

FERGUSON, CASE, ORR, PATERSON  
& CUNNINGHAM

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50 JUN 28 1993

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June 30, 1993

Ms. Jennifer Eberle  
Hazardous Materials Specialist  
Alameda County Health Care Services Agency  
80 Swan Way, Room 200  
Oakland, California 94621

Re: STID 1248  
4035 Park Blvd., Oakland, California

Dear Ms. Eberle:

As a further to our telephone conversations yesterday and today, I am forwarding the following documents in connection with the above-referenced site:

1. Complaint for Damages and Declaratory Relief, filed by Desert Petroleum, Inc., against several defendants who operated the service station under lease and against Walton Engineering, who installed the new lines and dispensers. The complaint sets forth the facts regarding the lease of the station to the various lessees, including Messrs. Golpad and Karimabadi, who were leasing the service station property when the leak occurred.
2. Correspondence from Desert Petroleum to your agency, dated December 12, 1989, concerning the release. This letter identifies Mr. Jason Golpad as the operator of the service station at the time of the leak. ✓ This reference should also have included his partner, Mr. Karimabadi. *it doesn't*
3. Release report, filed by Desert Petroleum, dated December 8, 1989. This report also lists Mr. Golpad and his partnership, J & M Service Station, as the operators of the facility. ✓

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4. Face sheet of the Lease Agreement, evidencing a lease to the first lessee, Mr. Hadjian, for a term commencing in November 1987 and ending in October 1990. Desert Petroleum had not been the operator of the facility since 1987 and definitely was not the operator at the time of the leak. Nevertheless, for some unknown reason all cleanup directives were sent solely to Desert because it was the only RP identified with this project. ✓
5. Jason Golpad's Answers to Interrogatories. These are responses to interrogatories submitted by Desert Petroleum to Mr. Golpad and his partner in connection with the pending lawsuit. I have highlighted the relevant portions. These responses, which are provided under penalty of perjury, establish that Golpad and Karimabadi operated the station from September 1988 until November 1989 and that Walton Engineering's work was performed in September, 1989. ✓
6. Correspondence to Messrs. Hadjian, Golpad and Karimabadi, dated October 30, 1989, requesting that the lease assignment documents be signed and returned to Desert Petroleum. Although these were never signed, it is indisputable that Messrs. Golpad and Karimabadi operated the station for the period 9/88 to 11/89. ✓
7. Walton Engineering's "Completed Work" form confirming that the described work was completed and requesting payment from Golpad's and Karimabadi's lender, the Perry Morris Corporation. The attached "scope of work" schedule lists the work performed.

As noted in the complaint, the leak was caused by Walton Engineering's defective work, which was performed while Messrs. Golpad and Karimabadi were leasing and operating the service station from Desert Petroleum.

It is my understanding I will be receiving soon from Golpad's and Karimabadi's attorney, Mr. Matt Haley, a letter affirming that the lease has been terminated, subject to the parties retaining all rights in the pending litigation. This will eliminate any issue about Desert providing access to your agency onto the property to view the contents of the service station building. I assume that any directive from your agency for the removal of hazardous waste found in the building will be directed to Golpad and Karimabadi to the extent the

Ms. Jennifer Eberle  
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materials are associated with their prior operation of a gasoline service station and automobile repair facility on the property.

In the meanwhile, I am informed that the work we discussed yesterday and again today is being performed expeditiously. Please call me if you have any questions or comments regarding any of the above.

Very truly yours,

FERGUSON, CASE, ORR, PATERSON  
& CUNNINGHAM

By

  
Lou Carpiac

LC:dlr  
Enclosures

1 LOU CARPIAC  
2 FERGUSON, CASE, ORR, PATERSON  
3 & CUNNINGHAM  
4 315 North "A" Street  
Post Office Box 1229  
Oxnard, CA 93032  
(805) 486-4511

5 Attorneys for Plaintiff  
6 DESERT PETROLEUM, INC.

**ENDORSED  
FILED**

NOV 19 1990

RENE C. DAVIDSON, County Clerk  
By ALPHONSINE OATES, Deputy

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA

10 672656-2

11 DESERT PETROLEUM, INC., a  
12 California corporation,

13 Plaintiff,

14 vs.

15 WALTON ENGINEERING, INC., a  
16 California corporation, HOOSHANG  
17 F. HADJIAN, JASON GOLPAD,  
18 MOJTABA KARIMABADI, J & M BEACON  
AUTO SERVICE, a California  
partnership, and DOES 1 through  
50, inclusive,

19 Defendants.

Case No.

COMPLAINT FOR DAMAGES  
AND FOR DECLARATORY  
RELIEF

1. Negligence (against Operator Defendants)
2. Negligence (against Walton and Contractors)
3. Breach of Lease
4. Waste
5. Private Nuisance
6. Implied Indemnity
7. Contribution
8. Declaratory Relief
9. Quasi-Contract
10. Express Indemnity

20  
21 PARTIES AND GENERAL ALLEGATIONS

22 1. Plaintiff DESERT PETROLEUM, INC. (hereinafter "DESERT")  
23 is, and at all times herein mentioned was, a corporation orga-  
24 nized and existing under the laws of the State of California,  
25 with its principal place of business in the City of Ventura,  
26 County of Ventura, State of California.

27 2. Defendant WALTON ENGINEERING, INC. (hereinafter  
28 "WALTON") is, and at all times herein mentioned was, a corpora-

1 tion organized and existing under the laws of the State of  
2 California, with its principal place of business in the County of  
3 Sacramento, State of California.

4 3. Plaintiff is informed and believes and thereon alleges  
5 that defendant JASON GOLPAD (herein "GOLPAD") is an individual  
6 whose residence is in the County of Alameda, State of California.

7 4. Plaintiff is informed and believes and thereon alleges  
8 that defendant MOJTABA KARIMABADI (herein "KARIMABADI") is an  
9 individual whose residence is in the County of Alameda, State of  
10 California.

11 5. Plaintiff is informed and believes and thereon alleges  
12 that defendant HOOSHANG F. HADJIAN (herein "HADJIAN") is an  
13 individual whose residence is in the County of Contra Costa,  
14 State of California, and who conducted business in the County of  
15 Alameda as alleged herein.

16 6. Plaintiff is informed and believes, and thereon alleges  
17 that defendants JASON GOLPAD and MOJTABA KARIMABADI were partners  
18 in a business enterprise under the fictitious business name of  
19 J & M Beacon Auto Service. Plaintiff is further informed and  
20 believes and thereon alleges that defendant J & M BEACON AUTO  
21 SERVICE (herein J & M) is, and at all times herein mentioned was,  
22 a California general partnership, with its principal place of  
23 business in Alameda County, and its general partners include  
24 defendants JASON GOLPAD, MOJTABA KARIMABADI, and DOES 41 to 50.

25 7. The defendants designated herein by the fictitious names  
26 DOES 1 through 50, inclusive, were in some way responsible for,  
27 participated in, or contributed to the matters of which plaintiff  
28 complains herein, and in some fashion are responsible therefor.

1 The names of said defendants are unknown to plaintiff and when  
2 the true identities of such defendants are ascertained and the  
3 extent of their participation and responsibility for the matters  
4 alleged herein is determined, plaintiff will amend this complaint  
5 to set forth their true names and capacities.

6 8. Plaintiff is informed and believe and thereon alleges  
7 that each of the defendants is responsible in some manner for the  
8 acts alleged below, and the damages suffered thereby by plaintiff  
9 were proximately caused by or contributed to by the conduct of  
10 each defendant. Each defendant was the agent or employee of one  
11 or more of the others, and each acted within the scope of that  
12 agency in committing the acts alleged below.

