Comp. Cert./CHP Insp. | 66448 |
| ___ | 34. Containers | 66465 |
| <hr/> | | |
| ___ | 35. Vehicles | 66465 |
| ___ | 36. EPA ID #s | 66531 |
| ___ | 37. Correct | 66541 |
| ___ | 38. HW Delivery | 66543 |
| ___ | 39. Records | 66544 |
| <hr/> | | |
| ___ | 40. Name/ Covers | 66545 |
| ___ | 41. Recyclables | 66800 |

4-1 vault. 
 spl (1) - 8 1/2", blue gray clay color
 spl (2) - 10" west floor " " " "
 spl (3) - east wall 9' " " " "
 spl (4) - SE corner ~ 8 1/2" " ?

Rev 6/88

Contact: John N. Alt
 Title: Geologist
 Signature: John N. Alt

Inspector: BChan
 Signature: _____

ALAMEDA COUNTY, DEPARTMENT OF ENVIRONMENTAL HEALTH

P3
80 Swan Way, #200
Oakland, CA 94621
(415) 271-4320

Hazardous Materials Division Inspection Form

Site ID# _____ Site Name Former Chrysler Today's Date 7/28/94
 Site Address 2417 Broadway EPA ID# _____
 City _____ Zip 94612 Phone _____

MAX Amt. Stored > 500lbs/55g/200cf? Y N
 Hazardous Waste generated per month? _____

Inspection Categories:

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

The marked items represent violations of the Calif. Administration Code (CAC) or the Health & Safety Code (HS&C)

IA GENERATOR (Title 22)

- | | | |
|-------------------|--|---------|
| Manifest | <input type="checkbox"/> 1. Waste ID | * 66471 |
| | <input type="checkbox"/> 2. EPA ID | 66472 |
| | <input type="checkbox"/> 3. > 90 days | 66508 |
| | <input type="checkbox"/> 4. Label dates | 66508 |
| | <input type="checkbox"/> 5. Biennial | 66493 |
| Manifest | <input type="checkbox"/> 6. Records | 66492 |
| | <input type="checkbox"/> 7. Correct | 66484 |
| | <input type="checkbox"/> 8. Copy sent | 66492 |
| | <input type="checkbox"/> 9. Exception | 66484 |
| | <input type="checkbox"/> 10. Copies Rec'd | 66492 |
| Misc. | <input type="checkbox"/> 11. Treatment | 66371 |
| | <input type="checkbox"/> 12. On-site Disp. (H.S.&C.) | 26189.5 |
| | <input type="checkbox"/> 13. Ex Haz. Waste | 66570 |
| Prevention | <input type="checkbox"/> 14. Communications | 67121 |
| | <input type="checkbox"/> 15. Aisle Space | 67124 |
| | <input type="checkbox"/> 16. Local Authority | 67126 |
| | <input type="checkbox"/> 17. Maintenance | 67120 |
| | <input type="checkbox"/> 18. Training | 67105 |
| Cont'n. gency | <input type="checkbox"/> 19. Prepared | 67140 |
| | <input type="checkbox"/> 20. Name List | 67141 |
| | <input type="checkbox"/> 21. Copies | 67141 |
| | <input type="checkbox"/> 22. Emg. Coord. Tmg. | 67144 |
| Containers, Tanks | <input type="checkbox"/> 23. Condition | 67241 |
| | <input type="checkbox"/> 24. Compatibility | 67242 |
| | <input type="checkbox"/> 25. Maintenance | 67243 |
| | <input type="checkbox"/> 26. Inspection | 67244 |
| | <input type="checkbox"/> 27. Buffer Zone | 67246 |
| | <input type="checkbox"/> 28. Tank Inspection | 67259 |
| | <input type="checkbox"/> 29. Containment | 67245 |
| | <input type="checkbox"/> 30. Safe Storage | 67261 |
| | <input type="checkbox"/> 31. Freeboard | 67257 |

Comments:

Tank pit #2 excavated preliminarily to 10' these soils are moist & really have a pungent odor. We think GW is very close. GW encountered @ 11' - excavation continued to this depth.

There is at least 1 well across the street on the sidewalk at the Neigherben Ford site. Apparently a gas & oil tank were also removed at this site.

Tank pit #1 was clean & jack hammered through the 6" floor. Soil was blue-green clay w/no odor.

Please run gas/soil spls for TPH₉, BTEX & Total Pb lead. Please run the w/o soil spls for TPH₉, d, BTEX, TOG, Chlorinated Solvents and semi-volatiles & metals - Lead, nickel, Chromium, copper and zinc.

The hydraulic lifts will be sampled for TPH & hydraulic oil at a later date.

LB TRANSPORTER (Title 22)

- | | | |
|----------|--|-------|
| Manifest | <input type="checkbox"/> 32. Applic./Insurance | 66428 |
| | <input type="checkbox"/> 33. Comp. Cert./CHP Insp. | 66448 |
| | <input type="checkbox"/> 34. Containers | 66465 |
| Manifest | <input type="checkbox"/> 35. Vehicles | 66465 |
| | <input type="checkbox"/> 36. EPA ID #s | 66531 |
| | <input type="checkbox"/> 37. Correct | 66541 |
| | <input type="checkbox"/> 38. HW Delivery | 66543 |
| | <input type="checkbox"/> 39. Records | 66544 |
| Cont'n | <input type="checkbox"/> 40. Name/ Covers | 66545 |
| | <input type="checkbox"/> 41. Recyclables | 66900 |

Rev 6/88

Contact: John M. Alt
 Title: Geologist
 Signature: [Signature]

