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MICHAEL P. WALSH
RICHARD T. WHITE
TIMOTHY W. MOPPIN
FITZGERALD, ABBOTT & BEARDSLEY
1221 Broadway, 21st Floor
Oakland, California 94612-1837
Telephone: (415) 451-3300

Attorneys for Defendants STEPHEN DAVIS
and LEONARD DAVIS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

ALVIN H. BACHARACH and)
BARBARA JEAN BORSUK,)
)
Plaintiffs,)
)
v.)
)
STEVEN DAVIS, LEONARD)
DAVIS, ROBERT L. DAVIS,)
and DOES 1 to 25,)
)
Defendants.)

NO. 666290-3

DECLARATION OF JAMES P. BOWERS
IN OPPOSITION TO PLAINTIFF'S
APPLICATION FOR RIGHT TO
ATTACH ORDER AND MOTION FOR
APPOINTMENT OF RECEIVER

Date: July 30, 1990
Time: 10:00 a.m.
Dept.: 19

I, James P. Bowers, declare as follows:

1. I am President of Subsurface Consultants, Inc. I make this declaration of my own knowledge, and if called as a witness I could testify competently to the matters stated herein.

2. I am a registered Civil Engineer and a registered geotechnical engineer, for the State of California. I have been President of Subsurface Consultants, Inc., since 1983. I have had extensive experience in evaluating soil and groundwater contamination problems. A copy of my current resume, attached

as Exhibit A, contains a true description of my professional qualifications and experience.

EXH C
[Signature]

1 3. On September 3, 1987, I received a telephone call from
2 Mr. Mark Borsuk of Mark Borsuk, Inc., requesting that a proposal be
3 submitted to investigate several underground gasoline storage tanks
4 that existed on property at 1432 Harrison Street in Oakland,
5 California. Mr. Borsuk indicated that he was representing the
6 owner of the property, Mr. Alvin Bacharach.

7 4. On September 15, 1987, I met with Mr. Borsuk at the site
8 to inspect the property. During this meeting, we discussed details
9 of the tanks and conducted a brief inspection of the building
10 occupying the property.

11 5. During the inspection, Mr. Borsuk indicated that a tank
12 had been removed previously and replaced with a new tank. The tank
13 was situated beneath the Harrison Street sidewalk. Mr. Borsuk
14 indicated that the tank that was removed had been observed to be
15 leaking.

16 6. During the inspection, I discovered piping in the
17 basement of the structure suggesting the presence of another
18 underground storage tank. The tank was suspected to be located
19 beneath the basement floor slab in the southwest corner of the
20 building, adjacent to Alice Street. Black oily stains were noted
21 on the basement wall of the building near the fuel piping for the
22 tank. Similar stains were observed on the floor in the area. It
23 is my opinion that this tank represents a possible source of soil
24 and groundwater contamination. I recommended to Mr. Borsuk that a
25 test boring be drilled in the area to check for indications of tank
26 leakage. The proposal to Bacharach contained the same
27 recommendation.
28

1 7. Subsurface Consultants, Inc. subsequently prepared a
2 proposal to conduct a preliminary investigation into past fuel tank
3 leakage on the property. It was submitted to Mr. Alvin Bacharach
4 on September 23, 1987. The cost of the investigation was estimated
5 to be \$4,950. A true and correct copy of this proposal and
6 selected records from Subsurface Consultants, Inc. files are
7 attached hereto as Exhibit B.

8 8. Subsurface Consultants, Inc. was never retained by Alvin
9 Bacharach to conduct the study.

10 9. On or around June 21, 1990, I received a request from
11 Mr. Jonathan Redding of Fitzgerald, Abbott & Beardsley, to provide
12 consulting services regarding underground fuel storage tanks at the
13 Harrison garage property located at 1432 Harrison Street in
14 Oakland, California.

15 10. On July 21, 1990, I met with Mr. Redding at the site to
16 inspect the property. During the inspection I observed numerous
17 facilities indicating that the building had previously been used as
18 an automobile service and repair facility. I observed underground
19 fuel storage tanks, a fuel pumping facility, hydraulic hoists, and
20 auto cleaning areas. A schematic diagram of the site and the
21 associated tanks and auto repair facilities are attached hereto as
22 Exhibit C.

23 11. During the July 21, 1990, inspection, I removed the
24 covers to two underground fuel tanks located under the sidewalk in
25 front of the Harrison Street entrance. I noted that the tanks
26 contained fuels which I judged to be gasoline.