13 9. On or about November 2, 1987, plaintiff DESERT, as  
14 lessor, and defendant HADJIAN, as lessee, entered into a lease  
15 agreement with respect to a gasoline service station on real  
16 property commonly described as 4035 Park Boulevard, in the City  
17 of Oakland, County of Alameda, State of California (hereinafter  
18 variously referred to as the "Property" or the "Service Sta-  
19 tion"). A true and correct copy of said lease instrument is  
20 attached hereto as Exhibit "A" and is incorporated herein by this  
21 reference (hereinafter the "Lease"). Defendant DESERT is, and at  
22 all times herein relevant was, the owner in fee simple of the  
23 Property. Defendant HADJIAN operated a gasoline service station  
24 on the Property from the inception of the Lease until approxi-  
25 mately September 31, 1989.

26 10. On or about October 1, 1989, defendant HADJIAN assigned  
27 the Lease to defendants GOLPAD and KARIMABADI individually, and  
28 their partnership, J & M. Although no written consent was given

1 to the assignment, by the parties' conduct, DESERT consented to  
2 the assignment and GOLPAD, KARIMABADI and J & M assumed the  
3 lessee's obligations under the Lease, including the making of  
4 rent payments, which were tendered to and accepted by DESERT.  
5 Defendants GOLPAD, KARIMABADI and J & M took possession of the  
6 Property on or about October 1, 1989, and operated a gasoline  
7 service station thereon, individually and as partners, under the  
8 business name of J & M Beacon Auto Service.

9 11. Plaintiff is informed and believes and thereon alleges  
10 that at all times relevant hereto each of the defendants, includ-  
11 ing all defendants designated herein as DOE defendants 1 through  
12 20, had an interest in the Property, whether as lessee, subles-  
13 see, licensee, operator or other beneficial or possessory inter-  
14 est, and operated certain underground gasoline storage tanks and  
15 related equipment situated on and under the Property.

16 12. During the terms of the Lease described above defen-  
17 dants HADJIAN, GOLPAD, KARIMABADI, J & M and DOES 1 through 20  
18 (hereinafter referred to collectively as the "Operator Defen-  
19 dants") conducted operations on the Property which involved the  
20 use of various petroleum products and other hazardous substances,  
21 and in connection therewith each of them operated underground  
22 gasoline storage tanks and related equipment and piping on and  
23 under the Property.

24 13. Plaintiff is informed and believes and thereon alleges  
25 that approximately in September 1989 defendants GOLPAD,  
26 KARIMABADI and J & M entered into an agreement with defendant  
27 WALTON for the installation of certain equipment and piping  
28 associated with the underground storage tanks and dispensers on

1 and under the Service Station (herein referred to as the "Alter-  
2 ation Work")

3 14. On or about November 30, 1989 DESERT received verbal  
4 notification from the Alameda County Department of Environmental  
5 Health (herein the "Environmental Agency") that traces of hydro-  
6 carbon contamination had been discovered in the public sewer  
7 system lines near the Service Station and requested that the  
8 underground storage tanks at the Service Station be tested for  
9 structural integrity to ascertain whether gasoline was being  
10 released therefrom. DESERT informed the Environmental Agency  
11 that the Service Station was being operated by Operator Defen-  
12 dants under the terms of the Lease and they were the persons and  
13 entities who had exclusive possession of the Property and control  
14 over the operation of the underground storage tanks and related  
15 service station equipment. This was DESERT's first hint of  
16 possible contamination of the Property.

17 15. Despite repeated requests by plaintiff DESERT to  
18 GOLPAD, KARIMABADI and J & M that they undertake the actions  
19 mandated by the Environmental Agency, said defendants refused and  
20 failed to test or discontinue operation of the underground  
21 storage tanks.

22 16. By virtue of the regulations and mandates of the  
23 Environmental Agency, the Regional Water Quality Control Board,  
24 and other regulatory agencies having jurisdiction and responsi-  
25 bility for the enforcement of the federal, state and local  
26 environmental laws, DESERT, as the owner of the Property, was  
27 directed by Environmental Agency to test the underground storage  
28 tanks and related components on and below the Service Station and



1 to perform necessary site assessments, and if necessary, to  
2 undertake remediation measures immediately. DESERT was also  
3 ordered by the Environmental Agency to cease operation by its  
4 lessee of the underground storage tanks. DESERT complied with  
5 said order and caused its lessees to discontinue operation of the  
6 underground storage tanks.

7 17. DESERT notified Operator Defendants and WALTON ENGI-  
8 NEERING, INC. of the presence of contamination and requested that  
9 they indemnify plaintiff and specifically requested that defen-  
10 dants contribute financially to meet the anticipated expenses of  
11 performing the mandated investigation and remediation. Notwith-  
12 standing said requests, defendants, and each of them, have  
13 refused and continue to refuse to assume any part of said remedi-  
14 ation responsibility.

15 18. Plaintiff is informed and believes and thereon alleges  
16 that at all times herein mentioned there existed a unity of  
17 interest and ownership between defendants WALTON and DOES 31  
18 through 40, such that any individuality and separateness between  
19 WALTON and DOES 31 through 40 ceased and that WALTON is the alter  
20 ego of DOES 31 through 40 in that WALTON is, and at all times  
21 herein mentioned was, a mere shell, instrumentality and conduit  
22 through which DOES 31 through 40 carried on their business in  
23 this corporate name, exercising complete control and dominance of  
24 such business to such an extent that any individuality or sepa-  
25 rateness of WALTON and DOES 31 through 40 does not, and at all  
26 times herein mentioned did not, exist. Furthermore there exists,  
27 and at all times herein mentioned has existed, a unity of inter-  
28 est and ownership between DOES 31 through 40 and WALTON such that

1 any separateness has ceased to exist in that DOES 31 through 40  
2 intermingled their assets with those assets of WALTON, and caused  
3 their assets and the assets of the corporation to be transferred  
4 one to the other without adequate consideration. Adherence to  
5 the fiction of the separate existence of WALTON as an entity  
6 distinct from DOES 31 through 40 would permit an abuse of the  
7 corporate privilege, allow corporate subterfuge and promote  
8 injustice.

9 **FIRST CAUSE OF ACTION**  
10 **(Negligence)**  
11 **(Against Operator Defendants)**

12 19. Plaintiff realleges paragraphs 1 through 18 and makes  
13 same a part of this cause of action as though fully set forth  
14 herein.

15 20. At all times relevant hereto, the Operator Defendants,  
16 and each of them, had a duty to operate, manage and oversee the  
17 operation of the Property in such a manner so as not to permit  
18 discharges or releases of hazardous materials. Without limiting  
19 the generality of the foregoing, Operator Defendants had a duty  
20 to operate the storage tanks and related equipment in a good,  
21 safe and secure condition and to otherwise operate and manage the  
22 Property and its related equipment in a manner which would  
23 prevent the contamination of the soil and groundwater by gasoline  
24 or other hazardous substances.

25 21. Plaintiff is informed and believes and thereon alleges  
26 that Operator Defendants, and each of them, negligently pos-  
27 sessed, operated, managed and supervised the Property and the  
28 operations thereon, and their actions resulted in the contamina-  
tion of the soil on and under the Property and off-site migration

1 of gasoline and other hazardous substances (herein the "Contami-  
2 nation"), during their respective tenures of possession and  
3 operation. Plaintiff is further informed and believes and  
4 thereon allege that the Contamination has impacted and continues  
5 to spread in the underlying groundwater and has migrated off-site  
6 along the sewer line. Because the environmental damage is still  
7 ongoing, plaintiff will seek leave to amend this complaint to  
8 allege such additional damage once the facts have been fully  
9 ascertained.

10 22. As a proximate result of defendants' negligence,  
11 plaintiff incurred, and will continue to incur, clean up costs,  
12 including costs for testing and decontaminating the soil and  
13 groundwater and disposing of the hazardous waste from the Proper-  
14 ty (hereinafter the "Remediation" or "Clean-up"), all to plain-  
15 tiff's damage in a sum which has not yet been determined, but  
16 which will exceed the jurisdictional sum of \$25,000. Plaintiff  
17 will seek leave of Court to amend this complaint to state the  
18 full amount of such damages when they are ascertained.

19 23. As a further proximate result of the negligence of  
20 defendants, plaintiff has suffered additional damages in the form  
21 of (i) lost profits because of plaintiff's inability to develop  
22 or sell the property due to the presence of such contaminants,  
23 and (ii) loss in rental income, the extent of which has not yet  
24 been ascertained. Plaintiff will seek leave of Court to amend  
25 this complaint to state the full amount of those damages when  
26 they are ascertained.

27 / / /

28 / / /



1 of (i) lost profits because of plaintiff's inability to develop  
2 or sell the property due to the presence of such contaminants,  
3 and (ii) loss in rental income, the extent of which has not yet  
4 been ascertained. Plaintiff will seek leave of Court to amend  
5 this complaint to state the full amount of those damages when  
6 they are ascertained.

7 **THIRD CAUSE OF ACTION**  
8 **(Breach of Lease)**  
9 **(Against Operator Defendants)**

10 29. Plaintiff realleges paragraphs 1 through 28 and makes  
11 same a part of this cause of action as though fully set forth  
12 herein.

13 30. Pursuant to paragraphs 7 and 8 of the Lease, Operator  
14 Defendants did agree in pertinent part as follows:

15 "7. COMPLIANCE WITH LAWS: Lessee shall . . .  
16 comply with all laws and ordinances . . . regula-  
17 tions and requirements (. . . regarding pollution  
18 and air quality) of all federal, state and municipi-  
19 pal governments . . . which shall impose a duty  
20 upon the Lessor or Lessee . . . ."

21 "8. REPAIRS AND MAINTENANCE: Lessee shall . . .  
22 take good care of the Premises . . . Lessee shall  
23 make all necessary repairs, interior and exterior,  
24 structural and non-structural, ordinary as well as  
25 extraordinary, foreseen as well as unforeseen.  
26 Lessee shall not commit, permit . . . any waste,  
27 damage or injury to the Premises. . . ."

28 31. Defendants, and each of them, breached the Lease as  
follows:

29 a) Defendants, and each of them, created waste on the  
30 Property by virtue of the Contamination described in this com-  
31 plaint.

32 b) Defendants, and each of them, failed to make the  
33 necessary repairs and generally take good care of the underground

1 storage tanks, product lines, dispensers and related equipment.  
2 Plaintiff is informed and believes and alleges thereon that as a  
3 result of the disrepair and faulty repair of equipment on the  
4 Property by Operator Defendants, there were spills and other  
5 unauthorized releases of gasoline and hydrocarbon substances into  
6 the soil and groundwater.

7 c) Operator defendants failed to comply with all laws  
8 as required by paragraph 7 of the Lease, in that they failed to  
9 conduct tank testing when ordered by the Environmental Agency and  
10 failed and refused to undertake or pay for the costs of remediating  
11 the soil and groundwater contamination resulting from the  
12 discharge of gasoline described in this complaint.

13 32. As a direct result of defendants' aforesaid breaches of  
14 the Lease, plaintiff has been damaged in that plaintiff incurred,  
15 and will continue to incur, clean up costs, including costs for  
16 testing and decontaminating the soil and groundwater and disposing  
17 of the hazardous waste from the Property, all to plaintiff's  
18 damage in a sum which has not yet been determined, but which will  
19 exceed the jurisdictional sum of \$25,000.00. Plaintiff will seek  
20 leave of Court to amend this complaint to state the full amount  
21 of such damages when they are ascertained.

22 33. As a further result of defendants' breaches of the  
23 Lease, plaintiff has suffered additional damages in the form of  
24 (i) lost profits because of plaintiff's inability to develop or  
25 sell the property due to the presence of such contaminants and  
26 (ii) loss of rental income, the extent of which has not yet been  
27 ascertained. Plaintiff will seek leave of Court to amend this  
28 complaint to state the full amount of those damages when they are

1 ascertained.

2 34. Paragraph 24 of the Lease provides as follows:

3 "24. ATTORNEYS' FEES: If either party hereto  
4 shall bring suit . . . for the breach of any pro-  
5 vision(s) of this Lease Agreement, the prevailing  
6 party shall be entitled to receive from the losing  
7 party such amounts as the court may adjudge to be  
8 reasonable as attorneys' fees."

9 35. Plaintiff has engaged the law firm of Ferguson, Case,  
10 Orr, Paterson & Cunningham to represent it in this lawsuit and,  
11 consequently, plaintiff has incurred and will continue to incur,  
12 attorney's fees to prosecute this action.

13 **FOURTH CAUSE OF ACTION**  
14 **(Waste)**  
15 **(Against Operator Defendants)**

16 36. Plaintiff realleges paragraphs 1 through 35 and makes  
17 same a part of this cause of action as though fully set forth  
18 herein.

19 37. As a proximate result of the above-described conduct,  
20 Operator Defendants committed waste by allowing the soil and  
21 groundwater on and under the Property to be contaminated by  
22 gasoline and other hazardous substances during their respective  
23 tenures.

24 38. As a proximate result of the waste committed by Opera-  
25 tor Defendants, plaintiff incurred, and will continue to incur,  
26 Remediation Costs, including costs for testing and decontaminat-  
27 ing the soil and groundwater and disposing of the hazardous waste  
28 from the Property. Plaintiff will seek leave of Court to amend  
this complaint to state the full amount of such damages when they  
are ascertained.

///

1           39. As a further proximate result of the waste committed by  
2 Operator Defendants, plaintiff has suffered additional damages in  
3 the form of (i) lost profits because of plaintiff's inability to  
4 develop or sell the property due to the presence of such contami-  
5 nants and (ii) loss of rental income, the extent of which has not  
6 yet been ascertained. Plaintiff will seek leave of Court to  
7 amend this complaint to state the full amount of those damages  
8 when they are ascertained.

9                                   **FIFTH CAUSE OF ACTION**  
10                                   **(For Private Nuisance)**  
11                                   **(Against All Defendants)**

12           40. Plaintiff realleges paragraphs 1 through 39 and makes  
13 same a part of this cause of action as though fully set forth  
14 herein.

15           41. The above-described conduct of defendants, and each of  
16 them, constitutes a nuisance within the meaning of Civil Code  
17 section 3479 in that it substantially interfered with plaintiff's  
18 use and comfortable enjoyment of the property.

19           42. As a proximate result of the nuisance created by  
20 defendants, and each of them, plaintiff incurred, and will  
21 continue to incur, Remediation Costs, including costs for testing  
22 and decontaminating the soil and groundwater and disposing of the  
23 hazardous waste from the Property. Plaintiff will seek leave of  
24 Court to amend this complaint to state the full amount of such  
25 damages when they are ascertained.

26           43. As a further proximate result of the nuisance created  
27 by defendants, plaintiff has suffered additional damages in the  
28 form of (i) lost profits because of plaintiff's inability to  
develop or sell the property due to the presence of such contami-



1 nants and (ii) loss of in rental income, the extent of which has  
2 not yet been ascertained. Plaintiff will seek leave to amend  
3 this complaint to state the full amount of those damages when  
4 they are ascertained.

5 44. As a direct and proximate result of the nuisance  
6 created by defendants, plaintiff has suffered further damage in  
7 that the value of plaintiff's property has been diminished in an  
8 amount which cannot be ascertained at this time, but which is in  
9 excess of the jurisdictional sum of \$25,000.00. The value of  
10 plaintiff's property will continue to diminish until such time as  
11 the nuisance is abated by complete Remediation of the Contam-  
12 ination on the Property. Plaintiff will ask leave to amend this  
13 complaint to state the full amount of those damages when they are  
14 ascertained.