Inspector: B. Chan
 Signature: _____

Project Specialist (print) BARNEY CATTAN

JK 7/16/84
Blk

ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
DEPARTMENT OF ENVIRONMENTAL HEALTH
HAZARDOUS MATERIALS DIVISION
80 SWAN WAY, ROOM 200
OAKLAND, CA 94621
PHONE NO. 415/271-4320

ACCEPTED
Underground Storage Tank Closure Permit Application
Alameda County Division of Hazardous Materials
80 Swan Way, Suite 200,
Oakland, CA 94621
Telephone: (510) 271-4320

These closure/removal plans have been received and found to be acceptable and essentially meet the requirements of State and Local Health Laws. Changes to your closure plans indicated by this Department are to assure compliance with State and local laws. The proposed plans are now based for issuance of any required permits for installation/destruction. One copy of the approved plans must be submitted to the job and available to all contractors involved in the job and available to all contractors involved in the job with the removal. Any changes to the approved plans or specifications must be submitted to the Department of Environmental Health and Building Inspections Department in advance of any changes meet the requirements of State and local laws.

Notify this Department at least 72 hours prior to the following required inspections: *
_____ Removal of Tank(s) and Piping
_____ Sampling
_____ Final Inspection

Issuance of a) permit to operate, b) permanent site closure, is dependent on compliance with accepted plans and all applicable laws and regulations.

***THERE IS A FINANCIAL PENALTY FOR NOT OBTAINING THESE INSPECTIONS**

Contact Specialist:

UNDERGROUND TANK CLOSURE PLAN

***** Complete according to attached instructions *****

- Business Name Former Chrysler Dealership
Business Owner NA
 - Site Address 2417 Broadway
City Oakland Zip 94612 Phone NA
 - Mailing Address 650 California Street, 29th Floor
City San Francisco Zip 94108 Phone 415-392-5600
 - Land Owner K.C.Ma
Address 650 California St, 29Flr City, State SF., CA Zip 94108
 - Generator name under which tank will be manifested _____
K.C.Ma
- EPA I.D. No. under which tank will be manifested CAC000965488

6. Contractor Bernabe and Brinker, Inc.
Address 1281-30th Street
City Oakland, CA. 94608 Phone 510-451-3482
License Type A-HAZ ID# 610617

7. Consultant James E. Brinker
Address 1281-30th Street
City Oakland, CA. 94608 Phone 510-451-3482

8. Contact Person for Investigation
Name James E. Brinker Title Consultant
Phone 510-451-3482

9. Number of tanks being closed under this plan 2(two)
Length of piping being removed under this plan 10ft.
Total number of tanks at facility 2

10. State Registered Hazardous Waste Transporters/Facilities (see instructions).

** Underground tanks are hazardous waste and must be handled **
as hazardous waste

a) Product/Residual Sludge/Rinsate Transporter
Name Waste Oil Recovery Systems EPA I.D. No. CAD000626515
Hauler License No. 843 License Exp. Date 7-31-94
Address 6401 Leona Street
City Oakland State CA. Zip 94605

b) Product/Residual Sludge/Rinsate Disposal Site
Name _____ EPA I.D. No. _____
Address _____
City _____ State _____ Zip _____

c) Tank and Piping Transporter

Name Erickson INC. EPA I.D. No. CAD009466392
Hauler License No. 0019 License Exp. Date 5-31-95
Address 55 Parr Blvd
City Richmond State CA Zip 94801

d) Tank and Piping Disposal Site

Name Erickson INC. EPA I.D. No. CAT009466392
Address 55 Parr Blvd.
City Richmond State CA Zip 94801

11. Experienced Sample Collector

Name John Alt
Company Epigene International
Address 38750 Paseo Padre Parkway
City Fremont State CA Zip 94536 Phone 510-791-1986

12. Laboratory

Name McC Campbell Analytical
Address 110-2nd Avenue South # D7
City Pacheco State CA Zip 94533
State Certification No. 1644

13. Have tanks or pipes leaked in the past? Yes [] No [x]

If yes, describe. _____

14. Describe methods to be used for rendering tank inert

CO2, Dry Ice

Before tanks are pumped out and inerted, all associated piping must be flushed out into the tanks. All accessible associated piping must then be removed. Inaccessible piping must be plugged.

The Bay Area Air Quality Management District (771-6000), along with local Fire and Building Departments, must also be contacted for tank removal permits. Fire departments typically require the use of explosion proof combustible gas meters to verify tank inertness. It is the contractor's responsibility to bring a working combustible gas meter on site to verify tank inertness.

15. Tank History and Sampling Information

Tank		Material to be sampled (tank contents, soil, ground-water, etc.)	Location and Depth of Samples
Capacity	Use History (see instructions)		
250 Gallon	Leaded Gasoline Empty For 20 years	Soil groundwater	2 Feet below the bottom of the tank if possible
250 Gallon	Leaded Gasoline	Soil groundwater	2 Feet below the bottom of the tank if possible

One soil sample must be collected for every 20 feet of piping that is removed. A ground water sample must be collected should any ground water be present in the excavation.

Excavated/Stockpiled Soil	
Stockpiled Soil Volume (Estimated)	Sampling Plan
20 yards	Composite three soil samples

Stockpiled soil must be placed on bermed plastic and must be completely covered by plastic sheeting.

16. Chemical methods and associated detection limits to be used for analyzing samples

The Tri-Regional Board recommended minimum verification analyses and practical quantitation reporting limits should be followed. See attached Table 2.

Contaminant Sought	EPA, DHS, or Other Sample Preparation Method Number	EPA, DHS, or Other Analysis Method Number	Method Detection Limit
TPH Gasoline BTX&E Total Lead TPH AND BTX&E	GCFID (5030) 8020 or 8240 AA 8260		1 ppb 0.005 ppb

17. Submit Site Health and Safety Plan (See Instructions)

18. Submit Worker's Compensation Certificate copy

Name of Insurer State Compensation Ins. Fund

19. Submit Plot Plan (See Instructions)

20. Enclose Deposit (See Instructions)

21. Report any leaks or contamination to this office within 5 days of discovery. The report shall be made on an Underground Storage Tank Unauthorized Leak/Contamination Site Report form. (see Instructions)

22. Submit a closure report to this office within 60 days of the tank removal. This report must contain all the information listed in item 22 of the instructions.

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 understand that all work performed during this project will be done in compliance with all applicable OSHA (Occupational Safety and Health Administration) requirements concerning personnel health and safety. 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.

Once I have received my stamped, accepted closure plan, I will contact the project Hazardous Materials Specialist at least three working days in advance of site work to schedule the required inspections.

Signature of Contractor

Name (please type) Ernesto F. Bernabe Jr.

Signature [Handwritten Signature]

Date 7-18-94

Signature of Site Owner or Operator

X Name (please type) K.C. Ma

Signature [Handwritten Signature]

Date 7/17/94

INSTRUCTIONS

General Instructions

- * Three (3) copies of this plan plus attachments and deposit must be submitted to this Department.
- * Any cutting into tanks requires local fire department approval.
- * One complete copy of your approved plan must be at the construction site at all times; a copy of your approved plan must also be sent to the landowner.
- * State of California Permit Application Forms A and B are to be submitted to this office. One Form A per site, one Form B for each removed tank.

Item Specific Instructions

2. SITE ADDRESS
Address at which closure is taking place.
5. EPA I.D. NO. under which the tanks will be manifested
EPA I.D. numbers may be obtained from the State Department of Health Services, 916/324-1781.
6. CONTRACTOR
Prime contractor for the project.
10. STATE REGISTERED HAZARDOUS WASTE TRANSPORTERS/FACILITIES
 - a) All residual liquids and sludges are to be removed from tanks before tanks are inerted.
 - c) Tanks must be hauled as hazardous waste.
 - d) This is the place where tanks will be taken for cleaning.
15. TANK HISTORY AND SAMPLING INFORMATION

Use History - This information is essential and must be accurate. Include tank installation date, products stored in the tank, and the date when the tank was last used.

Material to be sampled - e.g. water, oil, sludge, soil, etc.

Location and depth of samples - e.g. beneath the tank a maximum of two feet below the native soil/backfill interface, side wall at the high water mark, etc.

16. CHEMICAL METHODS AND ASSOCIATED DETECTION LIMITS

See attached Table 2.

17. SITE HEALTH AND SAFETY PLAN

A site specific Health and Safety plan must be submitted. We advocate the site health and safety plan include the following items, at a minimum:

- a) The name and responsibilities of the site health and safety officer;
- b) An outline of briefings to be held before work each day to appraise employees of site health and safety hazards;
- c) Identification of health and safety hazards of each work task. Include potential fire, explosion, physical, and chemical hazards;
- d) For each hazard, identify the action levels (contaminant concentrations in air) or physical conditions which will trigger changes in work habits to ensure workers are not exposed to unsafe chemical levels or physical conditions;
- e) Description of the work habit changes triggered by the above action levels or physical conditions;
- f) Frequency and types of air and personnel monitoring - along with the environmental sampling techniques and instrumentation - to be used to detect the above action levels. Include instrumentation maintenance and calibration methods and frequencies;
- g) Confined space entry procedures (if applicable);
- h) Decontamination procedures;
- i) Measures to be taken to secure the site, excavation and stockpiled soil during and after work hours (e.g. barricades, caution tape, fencing, trench plates, plastic sheeting, security guards, etc.);
- j) Spill containment/emergency/contingency plan. Be sure to include emergency phone numbers, the location of the phone nearest the site, and directions to the hospital nearest the site;
- k) Documentation that all site workers have received the appropriate OSHA approved trainings and participate in appropriate medical surveillance per 29 CFR 1910.120; and
- l) Page for employees to sign indicating they have read and will comply with the site health and safety plan.

The safety plan must be distributed to all employees and contractors working in hazardous waste operations on site. A complete copy of the site health and safety plan along with any standard operating procedures shall be on site and accessible at all times.

NOTE: These requirements are excerpts from 29 CFR Part 1910.120(b)(4), Hazardous Waste Operations and Emergency Response; Final Rule, March 6, 1989. Safety plans of certain underground tank sites may need to meet the complete requirements of this Rule.

19. PLOT PLAN

The plan should consist 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 Lines;
- d) Location of all Structures;
- e) Location of all relevant existing equipment including tanks and piping to be removed and dispensers;
- f) Streets;
- g) Underground conduits, sewers, water lines, utilities;
- h) Existing wells (drinking, monitoring, etc.);
- i) Depth to ground water; and
- j) All existing tanks and piping in addition to the ones being pulled.

20. DEPOSIT

A deposit, payable to Alameda County for the amount indicated on the Alameda County Underground Storage Tank Fee Schedule, must accompany the plans.

21. Blank Unauthorized Leak/Contamination Site Report forms may be obtained in limited quantities from our office and from the San Francisco Bay Regional Water Quality Control Board (415/464-1255). Larger quantities may be obtained directly from the State Water Resources Control Board at (916) 739-2421.

22. TANK CLOSURE REPORT

The tank closure report should contain the following information:

- a) General description of the closure activities;
- b) Description of tank, fittings and piping conditions. Indicate tank size and former contents; note any corrosion, pitting, holes, etc.;

- c) Description of the excavation itself. Include the tank and excavation depth, a log of the stratigraphic units encountered within the excavation, a description of root holes or other potential contaminant pathways, the depth to any observed ground water, descriptions and locations of stained or odor-bearing soil, and descriptions of any observed free product or sheen;
- d) Description of sampling methods;
- e) Description of any remedial measures conducted at the time of tank removal;
- f) To-scale figures showing the excavation size and depth, nearby buildings, sample locations and depths, and tank and piping locations. Include a copy of the plot plan prepared for the Tank Closure Plan under item 19;
- g) Chain of custody records;
- h) Copies of signed laboratory reports;
- i) Copies of "TSDF to Generator" Manifests for all hazardous wastes hauled offsite (sludge, rinsate, tanks and piping, contaminated soil, etc.); and
- j) Tabulation of the volume and final destination of all non-manifested contaminated soil hauled offsite.

EXPLANATION FOR TABLE #2: MINIMUM VERIFICATION ANALYSIS

1. OTHER METHODOLOGIES are continually being developed and as methods are accepted by EPA or DHS, they also can be used.
2. For DRINKING WATER SOURCES, EPA recommends that the 500 series for volatile organics be used in preference to the 600 series because the detection limits are lower and the QA/QC is better.
3. APPROPRIATE STANDARDS for the materials stored in the tank are to be used for all analyses on Table #2. For instance, seasonally, there may be five different jet fuel mixtures to be considered.
4. To AVOID FALSE POSITIVE detection of benzene, benzene-free solvents are to be used.
5. TOTAL PETROLEUM HYDROCARBONS (TPH) as gasoline (G) and diesel (D) ranges (volatile and extractable, respectively) are to be analyzed and characterized by GC/FID with a fused capillary column and prepared by EPA method 5030 (purge and trap) for volatile hydrocarbons, or extracted by sonication using 3550 methodology for extractable hydrocarbons. Fused capillary columns are preferred to packed columns; a packed column may be used as a "first cut" with "dirty" samples or once the hydrocarbons have been characterized and proper QA/QC is followed.
6. TETRAETHYL LEAD (TEL) analysis may be required if total lead is detected unless the determination is made that the total lead concentration is geogenic (naturally occurring).
7. CHLORINATED HYDROCARBONS (CL HC) AND BENZENE, TOLUENE, XYLENE AND ETHYLBENZENE (BTX&E) are analyzed in soil by EPA methods 8010 and 8020 respectively, (or 8240) and in water, 601 and 602, respectively (or 624).
8. OIL AND GREASE (O & G) may be used when heavy, straight chain hydrocarbons may be present. Infrared analysis by method 418.1 may also be acceptable for O & G if proper standards are used. Standard Methods" 17th Edition, 1989, has changed the 503 series to 5520.
9. PRACTICAL QUANTITATION REPORTING LIMITS are influenced by matrix problems and laboratory QA/QC procedures. Following are the Practical Quantitation Reporting Limits:

	<u>SOIL PPM</u>	<u>WATER PPB</u>
TPH G	1.0	50.0
TPH D	1.0	50.0
BTX&E	0.005	0.5
O & G	50.0	5,000.0

Based upon a Regional Board survey of Department of Health Services Certified Laboratories, the Practical Quantitation Reporting Limits are attainable by a majority of laboratories with the exception of diesel fuel in soils. The Diesel Practical Quantitation Reporting Limits, shown by the survey, are:

ROUTINE	MODIFIED PROTOCOL
≤ 10 ppm (42%)	≤ 10 ppm (10%)
≤ 5 ppm (19%)	≤ 5 ppm (21%)
≤ 1 ppm (35%)	≤ 1 ppm (60%)

When the Practical Quantitation Reporting Limits are not achievable, an explanation of the problem is to be submitted on the laboratory data sheets.

10. LABORATORY DATA SHEETS are to be signed and submitted and include the laboratory's assessment of the condition of the samples on receipt including temperature, suitable container type, air bubbles present/absent in VOA bottles, proper preservation, etc. The sheets are to include the dates sampled, submitted, prepared for analysis, and analyzed.
11. IF PEAKS ARE FOUND, when running samples, that do not conform to the standard, laboratories are to report the peaks, including any unknown complex mixtures that elute at times varying from the standards. Recognizing that these mixtures may be contrary to the standard, they may not be readily identified; however, they are to be reported. At the discretion of the LIA or Regional Board the following information is to be contained in the laboratory report:

The relative retention time for the unknown peak(s) relative to the reference peak in the standard, copies of the chromatogram(s), the type of column used, initial temperature, temperature program is C/minute, and the final temperature.

12. REPORTING LIMITS FOR TPH are: gasoline standard ≤ 20 carbon atoms, diesel and jet fuel (kerosene) standard ≤ 50 carbon atoms. It is not necessary to continue the chromatography beyond the limit, standard, or EPA/DHS method protocol (whichever time is greater).

EPILOGUE

ADDITIVES: Major oil companies are being encouraged or required by the federal government to reformulate gasoline as cleaner burning fuels to reduce air emissions. MTBE (Methyl-tertiary butyl ether), ETHANOL (ethyl alcohol), and other chemicals may be added to reformulate gasolines to increase the oxygen content in the fuel and thereby decrease undesirable emissions (about four percent with MTBE). MTBE and ethanol are, for practical purposes, soluble in water. The removal from the water column will be difficult. Other compounds are being added by the oil companies for various purposes. The refinements for detection and analysis for all of these additives are still being worked out. If you have any questions about the methodology, please call your Regional Board representative.

TABLE #2
RECOMMENDED MINIMUM VERIFICATION ANALYSES FOR
UNDERGROUND TANK LEAKS

<u>HYDROCARBON LEAK</u>	<u>SOIL ANALYSIS</u>	<u>WATER ANALYSIS</u>
Unknown Fuel	TPH G GCFID(5030) TPH D GCFID(3550) BTX&E 8020 or 8240 TPH AND BTX&E 8260	TPH G GCFID(5030) TPH D GCFID(3510) BTX&E 602, 624 or 8260
Leaded Gas	TPH G GCFID(5030) BTX&E 8020 OR 8240 TPH AND BTX&E 8260 TOTAL LEAD AA -----Optional----- TEL DHS-LUFT EDB DHS-AB1803	TPH G GCFID(5030) BTX&E 602 or 624 TOTAL LEAD AA TEL DHS-LUFT EDB DHS-AB1803
Unleaded Gas	TPH G GCFID(5030) BTX&E 8020 or 8240 TPH AND BTX&E 8260	TPH G GCFID(5030) BTX&E 602, 624 or 8260
Diesel, Jet Fuel and Kerosene	TPH D GCFID(3550) BTX&E 8020 or 8240 TPH AND BTX&E 8260	TPH D GCFID(3510) BTX&E 602, 624 or 8260
Fuel/Heating Oil	TPH D GCFID(3550) BTX&E 8020 or 8240 TPH AND BTX&E 8260	TPH D GCFID(3510) BTX&E 602, 624 or 8260
Chlorinated Solvents	CL HC 8010 or 8240 BTX&E 8020 or 8240 CL HC AND BTX&E 8260	CL HC 601 or 624 BTX&E 602 or 624 CL HC AND BTX&E 8260
Non-chlorinated Solvents	TPH D GCFID(3550) BTX&E 8020 or 8240 TPH AND BTX&E 8260	TPH D GCFID(3510) BTX&E 602 or 624 TPH and BTX&E 8260
Waste and Used Oil or Unknown (All analyses must be completed and submitted)	TPH G GCFID(5030) TPH D GCFID(3550) TPH AND BTX&E 8260 O & G 5520 D & F BTX&E 8020 or 8240 CL HC 8010 or 8240	TPH G GCFID(5030) TPH D GCFID(3510) O & G 5520 C & F BTX&E 602, 624 or 8260 CL HC 601 or 624
	ICAP or AA TO DETECT METALS: Cd, Cr, Pb, Zn, Ni METHOD 8270 FOR SOIL OR WATER TO DETECT: PCB* PCP* PNA CREOSOTE	PCB PCP PNA CREOSOTE

* If found, analyze for dibenzofurans (PCBs) or dioxins (PCP)

Reference: Tri-Regional Board Staff Recommendations for Preliminary Evaluation and Investigation of Underground Tank Sites, 10 August 1990

**STATE
COMPENSATION
INSURANCE
FUND**

P.O. BOX 807, SAN FRANCISCO, CA 94101-0807

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 06-01-94

POLICY NUMBER: 1305773 - 94
CERTIFICATE EXPIRES: 06-01-95

COUNTY OF ALAMEDA
HAZARDOUS WASTE DEPT.
80 SWAN WAY
OAKLAND CA 94612

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 10 days' advance written notice to the employer.

We will also give you 10 days' advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate of insurance 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.


PRESIDENT

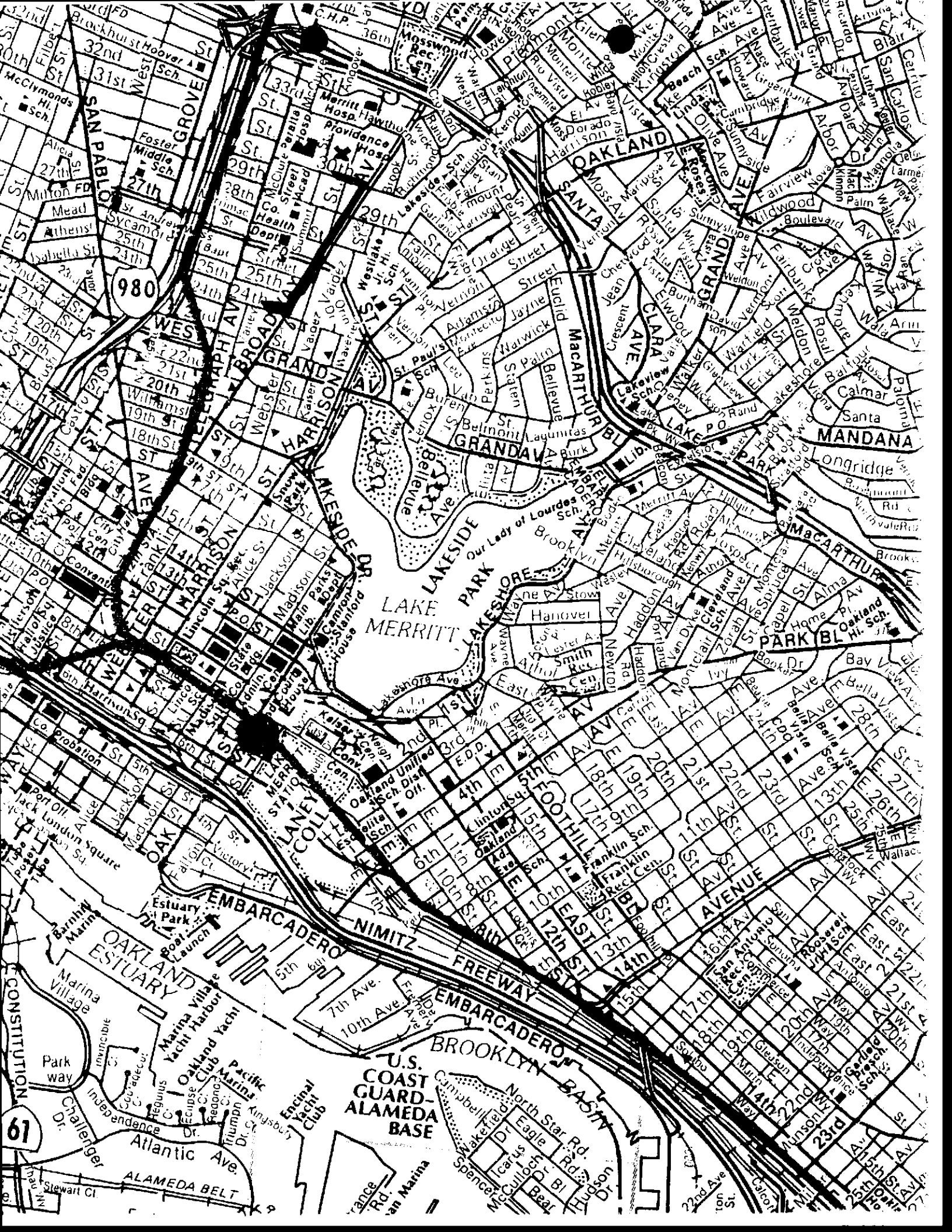
EMPLOYER'S LIABILITY LIMIT: \$3,000,000.00 PER OCCURRENCE.