27 12. On July 24, 1990, I was retained to conduct soil gas
28 vapor and air quality studies using an organic vapor meter (OVM),

1 at several locations inside the building. The OVM is capable of
2 detecting volatile organic vapors at concentrations as low as one
3 part per million (ppm). A follow up OVM air quality survey was
4 conducted on July 26, 1990. The results of all the OVM readings
5 are attached hereto as Exhibit D.

6 13. The soil gas survey revealed the presence of volatile
7 organic chemical vapors in the soil at concentrations up to 81.6
8 ppm near a suspected tank location inside the building on the
9 ground floor. Near a floor sump also situated on the ground floor
10 we found concentrations of volatile organic chemical vapors of up
11 to 14 ppm. Based on my experience, it is my opinion that
12 hydrocarbon soil contamination probably exists at these locations
13 which might lead a regulatory agency to require clean-up.

14 14. The air quality survey performed with the OVM revealed
15 that volatile organic chemicals were present in the air within the
16 building. The results of the survey are presented in Exhibit D,
17 Table 3. Organic chemical concentrations were highest (6-9 ppm) in
18 the lowest basement level. Air quality improved in the mid-level
19 parking area (5-6 ppm), and was significantly better at the ground
20 floor level (1-2 ppm). Organic chemical concentrations were
21 highest near the suspected oil storage tank in the lowest basement
22 level (7-9 ppm). OVM readings taken in a hole cored in the
23 concrete slab above the suspected oil tank location, which might be
24 a source of the air quality impacts, indicated volatile organic
25 chemical concentrations of 25 to 27 ppm.

26 15. On July 25, 1990, Subsurface Consultants, Inc. was
27 retained to drill two test borings within the City of Oakland
28

1 right-of-way in front of the building at 1432 Harrison Street. The
2 borings extended to groundwater, a depth of approximately 22 feet.

3 16. Soil samples retrieved from the test borings below depths
4 of about 13 feet smelled strongly of gasoline, as reflected by the
5 high OVM readings shown on Exhibit D, Table 1. The contaminated
6 soils extended to groundwater. We have selected soil samples for
7 further chemical analysis at a state certified laboratory. The
8 results of such analysis should be available in two to three weeks.

9 17. Based on my experience with similar underground fuel tank
10 leakage problems, it is my opinion that one or more of the tanks
11 beneath the Harrison Street sidewalk or their piping systems, have
12 leaked in the past. It is probable that groundwater has at least
13 been locally impacted. Based upon current regulatory agency
14 guidelines, it is my opinion that further investigation, and soil
15 and groundwater remediation will likely be required, and that such
16 investigation and remediation costs will likely exceed \$100,000,
17 and could exceed several hundred thousand dollars.

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

20 Executed this 27 day of July, 1990, at Oakland, California.

21
22 
23 _____
24 James P. Bowers
25
26
27
28

JAMES P. BOWERS
Principal Geotechnical Engineer
President

Mr. Bowers has consulted on a variety of projects dealing with the investigation and clean up of soil and groundwater contamination, as well as projects involving conventional geotechnical engineering. Mr. Bowers has a strong background in project management, having supervised numerous projects involving soil sampling and classification, geologic and hydrologic site characterization, groundwater monitoring well installation and development, and groundwater sampling. Mr. Bowers possesses diverse analytical experience relating to groundwater hydrology and soil mechanics, as well as foundation engineering. He has directed numerous projects involving multi-disciplinary consultants, and successfully negotiated with regulatory agencies. He has provided consulting and design services for numerous landfills, and projects constructed over landfills. These services have included landfill design and closure, surface liners design, methane gas mitigation system design, and leachate control.

EXPERIENCE

1983 - Present Subsurface Consultants, Inc., President

1976 - 1983 Harding Lawson Associates
1981 - 1983 Associate-in-charge, San Francisco branch office
1980 - 1981 Chief Engineer, San Francisco
1976 - 1980 Project Engineer

1976 Cooper Clark and Associates

1971 - 1974 U.S. Army, 82nd Airborne Division, surveyor

PROFESSIONAL REGISTRATION

Registered Civil Engineer, California
Registered Geotechnical Engineer, California

EDUCATION

Master of Science, Civil Engineering, University of California, Berkeley, 1976 (graduate specialization in geotechnical engineering)

Bachelor of Science, Civil Engineering, University of California, Berkeley, 1975

MEMBERSHIPS

American Society of Civil Engineers
American Council of Independent Laboratories
California Groundwater Association

Subsurface Consultants

JOB MEMORANDUM

ROUTE TO: / / / FILE

JOB NAME Harrison Tanks

JOB NO. _____

RECORD OF: Telephone Conversation
 Office Conference
 Client Office Conference
 Job Site Inspection/Conference

DATE 11/21/81

TIME _____

BY YB

WITH: Mark Borwick - 922-4746

SUBJECT: Uline Warehouse & tanks

DISCUSSION: - 9000 1400 - 14 Harrison St
- for storage tanks 14+ Harrison St
- reason or replace 11
1 - 5 ft + old tanks on Harrison St.
1 - ? old
1 - ?
be with new tank

ACTION REQUIRED: _____

cc to: _____ Initial _____

EXHIBIT

IMPORTANT MESSAGE

FOR Jim
DATE 8/7 TIME 11:50 A.M.
M. Mark Bosuk
OF _____
PHONE 820-8468
AREA CODE NUMBER EXTENSION

TELEPHONED		PLEASE CALL	<input checked="" type="checkbox"/>
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		FLIGHT	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE _____

SIGNED _____
UNITED STATES

IMPORTANT MESSAGE

FOR Jim
DATE 9/23 TIME 9:55 A.M.
M. Mark Bosuk
OF _____
PHONE 922-4740
AREA CODE NUMBER EXTENSION

TELEPHONED		PLEASE CALL	<input checked="" type="checkbox"/>
CAME TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		FLIGHT	
RETURNED YOUR CALL		SPECIAL ATTENTION	

MESSAGE _____
#985-9077 (after
10:30)
He needs his
Report - etc.

SIGNED _____
UNITED STATES

September 23, 1987

Mr. Alvin Bacharach
383 Diablo Road, Suite #100
Danville, California 94520

Proposal
Geotechnical Services
Re. Fuel Tank Leakage
1428 Harrison Street
Oakland, California

Dear Mr. Bacharach,

Subsurface Consultants, Inc. (SCI) is pleased to submit this proposal to conduct a preliminary investigation of possible subsurface fuel contamination at the referenced address. The purpose of the proposed services is to obtain soil samples near existing subsurface fuel storage tanks and analyze them for the presence of petroleum hydrocarbons (gasoline). The study is intended to serve only as a preliminary means of checking for signs of past tank leakage. It is not intended to provide all the subsurface data that may be required by the Alameda County/City of Oakland to close the tanks in accordance with state criteria.

We understand that at least two underground fuel storage tanks are believed to exist beneath the sidewalk along the Harrison Street side of the structure. It is unknown whether other tanks exist in the area. An additional tank may exist in the basement of the structure adjacent to the east side of the building.

Proposed Scope of Services

We propose the following field investigation.

1. Two test borings will be drilled to groundwater near the tanks on the Harrison Street side of the building. The borings will likely extend 20 to 25 feet below the ground surface. One boring will be positioned near each of the existing tanks.
2. One test boring and one unsampled probe will be drilled in the basement of the structure, in the area of the suspected tank. The probe will be drilled only if the boring does not reveal the presence of an underground tank.

Subsurface Consultants, Inc.

1428 Street • Suite 201 • Oakland, California 94607 • Telephone 415-268-0461

EXHIBIT

B

3. Two shallow, unsampled test probes will be drilled in the sidewalk area along Harrison Street, north of the known tank locations. The purpose of these probes will be to check the area for underground tanks. No analytical tests will be performed on the soils encountered in the probes.

The test borings will be drilled with hollow stem auger drilling equipment, except in the basement where 3-inch-diameter, portable drilling equipment will be utilized. The concrete slabs at all drilling locations will be cored to facilitate drilling and patched with concrete upon completion of drilling. The sampling equipment will be steam cleaned before and after each use to reduce the risk of cross-contamination between samples. Upon completion of drilling, the bore holes will be backfilled with cement grout. Our field engineer will observe drilling operations and prepare a detailed log of each test boring.

A total of 3 soils samples, one from each test boring, will be analyzed for total petroleum hydrocarbons (gasoline) by Multi Tech Laboratories, Inc., a State certified analytical laboratory. The soil samples will be obtained, stored and transported to the laboratory in accordance with the procedures specified by the California Regional Quality Control Board. Chain of custody documents will accompany all samples.

A sample of the groundwater will be obtained from within the hollow stem of the drilling augers at one location near the existing tanks along the Harrison Street side of the building. The water sample will be analyzed for petroleum hydrocarbons, and benzene, toluene and xylene (BTX). Groundwater will not be sampled and/or analyzed from other exploration locations.

We will record our sampling and testing procedures, observations regarding soil conditions, and analytical test results in a letter report.

Fee

We propose to perform the services outlined herein on a time-and-expense basis, in accordance with the attached Schedule of Charges and General Conditions. On this basis, we estimate that our fee will be about \$4960, including the cost of drilling and analytical testing. We will not exceed the later fee without your prior authorization. An approximate breakdown of our estimated fee is presented below.

Mr. Alvin Bacharach
September 23, 1987
Page 3

Field Investigation		\$ 3000	1000
Analytical Testing	: 3 soil @ \$130/ea	390	200
	1 water @ \$160	160	160
Report		900	1000
Consultation	6 hrs @ \$85/hr	<u>510</u>	4200
	Total	\$ 4950	

Our fee estimate assumes that the analytical testing will be performed on a normal laboratory turnaround basis. If a quicker turnaround time is desired on the analytical testing, we suggest that an additional \$550 be budgeted for the laboratory surcharge (100 percent of the laboratory costs). Test results can normally be available within one to two working days, if it is elected to pay the surcharge. Normal turnaround time is about 10 working days.

Our proposed scope of services does not include significant consulting services beyond soil sampling and analysis, and discussing the results with you. However, we would be pleased to provide additional services, if necessary. The scope of any additional work will be developed in consultation with you and will be performed under a separate agreement.

We appreciate the opportunity to submit this proposal and look forward to working with you. If you have any questions regarding our proposed scope or fee, please call.

Please return an executed copy of the attached Service Agreement when you wish us to proceed.

Yours very truly,
Subsurface Consultants, Inc.

James P. Bowers
James P. Bowers
President

Attachments: Service Agreement
General Conditions
Schedule of Charges

2 copies submitted

JPB:fmh

EXHIBIT

SERVICE AGREEMENT

This Agreement is made this 22nd day of September 1987, between Mr. Alvin Bacharach, subsequently referred to as "Client", and Subsurface Consultants, Inc., subsequently referred to as "Consultant".

By joining in this Agreement, Client retains Consultant to conduct a preliminary investigation of possible subsurface fuel contamination at 1428 Harrison Street in Oakland, California, subsequently referred to as "Project". The Client's relationship to Project is that of the owner.

Scope of Services

By this Agreement, the scope of Consultant's services on Project is limited to:

1. Drilling two test borings to groundwater near the tanks along the Harrison Street side of the building. Borings will likely extend 20 to 25 feet below the ground surface. One boring will be positioned near each of the existing tanks.
2. Drilling one test boring and one unsampled probe in the basement of the structure in the area of the suspected tank. Probe to be drilled only if the boring does not reveal the presence of an underground tank,
3. Drilling two shallow, unsampled test probes in the sidewalk area along Harrison Street, north of the known tank locations to check the area for underground tanks,
4. Observing drilling operations and preparing a detailed log of each test boring,
5. Coring and patching concrete slabs at all drilling locations,
6. Backfilling bore holes with cement grout upon completion of drilling,
7. Analyzing one soil sample from three test borings for total petroleum hydrocarbons (gasoline),
8. Obtaining and analyzing a groundwater sample from within the hollow stem of the drilling augers near the existing tanks along the Harrison Street side of the building to check for petroleum hydrocarbons, benzene, toluene and xylene (BTX). Groundwater will not be sampled and/or analyzed from other exploration locations,

Service Agreement
Mr. Alvin Bacharach
September 23, 1987
Page 2

9. Preparing a written letter report recording the results of the investigation.

Fee

Consultant agrees to provide services covered by this Agreement on a time-and-expense basis, in accordance with the attached Schedule of Charges and General Conditions, which are part of this contract. On this basis, Consultant's fee is estimated to be between \$4960, including the cost of sampling and analytical testing. This latter fee will not be exceeded without Client's authorization. Our fee estimate assumes that the analytical testing will be performed on a normal laboratory turnaround basis.

If Project requirements or subsurface conditions encountered indicate that the scope of services covered by this Agreement should be revised, an additional Service Agreement or a written addendum to this Agreement shall be entered into to cover the revised scope and fee. Should Client authorize a revision in the scope of services without a revision to this Agreement, Consultant shall be compensated for services actually performed.

