

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



CALIFORNIA REGIONAL WATER

MAR 08 1995

WATER QUALITY CONTROL BOARD
RAFAT A. SHAHID, Assistant Agency Director

March 6, 1995

Alameda County CC4580
Environmental Protection Division
1131 Harbor Bay Parkway, Room 250
Alameda CA 94502-6577

Mr. Brad Job ✓
California Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Ste. 500
Oakland, CA 94612

RECEIVED

APP 25 1995

Director of Environmental Health

RE: MATTER OF BEATRICE GALLEGOS AND GREGORY GARCIA AS IT
PERTAINS TO REAL PROPERTY LOCATED AT 16035 E. 14TH STREET,
SAN LEANDRO, ALAMEDA COUNTY

Dear Mr. Job:

I reviewed the taped testimony of Bernard R. Gallegos as recorded during the January 25, 1995 RWQCB Region I Underground Storage Tank (UST) Workshop. As we discussed the week of February 26, 1995, enclosed please find a summary of case milestones associated with the subject site. Copies of certain documents which demonstrate the overall tone of this case are attached to this letter, and are identified by highlighted activity/item dates.

<u>DATE</u>	<u>ACTIVITY / ITEM</u>
12/30/91	UST closure application approved by Alameda County Department of Environmental Health (ACDEH). Application submitted on behalf of property owner, the Petsases.
2/4/92	UST closure. Unauthorized release identified.
2/6/92	Unauthorized leak report (ULR) recorded.
3/6/92	UST closure report / work plan for soil excavation and ground water investigation submitted by consultant on behalf of Petsases.
4/13/92	Addendum to work plan.
5/8/92	Notice of Requirement to Reimburse (NORR) issued to the Petsases following transfer of project oversight responsibility to the ACDEH Local Oversight Program (LOP). Petsases are identified as a "responsible party" (RP) pursuant to § 2720, Article 11, Title 23, Division 3, Chapter 16, California Code of Regulations (CCR).

Brad Job
RE: Gallegos / Garcia
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- 11/3/92 Informed by Petsas's attorney, Mr. Mark Johnson, of his client's application to the SB2004 Petroleum Trust Fund for reimbursement of costs incurred during implementation of pending corrective action.
- ~~2/11/93~~ M. Johnson submits to ACDEH a data package and site history with supporting documents which substantially indicate Beatrice Gallegos and Gregory Garcia are RPs pursuant to provisions of 23CCR and RCRA (42 USC § 6991(3)).
- 3/26/93 ACDEH informed by Petsas that they do not have the finances to continue with the installation of monitoring wells.
- ~~4/2/93~~ NORR issued to Gallegos / Garcia.
- ~~5/2/93~~ Hans Herb, attorney for Gallegos/Garcia, notification to ACDEH that a petition with the SWRCB challenging ACDEH's naming of Gallegos/Garcia as RPs had been filed.
- ~~6/15/93~~ SWRCB notice to H.Herb acknowledging receipt of petition **and concurring with ACDEH's decision to name petitioners as RPs**. SWRCB invites filing of addendum should there be additional information to be considered.
- ~~7/15/93~~ H.Herb addendum to SWRCB petition arguing, among other issues, that petitioners were never owners of the subject USTs and, therefore, should not be included as RPs.
- 7/30/93 Pre-Enforcement Review Panel (PERP) notification to all responsible parties % their commensurate attorneys. PERP to convene 8-31-93.
- ~~8/3/93~~ ACDEH correspondence to Theodore Cobb, SWRCB staff council, articulating ACDEH's understanding that consideration of the recent appeal to SWRCB would be "stayed" pending the outcome of the pending PERP.
- ~~8/4/93~~ H.Herb letter to ACDEH et al in response to PERP notice alleging such is "...clearly illegal, unconstitutional, and violative of [his] clients' due process rights." Terms the panel a "star chamber." Warns of his intent to seek legal action against ACDEH should they not comply with his requests.

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~~8/6/93~~ H.Herb letter to T. Cobb (SWRCB) regarding 8/3/93 ACDEH correspondence to SWRCB.

~~8/6/93~~ Gil Jensen (Alameda County Senior Deputy District Attorney) letter to H. Herb regarding the pending PERP and commenting on his 8/4/93 letter.

8/13/93 Preliminary site assessment (PSA) report submitted to ACDEH on behalf of Petsases.

~~8/16/93~~ B. Gallegos letter to David Kears, