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7/12/93

BEFORE THE CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

Petition for Review of Decision of Alameda County Naming Douglas Motor Service and its Partners as Responsible Parties	)

RESPONSE OF OWNERS ALVIN H. BACHARACH AND BARBARA JEAN BORSUK TO PETITION FOR REVIEW OF DOUGLAS MOTOR SERVICE AND ITS PARTNERS

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I

INTRODUCTION

Respondents Alvin Bacharach and Barbara Borsuk are owners of a parking garage at 1432 Harrison Street in downtown Oakland. The Petitioners, Douglas Motor Service and its Partners (Douglas), are former tenants who operated the parking garage and the gasoline storage tanks and pumps for a period of 16 years from 1972 to 1988. In its Petition, Douglas challenges a February 5, 1993 Order from the Alameda County Health Care Services Agency which names Douglas and the owners as responsible parties with regard to releases from the underground gasoline storage tanks. The County properly named Douglas in the Order.

II

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This is the second time the State Board has considered this matter. The leakage from the underground gasoline tanks was first confirmed through soil borings in July, 1990, but Douglas knew that at least one of the tanks was leaking as far back as 1982. Some eight to ten months after discovering the leakage, Douglas replaced that tank, known as "tank #2," in October, 1982. One of the contractors who dug up the old tank noted "numerous holes in tank and piping." And, one of the Douglas partners, Ron, saw a hole the size of "a Kennedy half-dollar" when the tank was removed.

With regard to the other gas tank, the Douglas partners admitted that they discussed replacing that tank as early as 1975 because of water infiltration. In fact, the tank was taking on so much water that some of Douglas' customers' car engines were damaged. (Ref. # 13.) Despite the water infiltration, however, Douglas continued using tank #1 until 1982 when Douglas replaced tank #2 with a larger 1,000 gallon tank. Both of the old tanks were 550 gallon capacity, and the 1,000 gallon new tank allowed Douglas to take tank #1 out of service, although it was never closed.

Douglas had the responsibility under its Leases with the owners to keep the tanks, piping and all other parts of the garage in good condition and repair and to comply with all environmental laws and regulations. (See e.g. 1972 Lease, §3.) Douglas, however, never performed the tank integrity testing and monitoring required by the Code of Regulations. The Douglas partners admitted in their depositions that they simply ignored these regulations from 1984 to April, 1988 when their Lease terminated.

The Douglas partners also admitted, and their records confirmed, that several of Douglas' subtenants had performed auto repairs and servicing in the garage. One of Douglas' subtenants, William Thompson, acknowledged using the hydraulic lift and pouring some 300 gallons of waste oil down a fill pipe on the ground floor, which connected to the waste oil tanks in the basement. Investigations by consultants have since confirmed

petroleum hydrocarbon releases in the hydraulic lift and waste oil tank areas as well as around the gasoline tanks. Douglas was responsible under its Lease for any contamination caused by its subtenants as well as by Douglas' own gasoline operations.

These are the essential facts which led the owners to demand and the County to conclude that Douglas should be added to the County's Order. Originally, the County had named only the owners. On July 31, 1990, the County issued a Notice of Violation to the owners regarding expired tank permits and requiring a soil investigation. On August 27 and September 24, 1990, the County issued further orders for a site assessment and corrective action. The owners then discovered that Douglas had registered the tanks but that the permits had lapsed.

The owners performed the soil investigation and prepared a work plan for removing all the tanks in the garage. In January, 1991, the owners requested that the County name Douglas as an additional responsible party. The County at first declined to do so, and the owners filed a Petition to the State Board on February 7, 1991, requesting that the Board add Douglas to the County's Order. On June 20, 1991, the Board issued Order No. WQ 91-07, which concluded:

> Petitioner's contention that Douglas ought to be added to the County's Order appears to have merit. If the County has substantial evidence that the leaks from the underground tanks occurred during the time Douglas was operating them, the County should add Douglas to its Order.

After the Board's remand, the owners submitted evidence to the County regarding Douglas' responsibility for the gasoline leakage and contamination around the hydraulic lift and the basement waste oil tanks.[1] Following presentation of this evidence, the County issued a new Order in a letter of February 5, 1993 (See, Exhibit G). The County's Order stated:

> The County has been presented substantial evidence that leaks from the underground gasoline tanks occurred during the time Douglas Motor Service was operating them. Therefore, Douglas Motor Service is a responsible party. Pursuant to Health & Safety Code Section 25299.37(c), Alvin Bacharach, Barbara Borsuk, and Douglas Motor Service and its Partners shall take appropriate corrective action in response to the discovery of unauthorized releases associated with gasoline tanks located at 1432 Harrison St., Oakland, CA. (February 5, 1993 County Letter and Order, p. 2.)

The County's Order was clearly correct in naming Douglas as a responsible party with regard to the gasoline releases. There is overwhelming evidence that the tanks leaked during Douglas' 16 years of gasoline operations. The Order, however, did not go far enough. The County did not name Douglas on the Order with regard to releases from the hydraulic lift and waste oil tanks, because the County evidently did not consider

[1] On October 14, 1992 the owners submitted a detailed letter to Deputy District Attorney Mark Thomson presenting the factual evidence and legal authority for naming Douglas on the Order both with regard to the gasoline tanks and the contamination at the hydraulic lift and waste oil tanks. (See Exhibit A). The owners also submitted an Appendix of documents and deposition testimony by Douglas confirming Douglas' responsibility for the contamination. Douglas responded in a letter to Mark Thomson dated January 15, 1993 (Exhibit B), and the owners replied in a letter of January 29, 1993 (Exhibit C).

these areas of garage to be included within the scope of the County's original orders to the owners, dating back to 1990. Nevertheless, the County should have named Douglas as a responsible party regarding these releases, because there is abundant evidence that Douglas' subtenants used the hydraulic lift and waste oil tanks and caused contamination in those areas.

Since the County's Order did not address Douglas' responsibility for leakage in the hydraulic lift and waste oil tank areas, the owners on March 8, 1993 submitted a new Petition to this Board presenting substantial evidence of the contamination caused by Douglas' subtenants and asking the Board to name Douglas as a responsible party regarding this contamination as well as the gasoline leakage. Around the same time, on March 5, 1993, Douglas submitted its own Petition to the Board appealing the County's decision to name Douglas as a responsible party regarding the gasoline releases. The owners' Response here concerns only the gasoline releases and the arguments raised in Douglas' Petition. Douglas' responsibility for the hydraulic lift and waste oil tanks is discussed in the owners' Petition of March 8, 1993.[2]

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[2] To avoid unnecessary duplication, the owners have attached here as exhibits only the key letters to the County and certain other documents. Other important evidence is contained in the lengthy References submitted with the owners' October 14, 1992 letter to District Attorney Mark Thomson. These References have already been submitted to the Board as Exhibit E to the owners' Petition of March 8, 1993. Some of the documents and deposition testimony contained in the References are also referred to here, using the same Reference numbers, e.g. "Ref. 14."

III

THERE IS "SUBSTANTIAL EVIDENCE" FROM DOUGLAS' OWN DEPOSITIONS THAT LEAKAGE FROM THE GASOLINE TANKS OCCURRED DURING THEIR SIXTEEN YEARS OF OPERATIONS

A. Evidence As To "Tank #2"

The evidence not only shows that the underground gasoline tanks leaked during Douglas' operations, but that Douglas' managing partner, Lee Douglas, lied about this leakage in his previous Declaration to this Board. When the owners first petitioned to the Board in February, 1991, Douglas responded with a Declaration from Lee Douglas of March 25, 1991. In that Declaration, Lee Douglas stated:

> To the best of my recollection, at no time during Douglas' tenure on the property did inventory control procedures, which consisted of comparisons of tank stick readings, meter readings and sales figures, indicate that gasoline was being lost from any tank. (Lee Douglas Decl., March 25, 1991, ¶ 3.)

In his subsequent deposition, however, when asked whether gasoline had leaked from the tanks, Lee Douglas admitted: "One we knew was leaking gas." (Lee Douglas Depo., p. 313:6; Ref. #3.) In his deposition, Lee Douglas thus directly contradicted his Declaration to this Board.

Both Lee and Ron Douglas testified in their depositions that they were alerted to loss of product from tank #2 by their

bookkeeper, Dorothy Vukas, who pointed out that they were buying more gasoline than they were selling. (R.D., pp. 195:9-15, 200:23-201:2, 203:13-21; L.D., p. 201:9-23; (Ref. #4.) Ron Douglas testified that the Douglas partners discovered the loss of product about "eight to ten months" before the tank was replaced in late 1982. (R.D., pp. 199:3-18, 492:18-25; Ref. #5.) Despite the leakage, Douglas continued using the tank until it was replaced in October, 1982. (Id.)

This tank was the same one investigated by Robert Miller Company at Douglas' request in April and May, 1982. Miller Company conducted an air test of the tank which demonstrated that the tank leaked. Miller's invoice for digging up the sidewalk also noted "numerous holes in tank and piping." (See, Musser Affidavit, Exhibit D.) Phil Musser was President of Miller Company at the time, and his Affidavit recites in detail his investigation of the tank, discovery of leaks, and discussions with the Douglas brothers about them. (Exhibit D.)

Both Douglas partners admitted in their depositions that tank #2 was leaking and that Douglas knew it months before the tank was replaced. (R.D., pp. 194:6-20; L.D., p. 200:3-22; Ref. #7.) Ron Douglas also said he saw a hole in the tank the size of a "Kennedy half dollar" when the tank was removed. (R.D., pp. 255:6-22; 257:7-17; Ref. #8.) Neither of the Douglas partners could explain the delay between May, 1982, when Miller Company discovered the leaks, and October 1982, when Douglas

finally had the tank replaced. (R.D., p. 217:9-25; L.D., p. 215:17-25; Ref. #9.)

As noted earlier, the Douglas partners not only admitted that this tank leaked gasoline, but Lee Douglas has now acknowledged that his previous statements to the State Board were false. When asked at his deposition whether the statements in Paragraph 11 of his Declaration to the State Board (denying that any leaks had occurred) were true, Lee Douglas testified as follows:

> Q. Let's take a look at Paragraph 11 [of the Declaration], if you would, please. Okay?
>
> A. Yes.
>
> Q. Is that true?
>
> A. No.
>
> Q. Pardon me?
>
> A. No.
>
> (L.D., p. 321:4-11; Ref. #10.)

In short, tank #2 leaked; the Douglas partners knew it leaked; and they lied to the Board before when they said there was no evidence of leakage.

B. <u>Evidence As To Tank #1</u>

In Lee Douglas' previous Declaration to the State Board, he stated that "water was showing up" in one of the

gasoline tanks, and that the tank was replaced at Douglas' expense in 1975. (Decl., ¶ 7-8, pp. 2-3; Ref. #13.) This statement, too, turned out to be wrong. In his deposition, Lee's brother, Ron, insisted that this particular tank, "tank 1," was never replaced. (R.D., pp. 96:3-9, 100;22-101:8, 350:4-10; Ref. #15.) Ron Douglas testified that, after water in the tank proved to be a continuing problem, the Douglas partners decided to simply shut down tank #1. (R.D., pp. 90:8-91:19, 93:6-11; L.D., pp. 119:20-120:17; Ref. #16.) It remained shut down until the end of Douglas' Lease. (R.D., pp. 387:19-388:3; L.D., pp. 303:17-304:17; Ref. #17.)

Ron Douglas also admitted that Douglas discussed replacing tank #1 as early as 1975. (R.D., pp. 103:11-105:21; Ref. #18.) Douglas, however, continued operating the tank until late 1982, when tank #2 was replaced. (R.D., pp. 493:1-494:4, Ref. #19.) Both tank #1 and #2 were originally 550-gallon tanks and Douglas kept operating tank #1 until tank 2 was replaced with a 1,000-gallon tank. (R.D., pp. 99:12-100:16, 141:3-9, 348:15-349:1; Ref. #20.)

The net result is that Douglas continued to operate tank #1 for as long as seven years after the water infiltration problem became known. As previously noted, water in the gasoline caused damage to several of the Douglas customers' cars, and Douglas viewed the water infiltration as serious enough to consider replacing the tank in 1975. (R.D., pp. 91:12-93:5, 95:1-96:16; Ref. #21.) Ron Douglas also testified that he

believed gasoline was leaking out of the tank at the same time water was leaking into it. (R.D., pp. 448:22-449:16; Ref. 22.)

In short, the Douglas partners knew for certain that gasoline was leaking from tank #2 for at least eight to ten months before it was replaced, and they suspected gasoline was leaking out of tank #1 for up to several years before it was shut down in 1982.

IV

DOUGLAS FAILED TO PERFORM THE INVENTORY RECONCILIATION AND TANK INTEGRITY TESTING REQUIRED BY CALIFORNIA LAW

Lee Douglas' previous Declaration to the Board stated that "inventory control" procedures indicated no product loss "from any tank" during Douglas' tenancy. (Decl., supra, ¶ 3; Ref. #2.) This statement was not only untrue as regards product loss, but also untrue in suggesting that Douglas had "inventory control procedures" worthy of the name. The "tank stick readings" referred to in Douglas' Declaration were performed on the average of once a week, and none of these dipstick readings was ever recorded. (R.D., pp. 80:16-82:10; L.D., pp. 44:14-24; Ref. #23.) Gas sales and pump meter readings were recorded on "gas sheets," which were used to bill monthly customers. Douglas' bookkeeper, Dorothy Vukas, would then periodically compare the pump meter readings with the invoices for gasoline purchased. (R.D., pp. 87:14-25; L.D., pp. 52:14-53:15; Ref. #24.)

These procedures in no way complied with the requirements for "inventory reconciliation" in the California Code of Regulations, and the Douglas partners so admitted in their depositions. (R.D., p. 423:11-17; L.D., pp. 317:3-318:16; Ref. #25.) See, e.g., Health & Safety Code §§ 25292, 25293; 23 CCR § 2646. As Ron Douglas put it, they continued to use "the same procedure they had for 50 years." (R.D., p. 309:3-17; Ref. #26.) The fact that a leak was discovered at all using these crude methods suggests that the product loss from the storage tanks must have been substantial. No one knows how much gasoline escaped, or for how many years, before the leaks became large enough to be detected in this manner.

The Douglas depositions also demonstrated Douglas' indifference to the requirements for tank integrity testing. See, e.g., Health & Safety Code § 25292; 23 CCR § 2645. The Douglas partners acknowledged that they were aware of the requirements for testing, but they never performed it on the new tank installed in 1982 or on the old tank left in place. (R.D., p. 346:2-13; Ref. #27.) At the time Douglas vacated the premises in April, 1988, neither of the tanks had been tested in accordance with State Regulations.

Douglas' failure to perform the required monitoring and testing cannot be explained by ignorance of the law. To the contrary, both of the Douglas partners testified that they received voluminous information from State agencies, private consultants and oil companies concerning the new underground

storage tank laws and regulations. (R.D., pp. 344:1-346:24; L.D., pp. 169:18-171:24, 245:1-246:4; Ref. #28.) For example, they received several brochures from environmental consultants advising them of the requirements for tank integrity testing and monitoring and the time periods when the new regulations went into effect. (R.D., pp. 65:24-66:21; L.D., pp. 249:16-250:22; Ref. #29.) Furthermore, at the time Douglas received this information, Douglas was operating at least four parking garages where they sold gasoline. (R.D., pp. 49:14-55:23; Ref. #30.) Douglas thus had ample reason to be aware of the new regulations.

By contrast, the owners had never operated the gasoline facilities at any time during their ownership of the garage. The garage had always been operated by tenants. Under the Douglas Leases from 1972 to 1988, the owners did not even receive revenues from Douglas' gasoline sales, but only rent based on parking revenues. The revenues from gasoline sales were Douglas' alone, because Douglas had insisted that these revenues be excluded from the rental computation when the Lease was first negotiated in 1972. (See 1972 Lease, Addendum, ¶ 28; see also, R.D., pp. 109:20-117:6; Ref. #31 and 32.)

The Douglas partners thus had far more information about the legal requirements for operating underground storage tanks than did the owners. The Douglas partners also admitted in their depositions that none of the literature Douglas received about underground storage tanks, whether from the State, consultants or other sources, was ever sent to the owners.

(R.D., pp. 354:17-355:14; L.D., p. 171:3-24; Ref. #35.) Douglas' knowledge of the regulations and failure to comply with them is an additional factor which supports the County's naming Douglas as a responsible party.

V

THE ENGINEERING DATA CONFIRMS THE RELEASES FROM THE GASOLINE STORAGE TANKS

The gasoline tanks have been investigated by three different consultants. In July, 1990, Subsurface Consultants, Inc. (SCI) performed soil borings adjacent to the two gasoline tanks and detected TPHg concentrations of 6300 ppm at 20 feet at tank #1 and 9300 ppm of TPHg at 18.5 feet at tank #2. SCI's investigation was summarized in a Report of August 18, 1990 (Exhibit E). SCI only analyzed samples from these two depths, but SCI's boring logs indicated hydrocarbon odors at shallower depths as well. SCI described the soil characteristics as "clayey sand" and "silty sand."

In a Report of October 19, 1990, SCI described the results of further soil borings around the fuel dispensers, at a point midway between the fuel dispensers and the hydraulic lift, and in the hydraulic lift area itself. In each of these locations, SCI detected gasoline releases. SCI detected concentrations of 2500 ppm of gasoline around the fuel dispensers, 1200 ppm at the midpoint, and 110 ppm in the hydraulic lift area. As these findings indicate, gasoline

releases occurred in several areas in the ground floor of the garage. (See October 19, 1990 SCI Report, Exhibit F.)

In January, 1992, the owners retained RGA to prepare a Health and Safety Plan for removal of the various underground storage tanks at the garage. As part of that task, RGA performed soil borings to obtain additional data regarding the chemical constituents involved. These borings included shallow borings in the area of the gasoline tanks and dispensers. RGA's borings confirmed releases of TPHg at shallower depths such as five, ten and 15 feet. RGA detected TPHg at 2.1 and 2.5 ppm at five feet and 15 feet, respectively, adjacent to tank #1 and 2.5 ppm at five feet adjacent to tank #2. RGA also detected TPHg at 42.3 ppm at five feet and 1540 ppm at ten feet adjacent to the dispensers. In other borings in the dispenser area, RGA detected concentrations ranging from 1.9 to 3.3 ppm at five to fifteen foot depths. (See Declaration of John Sturman, and Table 1 and Figure 1 attached as Exhibits A and B to his Decl.)

Finally, in May, 1993, Levine-Fricke performed two soil borings adjacent to the underground gasoline storage tanks to obtain further data on soil characteristics prior to tank removal. The principal purpose of these borings was to obtain geotechnical data regarding soil stability, but the owners also took the opportunity to obtain further soil chemistry data. Levine-Fricke's soil boring results are summarized in Exhibits A and B to the Sturman Declaration.

Levine-Fricke confirmed SCI's earlier findings of moderate to high concentrations of TPHg in deeper soils beneath the storage tanks. Levine-Fricke detected concentrations of 8800 ppm of TPHg at 24.5 feet adjacent to tank #1 and 6100 ppm of TPHg at 24.5 feet adjacent to tank #2. As Mr. Sturman's Declaration points out, these findings indicate releases from the gasoline storage tanks. The soils here are clayey sands and silty sands, and gasoline releases from the tanks would migrate to deeper soils over time. SCI also detected hydrocarbon odors in shallower soils, and RGA's findings confirm gasoline releases in shallower soils.

All of this data indicates substantial releases from the gasoline storage tanks and around the dispensers. This data confirms the Douglas partners' own deposition testimony that leaks occurred during their 16 years of gasoline operations.

VI

DOUGLAS' ARGUMENTS ARE WITHOUT MERIT -- THEY IGNORE THE TECHNICAL DATA AND DOUGLAS' OWN DEPOSITION TESTIMONY

Douglas makes two arguments. The first is that the soil data does not indicate significant releases from the underground gasoline tanks, but instead suggests an off-site source. This argument is defective for two reasons.

First, the findings of moderate to high concentrations of TPHg in deeper soils beneath these tanks are fully consistent

with releases from the tanks. The tanks are buried beneath the sidewalk, and the soils beneath the backfill are clayey sands and silty sands. Gasoline releases will over time migrate through these soils, and it is no surprise to find substantial concentrations at depths of 18 to 24 feet.

Second, there is no evidence of an off-site source. Douglas would like to hypothesize an off-site source, but neither Douglas nor anyone else has identified such a source. Douglas has not pointed to any known releases in the neighborhood, and the most Douglas can say is that there is a "possibility" that underground storage tanks closed in place at a neighboring property are the source. There are, however, no technical reports, groundwater monitoring wells, or groundwater gradient data to support this hypothesis. Instead, all the technical data thus far suggests that the releases at the 1432 Harrison Street garage are related to the tanks there, and not tanks at some unknown off-site location.

Douglas' second argument is also without substance. Douglas contends that leaks from the tanks or piping could not have occurred because these gasoline dispensers operated by vacuum pressure. According to Douglas, even if there were holes in the tanks or piping, the vacuum pressure would suck the gasoline past the holes, without leakage. This argument is frivolous. First, it is clear from Douglas' own testimony that substantial leaks occurred from tank #2 before Douglas replaced that tank in 1982. Despite this leakage, the dispenser for tank

#2 continued to function. Under Douglas' theory, the pump should have shut down. Second, Douglas' theory assumes that all of the holes are in the top of the tanks and piping. To the extent there were holes below the liquid levels in the tanks, leaks could obviously occur. Likewise, depending upon the size and location of the holes in the piping, leaks could occur despite the vacuum pressure.

At bottom, Douglas' argument about the vacuum system is just like its argument about the "off-site source" -- both arguments assume a hypothetical set of facts for which there is no evidence. The real evidence here is the technical data from three consultants, which confirms substantial releases around the underground storage tanks and dispensers, and Douglas' own deposition testimony which admits that leakage occurred.

VII

THE STATE BOARD'S DECISIONS SUPPORT THE COUNTY'S ORDER NAMING DOUGLAS AS A RESPONSIBLE PARTY

In its previous Order in this case, the Board concluded that Douglas should be added to the County's orders if there is "substantial evidence that the leaks from the underground tanks occurred during the time Douglas was operating them. . . ." (Order No. WQ 91-07; Ref. #1.) The evidence here is more than substantial -- it is overwhelming.

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The State Board's decisions make clear that a party should be named on a cleanup order whenever there is "substantial evidence" of the party's responsibility. In U.S. Cellulose, Order No. WQ 92-04 (1992), the Board stated that ". . . we look at the record to determine whether, in light of the record as a whole, there is a reasonable and credible basis to name a party." Similarly, the Board has stated that, "Substantial evidence does not mean proof beyond a doubt or even a preponderance of evidence. Substantial evidence is evidence upon which a reasoned decision may be based." (Robert S. Taylor and John F. Bosta, et al., Order No. WQ-92-14 (1992).)

In the present case, the evidence easily meets this standard. Douglas' own depositions provide a "reasonable and credible basis" for naming Douglas as a responsible party for the gasoline releases. So too does the technical data, which confirms substantial releases of gasoline around the underground storage tanks and dispensers.

Finally, the Board has long recognized that it is appropriate to name a tenant as a responsible party where the tenant has caused the contamination. See, e.g., Vallco Park, Ltd., Order No. WQ 86-18 (1986); Schmidl, Order No. WQ 89-1 (1989). Here, the owners have acknowledged their responsibility for site investigation and cleanup, and the County has properly included Douglas in the Order as well. The County's February 5, 1993 Order is fully supported by "substantial evidence" that

Douglas caused or permitted releases from the underground gasoline tanks.

VIII

CONCLUSION

Douglas operated the gasoline tanks and dispensers for 16 years. There is incontrovertible evidence that leakage from the underground storage tanks occurred, and the Douglas partners have admitted that leakage occurred during their tenancy. Douglas' Petition is therefore without merit. The Board should uphold the County's February 5, 1993 Order naming Douglas as a responsible party with regard to the gasoline releases.

DATED: July 12, 1993.

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October 14, 1992

VIA MESSENGER

Mark Thomson, Esq.
Deputy District Attorney
County of Alameda
Consumer & Environmental
Protection Division
7677 Oakport Street, Suite 400
Oakland, CA 94621

Re: Request To County Of Alameda To Name Douglas Motor Service And Its Partners As Responsible Parties As To 1428-1434 Harrison St. and 1435-1443 Alice St., Oakland, California

Dear Mr. Thomson:

On behalf of Alvin H. Bacharach and Barbara Jean Borsuk, we request that you name Douglas Motor Service and its partners as "responsible parties" with regard to all environmental investigation and remediation work at this property. This request is based on new evidence -- the Douglas depositions -- in which the Douglas partners have dramatically changed their testimony and admitted that their previous sworn testimony before the State Board was false. In their depositions, the Douglas partners admitted that the underground storage tanks leaked during their tenancy, that they knew it, and that the leakage continued for months or even years before they did anything about it.

The Douglas depositions not only provide sufficient evidence to name Douglas in the Order, but compelling evidence that Douglas should be designated as the primary responsible party. First, the Douglas partners admitted that the storage tanks leaked and that they knew it. Second, they admitted that they never monitored or tested the tanks despite knowledge of these requirements. Third, they admitted that they did not tell the owners a number of critical facts. For example, Douglas never sent the owners any of the literature Douglas received on requirements for monitoring, testing, registration and closure of tanks. Similarly, the owners -- and everyone else -- learned for the first time during the depositions that Douglas did not

EXHIBIT A

replace one tank in 1975, as previously believed, but simply abandoned it. As to the other tank, Douglas admitted knowing that the tank leaked many months before it was replaced.

In short, the Douglas depositions show that Douglas caused or permitted contamination of the property, failed to timely correct it, disregarded State laws on monitoring and testing, and misrepresented the property's true condition to the owners. Worse yet, Douglas did not tell the truth about these matters to the State Board.

The Douglas depositions have fundamentally changed the facts and assumptions upon which the County previously relied in determining responsibility for cleanup. We respectfully request that you now reconsider that issue, in light of the depositions, and designate Douglas as the primary responsible party. After you have considered the information in this letter, we also ask you to advise us of the approximate date we can expect the County's decision in this matter. Beyond that, it is up to you and the State Board to decide whether Douglas' false statements to the Board constitute perjury or other actionable misconduct.

Procedural History

On July 31, 1990, the Alameda County Health Care Services Agency issued a Notice of Violation to the owners. On September 24, 1990 the County issued a Cleanup Order to the owners. At a meeting on January 14, 1991, the owners requested that the County name Douglas as a responsible party. Douglas had leased the garage, operated the gasoline facilities, retained all the gasoline revenues, and subleased space to various auto repair shops for a period of 16 years (1972-1988).

The County, nevertheless, refused to name Douglas, and the owners petitioned to the State Water Resources Control Board on February 7, 1991, pursuant to Health & Safety Code Section 25299.37(d). After extensive briefings and a hearing involving the County, the owners, and Douglas, the Board issued Order No. WQ 91-07 on June 20, 1991. The Board's Order concluded:

> Petitioner's contention that Douglas ought to be added to the County's order

> appears to have merit. If the County has substantial evidence that the leaks from the underground tanks occurred during the time Douglas was operating them, the County should add Douglas to its order. (Order, p. 4; Ref. #1; see footnote on p.4, infra.)

This letter presents the evidence necessary for the County to add Douglas to the Order and to designate Douglas as the primary responsible party.

There Is Incontrovertible Evidence That The Underground Gasoline Tanks Leaked During The Time Douglas Operated Them

1. Douglas Misrepresented The Facts To The Board. One Tank Definitely Leaked, And Douglas Knew It

In his Declaration to the State Board, Lee Douglas stated:

> To the best of my recollection, at no time during Douglas' tenure on the property did inventory control procedures, which consisted of comparisons of tank stick readings, meter readings and sales figures, indicate that gasoline was being lost from any tank. (Decl., March 25, 1991, ¶ 11, p. 3; Ref. #2; see footnote on p.4.)

In his deposition, when asked whether gasoline was leaking from the tanks, Mr. Douglas stated: "One we knew was leaking gas." (Lee Douglas Depo., p. 313:6; emphasis

added; Ref. #3.)* Lee Douglas thus directly contradicted the sworn testimony in Paragraph 11 of his Declaration. Both Lee Douglas and Ron Douglas testified that they were alerted to loss of product from this tank by their bookkeeper, Dorothy Vukas, who pointed out that they were buying more gasoline than they were selling. (R.D., pp. 195:9-15, 200:23-201:2, 203:13-21; L.D., p. 201:9-23; Ref. #4.) Ron Douglas testified that the Douglas partners discovered the loss of product about "eight to ten months" before the tank was replaced in late 1982. (R.D., pp. 199:3-18, 492:18-25; Ref. #5.) Despite the leakage, Douglas continued using the tank until it was replaced. Id.

This tank, referred to as "tank 2," was the same tank investigated by Robert Miller Company, at Douglas' request, in April and May, 1982. Miller Co. conducted an air test of the tank, which demonstrated that the tank leaked. Phil Musser was President of Miller Co. at the time, and his Affidavit to the State Board recites in detail his investigation of the tank, discovery of leaks, and discussions with the Douglas brothers about them. In their depositions, the Douglas brothers "could not recall" these discussions with Musser, but Ron Douglas recalled that someone had "checked" the tank. (R.D., pp. 214:8-216:22; L.D., p. 211:3-18; Ref. #6.)

Both Douglas partners admitted that tank 2 was leaking and that Douglas knew it months before the tank was replaced. (R.D., pp. 194:6-20; L.D., p. 200:3-22; Ref. #7.) Ron Douglas later saw a hole in the tank the size of a "Kennedy half dollar" when the tank was removed. (R.D., pp. 255:6-22; 257:7-17; Ref. #8.) Neither of the Douglas partners could explain the delay between May, 1982, when Miller Company discovered the leaks, and October 1982, when

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* The Douglas depositions will hereafter be referred to as "R.D." for Ron Douglas and "L.D." for Lee Douglas. Excerpts from the depositions, exhibits, and other documents, such as the Douglas Declaration and State Board Order, are attached and referred to in this letter by reference numbers ("Ref. #"). We will provide you complete copies of the depositions, exhibits and videotapes of the depositions upon request.

Douglas finally had the tank replaced. (R.D., p. 217:9-25; L.D., p. 215:17-25; Ref. #9.)

As noted earlier, the Douglas partners not only admitted that this tank leaked gasoline, but also admitted that their sworn statements to the State Board were false. When asked whether the statements in Paragraph 11 of his Declaration (denying that any leaks had occurred) were true, Lee Douglas testified:

> Q. Let's take a look at Paragraph 11 [of the Declaration], if you would, please. Okay?
>
> A. Yes.
>
> Q. Is that true?
>
> A. No.
>
> Q. Pardon me?
>
> A. No.

(L.D., p. 321:4-11; Ref. #10.)

As this testimony indicates, the Douglas partners knew the tank was leaking when they told the State Board it was not leaking.

Douglas did not tell the owners the whole story either. Ron Douglas testified that, after replacing tank 2 in 1982, Douglas told the owners they ". . . were satisfied that the installation of the tank was satisfactory and met all the codes necessary to complete the job and meet the requirements." (R.D., pp. 290:22-291:5; Ref. #11.) Douglas never told the owners there was any soil contamination or that any further action was required after the tank was replaced. (R.D., p. 291:2-5; L.D., pp. 241:23-242:4; Ref. #12.)

2. Douglas Also Misrepresented The Facts As To The Second Gas Tank. It Was Not Replaced In 1975, But Abandoned

In Lee Douglas' Declaration to the State Board, he stated that "water was showing up" in one of the gasoline tanks, and that the tank was replaced at Douglas' expense in 1975. (Decl., ¶ 7-8, pp. 2-3; Ref. #13.) This statement, too, was false. In his deposition, Lee Douglas stated that he did not know whether a tank had been replaced in 1975. (L.D., p. 138:9-12; Ref. #14.) His brother, Ron, was adamant that this particular tank, "tank 1," was never replaced. (R.D., pp. 96:3-9, 100:22-101:8, 350:4-10; Ref. #15.) Ron Douglas testified that, after water in the tank proved to be a continuing problem, the Douglas partners decided to simply shut the tank down. (R.D., pp. 90:8-91:19, 93:6-11; L.D., pp. 119:20-120:17; Ref. #16.) It remained shut down until the end of Douglas' lease. (R.D., pp. 387:19-388:3; L.D., pp. 303:17-304:17; Ref. #17.)

It was unclear from Douglas' testimony when the "water problem" in tank 1 was first discovered, but Ron Douglas admitted that there was some discussion of it as early as 1975. (R.D., pp. 103:11-105:21; Ref. #18.) In any event, Douglas continued operating tank 1 until late 1982, when tank 2 was replaced. (R.D., pp. 493:1-494:4; Ref. #19.) Both tank 1 and 2 were originally 550-gallon tanks and Douglas kept operating tank 1, despite the water problem, until tank 2 was replaced with a 1,000-gallon tank. Only when Douglas obtained this additional capacity, did they finally shut down tank 1. (R.D., pp. 99:12-100:16, 141:3-9, 348:15-349:1; Ref. #20.)

The net result is that Douglas continued to operate tank 1 for as long as seven years after the water infiltration problem became known. Water in the gasoline, in fact, caused damage to several of the Douglas customers' cars. (R.D., pp. 91:12-93:5, 95:1-96:16; Ref. #21.) While the Douglas partners, in their depositions, maintained that water was only leaking into this tank, Ron Douglas finally admitted that, "If water comes in, we are assuming that gas went out." (R.D., pp. 448:22-449:16; Ref. #22.)

The Douglas partners thus knew for certain that gasoline was leaking from tank 2 before it was replaced, and they

knew or had good reason to know that gasoline was leaking out of tank 1 at the same time water was leaking in.

3. Douglas Also Misrepresented The Facts Regarding Their "Inventory Reconciliation" Procedures. Douglas Had No Procedures Which Qualified As "Inventory Reconciliation" Under State Law

Lee Douglas' Declaration stated that "inventory control" procedures indicated no product loss "from any tank" during Douglas' tenancy. (Decl., supra, ¶ 11, p. 3; Ref. #2.) This statement was not only untrue as regards product loss, but also untrue in suggesting that Douglas had "inventory control procedures" worthy of the name. The "tank stick readings" referred to by Douglas were performed on the average of once a week, and none of these dipstick readings was ever recorded. (R.D., pp. 80:16-82:10; L.D., pp. 44:14-24; Ref. #23.) Gas sales and pump meter readings were recorded on "gas sheets," which were used to bill monthly customers. Douglas' bookkeeper, Dorothy Vukas, would then periodically compare the pump meter readings with the invoices for gasoline purchased. (R.D., pp. 87:14-25; L.D., pp. 52:14-53:15; Ref. #24.)

These procedures in no way complied with the requirements for "inventory reconciliation" in the California Code of Regulations, and the Douglas partners so admitted. (R.D., p. 423:11-17; L.D., pp. 317:3-318:16; Ref. #25.) See, e.g., Health & Safety Code §§ 25292, 25293; 23 CCR § 2646. As Ron Douglas put it, they continued to use "the same procedure they had for 50 years." (R.D., p. 309:3-17; Ref. #26.) The fact that a leak was discovered at all using these crude methods -- comparison of vendor invoices and meter readings -- suggests that the product loss from tank 2 must have been substantial. No one knows how much gasoline escaped, or for how many years, before the leak became large enough to be detected in this manner.

The Douglas depositions also demonstrated Douglas' indifference to the requirements for tank integrity testing. See, e.g., Health & Safety Code § 25292; 23 CCR § 2645. The Douglas partners acknowledged that they were aware of the requirements for testing, but they never performed it on the new tank installed in 1982 or on the old tank left in place. (R.D., p. 346:2-13; Ref. #27.) At

the time Douglas vacated the premises in April, 1988, neither of the tanks had been tested in accordance with State Regulations.

Douglas' failure to monitor and test the underground storage tanks cannot be explained by ignorance of the law. To the contrary, both of the Douglas partners testified that they received voluminous information from State agencies, private consultants and oil companies concerning the new underground storage tank laws and regulations. (R.D., pp. 344:11-346:24; L.D., pp. 169:18-171:24, 245:1-246:4; Ref. #28.) For example, they received numerous brochures from environmental consultants advising them of the requirements for tank integrity testing and monitoring and the time period when the new regulations went into effect. (R.D., pp. 65:24-66:21; L.D., pp. 249:16-250:22; Ref. #29.) At the time they received this information, Douglas operated at least four parking garages where they sold gasoline. (R.D., pp. 49:14-55:23; Ref. #30.)

Douglas has, in fact, long been one of the largest parking companies in the East Bay, and when it came to gasoline sales, they knew far more than the owners, who had never operated the garage or gasoline pumps and who received none of the revenues from Douglas' gasoline sales. These revenues were Douglas' alone, and Douglas had insisted that these gasoline revenues be excluded from the rental computation when the lease was first negotiated in 1972. (See 1972 Lease, Addendum, ¶ 29; 1974 and 1981 Leases, Addenda ¶ 28; see also, R.D., pp. 109:20-117:6; Ref. #31.) In an October 28, 1975 letter to Sanford Douglas, Mr. Bacharach noted that, ". . . you specifically wanted the revenue for the sales of gasoline not to be included in your gross sales figure . . ." for determining the rent. (Exh. 14; L.D. 168:11-18; Ref. #32.)

Despite the abundance of information Douglas received about the new regulations for underground tanks, they did not comply with monitoring and testing requirements at Harrison Street or at any of their other facilities, including the main garage they owned at 1721 Webster Street. (R.D., pp. 65:24-66:1, 394:18-24, 401:3-16; Ref. #33.) And, contrary to their statements to the State Board, Ron and Lee Douglas admitted in their depositions that they knew there was no "exemption" from the tank monitoring and testing requirements based on "low throughput." The only

"exemption" was from vapor recovery requirements of BAAQMD. (R.D., p. 483:3-8; L.D., 37:4-19; Ref. #34.)

Finally, none of the literature Douglas received about underground storage tanks, whether from the State, consultants or other sources, was ever sent to Mr. Bacharach and Ms. Borsuk. (R.D., pp. 354:17-355:14; L.D., p. 171:3-24; Ref. #35.) The result is that Douglas failed to perform tank monitoring and testing with full knowledge of the regulations on these matters, while the owners never received any of this critical information. Douglas, not the owners, should therefore bear primary responsibility for the leakage which occurred.

4. The Douglas Depositions Also Demonstrate That Douglas Is Responsible For Contamination Which Occurred Elsewhere In The Garage During Its Tenancy

Douglas represented to its customers that it offered "complete auto service facilities on the premises." (L.D., pp. 144:22-146:22; Exh. 4; Ref. #36.) Similarly, Douglas advertised that it provided "complete systematized automotive repair," including batteries, carburetor and electrical experts, wheel aligning, brake service and body work. (R.D., pp. 147:5-148:9, Exh. 58; Ref. #37.) And, indeed, Douglas' subleases indicate that Douglas did offer such services.

For example, Roy's Auto Body performed repairing of automobiles "from bumper to bumper" at Harrison Street, according to Ron Douglas. (R.D., pp. 153:25-154:6; Ref. #38.) Similarly, Douglas had a sublease with a mechanic named Thompson for "repairing and servicing" of automobiles in a 1,000-square-foot area on the main floor, ". . . including a wash stall, hydraulic hoist stall and all utilities, fixtures and appliances therein." (R.D., pp. 176:13-178:25; Exh. 66; emphasis added; Ref. #39.) At the same time, Sanford Douglas wrote the owners and requested permission for a one-year sublease with Thompson, stating:

> The mechanic who has been doing repair work for the last several months has asked us for a one-year sublease with a one-year option at the same rental as presently exists, in

> order that he may have some security. His interest is to be able to purchase some new equipment.
>
> He is a good man and I would like to be able to keep him.
>
> He occupies the lubrication rack and the spaces of four cars adjoining. (R.D., pp. 162:21-163:20; Exh. 61; Ref. #40; emphasis added.)

In addition to this evidence of auto servicing and repairs, Douglas had other subleases which provided for servicing of cars on the premises. For example, Douglas had a sublease with American International Rent-A-Car which provided that American would sublet space for "Automobile Rental Storage and Repai[r] of Lessee's own Vehicles." (Sublease, ¶ 6.1, Exh. 63; Exh. 62; R.D. 169:5-23; Ref. #41.) American subleased "a portion of the main floor, including offices and automobile work areas. . . ." (R.D., pp. 167:10-168:10; Ref. #42; emphasis added.) Douglas, in fact, had two subleases with American, which occupied the premises for several years. Id.

Despite all this evidence regarding servicing and repairs, the Douglas partners in their depositions denied that any work, other than auto body work, had taken place at Harrison Street. (R.D., p. 162:2-21; L.D., pp. 85:9-86:25; Ref. #43.) With regard to Douglas' own advertisement of "complete auto service facilities on premises," Ron Douglas' response was, "That doesn't mean anything. If anything came in, I would take them over to D.M.S." [Douglas' operation on Webster Street]. (R.D., p. 145:16-23; Ref. #44.) In other words, according to Ron Douglas, they represented to customers that they were performing services on site, but then took the customers' cars elsewhere. (R.D., p. 148:18-25; Ref. #45.)

With regard to Sanford Douglas' letter about the mechanic who "occupies the lubrication rack," Ron Douglas flatly denied that any such person worked there. Ron Douglas, who now knows there is an underground tank associated with the lubrication rack, even went so far as to suggest that his father had been lying when he wrote to the owners about this mechanic. In the end, however, Ron Douglas could not

come up with any explanation as to why his father would say a mechanic had been performing repairs and occupying the lube rack if that were not true. (R.D., pp. 164:23-166:14; Ref. #46.) Since the depositions, additional evidence about this mechanic has turned up in the 1974 Yellow Pages, which advertised "Tom Thompson, Mechanic" and "Fuel Injection Specialist" for "Tune-ups & Repairs" at the 1432 Harrison Street Garage. (Ref. #47.)

With regard to the American International Rent-A-Car sublease, Ron Douglas and Lee Douglas said that American "neglected" the cars and never changed the oil or performed lubrication, but simply did "minor stuff," such as windshield wiper blades and light bulbs. (R.D., pp. 157:21-160:11, 172:1-12, 174:2-175:7; Ref. #48.)

The Douglas partners thus denied that any auto servicing or repairs took place at Harrison Street, other than the body shop, and they denied any use of the hydraulic lift or waste oil tanks. (R.D., pp. 174:20-175:7; Ref. #49.) This testimony is simply not credible. It is contradicted by numerous subleases, letters and advertisements, which refer to auto repairs by various Douglas subtenants. For example, the "mechanic who has been doing repair work for the last several months," and "who occupies the lubrication rack" must have used the hydraulic hoist. Similarly, as to the waste oil tanks in the basement, the Douglas partners denied any knowledge of them, but Ron Douglas admitted that he noted a "barrel of waste oil" on the property sometime after the Douglas lease commenced in 1972. (R.D., pp. 69:24-70:20; Ref. #50.)

In short, despite the Douglas partners' denials, their depositions strongly indicate that Douglas' subtenants performed auto repairs and servicing on the premises and used the hydraulic hoist and waste oil tanks. Douglas is therefore responsible not only for contamination associated with the gasoline tanks, but also for <u>any</u> contamination arising out of auto servicing during Douglas' 16-year tenancy.

Legal Analysis

The Board has already stated that Douglas should be added to the County's Order if there is "substantial evidence that the leaks from the underground tanks occurred during the time Douglas was operating them. . . ." (Bacharach (1991) Order No. WQ 91-07; Ref. #1 .) The evidence presented here clearly meets this standard.

Furthermore, the Board indicated that one party may be placed in a position of secondary responsibility:

> In many cases we deemed it reasonable to place one party in a position of secondary responsibility. (See, e.g., Order No. WQ 87-6, Prudential Insurance Company of America.) We find no basis for suggesting that the County do that in this case. (Bacharach (1991) Order No. WQ 91-07.)

At the time of the Board's Order, the Board did not have the benefit of the Douglas depositions, which now provide a very sound basis for determining primary and secondary responsibility. The facts established in the Douglas depositions show that Douglas should be designated as the primary responsible party, and the owners as secondary parties who will be obligated to conduct the cleanup only if Douglas fails to do so.

The State Board has made clear in several decisions that primary responsibility may be assigned where the facts justify it. For example, in Prudential, supra, petitioner was the landowner and leased the site to Fairchild Semiconductor and Micro Power, which agreed to conduct a cleanup in response to the Regional Board's Order naming the lessees and the owner. Prudential requested that the Order be modified to make clear that it would be obligated to perform the cleanup only if the lessees defaulted. Prudential Insurance Company of America (1987) Order No. 87-6. The State Board agreed, noting that Regional Boards can set a "different standard of performance" for lessees and landowners where the facts warrant it. Id.

Similarly, in Vallco Park, Ltd. (1986) Order No. WQ 86-18, the petitioner owned industrial land and leased portions of

it to two semiconductor manufacturers. The Regional Board issued waste discharge requirements to the lessees and the landowner, who petitioned to have his name removed from the Order. The State Board rejected this request, but agreed that the lessees should be designated as the primary responsible parties. The State Board concluded that, ". . . the Regional Board should continue to look to the lessees regarding cleanup and only involve the landowner if the lessees fail to comply with the orders." Vallco Park, Ltd. (1986) Order No. WQ 86-18.

Likewise, in Schmidl (1989) Order No. WQ 89-1, the Regional Board issued a cleanup and abatement order naming Bowles Flying Service, a pesticide sprayer, as the primary responsible party and the Schmidls, the landowners, as secondary parties. The landowners protested that they should not be named at all, but the State Board concluded the Order was proper:

> The initial responsibility for cleanup is with the operator, but according to Vallco, it is appropriate to look to the owner to assure cleanup in the event the operator fails in its obligations. See also, Stinnis-Western Chemical Corp. (1986) Order No. WQ 86-16; J.N.J. Sales and Services, Inc. (1988) Order No. WQ 88-8. Similarly, the Board has found it appropriate to name landowners as responsible parties -- subject to the lessee/discharger's primary duty -- to comply with waste discharge requirements. Southern California Edison Co. (1986) Order No. WQ 86-11; U.S. Forest Service (1987) Order No. WQ 87-5. (Schmidl, supra; see also Arthur Spitzer (1989) Order No. WQ 89-8.)

These rules apply with equal force in the present case. Here, the facts demonstrate that Douglas permitted the discharge, knew about it, and most recently, lied about it. There can be no doubt about Douglas' responsibility, and there is no reason Douglas cannot undertake the cleanup. While Douglas is no longer the lessee at Harrison Street,

Douglas continues to operate parking garages and lots throughout Oakland, and Douglas' main office at 1721 Webster Street is only a few blocks away. Douglas can easily take over the cleanup, and now is an ideal time for Douglas to do so, since the next phase of work, tank removal, is about to begin.

Under the State Board's decisions, the County should therefore designate Douglas as the primary responsible party and the owners as secondary parties who will be obligated to perform the cleanup if Douglas fails to do so.

Conclusion

The Douglas partners have finally come clean and admitted that the underground gasoline tanks leaked while they operated them. This is precisely the evidence the State Board said is sufficient to name Douglas as a responsible party. The evidence, however, goes far beyond that. Douglas' testimony not only confirmed that the tanks leaked, but that the Douglas partners knew it and did nothing about it for months or even years.

Later, when the underground storage tank laws and regulations came into effect, they ignored the monitoring and testing requirements and continued to do business "as usual." Meanwhile, their subtenants continued to perform a variety of mechanical repairs and servicing of automobiles, which the Douglas partners denied, but which undoubtedly contributed to the contamination in the garage.

Finally, and perhaps most important, the Douglas partners admitted that they did not tell the State Board the truth. This admission not only raises the question of perjury, but fundamentally changes the facts and assumptions upon which the County's previous determination of responsibility was based.

In these circumstances, the County should reevaluate the issue of responsibility and designate Douglas as the primary responsible party. In so doing, the County will ensure that the party who caused the contamination pays for

it and that irresponsible business practices are discouraged, not rewarded.

Very truly yours,

Randall D. Morrison

RDM/kh

cc w/Enclosure:

The Honorable Joseph J. Carson, via messenger
William J. Trinkle, via messenger
Charles M. Riffle, by regular mail
Donald F. Drummond, by regular mail
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January 15, 1993

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Re: Douglas Motors Service Response and Opposition to Bacharach/Borsuk Request to Name Douglas Motors Service As Responsible Parties Regarding 1428-1434 Harrison St. and 1435-1443 Alice St., Oakland, California

Dear Mr. Thomson:

This letter is the Douglas Motors parties ("Douglas") response and opposition to the request that Douglas Motors be named Responsible Parties regarding the Harrison St. Garage, Oakland. That request has again been made by Alvin Bacharach and Barbara Borsuk ("Bacharach" or "Bacharach parties"), as you are aware.

Initially, with this letter, we provide to you complete sets of the depositions of Ronald and Leland Douglas for your review. We have found the limited excerpts provided to you by the Bacharach parties to be less than fair. We believe that only by a full reading of the depositions can you clearly understand the testimony of these men and their forthrightness. We apologize for the volume of such materials, but obviously a great deal is at stake for Douglas Motors. We also would request that, to the extent, in their reply, Bacharach seeks to raise new issues not previously raised or to provide further evidence, Douglas Motors be provided a brief time in which to address such matters.