15 45. Plaintiff has no adequate remedy at law in that the  
16 value of plaintiff's property has been diminished and will  
17 continue to diminish and that a multiplicity of actions will be  
18 required to secure compensation for future damages.

19 **SIXTH CAUSE OF ACTION**  
20 **(Implied Indemnity)**  
21 **(Against All Defendants)**

22 46. Plaintiff realleges paragraphs 1 through 45 and makes  
23 same a part of this cause of action as though fully set forth  
24 herein.

25 47. Plaintiff knows of no negligence or other wrongful  
26 conduct on its part which resulted in or contributed to any  
27 release or discharge of gasoline or other hazardous substances on  
28 the Property. At no time during the lease term did plaintiff or  
any agent or employee of plaintiff operate any underground

1 gasoline storage tank or related equipment on the Property or  
2 make alterations thereto.

3 48. Government agencies having jurisdiction over hazardous  
4 waste, are empowered to impose liability against prior and  
5 current owners and operators of the subject Property for the  
6 clean-up of contaminated soil and groundwater pursuant to feder-  
7 al, state and local environmental laws and regulations. By  
8 virtue of the fact that plaintiff is record owner of the Property  
9 at the present time when the contamination was discovered, the  
10 regulations of the Environmental Agency and the Regional Water  
11 Quality Control Board impose on plaintiff the obligation to  
12 investigate and clean-up the contamination, leaving plaintiff to  
13 recover its Remediation Costs from those parties who owned or  
14 operated the Property and the said equipment before said contami-  
15 nation was discovered.

16 49. The liability being incurred by plaintiff for the  
17 Remediation of the Property arises not as a result of plaintiff's  
18 fault, active or passive, but solely as a result of the primary  
19 and active negligence and other wrongful conduct of defendants,  
20 and each of them, in connection with their operation of the  
21 Service Station the Alteration Work described in this complaint.

22 50. Plaintiff gave written notice to defendants of the  
23 clean-up obligations required under the regulations of Environ-  
24 mental Agency and the Regional Water Quality Control Board, and  
25 requested that defendants assume or contribute to the cost of  
26 said mandated clean-up, based on defendants' primary responsibil-  
27 ity for the environmental damages and the resultant obligation to  
28 indemnify plaintiff for any related loss and remediation costs.

1 Notwithstanding such request, defendants refused, and continue to  
2 refuse, to fully indemnify plaintiff for the anticipated Remedia-  
3 tion Costs.

4 51. In resolving the demands imposed by the governing  
5 agencies with respect to the environmental clean-up, plaintiff  
6 necessarily and reasonably incurred and paid attorney's fees and  
7 other legal costs. Plaintiff will seek leave of Court to amend  
8 this complaint to insert the exact sum when same has been ascer-  
9 tained.

10 52. By reason of the foregoing, plaintiff is impliedly  
11 entitled to indemnity from defendants, and each of them, for all  
12 Remediation costs, and other consequential damages, which defen-  
13 dants have refused to pay to plaintiff, notwithstanding demands  
14 being made by plaintiff. Plaintiff will seek leave of Court to  
15 amend this complaint to state the full amount of such indemnity  
16 when the full amount is ascertained.

17 SEVENTH CAUSE OF ACTION  
18 (Contribution)  
(Against All Defendants)

19 53. Plaintiff realleges paragraphs 1 through 52 and makes  
20 same a part of this cause of action as though fully set forth  
21 herein.

22 54. As a result of the joint and several liability imposed  
23 by the federal, state and local environmental statutes, plaintiff  
24 will be compelled to pay the cost of cleaning up the environmen-  
25 tal damage caused by defendants, and each of them, during their  
26 prior operations of the Property or performance of the Alteration  
27 Work.

28 / / /

1           55. Defendants, and each of them, have failed and refused,  
2 and continue to fail and refuse, to contribute to the payment of  
3 the Remediation costs imposed on plaintiff by the governmental  
4 agencies.

5           56. By reason of the foregoing, plaintiff is entitled to  
6 contribution from defendants, and each of them, for all Remedia-  
7 tion costs, including, without limitation, costs for testing and  
8 decontaminating the soil and groundwater and disposing of the  
9 hazardous waste from the Property, which defendants have refused  
10 to pay to plaintiff, notwithstanding demands being made by  
11 plaintiff. Plaintiff will seek leave of court to amend this  
12 complaint to state the full amount of such contribution when the  
13 full amount has been ascertained.

14                           EIGHTH CAUSE OF ACTION  
15                           (Declaratory Relief)  
16                           (Against All Defendants)

17           57. Plaintiff realleges paragraphs 1 through 56 and makes  
18 same a part of this cause of action as though fully set forth  
19 herein.

20           58. An actual controversy has arisen and now exists between  
21 plaintiff and defendants regarding their respective rights,  
22 duties and obligations, in that plaintiff contends, and defen-  
23 dants deny, as follows:

24                   Plaintiff is impliedly entitled to total indemnity  
25                   and contribution from defendants, and each of  
26                   them, for the Remediation Costs and lost profits  
27                   and consequential damages resulting from the gov-  
28                   ernment-mandated clean-up of contamination of the  
                 Property caused by defendants. By virtue of the

1 primary and active negligence and other wrongful  
2 conduct of defendants, and each of them, arising  
3 out of their operation of the Property and perfor-  
4 mance of the Alteration Work, as set forth in this  
5 complaint, plaintiff is entitled to be fully in-  
6 demnified and to receive full and complete contri-  
7 bution from defendants for all Remediation Costs  
8 incurred by plaintiff and for other consequential  
9 damages.

10 59. Plaintiff desires a judicial determination of its  
11 rights and duties and a declaration as to the duties of defen-  
12 dants to indemnify and to contribute with respect to Remediation  
13 costs incurred and paid by plaintiff, as described in this  
14 complaint. Specifically, plaintiff seeks a declaration of  
15 defendants' responsibilities regarding contribution and indemnity  
16 for the sums expended by plaintiff for Remediation costs and loss  
17 of rental revenue and for which defendants are determined  
18 to be responsible under the applicable environmental laws and  
19 under general principles of equity.

20 60. Such a judicial determination is necessary and appro-  
21 priate at this time so that the parties herein can ascertain  
22 their rights and liabilities with respect to the Remediation  
23 Costs imposed on and paid by plaintiff, the loss of income and  
24 other consequential damages so that the rights and responsibili-  
25 ties of all parties in the present litigation may be ascertained  
26 at one time with judicial economy.

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NINTH CAUSE OF ACTION  
(Quasi Contract)  
(Against All Defendants)

61. Plaintiff realleges paragraphs 1 through 60 and makes the same a part of this cause of action as though fully set forth herein.

62. By virtue of federal, state and local environmental laws and principles of equity, plaintiff has discharged an obligation properly belonging to defendants and defendants would be unjustly enriched if not ordered to make restitution to plaintiff for the damages plaintiff has suffered due to the Contamination created by defendants and the Remediation costs incurred to date and which will be incurred hereafter by plaintiff, as set forth in this complaint.

63. As a proximate result of the negligence and unlawful conduct of defendants, and each of them, as described in this complaint, plaintiff has incurred, and will continue to incur, Remediation costs, in connection with the Contamination on and below the Property. Plaintiff will seek leave of court to amend this complaint to state the full amount of such damages when they have been fully ascertained.

64. As a further and proximate result of the Contamination created by defendants, and each of them, during their respective periods of ownership and/or possession, plaintiff has suffered additional damages in the form of lost rental income and lost profits, the extent of which has not yet been ascertained. Plaintiff will seek leave of court to amend this complaint to state the full amount of those damages when fully ascertained.

/ / /

1 TENTH CAUSE OF ACTION  
2 (Breach of Express Indemnity)  
3 (Against Operator Defendants)

4 65. Plaintiff realleges paragraphs 1 through 64 and makes  
5 the same a part of this cause of action as though fully set forth  
6 herein.

7 66. Pursuant to paragraphs 12 and 18 of the Lease Agree-  
8 ment, defendant HOOSHANG F. HADJIAN, as lessee, and his succes-  
9 sors and assignees under the Lease, did agree to indemnify and to  
10 hold harmless plaintiff, as follows:

11 "12. INDEMNITY: Lessee hereby agrees to assume  
12 full responsibility for any losses, costs or ex-  
13 penses on account of . . . property damage, to  
14 persons or property of the Lessee, of his employ-  
15 ees or of third parties, arising out of the exis-  
16 tence of . . . tanks . . . or Lessee's possession  
17 and use thereof . . . whether or not any such  
18 incident is caused or contributed to by the negli-  
19 gence of Lessor or its agents; and further agrees  
20 to indemnify and hold Lessor harmless for any such  
21 losses, costs, expenses damages . . . resulting  
22 from suits, demands or claims arising therefrom.

23 ". . . .

24 "18. ADJACENT PROPERTY. Lessee agrees to indem-  
25 nify and hold Lessor harmless from and against any  
26 and all damages of any nature suffered by owners  
27 of adjacent properties by reason of any activity  
28 or non-activity of Lessee on the Premises."

29 67. On several occasions plaintiff notified Operator  
30 Defendants of the presence of contamination and requested to be  
31 indemnified and to be held harmless, in accordance with the terms  
32 of the Lease, by said defendants and specifically requested that  
33 Operator Defendants contribute financially to meet the anticipat-  
34 ed expenses of performing the mandated investigation and remedia-  
35 tion. Notwithstanding said request, Operator Defendants, and  
36 each of them, have refused and continue to refuse to indemnify

1 and hold plaintiff harmless and have refused to assume any  
2 portion of said remediation responsibility.

3 68. By virtue of the foregoing, Operator Defendants, and  
4 each of them, breached the indemnity and hold harmless provision  
5 of the Lease.

6 69. As a direct result of Operator Defendants' aforesaid  
7 breach of the express indemnity and hold harmless provision of  
8 the Lease, plaintiff has been damaged in that plaintiff incurred,  
9 and will continues to incur, clean up costs, including costs for  
10 testing and decontaminating the soil and possibly the groundwater  
11 and disposing of the hazardous waste from the Property and from  
12 offsite property, all to plaintiff's damage in a sum which has  
13 not yet been determined, but which will exceed the jurisdictional  
14 sum of \$25,000. Plaintiff will seek leave of Court to amend this  
15 complaint to state the full amount of such damages when they are  
16 ascertained.

17 70. As a further result of Operator Defendants' breaches of  
18 the express indemnity and hold harmless provision of the Lease,  
19 plaintiff have suffered additional damages in the form of (i)  
20 lost profits because of plaintiff's inability to refinance,  
21 develop or sell the property due to the presence of such contami-  
22 nants and (ii) loss of rental income, the extent of which has not  
23 yet been ascertained. Plaintiff will seek leave of Court to  
24 amend this complaint to state the full amount of those damages  
25 when they are ascertained.

26 / / /

27 / / /

28 / / /



1 71. Paragraph 24 of the Lease provides as follows:

2 "24. ATTORNEYS' FEES: If either party hereto  
3 shall bring suit . . . for the breach of any pro-  
4 vision(s) of this Lease Agreement, the prevailing  
5 "party shall be entitled to receive from the los-  
6 ing party such amounts as the court may adjudge to  
7 be reasonable as attorneys' fees."

8 72. Plaintiff has engaged the law firm of Ferguson, Case,  
9 Orr, Paterson & Cunningham to represent it in this lawsuit and,  
10 consequently, plaintiff has incurred, and will continue to incur,  
11 attorney's fees to prosecute this action.

12 WHEREFORE, plaintiff prays for judgment against defendants,  
13 and each of them, as follows:

14 AS TO ALL CAUSES OF ACTIONS:

15 1. For compensatory and special damages, including all  
16 costs incurred for testing, cleaning-up and disposing of the  
17 contaminated soil and groundwater, according to proof, but in an  
18 amount greater than the jurisdictional sum of \$25,000.00.

19 2. For lost rental income and lost profits, according to  
20 proof, but in an amount greater than the jurisdictional sum of  
21 \$25,000.00.

22 3. For costs of suit, including reasonable attorneys'  
23 fees, according to proof;

24 4. For pre-judgment interest as provided by law; and

25 5. For such other and further relief as this Court may  
26 deem proper.

27 AS TO THE FOURTH CAUSE OF ACTION:

28 6. For the diminution in value suffered by plaintiff's  
property, according to proof.

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AS TO THE SIXTH, SEVENTH, EIGHTH AND TENTH CAUSES OF ACTION:

6. For a declaration that defendants, and each of them, are obligated to indemnify plaintiff with regard to any Remediation costs and other actions which may be imposed by law upon plaintiff, and to hold plaintiff harmless and indemnify it from any property damage, and from any and all damages, awards, judgments, settlement, and other costs which may be incurred by plaintiff in undertaking to comply with the federal, state and local laws, or any action brought to enforce compliance.

AS TO THE NINTH CAUSE OF ACTION:

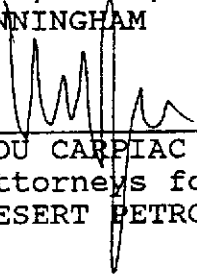
7. For restitution of investigation and remediation costs incurred by plaintiff in complying with the mandates of governmental agencies, in an amount in excess of \$25,000.00.

AS TO THE THIRD, SIXTH AND TENTH CAUSES OF ACTION:

8. For attorney's fees according to proof.

FERGUSON, CASE, ORR, PATERSON  
& CUNNINGHAM

DATED: November 13, 1990

By:   
\_\_\_\_\_  
LOU CARPIAC  
Attorneys for Plaintiff  
DESERT PETROLEUM, INC.

lc20957

# desert petroleum, inc.

Gary W. Carson  
Executive Vice President

December 12, 1989

VIA FAX - 415-568-3706  
EXPRESS MAIL

Alameda County Health Agency  
Department of Environmental Health  
80 Swan Way, Room 200  
Oakland, Ca 94621

Attn.: Ariu Levi  
Hazardous Materials Specialist

Re: Release - 4035 Park Blvd., Oakland, CA  
Release Reporting Date - 11/30/89

This report is to provide information regarding a release at the above-referenced location in compliance with 23CCR Section 2652(c).

- A. Facility operator is Jason Golpad. Telephone number 415-530-1033. Property owner is Desert Petroleum, Inc. Telephone number 805-644-6784.
- B. Type of release is motor fuel gasoline, quantity and concentration are unknown at this time.
- C. Present investigation to determine extent of contamination due to the release consists of: (a) precision tank test and line pressure to determine cause of release; (b) soil gas investigation of property; (c) map and track sewer lines from property by Ultra Sound Equipment; (d) review inventory and sales records to determine quantities released; and (e) 3 soil borings on property for sampling as part of preliminary site assessment.
- D. Results of investigations indicate soil contamination is not extensive, with possible migration of product along pores of the sewer trench entering sewer system at crack in sewer line at low point. A formal site assessment will be submitted to more fully define the problem.

POST OFFICE BOX 1601, OXNARD, CALIFORNIA 93032 • TELEPHONE (805) 644-678

100038

E. Cleanup implemented to date consists of:

1. Periodic flushing and monitoring of sewer system.
2. Closure of business and evacuation of gasoline from tanks.
3. Install 3 recovery wells on property.
4. Secure proper permits for offsite and property drilling.
5. Secure and install vacuum extraction and water remediation system on site to remove free product.

F. Additional proposed cleanup: (a) recovery well in street near sewer; (b) install portable vapor extraction unit at sewer to evacuate free product from sewer area. Unit will be monitored continually and operated during daylight hours; (c) operate and monitor additional vacuum equipment on property; and (d) prepare formal site plan to investigate and cleanup further contamination.

G. Approximate costs to date for cleanup are in excess of \$60,000.00.

H. All contaminated waste, groundwater or soils will be disposed of by proper manifest to an authorized waste facility unless properly remediated in-situ.

I. Future repairs or replacement will be handled by securing proper permits and approvals.

J. Progress reports to be submitted to local and regional agencies every three months or as frequently as required by agency.

K. State required form unauthorized release contamination site report is attached. Original copy has been sent under separate cover to Health Agency.

100039

The source of release has been stopped by removal of gasoline product at the site. Investigation and remediation will continue as quickly as possible. Although, the time required to submit a formal work plan for additional and future action is by January 15, on site work will continue to remediate source to sewer system.

Very truly yours,



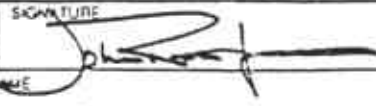
Gary W. Carson

GWC:ca

cc: State Office of Emergency Services  
Regional Water Quality Control Board  
San Francisco Region  
G. Wensen - Alameda County District Attorney's Office

100048

# UNDERGROUND STORAGE TANK UNAUTHORIZED RELEASE (LEAK) / CONTAMINATION SITE REPORT

EMERGENCY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		HAS STATE REPORT BEEN MADE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		OF EMERGENCY SERVICES <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		FOR LOCAL AGENCY USE I HEREBY CERTIFY THAT I AM A DESIGNATED GOVERNMENT EMPLOYEE AND THAT I HAVE REPORTED THIS INFORMATION TO LOCAL OFFICIALS PURSUANT TO SECTION 25160.7 OF THE HEALTH AND SAFETY CODE.		
REPORT DATE 1.2.08.89		CASE #		SIGNED _____		DATE _____		
REPORTED BY	NAME OF INDIVIDUAL FILING REPORT J.D. RUTHERFORD			PHONE 8516445892		SIGNATURE 		
	REPRESENTING <input checked="" type="checkbox"/> OWNER/OPERATOR <input type="checkbox"/> REGIONAL BOARD <input type="checkbox"/> LOCAL AGENCY <input type="checkbox"/> OTHER			COMPANY OR AGENCY NAME DESERT PETROLEUM INC.				
RESIDUAL PARTY	ADDRESS P.O. Box 1601			CITY OXNARD		STATE CA		
	ZIP 93032							
SITE LOCATION	NAME JASON GOLPAD			CONTACT PERSON JASON GOLPAD		PHONE 415 530-1033		
	ADDRESS 4035 PARK Blvd.			CITY OAKLAND		STATE CA		
ZIP 94602								
IMPLEMENTING AGENCIES	LOCAL AGENCY ALAMEDA County Health Services			AGENCY NAME AIRM LEVI		CONTACT PERSON L FELDMON		
	REGIONAL BOARD SAN FRANCISCO RWQCB			PHONE 415 271-4320		PHONE 415 464-1255		
SUBSTANCES INVOLVED	(1) NAME Motor FUEL (GASOLINE)			QUANTITY LOST (GALLONS) <input checked="" type="checkbox"/> UNKNOWN				
	(2)			<input type="checkbox"/> UNKNOWN				
DISCOVERY/ABATEMENT	DATE DISCOVERED 1.1.3.08.89		HOW DISCOVERED <input type="checkbox"/> TANK TEST <input type="checkbox"/> TANK REMOVAL		<input type="checkbox"/> INVENTORY CONTROL <input type="checkbox"/> SUBSURFACE MONITORING		<input checked="" type="checkbox"/> NUISANCE CONDITIONS	
	DATE DISCHARGE BEGAN <input checked="" type="checkbox"/> UNKNOWN		METHOD USED TO STOP DISCHARGE (CHECK ALL THAT APPLY) <input checked="" type="checkbox"/> REMOVE CONTENTS <input type="checkbox"/> REPLACE TANK <input checked="" type="checkbox"/> CLOSE TANK <input type="checkbox"/> REPAIR TANK <input type="checkbox"/> REPAIR PIPING <input type="checkbox"/> CHANGE PROCEDURE <input type="checkbox"/> OTHER					
HAS DISCHARGE BEEN STOPPED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YES, DATE 1.2.05.89								
SOURCE/CAUSE	SOURCE OF DISCHARGE <input type="checkbox"/> TANK LEAK <input checked="" type="checkbox"/> UNKNOWN <input checked="" type="checkbox"/> PIPING LEAK <input type="checkbox"/> OTHER		TANKS ONLY/CAPACITY AGE _____ YRS <input checked="" type="checkbox"/> UNKNOWN		MATERIAL <input type="checkbox"/> FIBERGLASS <input checked="" type="checkbox"/> STEEL <input type="checkbox"/> OTHER		CAUSE(S) <input type="checkbox"/> OVERFILL <input type="checkbox"/> RUPTURE/FAILURE <input type="checkbox"/> CORROSION <input checked="" type="checkbox"/> UNKNOWN <input type="checkbox"/> SPILL <input type="checkbox"/> OTHER	
	CASE TYPE <input checked="" type="checkbox"/> UNDETERMINED <input type="checkbox"/> SOIL ONLY <input type="checkbox"/> GROUNDWATER <input type="checkbox"/> DRINKING WATER (CHECK ONLY IF WATER WELLS HAVE ACTUALLY BEEN AFFECTED)							
CURRENT STATUS	CHECK ONE ONLY <input checked="" type="checkbox"/> SITE INVESTIGATION IN PROGRESS (DEFINING EXTENT OF PROBLEM) <input checked="" type="checkbox"/> CLEANUP IN PROGRESS <input type="checkbox"/> SIGNED OFF (CLEANUP COMPLETED OR UNNECESSARY) <input type="checkbox"/> NO ACTION TAKEN <input type="checkbox"/> POST CLEANUP MONITORING IN PROGRESS <input type="checkbox"/> NO FUNDS AVAILABLE TO PROCEED <input checked="" type="checkbox"/> EVALUATING CLEANUP ALTERNATIVES							
	CHECK APPROPRIATE ACTION(S) (SEE BACK FOR DETAILS) <input type="checkbox"/> CAP SITE (CO) <input type="checkbox"/> EXCAVATE & DISPOSE (ED) <input checked="" type="checkbox"/> REMOVE FREE PRODUCT (FP) <input type="checkbox"/> ENHANCED BIO DEGRADATION (IT) <input type="checkbox"/> CONTAINMENT BARRIER (CB) <input type="checkbox"/> EXCAVATE & TREAT (ET) <input type="checkbox"/> PUMP & TREAT GROUNDWATER (GT) <input type="checkbox"/> REPLACE SUPPLY (RS) <input type="checkbox"/> TREATMENT AT HOOKUP (M) <input type="checkbox"/> NO ACTION REQUIRED (NA) <input type="checkbox"/> OTHER (OT)							
COMMENTS	Informed of Gasoline in Sewer near location on 11/30/89 approx. 10:30 AM.							
	Conducted Inventory Reconciliation of Tanks P.M. 11/30/89. Tank test on 12/6/89. Facility shut down.							

100037

L E A S E A G R E E M E N T

THIS LEASE AGREEMENT is made and entered into this 22nd day of October, 1987, by and between DESERT PETROLEUM INC., a California corporation (hereinafter referred to as "Lessor"), and HOOSHANG F. HADJIAN (hereinafter referred to as "Lessee"), whether one or more;

W I T N E S S E T H :

IN CONSIDERATION of the mutual covenants and agreements herein contained, Lessor and Lessee agree as follows:

1. DESCRIPTION OF PREMISES AND TERM:

Lessor does hereby lease unto Lessee and Lessee does hereby hire and take from Lessor for a term commencing on the 1st day of November, 1987, and ending on the 31st day of October, 1990, subject to sooner termination and cancellation as hereinafter provided), all that certain parcel of land together with the building, structures and all other improvements located thereon (hereinafter referred to as the "Premises"), as more particularly set forth in the Exhibit "A" attached hereto and by reference made a part hereof, as situated in the City of Oakland, County of Alameda, State of California, commonly described as the property at 4035 Park Boulevard and Hampel Street, and more particularly described as follows, to wit:

Lots 7 and 8 in Block "A", as said Lots and Block are delineated and so designated upon a certain Map entitled "Maps of Fourth Avenue Terrace, Oakland, California - April 1907" filed May 8, 1907, in Book 22 of Maps, at Page 93, in the office of the County Recorder of said County of Alameda, State of California, together with all improvements thereon.

