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2/6/91

Attorneys for Petitioners
ALVIN BACHARACH and BARBARA BORSUK

BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

Petition for Review of Failure to Act by the County of Alameda Health Care Services Agency re: Corrective Action Order for Harrison Street Garage, 1432 Harrison Street, Oakland, California 94612	No.

DECLARATION OF JONATHAN S. LEO

I, JONATHAN S. LEO, hereby declare:

1. I am the attorney of record in the above-captioned matter, and I have personal knowledge of the facts herein alleged.

2. On January 14, 1991, my clients, Alvin Bacharach and Barbara Borsuk (collectively "Petitioner"), and I met with Paul Smith, hazardous materials specialist with the Alameda County Health Care Services Agency, and Mark Thomson, Esq., Deputy District Attorney for the County. The purpose of the meeting was to discuss the Cleanup Order ("Order") issued to my clients by the County regarding the Harrison Street Garage, and, in particular, the County's failure to name Douglas Motor Services ("Douglas") on the Order. On my clients' behalf, I asserted the following positions represented in the accompanying Petition: (1) that my clients never

operated the underground storage tanks ("USTs") on the property; (2) that they did not own the USTs which were in place when the California Underground Storage of Hazardous Substances statute was enacted in 1984; (3) that Douglas did own and operate the USTs; (4) that Douglas' negligence in such operation and its failure to comply with the statute was the primary cause of the current contamination problem; and (5) that the statute and overwhelming Water Board precedent favored at least adding Douglas to the Order.

3. The County was unpersuaded by the foregoing arguments and the supporting documentation. Mr. Thomson stated that the County would not add Douglas to the Order as an additional responsible party.

4. Mr. Thomson stated that it is the County's view that Petitioner owns the USTs on the property. It is my understanding that the County's position in this regard is based primarily on the fact that USTs existed on the property when it was purchased by Petitioner in 1945.

5. On behalf of the County, Mr. Thomson asserted that Douglas is not the owner of the USTs which it purchased and installed on the property, and that Douglas' decision to identify itself as the "owner" of the USTs on the installation permits was neither dispositive of nor relevant to the question of their ownership for purposes of the Underground Storage of Hazardous Substances statute, since these were merely standard form permits obtained by the installation contractors hired by Douglas. Mr. Thomson further stated that the listing of Douglas as the

"owner" on the operation permit issued by the County does not indicate conclusively an ownership interest in the USTs. Similarly, he stated that Douglas' identification of itself as the "owner" of the USTs on the State Board Hazardous Substance Storage Statements is not a definitive statement of ownership.

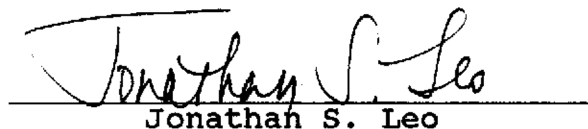
6. Mr. Thomson acknowledged that Douglas and not Petitioner was the operator of the USTs on the property, and that Petitioner did not operate the USTs on the property at any time during Douglas' tenancy. Mr. Thomson further acknowledged that operators are responsible for corrective action under the statute. Nevertheless, Mr. Thomson refused to provide any basis for the County's decision not to amend the Order to add Douglas as an additional responsible party. He stated only that it was "not inappropriate" for Petitioner to bear the full burden of corrective action alone. The County stressed the importance of the expeditious performance of necessary corrective action, but failed to respond to, or attempt to refute, my statement that merely adding Douglas to the Order would not delay such expeditious performance.

7. The parties agreed that the cost of the corrective action could be very substantial, and Mr. Thomson cited the figure of $1.3 million. Although I question the basis for Mr. Thomson's figure (since an estimate of remediation costs normally must await the conclusion of an acceptable characterization of the lateral and vertical extent of contamination and the determination of appropriate remedial action), my clients indicated that such

liability was beyond their means and would most likely push them into bankruptcy. Mr. Thomson only responded that Petitioner could pursue Douglas for contribution to such costs in a civil action. I pointed out that, by its failure to include Douglas on the Cleanup Order after being requested to do so, the County was sending a message to Douglas, and all others, that it did not hold Douglas in any way responsible for the site contamination, and that this, in turn, would unnecessarily and unfairly impair Petitioner's ability to maintain such a civil action against Douglas for contribution or indemnity. Mr. Thomson replied only that the purpose of a corrective action order was not to send messages, but rather to achieve remediation. Mr. Thomson concluded the meeting by indicating that if Petitioner did not comply with the County's Cleanup Order immediately, he would likely file a civil or criminal enforcement action against Petitioner.

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

Executed this 6 day of February 1991, at San Francisco, California.



Jonathan S. Leo