We note that the depositions of Ronald and Leland Douglas utilized throughout references to the only two (2) fuel storage tanks known to Douglas Motors as Tank 1 and Tank 2. Such references were to locations rather than to specific tanks since Tank 2 was initially a 550 gallon tank, subsequently replaced by a 1000 gallon tank in 1982. There was also questioning regarding replacement of a tank at the Tank 1 location, although it is unclear whether such did or did not actually occur. We will use the same references to those locations in this letter.

EXHIBIT B

In this letter, we believe it would be inappropriate to respond to the accusatory comments of the Bacharach parties, except in one brief respect. In his deposition, Mr. Lee Douglas voluntarily acknowledged an error in the declaration submitted to the State Board. Investigation revealed that Mr. Douglas had noted the error on a draft of the declaration. As a result of clerical error, the necessary correction to the declaration was unfortunately not made. Mr. Douglas did not notice the lack of change at the time he executed the finalized declaration. I would suggest that Lee Douglas' mistake is similar to the mistake in Alvin Bacharach's declaration to the State Board, Paragraph 7, where Mr. Bacharach affirmatively testified that a tank had been "removed and replaced in August 1975". This statement also now appears to be erroneous.

Our intention is simply to address the issues before you: (1) Is there substantial evidence to support the naming of Douglas Motor's as a responsible party with respect to any one or more USTs based upon Douglas Motors's operation of such at the time of an unauthorized release? and (2) If Douglas Motors is to be named a responsible party in some respect (a matter strongly disputed), how should the primary vs. secondary responsible party issue be resolved if at all?

The State Board's Order requires that before Douglas be named that there be "substantial evidence which shows that Douglas was in control of the property and using the tanks while leaks were taking place." (Order No. WQ 91-07, p.4) (emphasis added) Further, a responsible party is primarily defined by the relationship of the party to a particular UST. See UST Regulations § 2721(6) - "Responsible parties for an underground storage tank shall comply...." As to each UST, it must be determined who the responsible parties are and also whether there is any evidence of a need for corrective action with respect to that UST.

ANALYSIS OF TECHNICAL DATA

The most striking feature of this case is that, when stripped of lawyerly rhetoric, all that remain is Bacharach's own empirical testing data which demonstrates that there is simply no scientific basis for holding that an actionable release resulted from Douglas Motors' 16 years of business operations on the property. The evidence shows that contamination levels in the areas near the soil surface are at low or non detect level. It also reflects a barrier between the shallow and lower levels of the soil and significant contamination only in the 20 foot deep range. The deep contamination simply could not be the result of releases from the USTs. Most likely such contamination migrated on site from an off-site source. The empirical evidence is, thus, diametrically opposed to that which the State Water Quality Control Board said must be demonstrated in order to name Douglas Motors as a

potentially responsible party (PRP) for this site; i.e., "substantial evidence" that the contamination occurred as the result of Douglas Motors' operation of the underground fuel storage tank system and associated equipment. Douglas Motors should not, therefore, be named a PRP at this time.

The absence of scientific evidence linking Douglas Motors to the contamination at the site is easily seen when each area of concern at the site is evaluated individually:

1. Underground Gasoline Storage Tank System. The area around these tanks constitutes the primary battleground between Douglas Parking and Cross-Complainant Bacharach with regard to whether or not Douglas Parking should be named a responsible party for the remediation of the contamination found there. Douglas Motors did operate the tanks for about 16 years, so, if there is any credible scientific evidence that, during that time, a release occurred, then Douglas should share in the responsibility for its remediation. However, there is not; to wit:

a. The first fact of note is that, in the immediate vicinity of the tanks, RGA, Inc., Bacharach's own consultant, found no actionable contamination. The results of 4 soil borings drilled to a depth of 5 ft., which would place the sample at or just above the bottom of the tanks, indicated TPHg ranging from 2.0 to 2.5 ppm; and benzene, PCBs and chlorinated hydrocarbons all below detection limits. TPHd was reported at levels ranging from 22.7 to 28 ppm; however, not only are these levels also of minimal significance, more importantly Douglas Motors never stored or sold diesel, so, although the genesis of this material is a mystery, it can have no bearing on Douglas Motors' potential liability. The same goes for the small amount of Total Oil and Grease (TOG), 39.1 ppm, found in one of the samples taken: this does not relate in any way to Douglas Motors' storage and sale of gasoline from these tanks.

b. The second fact of substance is that soil samples taken in the area of the product delivery line extending from the tanks to the product dispensers also reveal no significant contamination at depths of 13 ft. and 15 ft. At 13 ft., TPHg and BTEX were all below detection limits. At 15 ft., TPHg was found at 2.1 ppm but, again, benzene was below detection limits (here again some TPHd was found, 16.7 ppm, but, as stated above, this material is not related to Douglas Motors' operations at the site).

c. It is not until the 18.5 - 20 ft. level is reached that significant levels of soil contamination are revealed; at this depth TPHg is reported at levels ranging from 2,500 ppm to 9,300 ppm; benzene at 3.5 to 99 ppm; toluene at 34 to 900 ppm; ethylbenzene at 33 to 190 ppm and xylenes at 130 to 1,100 ppm.

d. In addition to the soil sample results shown in c., above, water samples were taken from three of the borings. These samples also revealed contamination levels possibly requiring remediation. In three samples analyzed, TPHg was reported in amounts ranging from below detection limits to 96 ppb. The only other compound reported in significant quantity is benzene, which was found at 6.0 ppb in one of the three samples, and was below detection limits in the other two samples.

An analysis of the contamination pattern revealed by the above data manifests a most interesting fact; there is no significant contamination until a depth of approximately 20 ft. below grade. The soil above this level was categorized at clayey sand, a relatively retentive material. It is virtually inconceivable that contamination levels as high as those reported at 20 ft. could in any manner be related to the use of the USTs some 15 ft. above without there being a tell-tale trail of relatively heavy contamination leading down to the 20 ft. level. The most likely scenario at this time is that an off-site source has contaminated groundwater upgradient from the subject site and that this contaminated groundwater is carrying the contaminants into the property. In fact, one possible source is well-known - two more USTs have been discovered within a few feet of the Douglas tanks in the assumed upgradient direction. No effort has been made to determine the owner of, the operator of, or the use to which these tanks were put. The data, however,suggests that such should be investigated before naming Douglas Parking as a PRP at this site is seriously considered.

2. Pump Islands. Two soil borings at the pump islands were sampled and tested at 5 ft. and 10 ft., where groundwater was encountered:

a. The results at 5 ft. again showed no significant contamination which could be attributed to the Douglas Motors operations; i.e., TPHg was reported at 2.5 and 42.3 ppm and benzene was below detection limits in both samples. The same anomaly discussed above occurred again - TPHd was reported at 26 and 670 ppm, but, as stated above, Douglas Motors never stored or sold diesel so it is impossible to relate the occurrence of this material to their operations.

b. The samples taken at 10 ft. were found to contain 3.3 ppm TPHg and no detectable benzene or TPHd in one and 1540 PPM TPHg, 175 TPHd and 0.987 ppm benzene in the other. There latter figures are a likely candidate for remediation, if they can be substantiated by further testing but, given the surrounding results, the numbers themselves are somewhat suspect. That is, just a few feet in all directions, TPHg is either insignificant or below detection limits. Certainly, this one anomalous reported result cannot be deemed "substantial evidence" that Douglas Motors

suffered a release at the islands, especially since there has been no evidence or testimony to date even remotely suggesting any problem around the dispenser island.

The above results are entirely consistent with exigent conditions at the site. It cannot be overemphasized that the fuel delivery system at this site was of the "suction" or "vacuum" type. The significance of this is that, even if there were small holes in the product delivery lines or in the upper portion of the USTs, there would not be any significant release. While the pump at the dispensers is operating, fuel is being "pulled" to the dispensers and cannot divert out a hole. When the vacuum is broken, the fuel rapidly "shoots" back into the UST and not out any holes. If the holes get big enough to become a problem, the pump is simply unable to pull sufficient vacuum to draw fuel at all and the entire system shuts down. Again, no release into the environment. The incursion of water into a UST is also consistent with the operation of a vacuum system. If there are small holes in the product lines or the top of the tank and if the holes are under water, the vacuum created inside the tank and piping will draw liquid (or air, if the hole is not under water) into the system from outside. Thus the reported incursion of water into the Douglas Motors tank in 1982 or 1983 does not mean that gasoline could correspondingly escaped from the tank.

3. Waste Oil Tanks and Associated Piping. Recently, Bacharach provided the district attorney's office with the declaration of Mr. William A. Thompson, who purportedly operated a limited vehicle repair business in part of the building under a sub-lease from Douglas Motors. In that declaration, Mr. Thompson avers that he was specifically told by Douglas Motors to use the waste oil system. The crux of the matter, however, is that there is simply nothing in the soil or groundwater in the vicinity of the waste oil tanks to suggest, must less provide "substantial evidence", that Mr. Thompson's brief use of the waste oil system, if in fact he actually used it at all, resulted in the contamination found. Further, the data obtained suggests that very little, if any, remediation at all should be required in this area:

Along the length of the pipeline leading to the waste oil tanks, 8 separate samples were taken at approximately 2 ft. below grade, which was 6" to 1 ft. below the piping itself, and the following data was obtained:

a. TPHg ranged from 1.6 to 27.3 ppm;

b. At the same depth TPHd ranged from 1.5 to 55.7 ppm;

c. Total Oil and Grease (TOG) ranged from 50.9 to 221 ppm;

d. Benzene was below detection limits in all samples;

e. Toluene, ethylbenzene and xylenes were found but at insignificant levels in each sample;

f. PCBs were below detection limits in all samples; and,

g. Chlorinated hydrocarbons were below detection limits in all samples.

Nearer the tanks themselves, similar results were obtained:

a. A sample taken at a depth of 5 ft. revealed 2.44 ppm TPHg; 11.1 ppm TPHd; and, PCBs and chlorinated hydrocarbons below detection limits (BTEX was not tested for);

b. At a depth of 8 ft., TPHd was detected at 109 ppm; chlorinated hydrocarbons were below detection limits; and, PCBs were below detection limits (once again BTEX was not tested for);

c. At a depth of 9 ft., "kerosene" was detected at 98 ppm; TOG was non-detect; BTEX was non-detect; and, PCBs were found at 9 ppb;

d. At 9.5 ft., "kerosene" was found at 140 ppm; TPHd was non-detect; and, TOG was non-detect.

In the first place, this minimal contamination in the area of the waste oil tanks cannot reasonably be deemed to be even remotely threatening to the public health, welfare and safety. More importantly from Douglas Motors' point of view, given the fact that, as far as anyone can recall, the waste oil tanks and associated piping were, in all likelihood, in the ground and in use for at least 50 years and Mr. Thompson <u>may</u> have used the tanks for a mere matter of a few months, there is absolutely no way that it can be asserted that the minuscule contamination which is in the area was placed there during Douglas Motors' tenure on the property or Mr. Thompson's alleged use of the waste oil tank system.

4. <u>Hydraulic Lift Area</u>. While this area does appear to contain sufficient levels of contaminants to warrant some remediative measures, Douglas Motors cannot logically be deemed a primary or even a secondary responsible party under the same analysis as that set forth in 3, above.

In addition, the data itself, obtained in the area of the hydraulic lifts, offers empirical evidence that Douglas Motors could not be responsible for whatever contamination exists in this region:

a. Two borings were made by RGA in the area of the hydraulic lifts; both borings were sampled at 5 ft. and 15 ft. At 5 ft. one of the samples taken revealed TPHg at 8.32 ppm; TPHd at 1.63 ppm; with benzene, PCBs and chlorinated hydrocarbons all below detection level; the other 5 ft. sample was below detection level for all constituents;

b. At the 15 ft. level, the first sample contained TPHg at 135 ppm; with TPHd, PCBs and chlorinated hydrocarbons below detection limits (BTEX was not tested for); and the corresponding second sample showed TPHg at 2.5 ppm; TPHd at 17.3 ppm; with PCBs and chlorinated hydrocarbons below detection limits (again BTEX was not tested for);

c. An earlier result obtained by Subsurface Consultants for Plaintiff Davis is totally anomalous: at 10 ft., directly in the middle between a. and b., above, Subsurface Consultants reported TPHd at 1700 ppm and TOG at 6300 ppm. The reported TOG level cannot be addressed effectively because RGA's samples which were supposed to be tested for TOG were allegedly lost by the testing lab. However, even if there is TOG in the area, there is no evidence that it got there during Douglas Motors' tenure on the property. Insofar as the diesel contamination is concerned, the reported levels are unbelievable: although not absolutely technically impossible, it strains credulity to assert that both 5 ft. above and 5 ft. below a reported 1700 ppm diesel, virtually no diesel exists.

d. A water sample taken by RGA from one of the two borings discussed in a. and b., above, did apparently contain high levels of contaminants: TPHg at 60,200 ppb; benzene at 55 ppb; TOG at 9721 ppb; and TPHd below detection limits.

While the above results may militate in favor of remediative action, it must be noted that the offending contaminants are TOG and TPHg and its notorious component, benzene. As is pointed out in the preceding discussion TOG cannot logically and reasonably be attributed to Douglas Motors.

While the gasoline and benzene contamination could hypothetically have resulted from a release from the underground fuel storage tank system operated by Douglas Motors, once again, Bacharach's own data belies this possibility. Significant gasoline and benzene contamination is not encountered until the 15 ft. level, thus, these could not have come from directly above. The only source would be downgradient migration of contaminants introduced into the groundwater from some upgradient source. In Section 1, above, it is shown that, even directly under the Douglas USTs, it is technically most likely that the heavy contamination at 20 ft. resulted from some source even further upgradient. The gasoline contamination under the hydraulic lifts is nothing more

than the extension of that contamination, the genesis of which is simply not known at this time but is not the Douglas USTs.

Tank 2 and 1982 Replacement

Douglas Motors does not contest that in 1982, its inventory reconciliation procedures identified that more fuel was being purchased than was being sold from Tank 2. The tank was apparently tested and the air test performed identified that the tank was not "air tight". The tank, then, was replaced.

However, as discussed herein, the scientific test results related to the Tank 1 and 2 locations obtained on behalf of the Bacharach parties indicate that to the extent there may have been some minor release at these locations the contamination levels would appear to be well below actionable quantities.

There Is No Evidence Of Any Release From The Tank 1, In 1975 Or At Any Time During Douglas' Tenancy

Health & Safety Code § 25281 defines "release" as meaning "any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils. Contrary to the arguments of Mr. Morrison, there is no substantial evidence from any source that there was at any time a release of any hazardous substance from this Tank 1.

Lee Douglas' State Board Declaration, at Paragraph 7, referenced that it appeared that a tank had been replaced in 1975. The qualifying language of "appears" and "apparently" were included in the declaration because Lee Douglas had and has no recall that such tank had been removed, but he had seen a letter from Mr. Bacharach regarding refusal to pay for a possible replacement of the tank. Lee Douglas' deposition testimony confirmed that he personally had no recall of either repairs to or removal of the tank in 1975. Lee Douglas' testimony and declaration are entirely consistent - he has no recall of difficulties, repair or replacement to the so-called tank 1 in 1975.

In Ron Douglas' testimony related to this tank, he similarly had no recall of it being replaced in 1975, or at any other time. None of his testimony was to the effect that fuel was being lost from the tank. On the contrary rather than there being a loss, which would be necessary for a "release", instead the tank was found to be accumulating water. The water getting into the tank did not occur until approximately 1982 or 1983, as best recalled. (R.D. pp. 348; 15 - 25, 349:1) Shortly, thereafter Douglas ceased to use the tank. Again there is no evidence of a release from this Tank 1 during Douglas' tenancy.

Ron Douglas has been retired from the business since April, 1987 and is no longer a partner. He also is not the most precise speaker, or witness, nor is he technically educated in any sense. When he was specifically asked about indications of gasoline leaking out of tank 1 (i.e., a release), he was unable to state any, but instead made a casual and improper assumption, which Mr. Morrison cites as the only evidence of a release from tank 1. Such an assumption is not evidence of a release, nor is there any other evidence of such a release.

Water in a UST is not evidence of a release. In fact, such water can infiltrate a tank from numerous sources, e.g., when the tank is being filled by the supplier, by rain or other surface drainage into the tank, condensation, or suction into the tank due to a suction system. None of these water sources indicates a release of product out of the tank. Further, a combination of more than one of these factors itself could result in tank water.

Mr. Morrison's letter with respect to the two (2) fuel tanks reflects a major inadequacy in understanding of the apparent type of UST system in place at the Harrison St. Garage. The system is known as either a suction or vacuum system by which fuel is effectively sucked out of the tank to the dispensers. The technology of such systems minimizes or eliminates the potentiality of a release while at the same time permitting the possibility of the drawing of moisture outside of the tank into the system. The nature of this system itself could account for the water which accumulated into tank 1.

Finally, although the Douglas inventory system was sensitive enough to identify a minor product discrepancy with respect to the other tank, no such discrepancy in inventory was ever noted regarding Tank 1.

No Evidence Whatsoever Of A Release Regarding The Tanks 1 & 2 From Late 1982 Forward

In late 1982, Douglas Motors caused a new 1000 gallon tank and piping to be installed (Tank 2). At the end of March 1988, Douglas Motors left the premises and ceased any operation at the Harrison St. Garage. There is absolutely no evidence of any release from the fuel storage tanks during this period of time, nor would any be expected. Douglas Motors was utilizing during this time period only one UST - the brand new 1000 gallon tank installed in 1982.

As a result, from the pre-regulatory time period of 1982 through March 1988, equivalent to approximately 30% of Douglas' 16 years on site, there is no evidence of a release, whatsoever. There is also no reason to expect a release from this new UST.

Re: Declaration of William A. Thompson, III

According to Mr. Thompson, for a period of a year during the early 1970s, he operated an automotive repair and service business at the Harrison St. Garage. Mr. Morrison mischaracterizes such statements as such relate to the Douglas'. Neither Leland Douglas, nor Ronald Douglas was involved with the Harrison St. Garage at the time of Mr. Thompson's tenancy. It is highly expectable that they would not recall a tenancy for such a limited time period. This tenancy was explicitly authorized by Bacharach (Ref #40) and almost certainly a source of further income to Bacharach, since the landlords received a percentage of rental income.

The most this declaration may evidence is that for a single brief one year period of time there was a subtenant of Bacharach and Douglas that used the hydraulic lift and may have disposed of oil via use of a "fill pipe".

Mr. Thompson does not indicate that their was any "release" of oil, nor that their was any indication of a "release" involving the hydraulic lift reservoir. This is critical, as you well know.

In fact, Mr. Thompson's declaration on the contrary would indicate that the lift was fully operable during his tenancy without indication of problem. Mr. Thompson's statement that to the best of his knowledge the lift was not serviced during his tenancy by Douglas Motors would correspond to Mr. Thompson's lease (Bacharach Ref #39, Paragraph third) in which Mr. Thompson undertook to maintain the "hydraulic hoist", and of course, with the written consent of the Landlords. It certainly cannot be interpreted as a dereliction by Douglas to do what Mr. Thompson was to do, the assumption Bacharach would like to make.

We have evidence that would indicate that Mr. Thompson in fact did not remain as a tenant for the full one year of his lease (note: option to terminate on 30 days notice - p. 2 of Lease, Ref #39). This evidence, regarding the insurance policy required by the lease, indicates that Mr. Thompson's tenancy terminated on or before August 6, 1974, a period of a mere 4 months after the date of the lease. You should note Mr. Thompson's vagueness about the date he terminated his tenancy (Decl., Paragraph 7).

It does not surprise us that Mr. Thompson might forget such a fact which occurred almost 19 years ago. However, this forgetfulness does raise substantial doubts about just how accurate Mr. Thompsons "estimates", statements of what he was told by whom, and what the condition of the so-called "hydraulic lift pit" are. It certainly makes one question just how much Mr. Thompson was assisted in remembering.

Mr. Morrison's characterization that Mr. Thompson "came forward", we believe hides thousands of dollars of investigative and legal expense to search out a witness who only was a tenant on the property for a couple of months during the half century of Bacharach and Borsuk ownership, a clearly uneventful few months without an incident of "release".

Once again, though, the critical fact about Mr. Thompson's declaration is that it provides no evidence (during whatever limited period of time he was on the premises) of any release of hazardous material onto or into the soil or waters beneath the Harrison St. Garage. On the contrary, it indicates affirmatively that Mr. William A. Thompson has no knowledge of any such a release during this time period. It provides further support, by independent testimony, that Douglas should not be named a responsible party with respect to these areas.

There Is No Evidence That Douglas "Operated" The Dispensers, The Hydraulic Lift Or The Waste Oil Tank At The Time Of Any Unauthorized Release

Mr. Bacharach and Ms. Borsuk have owned the Harrison St. Garage Building since approximately 1945. They have failed, and refused, during their almost half-century of ownership to meet even minimal standards of care for their property. They effectively have operated as commercial slumlords, and it is surprising (if such has not occurred) that they have not been cited by public authorities for allowing the deterioration and dilapidation of such a building in downtown Oakland.

As best is known, the same dispensers, lifts, and waste oil tank(s), as well as other potential unidentified USTs on-site have been on the property for the entirety of their ownership of the property, and before.

Clearly, Douglas ran a parking garage on the site for a period of 16 years. No one denies such fact. However, this time period is a mere 1/3 of the time Bacharach has owned the property. Further, it appears quite likely that the location was operated as a garage and repair facility for the entirety of its existence, estimated to be many years before 1945.

Mr. Thompson's declaration does evidence that he operated the lift and some fill pipe. It does not evidence that Douglas did. To the extent of the evidence, Mr. Thompson's tenancy of a few months was the only time period of use of such. He did not testify to any release during his tenancy. There is no evidence of any substantial nature which indicates that during Douglas' tenancy there was any release from the dispensers, the lift, the waste oil tank(s).

Douglas' testimony is that to the best of their recall, neither Douglas nor any of its subtenants (with the limited exception of Mr. Thompson apparently) used the lift, nor the waste oil tank. It is my recall that neither Ron Douglas, nor Lee Douglas were even aware of the existence of a waste oil tank. Similarly, there is no evidence of any release from the dispensers at the property.

It is important to note that subsequent to Douglas terminating its tenancy, the dispensers, lift, waste oil tank(s), fuel storage tanks and any other source of site contamination were simply abandoned without regulatory compliance by the Bacharach parties.

Lee Douglas specifically testified, a fact he also confirmed to Mr. Davis, that Bacharach was specifically informed of his statutory duties in 1987 to deal with abandoned tanks at the site. Instead, nothing was done by Bacharach regarding such matters until after Mr. Davis apparently contacted the county in 1990, several years later. No testing was done until after that time period. Douglas has no responsibility for whatever may have occurred during that time frame with respect to the various USTs.

I would note also that I believe Steven Davis has stated that, during his tenancy, as a result of the terrible leaking of the roof in the garage (always a landlord responsibility), the waste oil tanks(s) were flooded with water, resulting in a release out of them. From this we have substantial evidence of a release from improperly abandoned tank(s) during a time period as to which Douglas bears no potential culpability.

It is also significant to note that between the time of Douglas leaving the garage and the timing of the first tests on-site, the garage was subjected to significant damage as a result of the October 1989 Loma Prieta earthquake. It would appear a reasonable potentiabilty that the earthquake could very well have caused damage to the dispensers, hydraulic lift and the waste oil tank(s). Obviously, such damage resulting in a release (well after Douglas had left the property) would be events as to which Douglas bears no responsibility. The earthquake damage to the property was well documented by subsequent tenant Steven Davis in complaints to the landlord Bacharach.

No Responsibility For Removal Of USTs

The Bacharach parties have owned this property for almost half a century. As best known, USTs have been present on-site at the Tanks 1 & 2 locations during the entirety of that time period. In 1972, when Douglas Motors leased the property the tanks were on-site. Paragraph 5 of the leases provides that the landlord (Bacharach) owns all improvements. Further, Bacharach sought to lease use of the tanks to the subsequent tenant. Bacharach made no request for removal of the tanks when Douglas Motors left the property.

The Bacharach parties clearly are the owners of the two fuel storage tanks. They are also the owners of all of the other (the number of which is currently unknown) USTs on the property.

Removal of a UST is not corrective action under § 2720, Article 11 of UST Regulations. It is specifically excluded. Further, it is UST "owners" who have permanent closure responsibilities under § 2672, Article 7 of UST Regulations.

As a result, to the extent there is any amended order, such should be specific in delineating that it is only the Bacharach parties who have responsibility for the removal of the numerous USTs at the Harrison St. Garage.

Primary vs. Secondary Responsible Party Issue Related To USTs Under Harrison Street

To the extent the County, contrary to Douglas Motors position, reaches a conclusion that Douglas Motors is to be named a Responsible Party in relation to some UST, we believe that the substantial evidence indicates that in all fairness, Douglas should be named, at worst, a secondarily responsible party. While we understand Bacharach's frustration with the condition of the property, given the property's history and the likelihood that the great majority, if not all, remediable contamination has migrated from offsite, such contamination is a landowner's burden. Further, there is evidence of a release, when Douglas was no longer present. Bacharach has recognized responsibility by applying for and preliminarily having qualified for the UST fund. Bacharach, thus, beyond responsibility has an adequate source of funding for remediation efforts - Douglas is not necessary to protect the public.