If a dispute arises relating to the performance of services covered by this Agreement, and legal or other costs are incurred, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred in defense of the claim, including employee-related costs at current billing rates, attorney's fees and other claim-related expenses.

Authorized by:

James P. Berman
Title: President
Date: 9/23/87
Consultant

Client

JUL-25-90 THU 12:05 10:SCI TEL NO: 410-288-8131

GENERAL CONDITIONS

Invoices

Subsurface Consultants, Inc. (SCI) will submit invoices to Client at least as frequently as monthly and a final bill upon completion of services. Billings are payable upon receipt unless other arrangements, confirmed in writing by SCI, have been made. A finance charge of 1-1/2 percent per month will be payable on accounts not paid within 30 days. Any attorney's fees or other costs incurred collecting any delinquent amount shall be paid by the Client.

Samples

SCI will retain all soil and rock samples for 30 days after report submittal. Upon Client's authorization, samples will be delivered to Client or stored for an agreed charge. Client will be invoiced for the cost of sample liners if samples are stored for more than 4 months or if Client accepts delivery of samples.

Utilities

SCI will not be liable for damage or injury arising from damage to on-site subterranean structures (pipelines, underground cables, etc.) which are not called to our attention and correctly shown on the plans furnished in connection with the services performed by SCI. SCI will request responsible utilities to locate off-site utility lines, when necessary.

Standard of Care

Services performed by SCI will be conducted in a manner consistent with that level of care and skill ordinarily exercised by other members of the engineering profession currently practicing under similar conditions. No other warranty, expressed or implied, is made. Client recognizes that subsurface conditions may vary from those encountered at the location where test borings or other explorations are made by SCI and that SCI's interpretations and recommendations will be based on the results of investigative work. SCI will not be responsible for the interpretation or use by others of data developed by SCI.

Workers' Compensation Insurance

SCI is protected by Worker's Compensation Insurance as required by applicable State laws.

GENERAL CONDITIONS (Cont.)

Professional Liability Insurance and Limitation

SCI's liability for damages due to professional negligence will be limited to an amount not to exceed \$50,000 or SCI's fee, whichever is greater.

General Liability Insurance and Limitation

SCI is covered by General Liability insurance for bodily injury and property damage arising directly from its negligent acts or omissions. Within the limits and conditions of such insurance, SCI agrees to indemnify and hold Client harmless from any loss, damage or liability arising directly from any negligent act or omission by SCI. SCI shall not be responsible for the loss, damage or liability arising from any act or omission by Client, its agents, employees, other consultants, independent contractors, third parties, or others working on the project over which SCI has no supervision or control.

Disputes

If a dispute arises relating to the performance of services covered by this agreement, and legal or other costs are incurred, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred in defense of the claim, including employee related costs at current billing rates, attorney's fees and other claim related expenses.

SUBSURFACE CONSULTANTS, INC.

SCHEDULE OF CHARGES

Professional Services

Hourly Rates

Principal Engineers and Geologists	\$75 to 95
Senior Engineers and Geologists	\$50 to 80
Project Engineers and Geologists	\$40 to 55
Expert Witness & Deposition Testimony	\$120

Technical Services

Field Technician	\$25 to 45
Drafting	\$25 to 30
Word Processor Operator	\$25 to 30
Clerical	\$25

Equipment

Outside Services & Equipment	Cost + 15%
Vehicle	\$5/hour
Geophysical Equipment	Upon request
Nuclear Density Testing Equipment	\$5/test
Photo Copying	\$0.15/page

Travel Time

Travel time will be charged at regular hourly rates, not to exceed 8 hours per day.