Lessee accepts the Premises, including all equipment, if any, in an AS IS CONDITION, WITHOUT WARRANTY, EXPRESS OR IMPLIED, AS TO CONDITION OR FITNESS FOR ANY PURPOSE. Lessee will not hold Lessor responsible for any defect in or change in conditions affecting the Premises or for any damage to the Premises.

2. USE, CHANGES, ALIENATIONS AND ADDITIONS:

(a) Lessee shall have the right during the term of this Lease Agreement to occupy and use the premises for any lawful commercial purpose(s) whatsoever; EXCEPT THAT LESSEE SHALL AT ALL TIMES OCCUPY AND USE THE PREMISES AS A SERVICE STATION FOR DISPENSING OF PETROLEUM PRODUCTS AND

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Matthew D. Haley, Esq.  
HALEY LAW OFFICES  
1633 San Pablo Avenue  
Oakland, California  
(415) 444-1881

Attorneys for Defendants  
JASON GOLPAD, MOJTABA KARIMABADI &  
J & M BEACON AUTO SERVICE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

DESERT PETROLEUM, INC., a  
California Corporation,

Plaintiff

ANSWERS TO INTERROGATORIES

vs.

WALTON ENGINEERING, INC., a  
California Corporation, et. al.,

Defendants

AND RELATED CROSS-ACTIONS

Propounding Party: DESERT PETROLEUM, INC.  
Responding Party: JASON GOLPAD, et. al.  
Set Number: Two  
Set Dated: April 29, 1991

JASON GOLPAD, MOJTABA KARIMABADI and J & M BEACON AUTO  
SERVICE, hereby respond to above mentioned Special  
I n t e r r o g a t o r i e s .



- 1 1. No.
- 2 2. Not Applicable
- 3 3. Not Applicable
- 4 4. Not Applicable
- 5 5. November, 1989
- 6 6. Mr. Jason Golpad was advised that gasoline had leaked into  
7 the sewer system by the Alameda County Department of Health  
8 Services.
- 9 7. Unknown. We are informed and believe and based thereon state  
10 the substance was gasoline.
- 11 8. Unknown. We are informed and believe and based thereon  
12 allege that someone notified the Oakland Fire Department who in  
13 turn notified the Alameda County Department of Health Services.
- 14 9. See answering parties Response to Request for DESERT'S  
15 Production of Documents served herewith (hereinafter "documents")  
16 Exhibit G.
- 17 10. Yes
- 18 11. Yes
- 19 12. Installation of new product dispensers and related piping  
20 was done by WALTON ENGINEERING and generally completed in  
21 approximately September 1989.
- 22 13. See documents, Exhibit D.
- 23 14. See documents, Exhibit D. The only work done responsive to  
24 interrogatory 13 and 14 was done by WALTON, a contractor we had  
25 retained to do the work.
- 26 15. We are unable to state with certainty all people who had  
some knowledge of the project to replace the product dispensers  
and related piping. Generally, however, we are familiar with it  
as are employees of WALTON ENGINEERING and DESERT PETROLEUM.
16. Yes.
17. No.
18. See Documents, Exhibit D.
19. See Documents, Exhibit D.

- 1 20. Objection, Foundation. Without waiving said objection, none.
- 2 21. We are informed and believe and based thereon allege that no  
3 storage tank was removed, but some piping was removed and  
4 replaced by WALTON as part of the contract to replace product  
5 dispensers.
- 6 22. Yes.
- 7 23. We had the annual tank testing done at least once and  
8 perhaps two times by Johnson tank testing but I cannot recall  
9 when. In addition, Walton was, pursuant to the contract, to test  
10 the lines. [Responding party is excluding any tank or line  
11 testing which occurred after they were advised of the gasoline  
12 leak in November 1989.]
- 13 24. See documents, Exhibit D and F.
- 14 25. See response to interrogatories 23 and 24.
- 15 26. We do not recall the specific results of any of the tests.  
16 Generally, we were not advised of any problem with the storage  
17 tanks or piping.
- 18 27. We cannot state all the persons who may have knowledge of  
19 tank testing while we operated the station. Generally, however,  
20 we have knowledge as would employees of Johnson Tank Testing and  
21 Walton Engineering.
- 22 28. See documents, Exhibit D and F.
- 23 29. Mr. Mustafa Maiz  
24 Oakland, California  
25 clerk
- 26 Mohammed Salimi  
Casto Valley, California  
mechanic
30. This information will be provided.
31. Yes
32. From September 1988 until November 1989 we sold gasoline and  
motor oil.
33. Rhinehart Oil Company and Wheatland Oil Company.

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34. We do not recall. However, all invoices in our possession for purchases of products are included with the documents at Exhibit B.

35. Yes

36. The only spill we are aware of that occurred during our operation of the station is the gasoline spill we learned of in November 1989.

37. Unknown. We are informed and believe unleaded gasoline spilled. As to the amount, unknown.

38. We cannot state all the persons with this knowlege because there are so many. Generally, however, persons with knowledge would be members of the Oakland Fire Department, the Alameda County Department of Health Services, us, employees and agents of DESERT PETROLEUM. Insofar as this may call for expert opinions as to the amount of the spill, responding party claims the work-product privilege.

39. See documents, Exhibit D and G., Also see Desert's Response to these parties' Request for Production of Documents.

40. Walton Engineering replaced the product dispensers and related equipment, finishing in approximately September 1989.

41. Please see the contract documents included in Documents, Exhibit D.

42. Objection. Insofar as this calls for the opinions or results of consultations with experts, responding party claims work-product. Otherwise, responding parties have knowledge, employees of WALTON have knowlege as to what was done. See also DESERT'S response to this parties request for production of documents for analysis done after the spill was identified.

43. See documents, Exhibit D.

44. We do not know.

45. We are informed and believe and based thereon state that WALTON ENGINEERING, INC. removed some piping prior to November 1989 in connection with the replacement of the product dispensers. DESERT PETROLEUM, INC., also removed some piping after November 1989.