Obviously, Bacharach has made enormous efforts to shift responsibility elsewhere, but the facts and substantial evidence as well as equity indicate that as landowner for half a century Bacharach properly must bear primary responsibility for the contamination requiring remediation.

Conclusion

The evidence in this matter, we submit, mandates that there be no change to the County's order regarding responsible parties for the Harrison St. Garage. Specifically, we believe that there is no evidence of a release in any respect during a period of time Douglas was a tenant related to the dispensers, hydraulic lift, waste oil tanks(s), or Tank 1. Further, there is no evidence Douglas utilized the lift or waste oil tank(s), although Mr. William A. Thompson may have utilized them for a few months, at most, without incident.

The suction nature of the Tank 1 and 2 system militates against a release from them and the results of the scientific testing performed on behalf of Bacharach simply does not indicate actionable contamination at any level which can be attributable to any minor release which might have occurred from Tank 2.

The contamination at lower depths of the property are not the result of any on-site activity, but rather would appear to most likely be migration on-site from off-site. Douglas again is not a responsible party for such migration.

Douglas should not be named a responsible party, even secondarily so, since their is no substantial evidence of a release requiring corrective active from a source being operated by Douglas.

Due to the volume of material and some of the technical issues, we would suggest, and request, that a meeting with yourself and Paul Smith be set up to discuss these matters once you have had an opportunity for a preliminary review. We anticipate that Bacharach's counsel will ask to be present at that meeting. We suggest that would turn the meeting away from its purpose of explaining our position in a non-adversarial context. Further, Bacharach's counsel obviously did not provide our office with such opportunity when they have met with you in the past.

Sincerely,

RANDICK & O'DEA

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January 29, 1993

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Re: Request To County Of Alameda To Name Douglas Motor Service And Its Partners As Responsible Parties As To 1428-1434 Harrison St. and 1435-1443 Alice St., Oakland, California

Dear Mr. Thomson:

This letter is in reply to Mr. Trinkle's letter of January 15, 1992. In that letter, the Douglas parties conceded that there were unauthorized releases from at least one of the gasoline storage tanks. Douglas also conceded use of the hydraulic lift and disposal of waste oil in a drain line connected to the waste oil tanks in the basement. And, Douglas acknowledged that there is evidence of soil and groundwater contamination from petroleum hydrocarbons throughout the garage -- around the gasoline tanks and dispensers, at the hydraulic lift and wash rack, and along the drain pipes and waste oil tanks in the basement.

These facts provide "substantial evidence" for naming Douglas as a responsible party. All that is necessary is credible evidence that, ". . . Douglas was in control of the property and using the tanks while leaks were taking place, even if Douglas was not actually aware of the leaks." (Bacharach, Order No. WQ 91-07 (June 20, 1991). It is undisputed that Douglas was in control of the entire garage by virtue of Douglas' lease with the owners. It is also undisputed that Douglas operated the gasoline tanks and dispensers when gasoline leakage occurred, and that Douglas had control over the hydraulic lift area and basement. Douglas subleased the lift area to at least three subtenants, one or more of whom used the lift and the drain line connected to the waste oil tanks in the basement. Douglas, meanwhile, used the basement for long-term storage of cars, resulting in continuous and substantial

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discharges of waste oil onto the basement floor and, in all probability, into the soils beneath.

Site investigations by at least three consultants have confirmed significant releases of petroleum hydrocarbons in each of these areas -- the gas tanks and dispensers, the hydraulic lift, and waste oil tanks and piping in the basement. Some 1300 gallons of waste oil were pumped out of the basement tanks in 1990, and there is every reason to believe that leakage from the hydraulic lift, waste oil tanks, and piping continued throughout Douglas' 16-year tenancy. Indeed, there is no reason to believe the contrary.

These facts are more than sufficient for the County to name Douglas as a responsible party for contamination in each area of the garage. The State Board has noted in this case and many others that there is no requirement that a "responsible party" actively "cause," or even know about leakage, so long as the party is in control of the property and using the storage tanks while the leakage occurs. See Bacharach, supra; San Diego Unified Port District, Order No. WQ 98-12 (August 17, 1989); U.S. Cellulose, Order No. WQ 92-04 (March 19, 1992). Here, the leakage in all three areas of the garage -- the gasoline tanks and dispensers, hydraulic lift area, and waste oil tanks and piping in the basement -- continued for years while Douglas occupied the property and controlled the use of these facilities. Douglas clearly knew about the leakage from the gasoline tanks, but under the State Board's decisions, Douglas is also "responsible" for leakage from the other tanks, even if Douglas was unaware that this leakage was occurring.

Based on Douglas' January 15 letter, it now appears that the following facts establishing Douglas' responsibility are undisputed:

1. Douglas controlled and operated the gasoline tanks and dispensers throughout its 16-year tenancy.

2. Leakage from gasoline tank #2 and its piping occurred during Douglas' tenancy.

3. Douglas was aware of the leakage from tank #2 for at least 8-10 months before the tank was replaced in 1982.

4. Douglas was aware of substantial water infiltration into tank #1 from approximately 1975, when Sanford Douglas requested a contribution from the owners for replacing the tank.

5. Despite the water infiltration, Douglas continued to use tank #1 until tank #2 was replaced with a larger tank in 1982. Ron Douglas, meanwhile, suspected that gasoline was leaking out of tank #1 while water was leaking in.

6. Gasoline contamination has been confirmed in soils up to 100 feet from the storage tanks, including the area around the dispensers, the first floor area between the dispensers and the hydraulic lift, and at the hydraulic lift itself.

7. It is unknown whether any leakage occurred after Douglas' replacement of tank #2 in 1982, because Douglas never performed the tank integrity testing and monitoring and inventory reconciliation required by California law.

8. At least one subtenant of Douglas performed auto repairs, used the hydraulic lift, and disposed of substantial quantities of used oil in a drain pipe connected to the waste oil tanks in the basement.

9. Soil contamination from waste oils and similar compounds has been documented around the hydraulic lift, the drain pipe in the basement, and at the waste oil tanks.

10. The Douglas parties have been "mistaken" in their written and oral testimony to the State Board, and in their depositions, regarding leakage from the gasoline tanks, replacement of tank #1, use of the hydraulic lift, disposal of waste oil by subtenants, and other matters yet to be determined.

These undisputed facts provide substantial evidence of Douglas' responsibility for contamination throughout the garage. Faced with this evidence, Douglas cannot deny its control of the garage, its obligations (both statutory and contractual) to prevent the releases, or its actual knowledge that releases of gasoline were occurring. Instead, Douglas offers a series of "technical" arguments. These arguments lack credibility, because they ignore most of the data collected over the last two years as well as the State Water Resources Control Board's standards for naming "responsible parties."

Essentially, Douglas wishes to pick and choose from RGA's data, while ignoring data from Subsurface Consultants, Inc. (SCI) and SCS Engineers, Inc. (SCS). In so doing, Douglas has offered a rosy portrait of the garage, in which all the contamination is either insignificant or from "off-site sources." For two years, however, the County has made abundantly clear to the owners that they must take account of all the data. Douglas must do the same.

The data, taken as a whole, shows significant contamination in the garage, and even if the levels do not constitute a threat to health or the environment, as Douglas contends, the owners have still been required to investigate and may be required to remediate this contamination. Douglas was operating the garage when virtually all the known leakage occurred. Douglas is therefore responsible for the contamination and must share in the site investigation and remediation.

The Gasoline Tanks and Dispensers

It is undisputed that Douglas operated the gasoline tanks and dispensers throughout its 16-year tenancy. It is also undisputed that gasoline was released from tank #2 for at least 8 to 10 months in 1982, and in quantities sufficient to be detected by Douglas' crude inventory reconciliation procedures. Douglas contends that the releases were "minor," but there is no basis for this assertion. First, the losses had to be substantial to be detected by Douglas' informal and erratic inventory controls. Second, even with proper inventory procedures, hundreds of gallons per year could have escaped undetected. (See, e.g., Spencer Rental Service, Order No. WQ 87-1 (January 22, 1991)). Third, numerous leaks in both the tank and product lines were observed during removal of tank #2 in 1982. There is thus clear evidence of substantial releases from tank #2 during Douglas' tenancy.

It is also undisputed -- and confirmed in Douglas' letter -- that there was a major water infiltration problem in tank #1, a problem serious enough to warrant Douglas' abandonment of the tank in 1982, when tank #2 was replaced. Douglas attempts to argue that, even if there were holes in the tank and product lines, the "vacuum system" would prevent releases of gasoline while permitting water infiltration. This argument is speculation at best, since it assumes that the only holes in the tanks and product lines were in areas where gasoline would not leak out when the pump was shut off.

Douglas' argument is also inconsistent with the quantities of water Douglas reported in the tank. If the water infiltration problem was so severe as to require abandonment of the tank, there is reason to believe the holes in the tank and lines were sufficiently extensive to permit leakage of gasoline out as well as leakage of water in. This was Ron Douglas' assumption, and it was a reasonable one. The State Board, too, has noted that it is reasonable to conclude that a tank is leaking when an adjacent tank of similar age and condition is found leaking. (See, U.S. Cellulose, supra, Order No. WQ 92-04 (March 19, 1992)).

In short, Douglas' arguments about the gasoline tanks are unconvincing. There was admitted leakage from tank #2 and probable leakage from tank #1. Consultants have confirmed the releases around the tanks and the dispensers. SCI's Report of August 18, 1990 showed concentrations of 6,300 ppm of TPH-G at 20 feet and 9,300 ppm at 18.5 feet in two borings adjacent to the tanks. SCI concluded that, ". . . [T]he source of the contamination is/are the existing or previous fuel tanks, or their piping systems. . . ." (Report, p.2). SCI also noted that the concentrations of TPH-G and of benzene (98,000 ppb) are "relatively high and suggestive of a significant fuel release." (Id.)

Finally, gasoline mixed with rust was found when tank #1 was pumped out by SCS in 1990, which further indicates holes or corrosion in the tank. (See, SCS Report, November 14, 1990, pp. 1-2). And, Douglas' abandonment of this tank in 1982, while it still contained product, in itself constituted a "threat of discharge" sufficient to make Douglas a "responsible party" under the State Board's decisions and regulations. See, e.g., The BOC Group, Inc., Order No. WQ 89-13 (August 17, 1989) (". . . [T]he existence of the tank in the ground and the fact that it was abandoned constitutes a threat to create a condition of nuisance or pollution"). See also, Title 23, California Code of Regulations, Section 2720, which states:

'Responsible party' means one or more of the following:

(2) In the case of any underground storage tank no longer in use, any person who owned or operated the underground tank immediately before the discontinuation of its use;

(4) Any person who had or has control over a underground storage tank at the time of or following an unauthorized release of a hazardous substance.

Here, Douglas is a responsible party by virtue of its abandonment of tank #1 as well as its control over both tank #1 and tank #2 at the time of unauthorized releases.

Besides the area around the gas tanks, SCI confirmed that the gasoline contamination extended to other locations -- at the dispensers (B-7, 2500 ppm of TPH-G), midway back in the first floor area of the garage (B-8, 1200 ppm TPH-G), and as far back as the hydraulic lift and wash rack (B-4, 1700 ppm TPH-D; B-5, 110 ppm TPH-G; See, October 19, 1990 SCI Report, p.3). SCI concluded that the source of this contamination was leakage from the underground storage tanks and piping, which had reached groundwater and had "impacted soils more than 100 feet from the tanks." (SCI Report, October 19, 1990, p.4).

Contrary to Douglas' assertions, there is no "impermeable barrier" between the gasoline tanks and the high TPH soil concentrations detected by SCI. The soils beneath the tanks, as noted by SCI, consist of "medium dense and dense sands containing minor amounts of silt and clay." (August 18, 1990 SCI Report, p.2). These soils are "permeable," and it is no surprise to find high concentrations of TPH-G at depths of 18 to 20 feet. These concentrations indicate that the contamination has moved to deeper levels over time. While SCI did not analyze shallower soil samples, SCI's boring logs indicated hydrocarbon odors in shallow soils beneath the sidewalk, at 3 feet, 6 feet, and 15 feet, as well as "strong gasoline odors" below 16 and 18 feet.

SCI's data thus indicates soil contamination and probable groundwater contamination emanating from the underground gasoline tanks and piping. There is presently no basis, other than speculation, for Douglas' claim that this soil

contamination resulted from "off-site" migration. Both the high soil concentrations and the presence of gasoline-contaminated soils at various depths indicate on-site sources.

RGA's data confirms the releases of gasoline, although RGA's data was limited by unexpected contact with water at shallow depths. RGA confirmed releases of gasoline in shallow soils around the underground storage tanks, piping, and dispensers. For example, borings B-17, 18, 19 and 20 were drilled at the fill and pump ends of the tanks, and all of these borings indicated low levels of TPH-G and somewhat higher levels of TPH-D (15-30 ppm), which could represent weathered gasoline. (See, RGA Report, April 2, 1992, p.3). RGA's boring B-22 in the dispenser area[1] indicated moderately high concentrations of gasoline, 1540 ppm, at 10 feet.

Due to the unexpected water and the small number of samples, RGA's data cannot be considered alone, but must be viewed with the other data.[2] Together, SCI and RGA's studies confirm gasoline contamination in shallow and deeper soils throughout the first floor area.

In summary, there was admitted leakage from tank #2 during Douglas' tenancy and probable leakage from tank #1. This leakage has been confirmed by SCI and RGA, and the State Board has already noted in its first Order that, "The extent of the migration of the gasoline, as mapped in the Subsurface Consultants' report, is consistent with an assumption that leaks have existed for some time." (Order No. WQ 91-07, June 20, 1991). There can be no dispute that Douglas is a responsible party with regard to this contamination.

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[1] Ron Douglas acknowledged in his deposition that there had been leaks in the gas dispensers as well as the tanks. (Ron Douglas Depo., Vol. I, p. 213.)

[2] The purpose of RGA's investigation was to provide data to establish health and safety parameters for tank removal, not to provide a thorough horizontal and vertical characterization of the contamination. RGA used light portable drilling equipment which was generally limited to obtaining shallow soil and groundwater samples.

The Hydraulic Lift Area

Douglas now concedes that the hydraulic lift was used by one of Douglas' subtenants, William Thompson, and there is a strong inference that the lift was used by others. In addition to Thompson's sublease for 1974-1975, Douglas' file shows two subleases of the hydraulic lift area with American International Rent-A-Car, for 1977-1981. The Douglas parties have previously denied any use of the hydraulic lift by any of their subtenants, but their testimony has been discredited by Thompson's Declaration.

Since Douglas did not admit Thompson's use of the lift until the owners located Thompson, there is good reason to believe that Douglas has concealed use of the hydraulic lift by other subtenants as well, such as American International Rent-A-Car. Douglas' subleases with American specifically state that this area is subleased for rental car storage "and repairs." Based on the subleases with Thompson and American, and based on Thompson's Declaration, there is a reasonable inference that the hydraulic lift was used, and that auto repairs -- with spillage of oil, grease and other contaminants -- were performed in this area at various times during Douglas' tenancy.

These facts are sufficient to name Douglas as a responsible party for releases in the hydraulic lift area. The State Board has made clear that a party is responsible for discharges which occur while he is in control of the property and using the storage tanks, even if the party did not actively "cause" the discharges, but merely "permitted" them. (See, e.g., U.S. Cellulose, supra, Order No. WQ 92-04) (landowners and tenants may be characterized as dischargers despite the lack of any direct action causing a discharge, if they used or had control of the tanks on the premises).

Here, Douglas clearly had control over the hydraulic lift area, since Douglas leased the entire garage and subleased this specific area to Thompson and American. Any use of the hydraulic lift by these subtenants is the responsibility of Douglas, which had the contractual relationship with the subtenants, as well as overall responsibility under Douglas' own lease to "maintain and repair" the entire premises (Lease, ¶3), to comply with "all laws and ordinances, municipal, state, federal and any other governmental authority" (id.), and to prevent any "nuisance" or "waste" on the premises. (Id., ¶2).

Douglas thus had the contractual responsibility for and practical control over the entire garage, including subtenants' use of the hydraulic lift, drain pipes and waste oil tanks. This control is sufficient to impose responsibility under the State Board's decisions, because Douglas was in the position to prevent the releases, even if Douglas did not personally "cause" the releases. For example, in San Diego Unified Port District, Order No. WQ 98-12 (August 17, 1989) the State Board concluded:

> The question is whether the Port District 'caused or permitted' the copper to be discharged to the Bay. There is no question that the Port District permitted the discharges to occur. This Board has consistently taken the position that a landowner who has knowledge of the activity taking place and has the ability to control the activity, has 'permitted' the discharge within the meaning of Section 13304. In such case, we have concluded that it is appropriate to hold the landowner responsible for the discharges which it permitted. (Emphasis added).

The same is true for discharges permitted by a lessee and sublessor. Here, Douglas was in control of the entire garage and had the responsibility to maintain the tanks and piping and to prevent any disposal of wastes which could create a "nuisance" condition.

As the State Board observed in its previous Order in this case, it was not necessary for Douglas to have "actual knowledge" that contamination was occurring for Douglas to be named as a "responsible party." Since Douglas was aware of its subtenants' use of the hydraulic lift, repair of vehicles, and disposal of waste oil, Douglas knew or should have known that there were risks of contamination associated with these activities. This knowledge is sufficient to make Douglas a responsible party for contamination arising out of use of these facilities in the garage. As the State Board stated in John Stuart, Order No. WQ 86-15 (September 18, 1986):

> "Actual knowledge of the contamination need not be shown where it is reasonable for a person to be aware of the dangers generally inherent in the activity. In Order No. WQ 84-6 we examined factors involving general knowledge of the operation and normal dangers

> common to it and found that one who should have known is in the same position as the one who did know." (Stuart, supra, n.3).

Here, it is undisputed that Douglas had control over its subtenants' use of the hydraulic lift, drain pipes, and other facilities in the garage. Douglas is therefore responsible for any leakage resulting from their activities. Moreover, it is reasonable to assume that leakage from the lift, drain pipe, and waste oil tanks continued throughout Douglas' tenancy. While Douglas itself may not have used these facilities, they were within Douglas' control under the lease and subleases. This control is sufficient to make Douglas responsible for on-going leakage which occurred in these areas, whether Douglas knew about the leakage or not.

Substantial releases of petroleum hydrocarbons have been confirmed in the lift area. SCI's Report of October 19, 1990 noted concentrations of 6300 ppm of TOG and 1700 ppm in the "diesel" range from soil boring B-4. These concentrations of oil and grease are consistent with the known use of this area for auto repairs, and the report of "diesel range" hydrocarbons may reflect weathered gasoline. TPH-G was also detected at B-5, indicating that gasoline contamination had spread to the hydraulic lift area.

RGA's data confirms the releases of petroleum hydrocarbons in the hydraulic lift area. RGA's samples showed 135 ppm of TPH-G at 15 feet in B-13 and low concentrations in the gasoline and diesel ranges in B-13 at 5' and B-14 at 15'. Viewing the SCI and RGA data together, there is clear evidence of significant releases at depths of 5-15 feet below the hydraulic lift.

Waste Oil Tanks and Piping

As the result of William Thompson's Declaration, Douglas has been forced to concede that waste oil was disposed of on the property during Douglas' tenancy. Thompson estimated that he dumped about 300 gallons of used oil down a drain pipe in the hydraulic lift area. This drain pipe is connected to the waste oil tanks in the basement, as noted by JR Associates in an August 27, 1990 Report on their survey of the property: "The most significant buried pipe appeared to connect an abandoned drain near the car lifts to two waste oil tanks buried near the southern corner of the lower level of the garage (Drawings 3 and 4)."

It is reasonable to assume that Thompson's activities contributed in some measure to the contamination. It is clear that he used the drain pipe and waste oil tanks, and it is clear that releases of waste oil have occurred from both the tanks and piping.[3] Contamination in both areas has been confirmed by SCI, SCS and RGA. Moreover, it seems likely that releases of hydrocarbons from the waste oil tanks and drain lines continued throughout Douglas' tenancy. These releases may have continued irrespective of activities of Douglas and its subtenants, but they occurred during a 16-year period when Douglas had contractual, statutory and common law duties to prevent these releases. Douglas is therefore "responsible" for contamination which Douglas "permitted" during its control, as well as for contamination caused by Douglas' subtenants' activities.

The subtenants' disposal of waste oil and ongoing releases from the storage tanks, however, were not the only hydrocarbon releases in the basement during Douglas' tenancy. There was also a continuous release of waste oil through leakage from autos in long-term storage during the 16-year tenancy. Ron Douglas admitted that large portions of the basement were covered with waste oil and other fluids which were occasionally cleaned up but otherwise allowed to stand. (Ron Douglas Depo., Vol. II, pp. 413-414.) This continuous and substantial leakage of waste oil would very likely contaminate soil beneath the cement floor. Douglas therefore caused or permitted releases of waste oil quite apart from ongoing leakage from the storage tanks and Douglas' subtenants' use of the waste oil system.

Significant releases of petroleum hydrocarbons in the basement have been confirmed by SCI, SCS, and RGA. In SCI's Report of October 19, 1990, SCI reported up to 140 ppm in the "kerosene" range at B-9 near the waste oil tanks.

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[3] Thompson's disposal of 300 gallons was significant. That quantity is equal to 25% of the total waste oil (1300 gallons) pumped out of the tanks in 1990. The State Board's decisions make clear that, where there has been use of a waste system later found to be leaking, it is reasonable to assume that some leakage occurred during that use. See, e.g., Arthur Spitzer, et al., Order No. WQ 89-8 (May 16, 1989) (where party operated drycleaning business during time that drainage system was connected to surface disposal system, it is "reasonable to conclude" that the party "disposed of at least some of the PCE found on the Property"). The same is true here. It is reasonable to assume that some of the 300 gallons dumped by Thompson ended up in soils around the drain pipe and waste oil tanks.

Low concentrations of PCBs (9 ppb) were also reported. (See, SCI report, October 19, 1990, p.5).

SCS' investigation corroborates SCI's findings. In its Report of September 13, 1991 on "Sampling and Analysis of Contents, Waste Oil Tanks," SCS noted the ". . . presence of oil and grease, diesel, and volatile hydrocarbons," along with gasoline in the tanks. A variety of hydrocarbons were apparently disposed of in the tanks, and this usage is consistent with SCI's finding of petroleum hydrocarbons in the "kerosene" range in surrounding soils.

RGA's investigation confirmed releases of petroleum hydrocarbons at the waste oil tanks and along the buried piping in the basement. Samples B-1 through B-8 were taken at 20-foot intervals along the drain pipe, and these samples showed low levels of gasoline up to 27.3 ppm and diesel range hydrocarbons up to 55.7 ppm. (See, pp. 1,2 and Table 1A, RGA Preliminary Site Assessment Report, April 2, 1992.) Soil samples at the waste oil tanks, B-9 and B-10 at 5' and 8' respectively, indicated petroleum hydrocarbons in the gasoline and diesel ranges up to 109 ppm. The borings along the piping also indicated oil and grease from 55 to 221 ppm.

In summary, there is ample evidence of petroleum hydrocarbon contamination in the basement. It is reasonable to assume that some of these releases occurred as a result of use by Douglas' subtenants or ongoing leakage during Douglas' 16-year tenancy. And, there is clear evidence of releases of waste oil in the basement from Douglas' own long-term storage of autos.

The Substantial Evidence Standard

The above evidence fully satisfies the State Board's requirements in its previous Order: " . . . [I]f the County has substantial evidence which shows that Douglas was in control of the property and using the tanks when leaks were taking place, even if Douglas was not actually aware of the leaks, the County should consider Douglas a 'responsible party' and, under these circumstances, name him in its order." (Order No. WQ 91-07, p. 4; emphasis added.)

The evidence here shows beyond dispute that leaks from the underground gasoline tanks occurred while Douglas was using them and that this contamination spread throughout the first floor area. The evidence also shows that Douglas permitted continuous discharges of waste oil onto the basement floor, and probably into

surrounding soils. As to the hydraulic lift, drain line and waste oil tanks, there is evidence that these facilities were used during Douglas' tenancy, and it is probable that releases of petroleum hydrocarbons occurred as the result of this use. Furthermore, it is likely that ongoing releases from these facilities occurred during Douglas' 16-year tenancy, and Douglas had the contractual and legal duty to prevent these releases. Douglas is therefore responsible for these releases, whether Douglas knew about them or not. See U.S. Cellulose, San Diego Unified Port District, and Bacharach, supra.

This evidence here is clearly "substantial" under the State Board's decisions and policies. For example, in its Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304 (Resolution No. 92-49, June, 1992), the Board stated that the Regional Boards shall:

> Use any relevant evidence, whether direct or circumstantial, in order to establish the existence of a discharge or threatened discharge or the source of a discharge. Any such determination must be supported by substantial evidence. (Policies & Procedures, p. 5; emphasis added).

The Policies & Procedures also list various types of acceptable evidence, including the following:

1. Documentation of historical or current activities, waste characteristics, chemical use, storage or disposal information, as documented by public records, responses to questionnaires, or other sources of information;

2. Site characteristics and location in relation to other potential sources of a discharge;

3. Hydrologic and hydrogeologic information, such as differences in upgradient anddowngradient water quality.

4. Industry-wide operational practices that have historically led to discharges, such as leakage of pollutants from wastewater collection and conveyance systems, sumps, storage tanks, landfills, and clarifiers;

5. Evidence of poor management of materials or wastes, such as improper storage practices or inability to reconcile inventories;

6. In conjunction with other evidence, lack of documentation of responsible management of materials or wastes, such as lack of manifests or lack of documentation of proper disposal;

7. Physical evidence, such as analytical data, soil or pavement staining, distressed vegetation, or unusual odor or appearance;

8. Reports and complaints;

9. Other agencies' records of possible or known discharge; and

10. In conjunction with other evidence, refusal or failure to respond to Regional Water Board inquiries. (Id., pp.5-6; emphasis added).

In the present case, there is "substantial evidence" against Douglas in several of these categories. First, there is documentation of "historical use" of all the garage facilities by Douglas or its subtenants. Second, Douglas clearly engaged in "operational practices" that have historically led to discharges, such as leakage from storage tanks and piping. Third, there is uncontradicted evidence of "poor management of materials or wastes," including "inability to reconcile inventories" and an abject failure to conduct the tank integrity testing and monitoring required from 1984 to the end of Douglas' tenancy in April, 1988.

There is also "lack of documentation of responsible management of materials or wastes," including absence of any documentation as to disposal of used oil. Further, there is abundant "physical evidence, such as analytical data, soil or pavement staining" indicating leakage from the gasoline storage tanks, lift area and in the basement. And, finally, there were "reports and complaints" by customers about water damage to their car engines, which put Douglas on notice of possible leakage from tank #1, leakage which Douglas never thoroughly investigated. In short, the evidence against Douglas derives from a number of reliable sources, direct and circumstantial, which have been endorsed by the State Board.

To determine whether evidence is "substantial," the Board has stated that, ". . . we look at the record to determine whether, in light of the record as a whole, there is a reasonable and credible basis to name a party." (U.S. Cellulose, supra). Similarly, the Board has stated that: "Substantial evidence does not mean proof beyond a doubt or even a preponderance of evidence. Substantial evidence is evidence upon which a reasoned decision may be based." (Robert S. Taylor and John F. Bosta, et al., Order No. WQ 92-14 (October 22, 1992), emphasis added). See also, Stinnes - Western Chemical Corporation, Order No. WQ 86-16 (September 18, 1986)).

In the present case, the evidence against Douglas is "substantial" under these State Board definitions as well as common sense. It is obvious that significant releases of petroleum hydrocarbons occurred while Douglas was in control of the garage, and that the contamination spread throughout the first floor and basement. This evidence is more than sufficient to name Douglas as a responsible party.

Scope of the County's Order

The County should name Douglas on the July 31, 1990 Notice of Violation and all subsequent directives regarding the property. Douglas should be named as a responsible party for the entire property, because Douglas was directly responsible for gasoline contamination extending throughout the first floor and because Douglas permitted, and its subtenants contributed to, the contamination in the hydraulic lift area and basement. Furthermore, the contamination in these areas overlapped. For example, the gasoline contamination from the storage tanks extended throughout the first floor and as far back as the hydraulic lift area. Likewise, the disposal of waste oil into the pipe in the hydraulic lift area probably impacted soils around the drain pipe and the waste oil tanks in the basement.

And, Douglas' permitting discharges of oil onto the basement floor probably contributed to the soil contamination there as well.

Douglas thus has responsibility for activities in all areas of the garage and for contamination in each of those areas. In these circumstances, the County should name Douglas on its Orders generally, and the County need not and should not attempt to parse out Douglas' responsibility area by area or tank by tank. There is substantial evidence that Douglas and its subtenants used and contaminated all the major areas in the garage.

The County should name Douglas on the Orders and let Douglas and the owners determine their respective shares of responsibility in the pending civil suit. While the Bacharach parties strongly believe that Douglas should be named as the primarily responsible party, the owners' priority now is a speedy decision which will place Douglas on the Orders and require Douglas to share in the massive ongoing expense for site investigation. With Douglas on the Orders, the parties can argue in the trial court about their respective shares or, if necessary, petition the State Board on the issue of primary-secondary responsibility. The task now is to have all the proper parties named in the Orders, so all parties will share in the site investigation and cleanup expense.

By naming Douglas generally on the Orders, the County can also avoid entanglement in other complex legal issues, such as ownership of the underground gasoline storage tanks. On this issue, there is abundant and conflicting evidence, such as Douglas' registration and permitting of the tanks as well as various lease provisions regarding ownership of improvements and responsibility for compliance with laws.[4] Whether the property owners or Douglas is the "owner" of the

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[4] Health and Safety Code Section 25286(a) provides that, "An application for a permit to operate an underground storage tank, or for renewal of the permit, shall be made, by the owner, on a standardized form. . . ." "Owner" is defined as the owner of an underground storage tank. (§25281(i)). Here, Douglas applied for and obtained a permit to operate one of the gasoline tanks, as well as completing Hazardous Substance Storage Statements for both tanks. (See, Lee Douglas' Depo, Exh. 37, 32, 33). These facts indicate that Douglas is the "owner" of the permitted tank under H&S § 25286(a). It is also undisputed that Douglas paid most of the cost for replacing tank #2 in 1982 and all of the cost for replacing

(continued...)

gasoline tanks is a complex issue involving disputed facts and interpretation of numerous leases, letters, and other documents. The County need not and should not try to resolve this issue, which will ultimately be determined in the trial court. See, e.g., Stuart Petroleum, supra (It is not the province of the Board to assign rights and duties based on the parties' contractual obligations).

Conclusion

The proper course for the County is to name Douglas as a responsible party in the Notice of Violation and all other directives. There is "substantial evidence" to support naming Douglas based on Douglas' control of the property and the confirmed releases of petroleum hydrocarbons throughout the first floor and basement during Douglas' tenancy. Douglas is responsible for contamination in each area of the garage, and Douglas must share the costs for investigating and remediating that contamination. The County's duty is to identify all the responsible parties, and the County can fulfill that duty by adding Douglas to the County's Orders. The County can also help to expedite the site investigation process by naming Douglas promptly, so that Douglas' consultants can collaborate with the owners on the next phases of investigation. We therefore request that the County name Douglas on its Orders if at all possible by February 15, 1993.

Very truly yours,

Randall D. Morrison

RDM:tp

cc: William Trinkle, Esq.

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[4](...continued)
tank #1 in 1975, if that tank was replaced. These facts, too, indicate tank ownership by Douglas, at least until the end of Douglas' tenancy.

bcc: Alvin Bacharach
Barbara Jean Borsuk
Mark Borsuk

JONATHAN S. LEO
CYNTHIA L. KOEHLER
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333 Bush Street
San Francisco, California 94104-2878
Telephone: (415) 772-6000

Attorneys for Petitioners
ALVIN BACHARACH and BARBARA BORSUK

BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of ALVIN BACHARACH AND BARBARA BORSUK For Review of Alameda County Cleanup Order Issued on January 14, 1991. State of California Water Resources Control Board File No. A-728. Order No. WQ 91-	**AFFIDAVIT OF PHILIP W. MUSSER**

I, Philip W. Musser, hereby declare:

1. I am now, and have been since December of 1982, the President of the Robert J. Miller Company, General Contractors, Inc. ("MILLER"), presently located at 385 Pittsburgh Avenue, Richmond, California 94801; telephone number (415) 233-9000. Prior to 1982, for approximately three years, I was an employee of MILLER. I have an undergraduate degree from the University of California at Berkeley, and I am a licensed general contractor. MILLER performs exclusively petroleum related activities. I have personal knowledge of the facts stated herein, and would be competent to testify thereto.

2. I know, based upon my personal knowledge, that MILLER, which began its business in 1943, has performed various kinds of work for Douglas Motor Services ("DOUGLAS") on an

EXHIBIT D

intermittent basis between 1979 and 1982. Since 1982, MILLER has performed limited service work for DOUGLAS, consisting of such activities as changing hoses and nozzles, fixing leaks and installing pumps at various garages owned or operated by DOUGLAS. On at least three or four occasions of which I am aware, MILLER has installed and/or removed underground gasoline storage tanks at garages owned or operated by DOUGLAS.

3. In late March or early April 1982, I was contacted by either Leland or Ronald Douglas to determine whether or not a 550-gallon underground petroleum storage tank located under the sidewalk in front of DOUGLAS' 1432 Harrison Street garage in Oakland, California was leaking. On approximately April 19, 1982 MILLER performed an "air test" on the tank in question to determine whether or not it was leaking. Prior to 1984 (the year in which the California Underground Storage of Hazardous Substances law was enacted), the "air test" was the commonly performed method for determining the integrity of an underground petroleum storage tank.

4. The air test which MILLER performed on the DOUGLAS 550-gallon underground petroleum storage tank at the 1432 Harrison Street garage in Oakland on April 19, 1982 proceeded in the following manner. All product was first drained from the tank. The vent line and the vapor recovery line (if one existed on this tank) were each capped by a rubber plug; the pump was disconnected from the line and capped. MILLER then attempted to pressurize the tank and the appurtenant lines by placing four-to-five pounds psi (per square inch) of air on the fill pipe.

However, the tank would not hold air and could not be pressurized. This clearly indicated that the tank, or the lines, or both, were leaking.

5. Ken Miller, a MILLER employee present at the air test, wrote me a note indicating that the test indicated that there were leaks in the underground tank system. He asked me to contact Ron or Lee Douglas with these results, and to determine whether DOUGLAS wished to determine the source of the leak by isolating the tank and lines. See Exhibit 1.

5. I personally informed either Leland or Ronald Douglas that the results of the tank air test definitely demonstrated that either the tank or the lines or both were leaking. In addition, MILLER informed DOUGLAS in writing about the leaks in MILLER'S October 19, 1982 invoice to DOUGLAS for the April and May 1982 work. This invoice specifically stated that MILLER "found many leaks in the tank and product line." See, Petition for Review, Declaration of Alvin Bacharach, Attachment 3. I also informed DOUGLAS that we could dig up the tank and lines and isolate them in order to determine the source of the leaks.

6. Within approximately 10 days of the conclusion of the tank air test described above, and authorization from DOUGLAS to continue the investigation of the source of the leak, MILLER removed the portion of the concrete sidewalk overlying the tank. The reason for removing the concrete sidewalk above the tank was to identify whether the tank alone, the tank lines alone or both the tank and the tank lines were the source of the leak(s). This

was the routine practice at that time where the air test of an underground gasoline tank buried below a sidewalk had disclosed that either the tank or the tank lines or both were leaking. After the concrete sidewalk overlying the tank was removed, the upper portion of the tank and the lines immediately appurtenant to it were exposed to plain view. At this time, I personally observed both the tank and these lines to be rusted and perforated.

7. I am sure that I informed either Leland or Ronald Douglas personally of my observations shortly after the tank and lines were exposed. In addition, Leland and/or Ronald Douglas most likely personally observed the condition of the exposed tank and lines. Moreover, MILLER submitted a bid to DOUGLAS in May, 1982 for the removal of the leaking tank and lines and their replacement with a new tank. This bid was directed to the attention of Ron or Leland Douglas. See Exhibit 2. DOUGLAS did not respond to this bid.

8. Shortly before October 4, 1982, DOUGLAS contacted me and requested that MILLER submit two bids; one to replace both the tank and the lines, and one to simply remove the tank. MILLER submitted both bids as per DOUGLAS' request on October 4, 1982. See Exhibits 3 and 4.

9. I was never informed by DOUGLAS that DOUGLAS had rejected MILLER'S October 1982 bids. I believe that I learned that BERNARD had been awarded the bid to remove and replace the tank by DOUGLAS because Vernon Bernard contacted me to ask me some questions about the operation and/or request my assistance.

91 TUE 4:59 P.02

PHILE 2432 Harrison St. S.F. 444-7402 4-19-82

550 7 or 1000 Douglas Motor Service systems test indicat an underground leak. Please contact Ron or Lee Douglas ASAP re: dig up of tank to isolate fault system component. [They are old customers of Bob Miller]

EXHIBIT 1

1.#

May 4, 1982

Douglas Motor Service
1721 Webster Street
Oakland, CA 94612

Re: 1432 Harrison Street
Oakland, CA

Attention: Ron or Lee Douglas

Dear Sir:

We are pleased to submit the following quotation as requested by you.

To furnish and install as follows:

1 - One (1) 1,000 gallon U.L. approved tank (double asphalt wrapped).
2 - Excavate the tank hole, remove old 550 gallon tank, install new 1,000 gallon tank, and back fill with sand.
3 - Furnish and install the tank fittings, vent, fill and suction lines. ~~Connect suction line to the existing [illegible].~~ Wrap all lines.
4 - Replace the cement removed by us, approximately 3'x15'x5" with wire reinforcing.
5 - Secure all permits and inspections as per the City and the Bay Area Air Quality Control District specifications.

TOTAL BID..............$ ~~[illegible]~~
10-4-82 6979.

All new Suction line to pump & vent

Very truly yours,

[illegible]

[illegible]

5467.

Accepted

Date

The above quote is good for 30 days

EXHIBIT 2

2nd

October 4, 1982

Douglas Motor Service
1721 Webster Street
Oakland, CA 94612

Re: 1432 Harrison Street
Oakland, CA

Attention: Ron or Lee Douglas

Dear Sir:

We are pleased to submit the following quotation as requested by you.

To furnish and install as follows:

1 - One (1) 1,000 gallon U.L. approved tank (double asphalt wrapped).
2 - Excavate the tank hole, remove old 550 gallon tank, install new 1,000 gallon tank, and back fill with sand.
3 - Furnish and install the tank fittings, vent, fill and suction lines. All new suction line to pump and vent. Wrap all lines.
4 - Replace the cement removed by us, approximately 8'x15'x6" with wire reinforcing.
5 - Secure all permits and inspections as per the City and the Bay Area Air Quality Control District specifications.

TOTAL BID.....$ 6,979.00

Very truly yours,

ROBERT J. MILLER COMPANY

Philip W. Musser

Accepted

Date

Please Note: The above quote is good for 30 days.

EXHIBIT 3

II
3

October 4, 1982

Douglas Motor Service
1721 Webster Street
Oakland, CA 94612

Attention: Ron or Lee Douglas

Dear Sir:

We are pleased to submit the following quotation as requested by you.

1 - Labor and material to excavate and remove one (1) approximately 550 gallon underground tank, backfill the excavation and replace concrete removed by us.

2 - Secure all permits and inspections as per the City specifications.

TOTAL BID.....$5,464.00

Very truly yours,

ROBERT J. MILLER COMPANY

Philip W. Musser

Accepted

Date

Please Note: The above quote is good for 30 days.

EXHIBIT 4

W. VERNON BERNARD . . . BUILDER

[redacted] • OAKLAND, CALIFORNIA [redacted] • TELEPHONE (415) [redacted]
5915 [redacted] Street 94605 531-4577

December 16, 1982.

Mr. Ron Douglas
Harrison St. Garage
1432 Harrison Street
Oakland, Ca. 94612

LABOR - MATERIAL - REPAIRS -
INSTALL GAS TANK

1432 Harrison Street, Oakland, Ca.

$ 4,294.70

W. Vernon Bernard
W. Vernon Bernard
5915 Lecia Street
Oakland, Ca. 94605

12/16 Paid in full CDB.

PLF/DEF EXHIBIT 25
WITN: L. Douglas
DATE: 6/24/92
PEGGY TSUJIMOTO REPORTER

D000003

PLF/DEFT EXHIBIT 26
WIT: L Douglas
DATE: 6/24/92
PEGGY TSUKIMOTO REPORTER

49

PETROLEUM AND INDUSTRIAL HOSE — SERVICE STATION EQUIPMENT — BULK PLANT AND TRUCK EQUIPMENT
GASOLINE AND OIL PIPING SYSTEMS — AIR COMPRESSORS

ROBERT J. MILLER CO.

Service Station and Industrial Equipment

04776

CONTRACTORS LICENSE NO. 118850
3261 GROVE STREET OAKLAND, CALIFORNIA 94609
(415) 653-5469

DATE	YOUR ORDER NO	OUR ORDER NO	TAX	TERMS
10/19/32	Ron Douglas	15931		NET 30 DAYS

SOLD TO
Douglas Motor Service
1721 Webster Street
Oakland, CA 94612

SHIPPED TO
1432 Harrison Street
Oakland, CA

PARTS NO.	DESCRIPTION	UNIT	AMOUNT
	Dug up sidewalk - found many leaks in tank and product line. (Note: Barricades are still at job site - to be billed upon removal)		$ 332 50
	Rental for compressor, jack hammer, asphalt blade and air hose.		150 00
	TOTAL.....		$ 332 50

Any invoice not paid within 30 days from date of invoice will be subject to a finance charge of 1½% per month on unpaid balance (18%) annually.

PLEASE PAY ON RECEIPT

NO STATEMENT WILL BE SENT UNLESS REQUESTED

It is understood that the title of goods received shall remain in the name of Robert J. Miller Company until the full amount of this bill is paid.

*The maximum FINANCE CHARGE, if ... only, is determined by applying a ... Periodic Rate of 1 ...
ANNUAL PERCENTAGE RATE ...

DEFENDANT'S EXHIBIT 49 Evans

James P. Bowers, PE
R. William Rudolph, Jr., PE

August 18, 1990
SCI 447.019

Mr. Jonathan Redding
Fitzgerald, Abbott & Beardsley
1221 Broadway, 21st Floor
Oakland, California 94612

Preliminary Subsurface Investigation
of Gasoline Tank Area
1432 Harrison Street
Oakland, California

Dear Mr. Redding:

This letter records our services to date regarding underground fuel storage tanks located at the referenced address. At least two (2) gasoline storage tanks are situated below the sidewalk along Harrison Street in front of the existing building, approximately as shown on Plate 1. Our services to date have consisted of drilling two test borings near the tanks on July 25, 1990, obtaining soil samples from the borings, and performing analytical tests on selected samples.

Investigation

In general, the test borings were drilled to depths of about 25 feet using solid flight auger drilling equipment. Our field engineer observed drilling operations, prepared detailed logs of the materials encountered, and obtained undisturbed samples. Upon conclusion of drilling, the test borings were backfilled with neat cement grout. Cuttings generated during drilling were placed in steel barrels and left on-site.

Soil samples were retained in brass sample liners. The ends of the liners were covered with Teflon sheeting, capped and sealed with duct tape. Samples were refrigerated on-site in ice chests, and remained so until delivery to the analytical laboratory for testing. Chain-of-custody records accompanied the samples to the analytical laboratory. Copies of the test boring logs and the Chain-of-Custody documents are attached.

Two soil samples were selected for chemical analysis. The soil samples were analyzed for total petroleum hydrocarbons (TPH), as

EXHIBIT E

gasoline, in accordance with approved EPA test methods. Analytical services were provided by Curtis & Tompkins, Ltd. A summary of the data is presented below. Analytical test reports are attached.

Sample Designation	TPH as gasoline (ppm)[1]	Benzene (ppb)[2]	Toluene (ppb)	Ethyl-benzene (ppb)	Total Xylenes (ppb)
1 @ 20'	6,300	99,000	490,000	110,000	610,000
2 @ 18.5'	9,300	98,000	900,000	190,000	1,100,000

1 ppm = parts per million = mg/kg
2 ppb = parts per billion = ug/kg

Soil and Groundwater Conditions

Our test borings indicate that the tank area is underlain by medium dense and dense sands containing minor amounts of silt and clay. These sands extend to the depths explored, approximately 25 feet below existing grades. Groundwater was encountered at a depth of about 20 feet during drilling. This level likely does not reflect stabilized groundwater conditions.

Conclusions

The results of our preliminary study indicate that gasoline exists in the soil below the tanks. We judge that the source of contamination is/are the existing or previous fuel tanks, or their piping systems, that exist in the area. The soil samples analyzed contain concentrations of gasoline as high as 9300 ppm, as well as elevated concentrations of BTXE. These concentrations are considered relatively high and suggestive of a significant fuel release. The gasoline concentrations exceed current remediation regulatory guidelines, as promulgated by the Alameda County Health Care Services Agency. Consequently, we conclude that soil remediation will be required.

The gasoline contamination appears to extend to groundwater. Based on the high gasoline concentrations and our experience

with other similar problems, we judge that (1) free gasoline product may exist on the groundwater surface, and (2) groundwater quality has likely been degraded. The severity of the groundwater problem is unknown at this time. However, we suspect that further study will indicate that groundwater remediation will be appropriate.

If you have any questions regarding our services to date, please call.

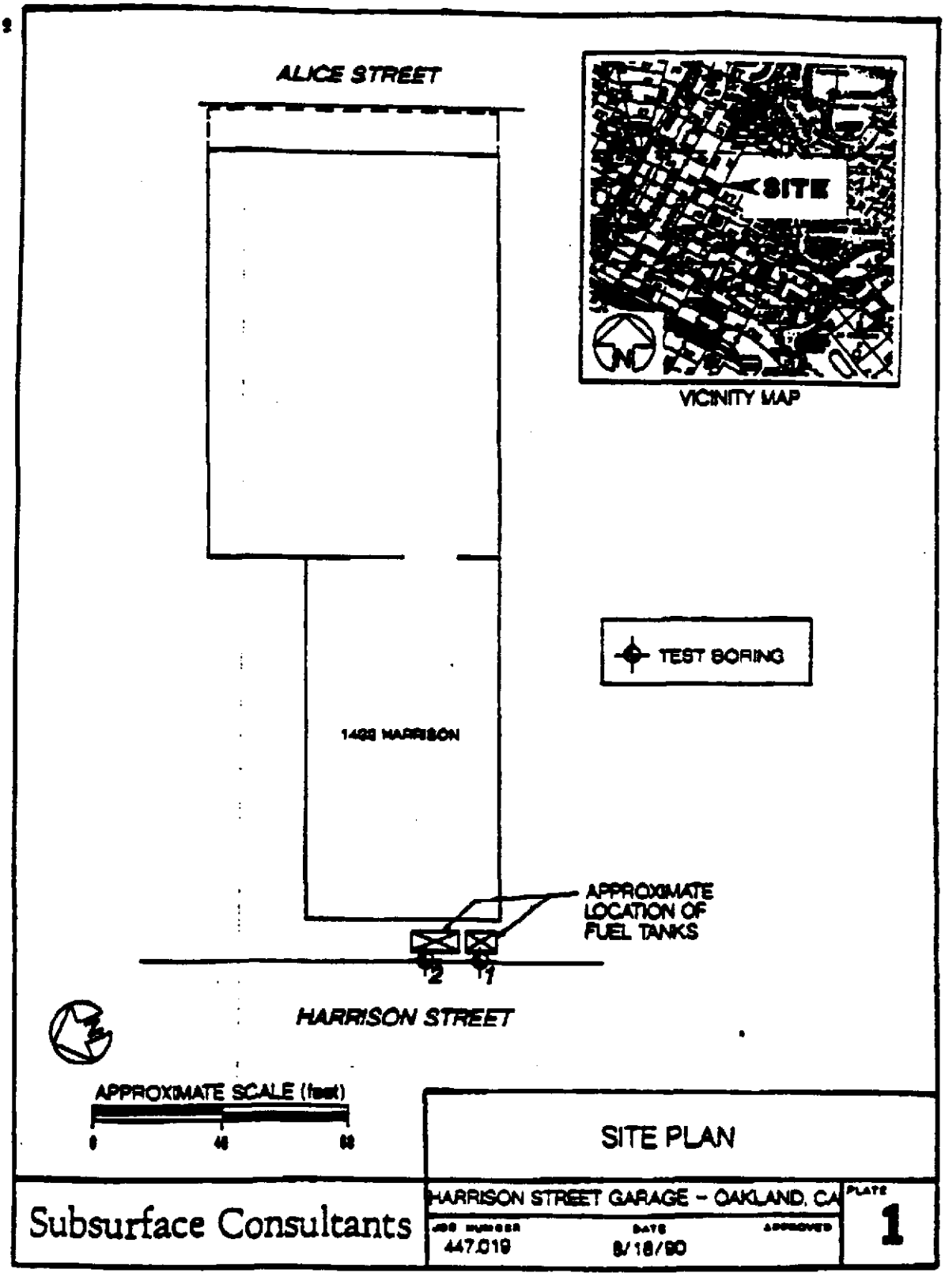
Yours very truly,

Subsurface Consultants, Inc.