EMPLOYER

LEGAL NAME

BERNABE & BRINKER, INC
1281 - 30TH ST
OAKLAND CA 94608

BERNABE & BRINKER, INC



980

61

U.S. COAST GUARD ALAMEDA BASE

OAKLAND ESTUARY

EMBARCADERO

BROOKLYN BASIN

EMBARCADERO

ALAMEDA BELT

ATLANTIC AVE.

CHALLENGER

STEWART CL.

OAKLAND

SANTA ANNE

CLARA

GRAND AV.

MACARTHUR BL.

LIBERTY

EMBARCADERO

AMBER

LIBERTY

EMBARCADERO

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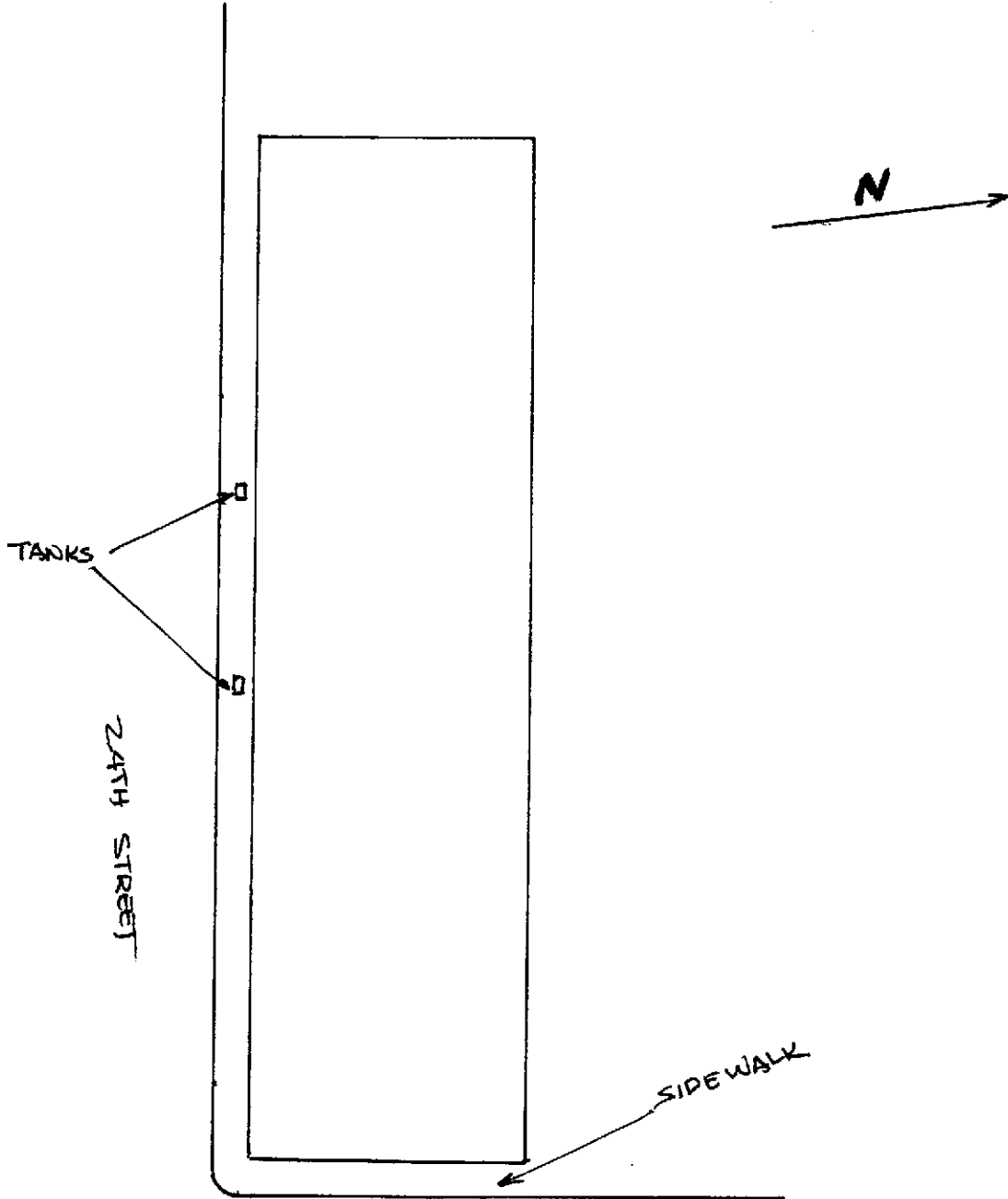