Outside Services

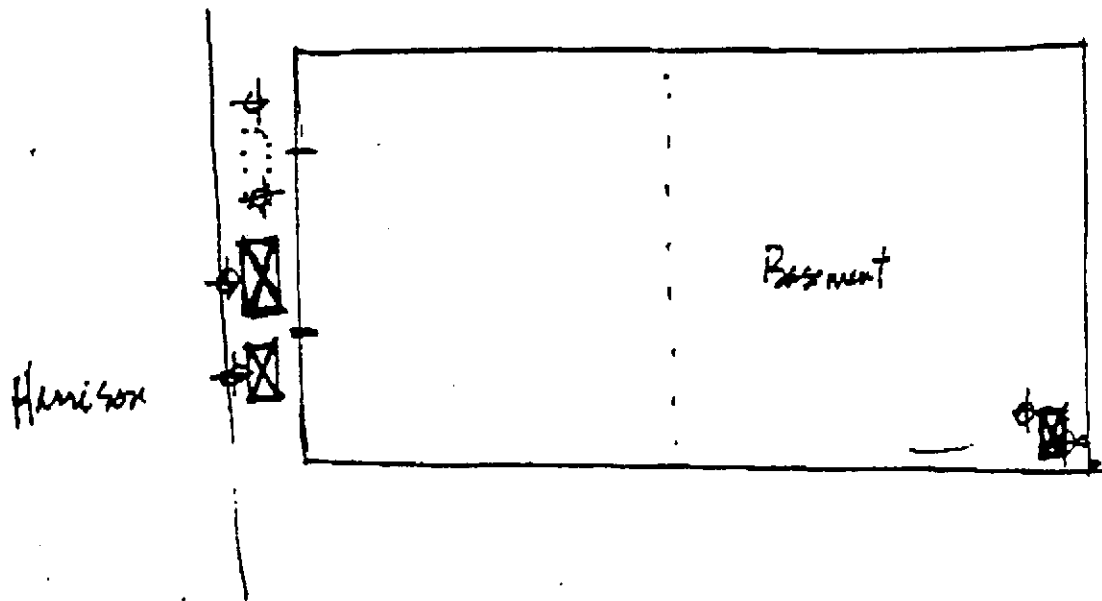
Outside services include all services and/or equipment not ordinarily provided by Subsurface Consultants, Inc., such as drilling equipment rental, laborers, special printing, subsistence and lodging, travel by common carrier, etc.

Terms

Billings are payable upon receipt unless other arrangements, confirmed in writing by Subsurface Consultants, Inc., have been made. A finance charge of 1-1/2 percent per month will be payable on accounts not paid within 30 days. Any attorney's fees or other costs incurred collecting any delinquent amount shall be paid by the Client.

082587

EXHIBIT



XHIBIT

AFFIDAVIT OF SERVICE BY MAIL

The undersigned deposes and says:

That I am a citizen of the United States and a resident of the County of Alameda; that I am over the age of eighteen years and not a party to the within actions; that my business address is the Office of the District Attorney, 7677 Oakport Street, Suite 400, Oakland, California, 94621;

That I served a true copy of the attached Response to Petition for Review of Failure to Act by the County of Alameda Health Care Services Agency and Title 23, Section 2050(a)(10) Record re: 1432 Harrison St. including connecting Alice St. garage, Oakland, CA 94612 by placing said copies in an envelope addressed to:

Theodore A. Cobb
Senior Staff Counsel
State Water Resources Control Board
Paul R. Bonderson Building
901 P Street
P. O. Box 100
Sacramento, CA 95812-0100

which envelope was then and there sealed and fees fully prepaid thereon and thereafter was on March 25, 1991 deposited with Federal Express for Overnight Delivery.

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

DATED this 25 day of March, 1991, at Oakland, California.



Susan Hanson Bogan

AFFIDAVIT OF SERVICE BY MAIL

The undersigned deposes and says:

That I am a citizen of the United States and a resident of the County of Alameda; that I am over the age of eighteen years and not a party to the within actions; that my business address is the Office of the District Attorney, 7677 Oakport Street, Suite 400, Oakland, California, 94621;

That I served a true copy of the attached Response to Petition for Review of Failure to Act by the County of Alameda Health Care Services Agency and Title 23, Section 2050(a)(10) Record re: 1432 Harrison St. including connecting Alice St. garage, Oakland, CA 94612 by placing said copies in an envelope addressed to:

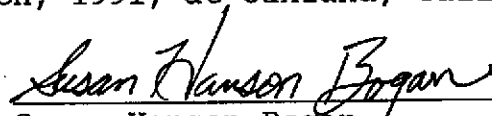
Steven R. Ritchie
Executive Officer
Calif. Regional Water Quality
Control Board, S.F. Bay Region
1800 Harrison Street, #700
Oakland, CA 94612

Jonathan S. Leo
Attorney At Law
Heller, Ehrman, White & McAuliffe
333 Bush Street
San Francisco, CA 94104-2878

which envelope was then and there sealed and postage fully prepaid thereon and thereafter was on March 25, 1991 deposited in the United States mail at Oakland, California.

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

DATED this 25 day of March, 1991, at Oakland, California.



Susan Hanson Bogan