James P. Bowers
Geotechnical Engineer 157 (expires 3/31/91)

CRF:JPB:nf

Attachments: Site Plan, Plate 1
Logs of Test Borings 1 and 2
Unified Soil Classification System
Laboratory Test Reports
Chain-of-Custody Documents



SITE PLAN

Subsurface Consultants

HARRISON STREET GARAGE – OAKLAND, CA

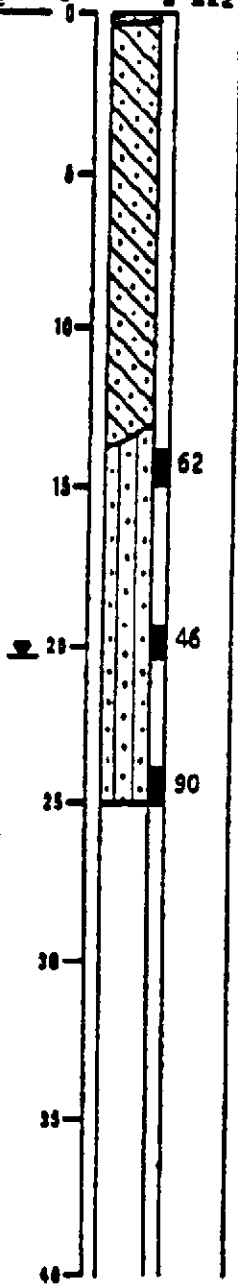
JOB NUMBER 447.019 | DATE 8/18/90 | APPROVED

PLATE 1

LOG OF TEST BORING 1

EQUIPMENT 6" Solid Flight Auger
DATE DRILLED 7/25/90
ELEVATION --

LABORATORY TESTS | MOISTURE CONTENT (%) | DRY DENSITY (PCF) | DEPTH (FT) | SAMPLE | BLOW COUNTS PER FOOT



CONCRETE SIDEWALK - 4" thick
GRAY GREEN CLAYEY SAND (SC)
medium dense to dense, moist to wet, slight hydrocarbon odor

hydrocarbon odor
GRAY GREEN SILTY SAND (SP/SM)
dense, moist

strong gasoline odor below about 18 feet
GROUNDWATER LEVEL DURING DRILLING

boring backfilled with cement grout

SAMPLER TYPE:
CALIFORNIA DRIVE
O.D.: 2.5 inches
I.D.: 2.0 inches

HAMMER WEIGHT: 140 pounds
HAMMER DROP: 30 inches

Subsurface Consultants

HARRISON STREET GARAGE - OAKLAND, CA

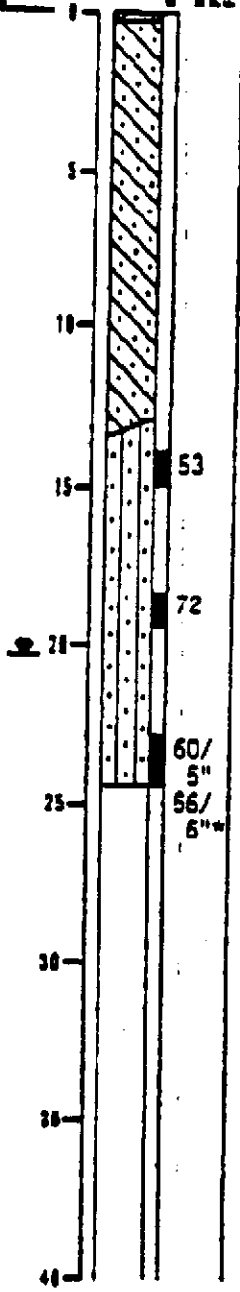
JOB NUMBER 447.019 | DATE 8/17/90 | APPROVED

PLATE 2

LOG OF TEST BORING 2

EQUIPMENT 6" Solid Flight Auger
DATE DRILLED 7/25/90
ELEVATION --

LABORATORY TESTS | MOISTURE CONTENT % | DRY DENSITY pcf | DEPTH (ft) | SAMPLES | BLOWS PER FOOT



CONCRETE SIDEWALK - 4" thick
GRAY GREEN CLAYEY SAND (SC)
medium dense to dense, moist

slight hydrocarbon odor below 3 feet

increase in hydrocarbon odor below 6 feet

GRAY GREEN SILTY SAND (SP/SM)
dense, moist

strong gasoline odor below 18 feet
GROUNDWATER LEVEL DURING DRILLING

boring backfilled with cement grout

*STANDARD PENETRATION TEST
O.D.: 2.0 inches
I.D.: 1.4 inches

Subsurface Consultants	HARRISON STREET GARAGE - OAKLAND, CA	PLATE 3
	JOB NUMBER 447.019 DATE 8/17/90 APPROVED	

GENERAL SOIL CATEGORIES			SYMBOLS	TYPICAL SOIL TYPES
COARSE GRAINED SOILS (More than half is larger than No. 200 sieve)	GRAVEL (More than half coarse fraction is larger than No. 4 sieve size)	Clean Gravel with little or no fines	GW	Well Graded Gravel, Gravel-Sand Mixtures
			GP	Poorly Graded Gravel, Gravel-Sand Mixtures
		Gravel with more than 12% fines	GM	Silty Gravel, Poorly Graded Gravel-Sand-Silt Mixtures
			GC	Clayey Gravel, Poorly Graded Gravel-Sand-Clay Mixtures
	SAND (More than half coarse fraction is smaller than No. 4 sieve size)	Clean sand with little or no fines	SW	Well Graded Sand, Gravelly Sand
			SP	Poorly Graded Sand, Gravelly Sand
		Sand with more than 12% fines	SM	Silty Sand, Poorly Graded Sand-Silt Mixtures
			SC	Clayey Sand, Poorly Graded Sand-Clay Mixtures
FINE GRAINED SOILS (More than half is smaller than No. 200 sieve)	SILT AND CLAY Liquid Limit Less than 50%		ML	Inorganic Silt and Very Fine Sand, Rock Flour, Silty or Clayey Fine Sand, or Clayey Silt with Slight Plasticity
			CL	Inorganic Clay of Low to Medium Plasticity, Gravelly Clay, Sandy Clay, Silty Clay, Lean Clay
			OL	Organic Clay and Organic Silty Clay of Low Plasticity
	SILT AND CLAY Liquid Limit Greater than 50%		MH	Inorganic Silt, Micaceous or Diatomaceous Fine Sandy or Silty Soils, Elastic Silt
			CH	Inorganic Clay of High Plasticity, Fat Clay
			OH	Organic Clay of Medium to High Plasticity, Organic Silt
HIGHLY ORGANIC SOILS			PT	Peat and Other Highly Organic Soils

UNIFIED SOIL CLASSIFICATION SYSTEM

Subsurface Consultants

HARRISON STREET GARAGE - OAKLAND, CA

JOB NUMBER	DATE	APPROVED
447.019	8/17/90	

PLATE 4

Curtis & Tompkins, Ltd.

LABORATORY NUMBER: 101213
CLIENT: SUBSURFACE CONSULTANTS
JOB NUMBER: 447.019
JOB LOCATION: HARRISON GARAGE

DATE RECEIVED: 07/27/90
DATE ANALYZED: 08/14/90
DATE REPORTED: 08/14/90

Total Volatile Hydrocarbons with BTXE in Soils & Wastes
TVH by California DOHS Method/LUFT Manual October 1989
BTXE by EPA 5030/8020

LAB ID	CLIENT ID	TVH AS GASOLINE (mg/Kg)	BENZENE (ug/Kg)	TOLUENE (ug/Kg)	ETHYL BENZENE (ug/Kg)	TOTAL XYLENES (ug/Kg)
101213-1	1 @ 30.0	6,300	99,000	490,000	110,000	610,000
101213-2	3 @ 15.5	9,300	98,000	800,000	190,000	1,100,000

QA/QC SUMMARY

RPD, %	2
RECOVERY, %	93

Subsurface Consultants

CHAIN OF CUSTODY RECORD
& ANALYTICAL TEST REQUEST

Project Name: HARRISON GARAGE

SCI Job Number: 447.019

Project Contact at SCI: JIM BOWERS

Sampled By: FERNANDO VELEZ

Analytical Laboratory: CURTIS & TOMPKINS

Analytical Turnaround: NORMAL

Sample ID	Sample Type[1]	Container Type[2]	Sampling Date	Hold	Analysis	Analytical Method
1@20.0	S	T	7/25/90		TVH + BTXE	
2@18.5	S	T	7/25/90		TVH + BTXE	

* * * * * *

Released by: [signature] Date:

Released by Courier: Date:

Received by Laboratory: [signature] Date: 7/26/90

Relinquished by Laboratory: Date:

Received by: Date:

[1] Sample Type: W = water, S = soil, O = other (specify)
[2] Container Type: V = VOA, P = plastic, G = glass, T = brass tube, O = other (specify)

Notes to Laboratory:
-Notify SCI if there are any anomalous peaks on GC or other scans
-Questions/clarifications...contact SCI at (415) 268-0451

FAX TRANSMITTAL

To: Jonathan Reddick (451-1523)

Company: FAB

From: Jim Bowles

Company: SCI

Project: Harrison Street Garage

SCI Job Number: 447.019

Date: 8/17/90

Number of Pages Transmitted: 10 (transmittal included)

Remarks: For your review and comment.

Subsurface Consultants

171 - 12th Street, Suite 201
Oakland, CA 94607
Telephone: (415) 268-0461
FAX: (415) 268-0137

James P. Bowers, PE
R. William Rudolph, Jr., PE

October 19, 1990
SCI 447.019

Mr. Jonathan Redding
Fitzgerald, Abbott & Beardsley
1221 Broadway, 21st Floor
Oakland, California 94612

Preliminary Subsurface Investigation
1432 Harrison Street
Oakland, California

Dear Mr. Redding:

This letter records our services to date regarding subsurface investigations and analytical testing performed at the referenced site. Results of a prior phase of investigation and analytical testing were transmitted to you in a previous letter dated August 18, 1990. A plan showing the location of the structure is presented on Plate 1.

Since the investigation recorded in our August 18th letter, our services have included (1) observing a geophysical survey performed by JR Associates within the building, (2) drilling six additional test borings within the structure, and (3) performing analytical tests on selected samples from the borings.

Geophysical Investigation

A ground-penetrating radar survey was performed in an effort to determine if additional underground storage tanks existed within the structure. Surveys were performed in areas suspected of containing underground storage tanks. During the survey, two waste oil tanks were discovered in the basement of the structure. In addition, an "anomalous" radar image was also revealed during the survey near the area identified on Plate 1 as the suspected former tank location. These areas were investigated further by drilling soil borings, as discussed in the following sections.

Subsurface Investigation

Six additional test borings (3 through 8) were drilled in areas of potential environmental concern. Their locations are indicated on Plate 1. Borings 1 and 2 were drilled previously near underground gasoline storage tanks beneath the Harrison Street sidewalk. Boring 3 was drilled adjacent to a wash area sump. Boring 4 was located next to an existing hydraulic automobile lift. Boring 5 was drilled near the anomalous area identified by the geophysical survey. These three borings extended to depths of approximately 25 feet below the ground surface.

EXHIBIT F

Test Boring 6 was drilled adjacent to the waste oil tanks, discovered in the basement of the structure. This boring extended to a depth of about 10 feet below the basement floor, which was just above groundwater in the area. Borings 7 and 8 were drilled within the central portion of the structure, in an effort to determine if contamination associated with the gasoline tanks extended beneath the building. These borings extended about 25 feet below the floor of the garage.

Test Borings 3 through 8 were drilled using four-inch diameter, solid-flight auger drilling equipment. Our geologist observed drilling operations, prepared detailed logs of the materials encountered, and obtained undisturbed samples of the soils encountered. Upon conclusion of drilling, the test borings were backfilled with cement grout. Soil cuttings generated during drilling were placed in steel barrels and left on-site.

Soil samples were retained in brass sample liners. The ends of the liners were covered with Teflon sheeting, capped, and sealed with duct tape. Samples were refrigerated on-site in ice chests and remained so until delivery to the analytical laboratory. Chain-of-custody records accompanied the samples to the analytical laboratory. Copies of the test boring logs are presented on Plates 2 through 7; chain-of-custody documents are attached.

Soil and Groundwater Conditions

Our test borings indicate that the site is underlain by dense, fine-grained sands containing varying amounts of silt and clay. These soils extend to the depths explored, about 25 feet below sidewalk grades. According to a geologic map by Radbruch[1], these sediments are part of the Merritt Sand formation.

Groundwater was encountered at depths varying from about 23 to 25 feet below the Harrison Garage floor slab during drilling. This level does not likely represent stabilized groundwater conditions. Data regarding past and present groundwater flow directions is currently unavailable. However, regional topographic contours would suggest a groundwater flow direction to the east, toward Lake Merritt.

---

[1] Radbruch, D., Areal and Engineering Geology of the Oakland West Quadrangle, California, USGS Misc. Geologic Investigations, Map I-239, 1957.

Analytical Testing

Seven soil samples were selected for chemical analysis, based on visual/olfactory inspection and organic vapor meter (OVM) screening. The soil samples were analyzed by Curtis & Tompkins, Ltd., a laboratory certified by the California Department of Health Services for the tests performed. Selected samples were analyzed for total volatile hydrocarbons (TVH), benzene, toluene, xylene, and ethylbenzene (BTXE), total extractable hydrocarbons (TEH), total oil and grease (TOG), chlorinated hydrocarbons (EPA 8010), polychlorinated biphenyls (PCBs), and soluble lead. The results of the analytical testing are summarized on Plate 1 and in the following table:

Table 1. Contaminant Concentrations in Soil

Boring & Depth	TVH[1] (ppm)	B[2] (ppb)	T[3] (ppb)	X[4] (ppb)	E[5] (ppb)	TOG[6] (ppm)	TEH[7] (ppm) Keros./Diesel	OTHER 8010/Sol Pb/PCBs ---/(ppm)/(ppb)
B1 @ 20'	6.300	99.000	490.000	610.000	110.000	---	---/---	---/---/---
B2 @ 16.5'	9.300	98.000	900.000	1.100.000	190.000	---	---/---	---/0.21/---
B3	---[8]	---	---	---	---	---	---/---	---/---/---
B4 @ 10'	---	---	---	---	---	6.300	ND[9]/1.700	---/---/---
B5 @22.5'	110	24	210	1.300	69	---	---/---	---/---/---
B6 @ 9'	---	ND	ND	ND	ND	ND	98/ND	ND/0.06/9 (Aroclor 1260)
B6 @ 9.5'	---	---	---	---	---	ND	140/ND	---/---/---
B7 @ 13'	ND	ND	ND	ND	ND			
B7@ 20'	2.500	3.500	34.000	130.000	33.000	---	---/---	---/0.07/---
B8 @ 22.5'	1.200	2.300	38.000	89.000	18.000	---	---/---	---/---/---

1 Total Volatile Hydrocarbons, mg/kg = ppm
2 Benzene, ug/kg = ppb
3 Toluene
4 Xylene
5 Ethylbenzene
6 Total Oil & Grease
7 Total Extractable Hydrocarbons (as kerosene and diesel)
8 Not tested for
9 Not detected

Conclusions

Existing Gasoline Storage Tanks

The previous investigation performed by SCI revealed the presence of gasoline-contaminated soils beneath two gasoline tanks located under the sidewalk adjacent to Harrison Street. Based on the gasoline concentrations found in the soils, it appears probable that free product exists on the groundwater surface. Soil samples situated just above groundwater from Borings 7, 8 and 5 contain gasoline concentrations of 2500, 1200 and 110 mg/kg, respectively. Judging from the concentration, we conclude that free gasoline product likely exists in a relatively large area, extending eastward beyond Boring 8. It appears probable that gasoline tank related contamination has impacted soils more than 100 feet from the tanks. Gasoline concentrations in Borings 5, 7 and 8 exceed current remediation guidelines, as promulgated by the ACHCSA. Consequently, we conclude that remediation of the gasoline-contaminated soils will be required.

Because it appears probable that free product exists on the groundwater surface, it is likely that groundwater quality has been degraded. The severity of groundwater impacts remains unknown. Further investigation will be required to determine the extent and severity of the groundwater problem. However, based on experience in the area, we judge that groundwater remediation will be required.

Hydraulic Hoist Area

Analytical test results from samples obtained from Boring 4 indicate concentrations of oil and grease of 6300 ppm and TEH (as diesel) of 1700 ppm in soils situated at a depth of about 10 feet. The soil sample analyzed was obtained from near an hydraulic automobile lift. Based on our observations and experience, we judge that these hydrocarbons are most likely associated with hydraulic fluids used in the lift. The data indicates that soil contamination has occurred, most likely as a result of leakage from the hydraulic lift cylinder. The concentrations are sufficiently high that they exceed current hydrocarbon regulatory agency cleanup guidelines. Consequently, we conclude that soil remediation will likely be required in this location.

Waste Oil Tanks

A test boring drilled adjacent to the waste oil tanks located in the basement of the structure encountered soils possessing relatively strong hydrocarbon odors. Soil samples taken from depths of about nine feet below the basement floor, which was just above groundwater, indicated hydrocarbon (as kerosene) concentrations up to 140 mg/kg. In addition, a very low concentration of PCBs (9 ug/kg) as Arochlor 1260 was reported by the laboratory to be present in the soils. In our opinion, the hydrocarbon source is most likely the adjacent waste oil tank(s). It is possible that our test boring was situated on the upgradient side of the tanks and hence may have been positioned near the edge of the contaminated soil area. Further study is required to evaluate the extent of contamination and remediation.

If you have any questions regarding our services to date or conclusions, please call.

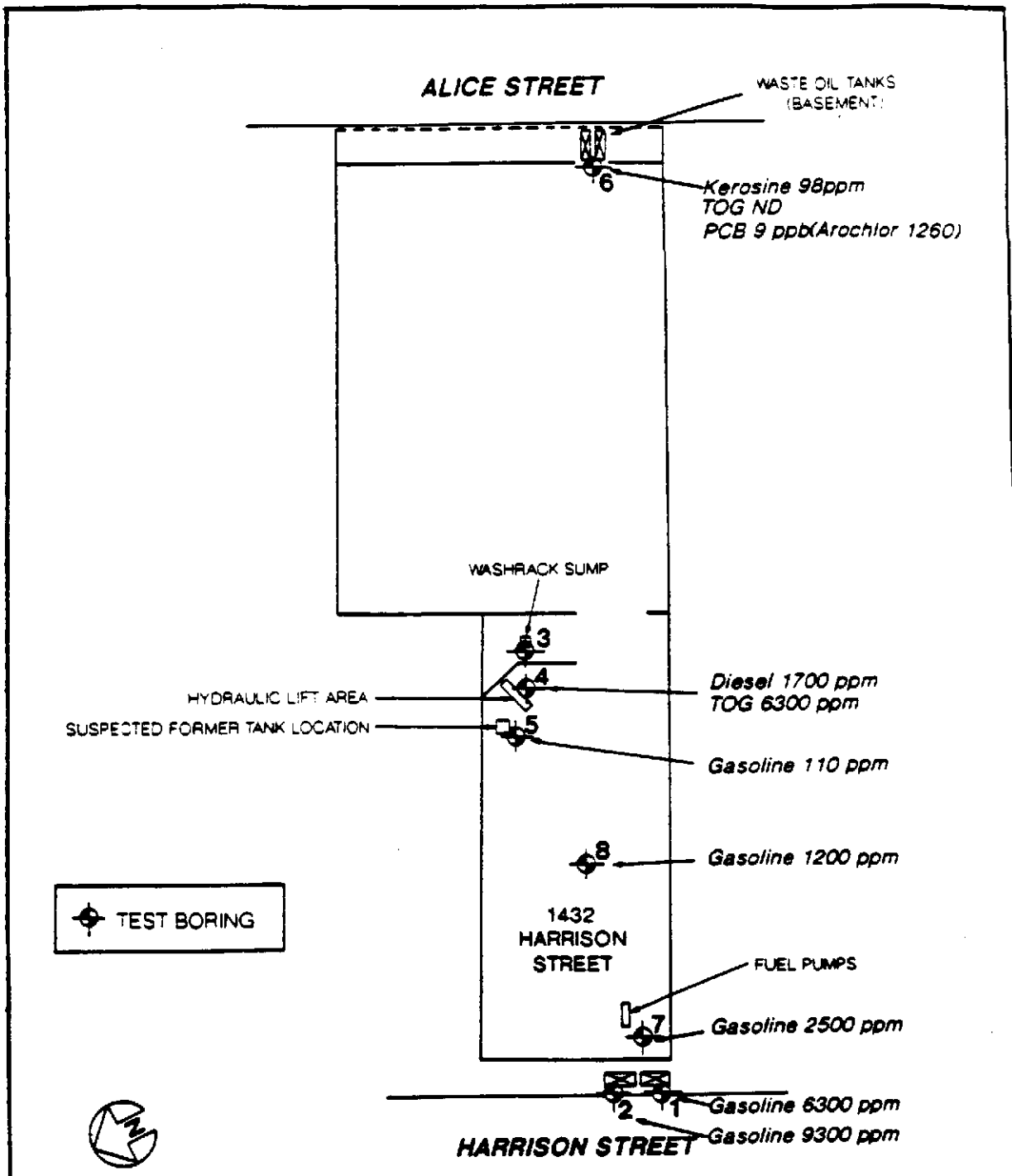
Yours very truly,

Subsurface Consultants, Inc.