BERNABE AND BRINKER INC.

General Engineering Contractor • Hazardous Substances Removal • License #610617

1281 - 30th Street
Oakland, California 94608

TEL: 510 • 451 • 3482
FAX: 510 • 836 • 2635



BROADWAY

FORMER CHRYSLER DEALER SHIP
2417 BROADWAY
OAKLAND, CA. 94612

ALAMEDA COUNTY HAZARDOUS MATERIALS DIVISION
Declaration of Site Account Refund Recipient

SITE OWNER FILLS OUT PER SITE

-- OPTIONAL --

The property owner will use this form to designate someone other than him- or her- self to receive any refund due at the completion of all deposit/refund projects at the site listed below. In the absence of this form, the property owner will receive any refund. Only one person at any one time may be designated to receive any refund.

SITE NUMBER/ADDRESS:

PROPERTY OWNER

Site Number

FORMER CHRYSLER

Company Name

K.C. MA

Owner's Name

2417 BROADWAY

Street Address

650 CALIFORNIA 29TH FLR

Owner's Address

OAKLAND 94612

City

Zip Code

SF

CA 94108

Owner's City

State

Zip

I designate the following person to receive any refund due at the completion of all deposit/refund projects:

BERNABE & BRINKER INC.

Name

1281-30TH ST

Street Address

OAKLAND CA 94608

City / Zip

Property Owner Signature

K.C. MA

Property Owner Name

Date

7/17/94

RETURN FORM TO: Alameda County, Hazardous Materials Div.
80 Swan Way, Rm 200
Oakland, CA 94621-1439
Phone: (510) 271-4320

BERNABE & BRINKER, INC.
SITE SAFETY PLAN

Site 2417 Broadway Project#

Original Site Safety Plan: Yes() No() Revision#

Plan Prepared by Ernie Bernabe Jr. Date 7-18-94

Plan Approved by Date

Please respond to each item as completely as possible.
Where an item is not applicable, please mark "N/A."

1. KEY PERSONNEL AND RESPONSIBILITIES

(Include name, telephone number, health and safety responsibilities, i.e., project manager - Joe Smith - responsible for supervision of all site activities.)

Project Manager Ernesto F. Bernabe Jr.

Site Safety Manager Ernesto F. Bernabe Jr.

Alternate Site Safety Manager James E. Brinker

Field Team Members James E. Brinker, Ernie F. Bernabe

Eugene Bowen

Agency Reps: [Please specify by one of the following symbols: Federal:(F), State:(S), Local:(L), Contractor(s):(C)]

Alameda County Health Haz Mat (L) Oakland Fire Dept (L)

John Alt (C) Erickson (C)

B&B SITE SAFETY PLAN

2. JOB HAZARD ANALYSIS:

Hazard Level: High() Moderate() Low(x) Unknown ()

Hazard Type: Liquid() Solid() Sludge() Vapor/Gas(x)

Known or suspected hazardous materials present on site:

Gasoline

Characteristics of hazardous materials included above:

(Complete for each chemical present:)

MATERIAL #1: Corrosive() Ignitable(x) Toxic()

Reactive() Volatile() Radioactive()

Biological Agent()

Exposure Routes: Inhalation(x) Ingestion() Contact()

MATERIAL #2: Corrosive() Ignitable() Toxic()

Reactive() Volatile() Radioactive()

Biological Agent()

Exposure Routes: Inhalation() Ingestion() Contact()

MATERIAL #3: Corrosive() Ignitable() Toxic()

Reactive() Volatile() Radioactive()

Biological Agent()

Exposure Routes: Inhalation() Ingestion() Contact()

MATERIAL #4: Corrosive() Ignitable() Toxic()

Reactive() Volatile() Radioactive()

Biological Agent()

Exposure Routes: Inhalation() Ingestion() Contact()

B&B SITE SAFETY PLAN

2.2 JOB-SPECIFIC HAZARDS

For each labor category, specify the possible hazards based information available (i.e., Task-driller, Hazards-trauma from drill rig accidents, etc.) For each hazard, indicate steps to be taken to minimize the hazard.

Jack hammer and air compressor noise

(use ear plugs)

The following additional hazards are expected on site (i.e., snake-infested area, extreme heat, etc.):

Measures to minimize the effects of the additional hazards are:

3. MONITORING PLAN

3.1 (a) Air Monitoring Plan

Action levels for implementation of air monitoring. Action levels should be based on published data available on contaminants of concern. Action levels should be set by persons experienced in industrial hygiene.