46. WALTON ENGINEERING, INC.

47. Yes

48. Annual tank testing  
Daily stick guaging  
Overall daily inspection
- 1
- 2 49. Responding parties  
Johnson Tank Test employees
- 3 50. See documents, Exhibit A, B and response to document request  
# 2.
- 4 51. None
- 5 52. Not Applicable
- 6 53. Not Applicable
- 7 54. Prior to November 1989, none.
- 8 55. None
- 9 56. Yes
- 10 57. No.
- 11 58. Responding parties. Also we gave the stick guaging reports  
12 for appoximately 3 months prior to November 1989 to the County of  
Alameda, Desert Petroleum or both so they may have knowledge.
- 13 59. Objection; foundation. We did not remove nor did we cause  
14 anyone to remove any underground storage tanks.
- 15 60. Responding parties
- 16 61. See documents, Exhibit D.
- 17 62. Other than the previously described replacement of product  
dispensers by WALTON, No.
- 18 63. Not Applicable
- 19 64. Not Applicable
- 20 65. Not Applicable
- 21 66. Not Applicable
- 22 67. As previously described, old product dispensers and related  
23 piping were replaced, but no additional dispensers were added.  
The station always had two dispensers.
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- 1 68. Not applicable
- 2 69. Yes
- 3 70. None
- 4 71. Yes
- 5 72. Objection, Not reasonably calculated to lead to the  
6 discovery of admissable evidence. Without waiving said objection,  
7 responding parties state for insurance policies, see documents,  
8 Exhibit I and responding parties answer to form interrogatory  
9 4.1. The carrier, WEST AMERICA INSURANCE COMPANY has reserved  
10 their rights.
- 11 73. Yes
- 12 74. DESERT PETROLEUM failed to property own, maintain and equip  
13 the station.
- 14 75. All parties and their employees.
- 15 76. None at this time.
- 16 77. Yes
- 17 78. WALTON ENGINEERING, INC., negligently and carelessly  
18 replaced the product dispensers and lines, causing the unleaded  
19 product line to leak. Discovery as to the responsibility of other  
20 cross-defendants continues at this time.
- 21 79. Objection, Work-Product. Knowledgable persons are responding  
22 party, WALTON and their employee, DESERT and their employees and  
23 agents.
- 24 80. Objection, Work Product. See report of REMEDIATION SERVICES,  
25 INC. produced by DESERT. See also documents, Exhibit D.
- 26 81. None, WALTON obtained the permits to do the product  
dispenser replacements.
82. Responding Parties and employees of WALTON ENGINEERING, INC.
83. None.
84. Alameda County Department of Health Services.
85. Responding Parties and employees of Alameda County,  
including Mr. Levy.
86. See Documents, Exhibit G

1 87. On or about November 23, 1989 a woman from the Alameda  
2 County Department of Health Services came to the station and  
3 advised Jason Golpad gasoline had spilled into the sewer. Mr.  
4 Gopad accompanied this woman to inspect the sewer and it was  
5 decided to test the water to see what type and whether there was  
6 contamination.

7 A few days later Mr. Levy returned to the station, advised  
8 Mr. Golpad of the results of the testing, and advised Mr. Golpad  
9 the station would have to be closed and the tanks emptied.

10 88. No

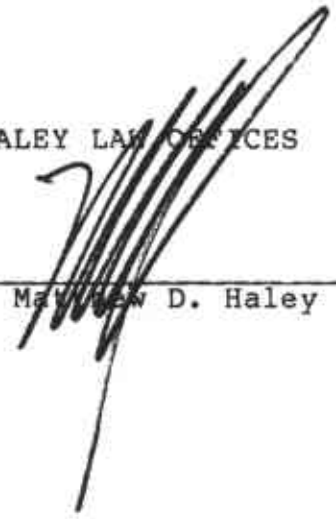
11 89. Responding Party

12 90. No.

13 DATED: July 8, 1991

THE HALEY LAW OFFICES

BY:

  
Matthew D. Haley

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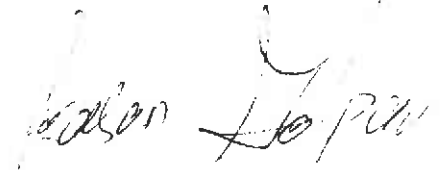
VERIFICATION

I, the undersigned, say:

That I am party in the above-entitled action or proceeding. I am one of the partners in J & M Beacon Auto Service. I have read the foregoing ANSWERS TO INTERROGATORIES Set Number One (1) and know the contents thereof. I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

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

Executed on July 5, 1991 at Oakland, California.

  
\_\_\_\_\_  
Jason Golpad, individually  
and on behalf of J & M Beacon  
Auto Service

PROOF OF SERVICE

I declare that:

I am employed in the County of Alameda. I am over the age of eighteen years and not a party to the within above entitled action. My business address is 1633 San Pablo Avenue, Oakland, California 94612-1505. On the date indicated below I served the within ANSWERS TO INTERROGATORIES SET NUMBER ONE (1) upon the party or parties in said action by

\_\_\_\_\_ sending via facsimile at the FAX number(s) indicated;

\_\_\_\_\_ sending via FEDERAL EXPRESS MAIL or substitute as indicated;

\_\_\_\_\_ PERSONALLY DELIVERING/MESSENGER SERVICE delivering a true copy thereof to the person(s) at the address(es) set forth below (and/or attached);

✓ \_\_\_\_\_ placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States MAIL at Oakland, California addressed as follows (and/or attached).

Lou Carpiac  
FERGUSON, CASE, ORR, PATERSON  
& CUNNINGHAM

1050 South Kimball Road

~~Oakland, CA 94607~~

Ventura 93004 7/11/91  
CA

Chris Gibson

Donald O. Spaulding

Scott A. Linn

BOUTIN, LASSNER, GIBSON, PERRY

& DELEHANT

455 Capitol Mall, Suite 300

Sacramento, CA 95814

Eric F. Hartman

Attorney at Law

1425 Park Avenue

San Jose, CA 95126

Larry Miller

P.O. Box 5398

San Mateo, CA 94402

Harvey W. Stein

Attorney at Law

TRANS PACIFIC CENTER

1000 Broadway, Suite 600

Oakland, CA 94607

Executed on July 8, 1991 at Oakland, California. I declare under penalty of perjury and under the laws of the State of California that the foregoing is true and correct.



Carol A. Bingo



October 30, 1989

Re: SS No. 793 Real Estate  
4035 Park Boulevard  
Oakland, CA

Messrs. Hadjian, Golpad & Karimabadi  
4035 Park Blvd.  
Oakland, CA 94602

Gentlemen:

Last September 25th, I sent you a certain Assignment, Assumption and Consent Agreement, with the request that it be signed, completed and returned to Mr. Carson. To date this item is still outstanding and we would appreciate the return of it or some correspondence from you as to why it has not been returned. Mr. Hadjian remains in our records as having full responsibility for the lease until the completed assignment is of record.

We have been issued a notice from the Oakland City Council that on June 22, 1989, a city-wide landscape and lighting assessment district has been established and the amount of \$273.36, will be assessed to the leased property and it will appear on the 89-90 property tax bill.

The monthly prorated amount to be reimbursed by you to Desert will be \$22.78, and this amount is effective as of July 1, 1989, for the fiscal tax year 89-90. You are requested to remit an amount of \$113.90 to cover the assessment period of July thru November and the \$22.78 will be billed to you thereafter.

Your prompt remittance is anticipated as well as the return of the above mentioned Assignment, Assumption & Consent.

Very truly yours,

DESERT PETROLEUM INC.

John Silver, Mgr.  
Contracts/Property

Enclosed (Copy of notice)

bcc: G.W. Carson  
B. Embrey  
J. Mahoney  
Via Chron / SM File

COMPLETED WORK

9:6 372 1888

FROM: WALTON ENGINEERING  
837 RISKE LANE  
W. SACRAMENTO, CA 95691

DATE OF INVOICE: 3/31/89

INVOICE NO. C 2291

SOLD TO: Mr. Perry Morris Corp.  
8 Corporate Park, 3rd Floor  
Irvine, CA 92714

JOB NO.: 89-2014

LOCATION: J & M Service  
Installed  
4035 Park Avenue  
Oakland, CA 94602

DESCRIPTION OF WORK COMPLETED:

Work performed for J & M Service as follows:

See Attached Scope of Work

ALL OF THE ABOVE WORK WAS PARTIALLY COMPLETED IN A SUBSTANTIAL AND WORKMANLIKE M.

[X] FOR THE SUM OF Thirteen Thousand Six Hundred Fifty-Seven  
DOLLARS (\$13,657.00)

[ ] TO BE PAID FOR THE ACTUAL COST OF LABOR, MATERIALS AND EQUIPMENT PLUS \_\_\_\_\_  
PERCENT ( \_\_\_\_\_ %) FOR  
TO TOTAL COST OF \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

PAYMENTS TO BE MADE AS FOLLOWS:

Due and Payable

  
Randy R. Rogers  
Project manager

100032