James P. Bowers
Geotechnical Engineer 157 (expires 3/31/91)

CRF:JPB:gf

Attachments: Analytical Test Results, Plate 1
Plates 2 through 7, Boring Logs
Plate 8, Unified Soil Classification System
Analytical Test Reports
Chain-of-Custody Documents



ANALYTICAL TEST RESULTS

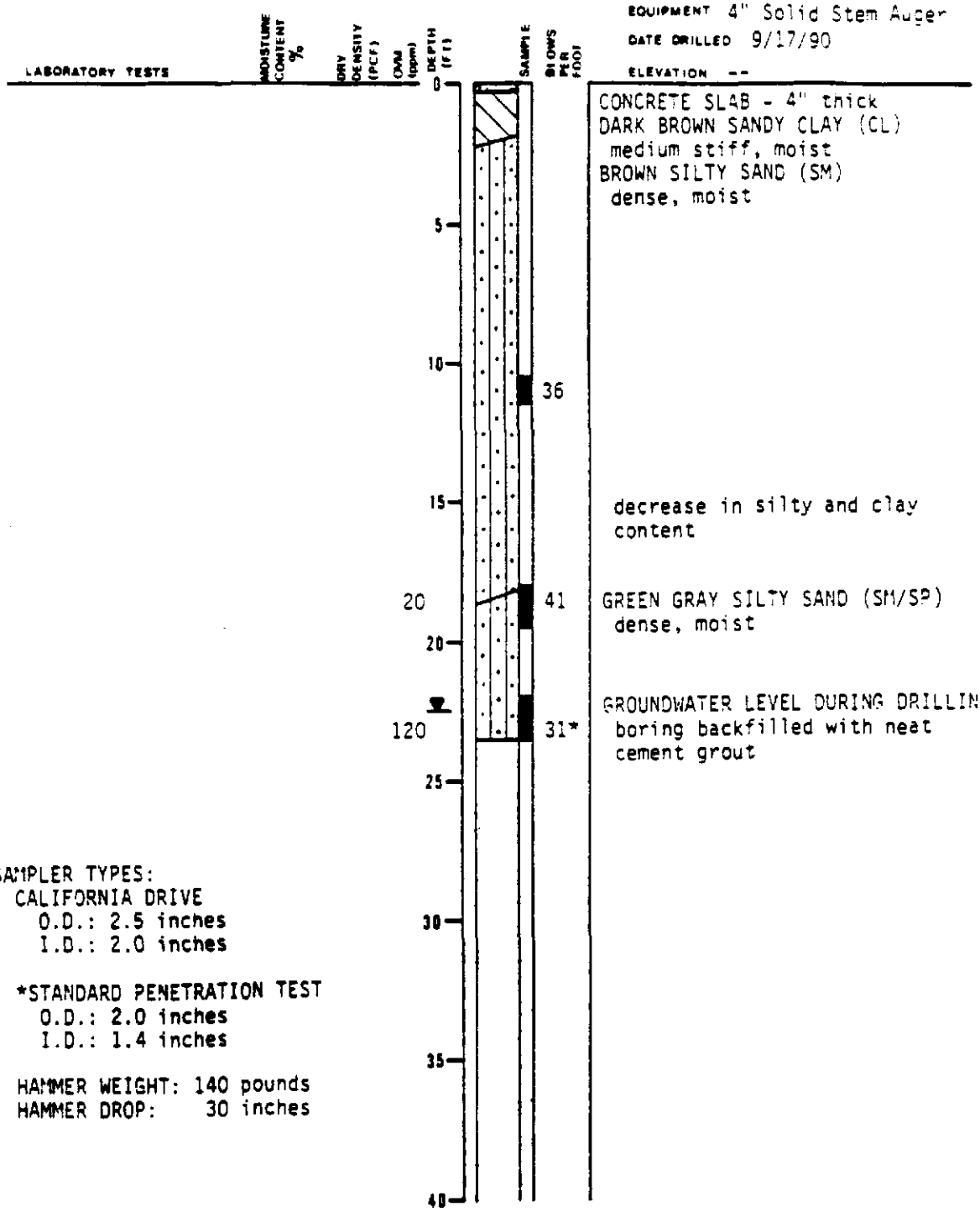
Subsurface Consultants

HARRISON STREET GARAGE - OAKLAND, CA

JOB NUMBER	DATE	APPROVED	PLATE
447.019	9/26/90		1

LOG OF TEST BORING 3

EQUIPMENT 4" Solid Stem Auger
DATE DRILLED 9/17/90
ELEVATION --



SAMPLER TYPES:
CALIFORNIA DRIVE
O.D.: 2.5 inches
I.D.: 2.0 inches

*STANDARD PENETRATION TEST
O.D.: 2.0 inches
I.D.: 1.4 inches

HAMMER WEIGHT: 140 pounds
HAMMER DROP: 30 inches

Subsurface Consultants	HARRISON STREET GARAGE - OAKLAND, CA	PLATE 2
	JOB NUMBER 447.019 / DATE 10/18/90 / APPROVED	

LOG OF TEST BORING 4

EQUIPMENT 4" Solid Stem Auger
DATE DRILLED 9/17/90
ELEVATION --

LABORATORY TESTS	MOISTURE CONTENT %	DRY DENSITY (PCF)	OVM (ppm)	DEPTH (FT)	SAMPLE	BLOWS PER FOOT	
				0			CONCRETE SLAB - 4" thick
							DARK BROWN SANDY CLAY (CL) medium stiff, moist
				5			BROWN SANDY CLAY (CL) medium stiff to stiff, moist
							GRAY-GREEN CLAYEY SAND (SC) dense, moist, strong petroleum product odor
			100	10		27	BROWN CLAYEY SAND (SC) dense, moist
				15			
				20			GRAY BROWN SILTY SAND (SM/SP) dense, moist
						48	GROUNDWATER LEVEL DURING DRILLING
						29	boring backfilled with neat cement grout
				25			
				30			
				35			
				40			

Subsurface Consultants

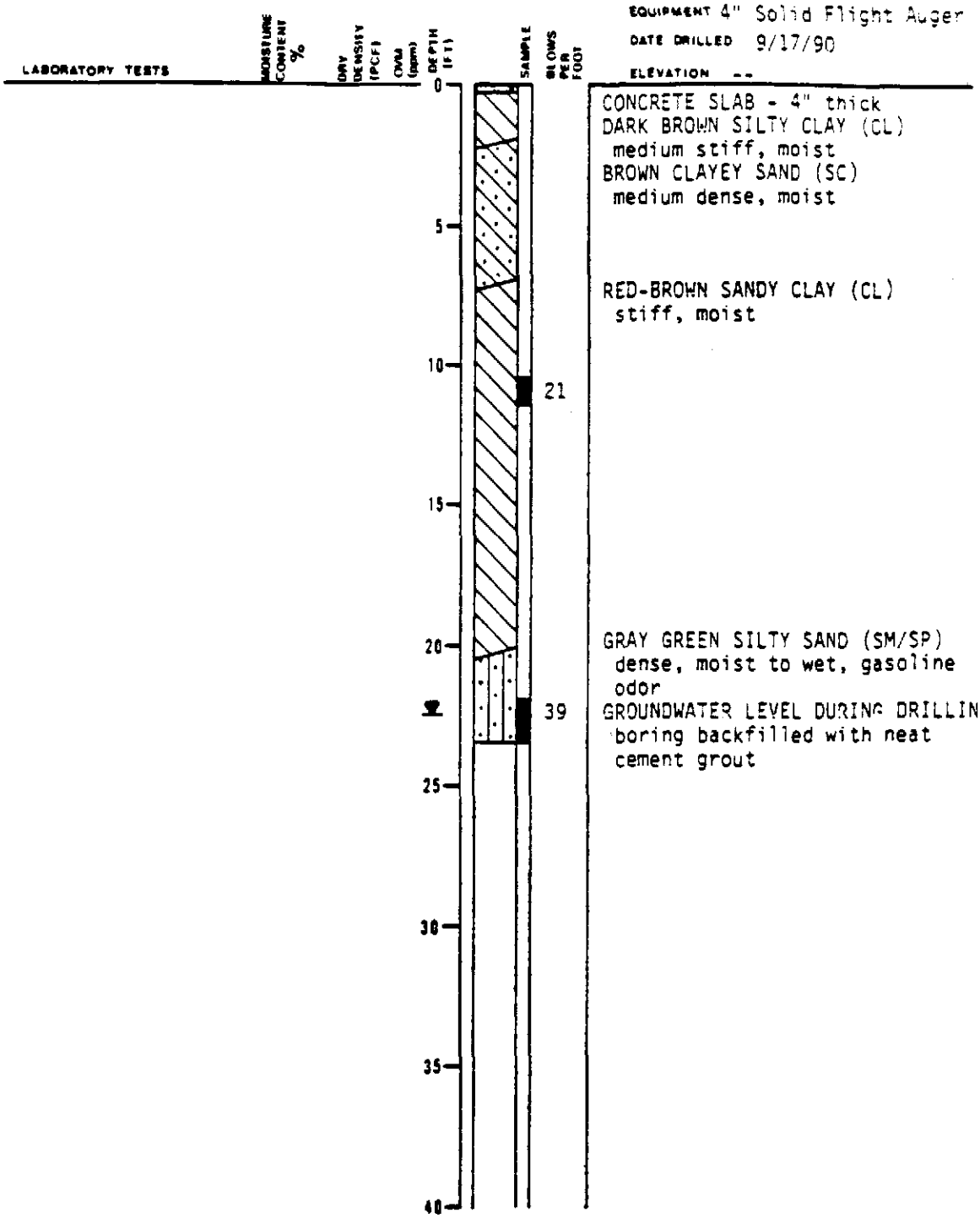
HARRISON STREET GARAGE - OAKLAND, CA

JOB NUMBER 447.019 | DATE 10/18/90 | APPROVED

PLATE 3

LOG OF TEST BORING 5

EQUIPMENT 4" Solid Flight Auger
DATE DRILLED 9/17/90
ELEVATION --



CONCRETE SLAB - 4" thick
DARK BROWN SILTY CLAY (CL)
medium stiff, moist
BROWN CLAYEY SAND (SC)
medium dense, moist

RED-BROWN SANDY CLAY (CL)
stiff, moist

GRAY GREEN SILTY SAND (SM/SP)
dense, moist to wet, gasoline odor
GROUNDWATER LEVEL DURING DRILLING
boring backfilled with neat cement grout

Subsurface Consultants

HARRISON STREET GARAGE - OAKLAND, CA

JOB NUMBER 447.019 | DATE 10/18/90 | APPROVED

PLATE 4

LOG OF TEST BORING 6

EQUIPMENT 3" Solid Flight Auger
DATE DRILLED 9/17/90
ELEVATION --

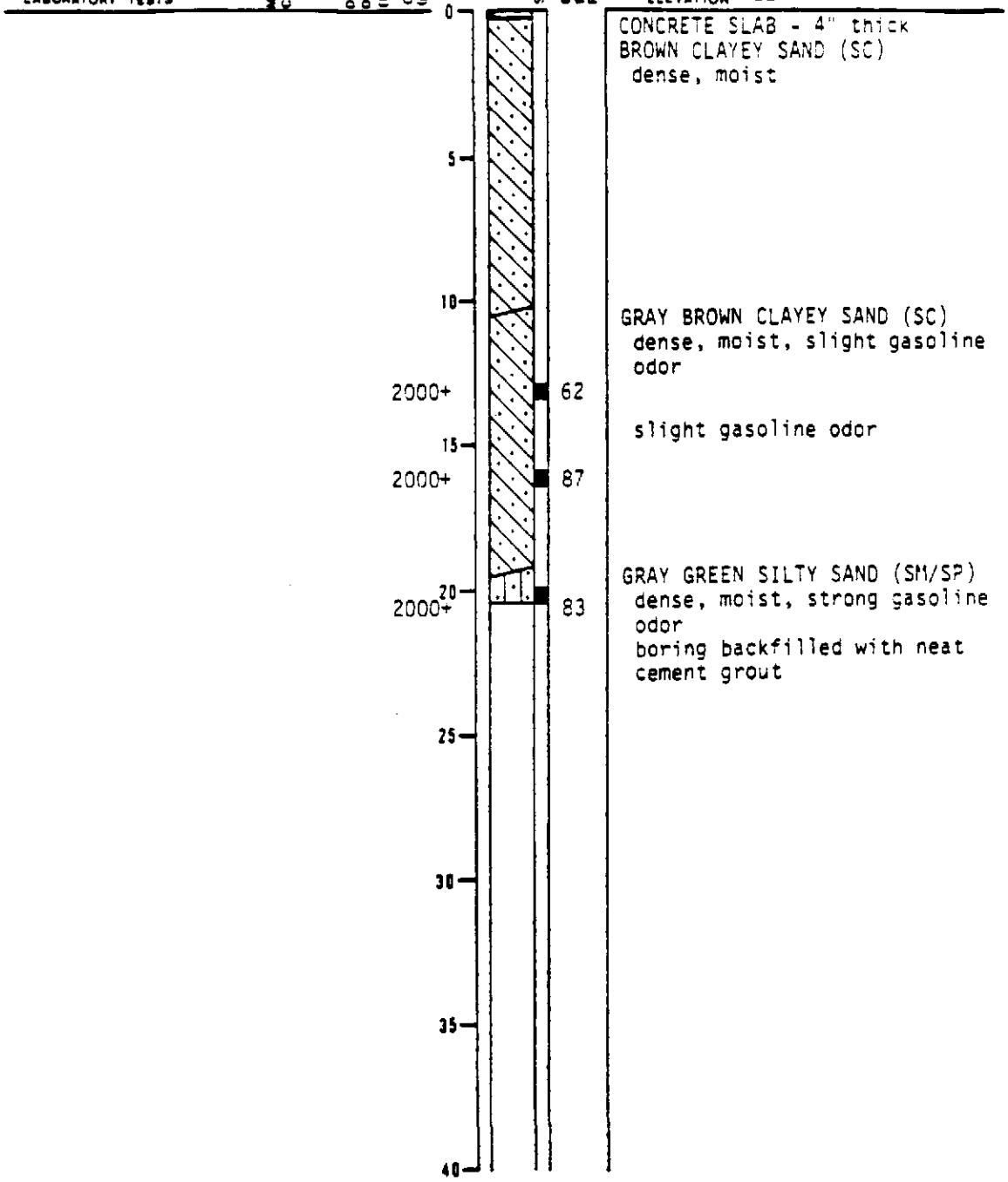
LABORATORY TESTS	MOISTURE CONTENT %	DRY DENSITY (PCF)	OVM (ppm)	DEPTH (FT)	SAMPLE	BLOWS PER FOOT	
				0			CONCRETE SLAB - 6" thick DARK BROWN SILTY SAND (SM) dense, moist
				5		50/6"	GRAY BROWN SILTY SAND (SM/SP) dense, moist, strong hydrocarbon odor
			5			50/6"	GROUNDWATER LEVEL DURING DRILLING boring backfilled with neat cement grout
			200+	10		50/6"	
				15			

HAMMER WEIGHT: 70 pounds
HAMMER DROP: 30 inches

Subsurface Consultants	HARRISON STREET GARAGE - OAKLAND, CA			PLATE
	JOB NUMBER	DATE	APPROVED	5
	447.019	10/18/90		

LOG OF TEST BORING 7

EQUIPMENT 3" Solid Flight Auger
DATE DRILLED 9/21/90
ELEVATION --



Subsurface Consultants

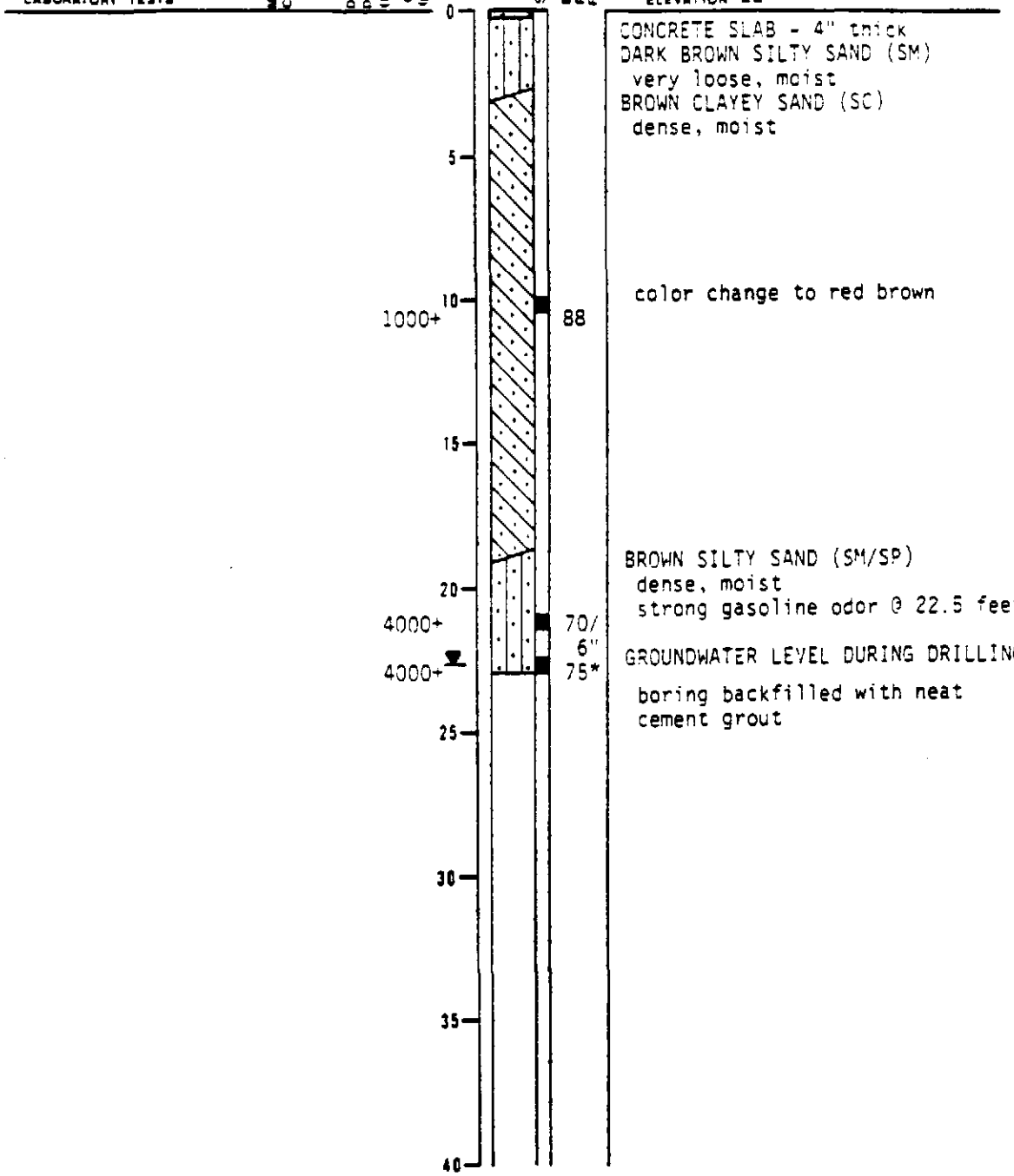
HARRISON STREET GARAGE - OAKLAND, CA

JOB NUMBER 447.019 | DATE 10/18/90 | APPROVED

PLATE 6

LOG OF TEST BORING 8

EQUIPMENT 3" Solid Flight Auger
DATE DRILLED 9/21/90
ELEVATION --



Subsurface Consultants

HARRISON STREET GARAGE - OAKLAND, CA

JOB NUMBER	DATE	APPROVED	PLATE
447.019	10/18/90		7

GENERAL SOIL CATEGORIES			SYMBOLS	TYPICAL SOIL TYPES
COARSE GRAINED SOILS (More than half is larger than No. 200 sieve)	GRAVEL (More than half coarse fraction is larger than No. 4 sieve size)	Clean Gravel with little or no fines	GW	Well Graded Gravel, Gravel-Sand Mixtures
			GP	Poorly Graded Gravel, Gravel-Sand Mixtures
		Gravel with more than 12% fines	GM	Silty Gravel, Poorly Graded Gravel-Sand-Silt Mixtures
			GC	Clayey Gravel, Poorly Graded Gravel-Sand-Clay Mixtures
	SAND (More than half coarse fraction is smaller than No. 4 sieve size)	Clean sand with little or no fines	SW	Well Graded Sand, Gravelly Sand
			SP	Poorly Graded Sand, Gravelly Sand
		Sand with more than 12% fines	SM	Silty Sand, Poorly Graded Sand-Silt Mixtures
			SC	Clayey Sand, Poorly Graded Sand-Clay Mixtures
FINE GRAINED SOILS (More than half is smaller than No. 200 sieve)	SILT AND CLAY (Liquid Limit Less than 50%)		ML	Inorganic Silt and Very Fine Sand, Rock Flour, Silty or Clayey Fine Sand, or Clayey Silt with Slight Plasticity
			CL	Inorganic Clay of Low to Medium Plasticity, Gravelly Clay, Sandy Clay, Silty Clay, Lean Clay
			OL	Organic Clay and Organic Silty Clay of Low Plasticity
	SILT AND CLAY (Liquid Limit Greater than 50%)		MH	Inorganic Silt, Micaceous or Diatomaceous Fine Sandy or Silty Soils, Elastic Silt
			CH	Inorganic Clay of High Plasticity, Fat Clay
			OH	Organic Clay of Medium to High Plasticity, Organic Silt
HIGHLY ORGANIC SOILS			PT	Peat and Other Highly Organic Soils

UNIFIED SOIL CLASSIFICATION SYSTEM

Subsurface Consultants

HARRISON STREET GARAGE - OAKLAND, CA

JOB NUMBER	DATE	APPROVED
447.019	10/18/90	

PLATE 8

Curtis & Tompkins, Ltd., Analytical Laboratories. Since 1878
2323 Fifth Street Berkeley CA 94710 Phone (415) 486-0900

DATE RECEIVED: 09/19/90
DATE REPORTED: 09/28/90

LAB NUMBER: 101685

CLIENT: SUBSURFACE CONSULTANTS

REPORT ON: 3 SOIL SAMPLES

PROJECT #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE

RESULTS: SEE ATTACHED

QA/QC Approval

Final Approval

LABORATORY NUMBER: 101685
CLIENT: SUBSURFACE CONSULTANTS
JOB #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE

DATE RECEIVED: 09/19/90
DATE EXTRACTED: 09/19/90
DATE ANALYZED: 09/21/90
DATE REPORTED: 09/28/90

Extractable Petroleum Hydrocarbons in Soils & Wastes
California DOHS Method
LUFT Manual October 1989

LAB ID	CLIENT ID	KEROSENE RANGE (mg/Kg)	DIESEL RANGE (mg/Kg)	REPORTING LIMIT (mg/Kg)
101685-1	B6 @ 9'	98	ND	10
101685-3	B4 @ 10'	ND	1,700	100

ND = Not Detected at or above reporting limit.

QA/QC SUMMARY

RPD, %	2
RECOVERY, %	87

LAB NUMBER: 101685
CLIENT: SUBSURFACE CONSULTANTS
PROJECT # : 447.019
LOCATION: 1432 HARRISON ST. GARAGE

DATE RECEIVED: 09/19/90
DATE ANALYZED: 09/27/90
DATE REPORTED: 09/28/90

ANALYSIS: HYDROCARBON OIL AND GREASE
METHOD: SMWW 17:5520 E&F

LAB ID	SAMPLE ID	RESULT	UNITS	REPORTING LIMIT
101685-1	B6 @ 9'	ND	mg/Kg	50
101685-3	B4 @ 10'	6,300	mg/Kg	50

ND = Not detected at or above reporting limit

QA/QC SUMMARY

RPD, %	1
RECOVERY, %	90

LABORATORY NUMBER: 101685
CLIENT: SUBSURFACE CONSULTANTS
JOB NUMBER: 447.019
JOB LOCATION: 1432 HARRISON ST. GARAGE

DATE RECEIVED: 09/19/90
DATE ANALYZED: 09/21/90
DATE REPORTED: 09/28/90

Total Volatile Hydrocarbons with BTXE in Soils & Wastes
TVH by California DOHS Method/LUFT Manual October 1989
BTXE by EPA 5030/8020

LAB ID	CLIENT ID	TVH AS GASOLINE (mg/Kg)	BENZENE (ug/Kg)	TOLUENE (ug/Kg)	ETHYL BENZENE (ug/Kg)	TOTAL XYLENES (ug/Kg)
101685-2	B5 @ 22 1/2'	110	24	210	69	1,300

QA/QC SUMMARY

RPD, %	3
RECOVERY, %	106

LAB NUMBER: 101685
CLIENT: SUBSURFACE CONSULTANTS
PROJECT #: 447.019
SAMPLE ID: B6 @ 9'

DATE RECEIVED: 09/19/90
DATE ANALYZED: 09/27/90
DATE REPORTED: 09/28/90

POLYCHLORINATED BIPHENYLS (PCBs)
ANALYSIS METHOD: EPA 8080
EXTRACTION METHOD: EPA 3550

AROCLOR TYPE	RESULT (ug/Kg)	REPORTING LIMIT (ug/Kg)
AROCLOR 1221	ND	17
AROCLOR 1232	ND	17
AROCLOR 1016	ND	17
AROCLOR 1242	ND	17
AROCLOR 1248	ND	17
AROCLOR 1254	ND	17
AROCLOR 1260	DETECTED(9.0)	17

ND = Not detected at or above reporting limit.

QA/QC SUMMARY

RPD, %	1
RECOVERY, %	80

LABORATORY NUMBER: 101685-1
CLIENT: SUBSURFACE CONSULTANTS
JOB #: 447.019
SAMPLE ID: B6 @ 9'

DATE RECEIVED: 09/19/90
DATE ANALYZED: 09/21/90
DATE REPORTED: 09/28/90

EPA 8010: Volatile Halocarbons in Soil & Wastes
Extraction Method: EPA 5030 - Purge & Trap

Compound	RESULT ug/Kg	REPORTING LIMIT ug/Kg
chloromethane	ND	10
bromomethane	ND	10
vinyl chloride	ND	10
chloroethane	ND	10
methylene chloride	ND	5.0
trichlorofluoromethane	ND	5.0
1,1-dichloroethene	ND	5.0
1,1-dichloroethane	ND	5.0
1,2-dichloroethene (total)	ND	5.0
chloroform	ND	5.0
freon 113	ND	5.0
1,2-dichloroethane	ND	5.0
1,1,1-trichloroethane	ND	5.0
carbon tetrachloride	ND	5.0
bromodichloromethane	ND	5.0
1,2-dichloropropane	ND	5.0
cis-1,3-dichloropropene	ND	5.0
trichloroethylene	ND	5.0
1,1,2-trichloroethane	ND	5.0
trans-1,3-dichloropropene	ND	5.0
dibromochloromethane	ND	5.0
2-chloroethylvinyl ether	ND	10
bromoform	ND	5.0
tetrachloroethylene	ND	5.0
1,1,2,2-tetrachloroethane	ND	5.0
chlorobenzene	ND	5.0
1,3-dichlorobenzene	ND	5.0
1,2-dichlorobenzene	ND	5.0
1,4-dichlorobenzene	ND	5.0

ND = Not detected at or above reporting limit.

QA/QC SUMMARY

Duplicate: Relative % Difference	34
Spike: Average % Recovery	75

LABORATORY NUMBER: 101685-1
CLIENT: SUBSURFACE CONSULTANTS
PROJECT #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE
SAMPLE ID: B6 @ 9'

DATE RECEIVED: 09/19/90
DATE ANALYZED: 09/21/90
DATE REPORTED: 09/28/90

EPA 8020: Volatile Aromatic Hydrocarbons in Soils & Wastes
Extraction Method: EPA 5030 - Purge & Trap

COMPOUND	Result ug/Kg	Reporting Limit ug/Kg
Benzene	ND	5.0
Toluene	ND	5.0
Ethyl Benzene	ND	5.0
Total Xylenes	ND	5.0
Chlorobenzene	ND	5.0
1,4-Dichlorobenzene	ND	5.0
1,3-Dichlorobenzene	ND	5.0
1,2-Dichlorobenzene	ND	5.0

ND = Not detected at or above reporting limit.