Level
(i.e., .5ppm)

Action Taken
(i.e., commence perimeter monitoring)

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B&B SITE SAFETY PLAN

(b) Air Monitoring Equipment

Outline the specific equipment to be used, calibration method, frequency of monitoring, locations to be monitored, and analysis of samples (if applicable):

Combustible gas meter

If air monitoring is not to be implemented for this site, explain why:

3.2 Personnel Monitoring

(Include hierarchy of responsibilities in decision-making on the site).

3.3 Sampling Monitoring

(a) Techniques used for sampling backhoe to pick up the soil from the tank pit and a 2" brass tube will be driven into the dirt to collect the samples.

B&B SITE SAFETY

(b) Equipments used for sampling Backhoe, hammer,

(c) Maintenance and calibration of equipments _____

4. **PERSONAL PROTECTIVE EQUIPMENT (PPE)**
Equipment used by employees for the site tasks and operations being conducted. Be specific (i.e., hard hat, impact resistance goggles, other protective glove, etc.).

hard hats, rubber gloves, leather gloves, safety glasses
orange vest, steel toe boots

5. **SITE CONTROL AND SECURITY MEASURES**
The following general work zone security guidelines should be implemented:

- Work zone shall be barricaded and caution tape be used.
- Excavations shall be closed when drilling and sampling activities are not actually taking place.
- No excavations shall be left unattended. Visitors will not enter the work zone unless they have attended a project safety briefing.
- Persons will not leave the work zone without first passing through the decontamination zone.

B&B SITE SAFETY PLAN

6. DECONTAMINATION PROCEDURE

List the procedures and specific steps to be taken to decontaminate equipment and PPE.

All equipments has to be wash, soap and rinse.

Protective clothing that had been contaminated

has to be dispose of properly

7. TRAINING REQUIREMENTS

Prior to mobilization at the job site, employees will be attend a safety briefing. The briefing will include the nature of the wastes and the site, donning personal protection clothes and equipment, decontamination procedures and emergency procedures.

8. MEDICAL SURVEILLANCE REQUIREMENTS

If any task requires a very high personnel protection level, personnel shall provide assurances that they have received a physical examination and they are fit to do the task. Also, personnel will be instructed to look for any symptom of heat stress, heat stroke, heat exhaustion, or any other unusual symptom. If there is any report of that, it will be immediately be followed through, and appropriate action will be taken.

9. STANDARD OPERATION PROCEDURES

Bernabe & Brinker, Inc. is responsible for all Bernabe & Brinker, Inc. employees on the site. Each contractor shall provide all the equipment necessary to meet safe operation practices and procedures for their personnel on site, and be responsible for the safety of their workers.

A. "Three Warning" system is utilized to enforce compliance with Health and Safety procedures practices which will be implemented at the site for worker safety:

*Eating, drinking, chewing gum, or tobacco, and smoking will be allowed only in designated areas.

B&B SITE SAFETY PLAN

*Wash facilities will be utilized by workers in the work areas before eating, drinking, or use of toiled facilities.

*Containers will be labeled, identifying them as waste, debris, or contaminated clothing.

*All excavation/drilling work will comply with regulatory agencies requirement.

*All site personnel will be required to wear hard hats and advised to take adequate measures for self-protection.

*Any other action which is determined to be unsafe by the site safety officer.

10. CONFINED SPACE ENTRY PROCEDURES

No one is allowed to enter any confined space operation without proper safety measures. Specifically, in case of an excavated Tank Pit no one should enter at no time.

11. EMERGENCY RESPONSE PLAN

Fire extinguisher(s) will be on site prior to excavation. Relevant phone numbers are:

Person	Title	Phone Number
<u>J.E.Brinker</u>	<u>Project Manager</u>	<u>510-451-3482</u>
<u>Oakland</u>	<u>Fire</u>	<u>911 or 510-444-1616</u>
<u>Oakland</u>	<u>Police</u>	<u>911 or 510-273-3211</u>
<u>Acme</u>	<u>Ambulance</u>	<u>911 or 510-653-6622</u>
	<u>Poison Control Center</u>	<u>(800) 523-2222</u>
		<u>510-410-9082</u>
	<u>Site Phone</u>	
	<u>Nearest Off-Site Number</u>	<u>510-410-9082</u>
	<u>Medical Advisor</u>	
<u>J.K.Kao</u>	<u>Client Contact</u>	<u>415-392-5600</u>

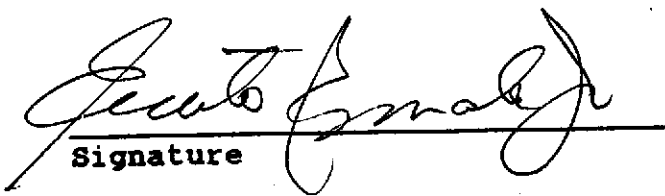
B&B SITE SAFETY PLAN

U.S. EPA - ERT.....(201) 321-6660
Chemtrec.....(800) 424-9300
Centers for Disease Control.....Day:
(404) 329-3311
Night:
(404) 329-2888
National Response Center.....(800) 424-8802
Superfund/RCRA Hotline.....(800) 424-8802
TSCA Hotline.....(800) 424-9065
National Pesticide Information Services....(800) 845-7633
Bureau of Alcohol, Tobacco, and Firearms...(800) 424-9555

**HEALTH AND SAFETY
COMPLIANCE STATEMENT**

I, Ernesto F. Bernabe Jr, have received and read a copy of the project Health and Safety Plan.

I understand that I am required to have read the aforementioned document and received proper training under the occupational Safety and Health Act (29 CFR, Part 1910.120) prior to conducting site activities at the site.

 7-18-94
Signature Date

Nearest Hospital Summit Hospital
Tel. No. 510-655-400