QA/QC SUMMARY

RPD, %	11
RECOVERY, %	93

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DATE RECEIVED: 09/19/90
DATE REPORTED: 09/28/90

LAB NUMBER: 101743

CLIENT: SUBSURFACE CONSULTANTS

REPORT ON: 1 SOIL SAMPLE

PROJECT #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE

RESULTS: SEE ATTACHED

QA/QC Approval

Final Approval

LABORATORY NUMBER: 101743
CLIENT: SUBSURFACE CONSULTANTS
PROJECT #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE

DATE RECEIVED: 09/19/90
DATE REQUESTED: 09/24/90
DATE ANALYZED: 09/27/90
DATE REPORTED: 09/28/90

ANALYSIS: SOLUBLE LEAD
ANALYSIS METHOD: EPA 7420
EXTRACTION BY WASTE EXTRACTION TEST: CCR TITLE 26 SECTION 22-66700

LAB ID	CLIENT ID	RESULT	UNITS	REPORTING LIMIT
101743-1	B6 @ 9'	0.06	mg/L	0.05

QA/QC SUMMARY

RPD, %	1
RECOVERY, %	103

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DATE RECEIVED: 09/24/90
DATE REPORTED: 09/26/90

LAB NUMBER: 101735

CLIENT: SUBSURFACE CONSULTANTS

REPORT ON: 1 SOIL SAMPLE

PROJECT #: 447.019
LOCATION: 1432 HARRISON STREET GARAGE

RESULTS: SEE ATTACHED

QA/QC Approval

Final Approval

LABORATORY NUMBER: 101735
CLIENT: SUBSURFACE CONSULTANTS
JOB NUMBER: 447.019
JOB LOCATION: 1432 HARRISON STREET GARAGE

DATE RECEIVED: 09/24/90
DATE ANALYZED: 09/25/90
DATE REPORTED: 09/26/90

Total Volatile Hydrocarbons with BTXE in Soils & Wastes
TVH by California DOHS Method/LUFT Manual October 1989
BTXE by EPA 5030/8020

LAB ID	CLIENT ID	TVH AS GASOLINE	BENZENE	TOLUENE	ETHYL BENZENE	TOTAL XYLENES
		(mg/Kg)	(mg/Kg)	(mg/Kg)	(mg/Kg)	(mg/Kg)
101735-1	B8 @ 22.5'	1,200	2.3	38	18	89

QA/QC SUMMARY

RPD, %	<1
RECOVERY, %	100

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DATE RECEIVED: 10/02/90
DATE REPORTED: 10/04/90

LAB NUMBER: 101822

CLIENT: SUBSURFACE CONSULTANTS

REPORT ON: 2 SOIL SAMPLES

PROJECT #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE

RESULTS: SEE ATTACHED

QA/QC Approval

Final Approval

LAB NUMBER: 101822
CLIENT: SUBSURFACE CONSULTANTS
PROJECT # : 447.019
LOCATION: 1432 HARRISON ST. GARAGE

DATE RECEIVED: 10/02/90
DATE ANALYZED: 10/04/90
DATE REPORTED: 10/04/90

ANALYSIS: HYDROCARBON OIL AND GREASE
METHOD: SMWW 17:5520F (503E)

LAB ID	SAMPLE ID	RESULT	UNITS	REPORTING LIMIT
101822-1	B6 @ 9 1/2'	ND	mg/Kg	50

ND = Not detected at or above reporting limit

QA/QC SUMMARY

RPD, %	12
RECOVERY, %	77

LABORATORY NUMBER: 101822
CLIENT: SUBSURFACE CONSULTANTS
JOB #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE

DATE RECEIVED: 10/02/90
DATE EXTRACTED: 10/03/90
DATE ANALYZED: 10/03/90
DATE REPORTED: 10/04/90

Extractable Petroleum Hydrocarbons in Soils & Wastes
California DOHS Method
LUFT Manual October 1989

LAB ID	CLIENT ID	KEROSENE RANGE (mg/Kg)	DIESEL RANGE (mg/Kg)	REPORTING LIMIT (mg/Kg)
101822-1	B6 @ 9 1/2'	140	ND	10

ND = Not Detected at or above reporting limit.

LABORATORY NUMBER: 101822
CLIENT: SUBSURFACE CONSULTANTS
JOB NUMBER: 447.019
JOB LOCATION: 1432 HARRISON ST. GARAGE

DATE RECEIVED: 10/02/90
DATE ANALYZED: 10/04/90
DATE REPORTED: 10/04/90

Total Volatile Hydrocarbons with BTXE in Soils & Wastes
TVH by California DOHS Method/LUFT Manual October 1989
BTXE by EPA 5030/8020

LAB ID	CLIENT ID	TVH AS GASOLINE (mg/Kg)	BENZENE (ug/Kg)	TOLUENE (ug/Kg)	ETHYL BENZENE (ug/Kg)	TOTAL XYLENES (ug/Kg)
101822-2	B7 @ 13'	ND(1.0)	ND(5.0)	ND(5.0)	ND(5.0)	ND(5.0)

ND = Not detected at or above reporting limit; Reporting limit indicated in parentheses.

QA/QC SUMMARY

RPD, %	7
RECOVERY, %	116

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DATE RECEIVED: 07/27/90
DATE REPORTED: 09/28/90

LAB NUMBER: 101742

CLIENT: SUBSURFACE CONSULTANTS

REPORT ON: 1 SOIL SAMPLE

PROJECT #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE

RESULTS: SEE ATTACHED

QA/QC Approval

Final Approval

LABORATORY NUMBER: 101742
CLIENT: SUBSURFACE CONSULTANTS
PROJECT #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE

DATE RECEIVED: 07/27/90
DATE REQUESTED: 09/24/90
DATE ANALYZED: 09/27/90
DATE REPORTED: 09/28/90

ANALYSIS: SOLUBLE LEAD
ANALYSIS METHOD: EPA 7420
EXTRACTION BY WASTE EXTRACTION TEST: CCR TITLE 26 SECTION 22-66700

LAB ID	CLIENT ID	RESULT	UNITS	REPORTING LIMIT
101742-1	2 @ 18.5	0.21	mg/L	0.05

QA/QC SUMMARY

RPD, %	1
RECOVERY, %	103

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RECEIVED
1990

DATE RECEIVED: 07/27/90
DATE REPORTED: 08/14/90

LAB NUMBER: 101213

CLIENT: SUBSURFACE CONSULTANTS

REPORT ON: 2 SOIL SAMPLES

PROJECT #: 447.019
LOCATION: HARRISON GARAGE

RESULTS: SEE ATTACHED

QA/QC Approval

Final Approval

LABORATORY NUMBER: 101213
CLIENT: SUBSURFACE CONSULTANTS
JOB NUMBER: 447.019
JOB LOCATION: HARRISON GARAGE

DATE RECEIVED: 07/27/90
DATE ANALYZED: 08/14/90
DATE REPORTED: 08/14/90

Total Volatile Hydrocarbons with BTXE in Soils & Wastes
TVH by California DOHS Method/LUFT Manual October 1989
BTXE by EPA 5030/8020

LAB ID	CLIENT ID	TVH AS GASOLINE (mg/Kg)	BENZENE (ug/Kg)	TOLUENE (ug/Kg)	ETHYL BENZENE (ug/Kg)	TOTAL XYLENES (ug/Kg)
101213-1	1 @ 20.0	6,300	99,000	490,000	110,000	610,000
101213-2	2 @ 18.5	9,300	98,000	900,000	190,000	1,100,000

QA/QC SUMMARY

RPD, %	2
RECOVERY, %	93

Curtis & Tompkins, Ltd., Analytical Laboratories Since 1878
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DATE RECEIVED: 09/24/90
DATE REPORTED: 10/02/90

LAB NUMBER: 101738

CLIENT: SUBSURFACE CONSULTANTS

REPORT ON: 1 SOIL SAMPLE

PROJECT #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE

RESULTS: SEE ATTACHED

QA/QC Approval

Final Approval

LABORATORY NUMBER: 101738
CLIENT: SUBSURFACE CONSULTANTS
PROJECT #: 447.019
LOCATION: 1432 HARRISON ST. GARAGE

DATE RECEIVED: 09/24/90
DATE ANALYZED: 09/27/90
DATE REPORTED: 10/02/90

ANALYSIS: SOLUBLE LEAD
ANALYSIS METHOD: EPA 7420
EXTRACTION BY WASTE EXTRACTION TEST: CCR TITLE 26 SECTION 22-66700

LAB ID	CLIENT ID	RESULT	UNITS	REPORTING LIMIT
101738-1	B7 @ 20'	0.07	mg/L	0.05

QA/QC SUMMARY

RPD, %	1
RECOVERY, %	103

Curtis & Tompkins Ltd.

LABORATORY NUMBER: 101738
CLIENT: SUBSURFACE CONSULTANTS
JOB NUMBER: 447.019
JOB LOCATION: 1432 HARRISON ST. GARAGE

DATE RECEIVED: 09/24/90
DATE ANALYZED: 10/01/90
DATE REPORTED: 10/02/90

Total Volatile Hydrocarbons with BTXE in Soils & Wastes
TVH by California DOHS Method/LUFT Manual October 1989
BTXE by EPA 5030/8020

LAB ID	CLIENT ID	TVH AS GASOLINE (mg/Kg)	BENZENE (ug/Kg)	TOLUENE (ug/Kg)	ETHYL BENZENE (ug/Kg)	TOTAL XYLENES (ug/Kg)
101738-1	B7 @ 20'	2,500	3,500	34,000	33,000	130,000

QA/QC SUMMARY

RPD, %	6
RECOVERY, %	101

Subsurface Consultants

CHAIN OF CUSTODY RECORD & ANALYTICAL TEST REQUEST

Project Name: 1432 HARRISON ST. GARAGE

SCI Job Number: 447.019

Project Contact at SCI: CRAIG FLETCHER

Sampled By: CRAIG FLETCHER

Analytical Laboratory: Curtis + Tompkins

Analytical Turnaround: RAPID

Sample ID	Sample Type[1]	Container Type[2]	Sampling Date	Hold	Analysis	Analytical Method
B6 @ 9½'	S	BT	9/17/90		TEH	8015 mod 5550
					TOG	SMWW 503E
B7 @ 13'	S	BT	9/21/90		TVH/BTXE	8015 mod/8020

* * * * * *

Released by: _____ Date: 10-2-90

Released by Courier: _____ Date: _____

Received by Laboratory: _____ Date: 10/3/90

Relinquished by Laboratory: _____ Date: _____

Received by: _____ Date: _____

[1] Sample Type: W = water, S = soil, O = other (specify)
[2] Container Type: V = VOA, P = plastic, G = glass, T = brass tube, O = other (specify)

Notes to Laboratory:
-Notify SCI if there are any anomalous peaks on GC or other scans
-Questions/clarifications...contact SCI at (415) 268-0461

Subsurface Consultants

& ANALYTICAL TEST REQUEST

Project Name: 1432 Harrison St. Garage

SCI Job Number: 447.019

Project Contact at SCI: Craig Fletcher / Jim Bowers

Sampled By: Craig Fletcher

Analytical Laboratory: Curtis & Tompkins, Ltd.

Analytical Turnaround: NORMAL

Sample ID	Sample Type[1]	Container Type[2]	Sampling Date	Hold	Analysis	Analytical Method
B7 @ 20'	S	T	9/21/90		TVH/BTXE	8015 mod./8020
"	"	"	"		soluble lead	

* * * * * *

Released by: [signature] Date: 9-24-90

Released by Courier: _____ Date: _____

Received by SCI: [signature] Date: 9/24/90

Received by Laboratory: _____ Date: _____

Relinquished by: _____ Date: _____

[1] Sample Type: W=Water, S=Soil, O=Other (specify)
[2] Container Type: V=VOA, P=Plastic, G=Glass, T=Brass Tube, O=Other (specify)

NOTES TO LABORATORY:
- Notify SCI if there are any anomalous peaks on GC or other scans
- Questions/clarifications - Contact SCI at (415) 268-0461

Subsurface Consultants

CHAIN OF CUSTODY RECORD & ANALYTICAL TEST REQUEST

Project Name: 1432 Harrison St. Garage

SCI Job Number: 447.019

Project Contact at SCI: Craig Fletcher / Jim Bowie

Sampled By: Craig Fletcher

Analytical Laboratory: Cuenco & Tomkins, Ltd.

Analytical Turnaround: RAPID

Sample ID	Sample Type[1]	Container Type[2]	Sampling Date	Hold	Analysis	Analytical Method
BB @ 22'6"	S	Plastic Sealed	9/21/90		TVH/BTXE	8015 mod/8020

* * * * * *

Released by: [signature] Date: 9-24-90

Released by Courier: _____ Date: _____

Received by SCI: _____ Date: _____

Received by Laboratory: [signature] Date: 9/27/90

Relinquished by: _____ Date: _____

---

1 Sample Type: W=Water, S=Soil, O=Other (specify)
2 Container Type: V=VOA, P=Plastic, G=Glass, T=Brass Tube, O=Other (specify)

NOTES TO LABORATORY:
- Notify SCI if there are any anomalous peaks on GC or other scans
- Questions/clarifications - Contact SCI at (415) 268-0461

Subsurface Consultants

ANALYTICAL TEST REQUEST

Project Name: HARRISON GARAGE

SCI Job Number: 447.019

Project Contact at SCI: JIM BOWERS

Sampled By: FERNANDO VELEZ

Analytical Laboratory: CURTIS & TOMPKINS

Analytical Turnaround: NORMAL

Sample ID	Sample Type[1]	Container Type[2]	Sampling Date	Hold	Analysis	Analytical Method
1@20.0	S	T	7/25/90		TVH + BTXE	
2@18.5	S	T	7/25/90		TVH + BTXE	
	"	"	"		SOLUBLE LEAD	(added 9/24/90)

* * * * * *

Released by: [signature] Date: _____

Released by Courier: _____ Date: _____

Received by Laboratory: [signature] Date: 7/27/90

Relinquished by Laboratory: _____ Date: _____

Received by: _____ Date: _____

[1] Sample Type: W = water, S = soil, O = other (specify)
[2] Container Type: V = VOA, P = plastic, G = glass, T = brass tube, O = other (specify)

Notes to Laboratory:
-Notify SCI if there are any anomalous peaks on GC or other scans
-Questions, clarifications...contact SCI at (415) 268-0461

Subsurface Consultants

CHAIN-OF CUSTODY RECORD
& ANALYTICAL TEST REQUEST

Project Name: 1432 Harrison St. Garage

CI Job Number: 447.019

Project Contact at SCI: Jim Bowers | Craig Fletcher

Sampled By: Craig Fletcher

Analytical Laboratory: Curtis & Tompkins

Analytical Turnaround: NORMAL

Sample ID	Sample Type[1]	Container Type[2]	Sampling Date	Hold	Analysis	Analytical Method
B6 @ 9'	S	BT	9/17/90		TOG	5030
					TEH	8015 mod / 3550
					Purgeable Halocarbons	8010
					PCB's	8080
					Purgeable Aromatics	8020
					Soluble Lead	(Added 9/24/90)
35 @ 22½'	S	BT	9/17/90		TVH / BTXE	8015 mod / 8020
B4 @ 10'	S	BT	9/17/90		TOG	5030
					TEH	8015 mod / 3550

* * * * * *

Released by: [signature] Date: 9-19-90

Released by Courier: _____ Date: _____

Received by SCI: _____ Date: _____

Received by Laboratory: [signature] Date: 9/19/90 9:00

Relinquished by: _____ Date: _____

---

[1] Sample Type: W=Water, S=Soil, O=Other (specify)
[2] Container Type: V=VOA, P=Plastic, G=Glass, T=Brass Tube, O=Other (specify)

NOTES TO LABORATORY:
- Notify SCI if there are any anomalous peaks on GC or other scans
- Questions/clarifications - Contact SCI at (415) 268-0461

CHROMALAB, INC.

Analytical Laboratory
Specializing in GC-GC/MS

- Environmental Analysis
- Hazardous Waste (#E694)
- Drinking Water (#965)
- Waste Water
- Consultation

October 22, 1990

ChromaLab File No.: 10901370

TECH-ART

Attn: Lew Schallit

RE: 8080 analysis
Client Sample Number: LB-PP-D
Project Location: 1432 HARRISON STREET
Date Analyzed: October 22, 1990

CHLORINATED PESTICIDE ANALYSIS

COMPOUNDS	CONCENTRATION (ug/Kg)	DETECTION LIMIT (ug/Kg)	SPIKE RECOVERY
ALDRIN	N.D.	10	----
DIELDRIN	N.D.	10	----
ENDRIN ALDEHYDE	N.D.	50	----
ENDRIN	N.D.	10	102.0%
HEPTACHLOR	N.D.	10	----
HEPTACHLOR EPOXIDE	N.D.	10	----
p,p' - DDT	N.D.	50	101.8%
p,p' - DDE	N.D.	10	93.3%
p,p. - DDD	N.D.	50	----
ENDOSULFAN I	N.D.	50	107.7%
ENDOSULFAN II	N.D.	50	----
α - BHC	N.D.	10	----
β - BHC	N.D.	10	----
δ - BHC (LINDANE)	N.D.	10	103.6%
ε - BHC	N.D.	10	----
ENDOSULFAN SULFATE	N.D.	100	----
p,p' - METHOXYCHLOR	N.D.	100	----
TOXAPHENE	N.D.	100	----
PCB's*	21000	100	----
CHLORDANE	N.D.	100	98.1%

*PCB 1260

CHROMALAB, INC.

David Duong
Senior Chemist

Eric Tam
Laboratory Director

2239 Omega Road, #1 • San Ramon, California 94583
415/831-1758 • Facsimile 415/831-8798

CHROMALAB, INC.

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- Hazardous Waste (#2394)
- Drinking Water (#955)
- Waste Water
- Consultation

October 22, 1990

ChromaLab File # 1090137 D

Client: Tech/Art
Attn: Lew Schalit
Date Sampled: Oct. 19, 1990
Date Submitted: Oct. 19, 1990
Date of Analysis: Oct. 20, 1990

Project Name: S Davis Garage, 1432 Harrison Street
Sample I.D.: LS-PP-D (Oil)
Method of Analysis: EPA 8240 Detection Limit: 75000ug/Kg

COMPOUND NAME	ug/Kg	Spike Recovery
CHLOROMETHANE	N.D	---
VINYL CHLORIDE	N.D.	---
BROMOMETHANE	N.D.	---
CHLOROETHANE	N.D.	---
TRICHLOROFLUOROMETHANE	N.D.	102.5% 82.3%
1,1-DICHLOROETHENE	N.D.	---
METHYLENE CHLORIDE	N.D.	---
1,2-DICHLOROETHENE (TOTAL)	N.D.	---
1,1-DICHLOROETHANE	N.D.	---
CHLOROFORM	N.D.	90.5% 91.7%
1,1,1-TRICHLOROETHANE	N.D.	---
CARBON TETRACHLORIDE	N.D.	---
BENZENE	450,000	---
1,2-DICHLOROETHANE	N.D.	---
TRICHLOROETHENE	80,000	---
1,2-DICHLOROPROPANE	N.D.	---
BROMODICHLOROMETHANE	N.D.	---
2-CHLOROETHYLVINYLETHER	N.D.	---
TRANS-1,3-DICHLOROPROPENE	N.D.	---
TOLUENE	3,200,000	93.2% 88.4%
CIS-1,3-DICHLOROPROPENE	N.D.	---
1,1,2-TRICHLOROETHANE	N.D.	---
TETRACHLOROETHENE	94,000	---
DIBROMOCHLOROMETHANE	N.D.	---
CHLOROBENZENE	N.D.	---
ETHYL BENZENE	1,000,000	---
BROMOFORM	N.D.	---
1,1,2,2-TETRACHLOROETHANE	N.D.	---
1,3-DICHLOROBENZENE	N.D.	---
1,4-DICHLOROBENZENE	N.D.	---
1,2-DICHLOROBENZENE	N.D.	91.5% 87.5%
TOTAL XYLENES	7,000,000	---

ChromaLab, Inc.

David Duong
Senior Chemist

Eric Tam
Lab Director

2239 Omega Road, #1 • San Ramon, California 94583
415/831-1788 • Facsimile 415/831-8795

E-1-7

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY
DAVID J. KEARS, Agency Director

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To Randall Morrison	From Paul Smith
Co. Crosby et al.	Co. Alco Co Haz. Mat.
Dept.	Phone # 271-4320
Fax # 273-8866	Fax # 569-4757

Hazardous Materials
80 Swan Way, Rm. 200
Oakland, CA 94621
(510) 271-4320

February 5, 1992

Mr. Randall Morrison Esq.
Crosby, Heafy, Roach & May
1999 Harrison Street
Oakland, CA 94612-3573

Mr. William Trinkle Esq.
Randick & ODea
1800 Harrison Street, Suite 1771
Oakland, CA 94612

Re: 1432 Harrison Street, Oakland, CA 94612

On September 24, 1990, the Alameda County Department of Environmental Health issued an order pursuant to California Health and Safety Code Section 25299.37(c) ordering Alvin Bacharach and Barbara Borsuk, the property owners of 1432 Harrison St., Oakland, to take appropriate corrective action in response to the discovery of unauthorized releases associated with gasoline tanks located at the Harrison St. property.

On February 7, 1991, Mr. Bacharach and Ms. Borsuk, pursuant to Health and Safety Code Section 25299.37(d), petitioned the State Water Resources Board requesting the Board name Douglas Motor Services, a 16 year tenant of the Harrison St. property, as the primary responsible party.

The Board issued Order No. WQ 91-07 on June 20, 1991, stating in part:

> In many cases we have deemed it reasonable to place one party in a position of secondary responsibility... We find no basis for suggesting that the County do that in this case.
>
> Petitioner's contention that Douglas ought to be added to the County's order appears to have merit. If the County has substantial evidence that the leaks from the underground tanks occurred during the time Douglas was operating them, the County should add Douglas to its order. (Order, p.4)

From June 20, 1991 until October 14, 1992, no new evidence on the responsible party issue was submitted to the Alameda County Department of Health.

On October 14, 1992, Mr. Bacharach and Ms. Borsuk presented new evidence to the Alameda County Department of Health and requested that Douglas Motor Service and its partners be named primary responsible parties for appropriate corrective action for unauthorized releases associated with gasoline tanks.

EXHIBIT G

On January 15, 1993, Douglas Motors Service presented evidence to the Alameda County Department of Health in arguing against adding Douglas Motor Service as a responsible party for appropriate corrective action for unauthorized releases associated with gasoline tanks.

On January 29, 1993, Mr. Bacharach and Ms. Borsuk replied to the January 15, 1993 Douglas Motors Service presentation.

Order:

The County has been presented substantial evidence that leaks from the underground gasoline tanks occurred during the time Douglas Motor Service was operating them. Therefore, Douglas Motor Service is a responsible party. Pursuant to Health and Safety code Section 25299.37(c), Alvin Bacharach, Barbara Borsuk, and Douglas Motor Service and Its Partners shall take appropriate corrective action in response to the discovery of unauthorized releases associated with gasoline tanks located at 1432 Harrison St., Oakland, CA.

Sincerely,

Paul M. Smith
Senior Hazardous Materials Specialist

cc:
Gil Jensen Esq., Alameda County District Attorneys Office, Consumer and Environmental Protection, 7677 Oakport Dr., Suite 400, Oakland, CA 94621
Alvin Bacharach, 383 Diablo Road, #100, Danville, CA 94526
Barbara Jean Borsuk, 383 Diablo Road, #100, Danville, CA 94526
Leland Douglas, Douglas Parking Company, 1721 Webster Street, Oakland, CA 94612
Lester Feldman, CA Regional Water Quality Control Board, San Francisco Bay Region, 2101 Webster St., Fifth Floor, Oakland, CA 94612

PROOF OF SERVICE BY MAIL
(1013,2015.5 C.C.P.)

I am a citizen of the United States and a resident of Alameda County. I am over the age of eighteen years and not a party to the within action; my business address is 1999 Harrison Street, Oakland, California 94612. On July 12, 1993, I served the within RESPONSE OF OWNERS ALVIN H. BACHARACH AND BARBARA JEAN BORSUK TO PETITION FOR REVIEW OF DOUGLAS MOTOR SERVICE AND ITS PARTNERS in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, Alameda County, California, addressed as follows:

Messrs. Ron and Leland Douglas
c/o William J. Trinkle, Esq.
RANDICK & O'DEA
1800 Harrison St., Suite 1771
Oakland, CA 94612

Mr. Thomas Peacock
Supervising Hazardous Materials Specialist
Alameda County Health Care Services Agency
Hazardous Materials Program
Department of Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

Gilbert A. Jensen, Esq.
Sr. Deputy District Attorney
Consumer and Environmental Protection Division
7677 Oakport Street
Suite 400
Oakland, CA 94621

Regional Water Quality Control Board
San Francisco Bay Area Region
2101 Webster Street, Suite 500
Oakland, CA 94612

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

Executed on July 12, 1993, at Oakland, California.

Mary Abbott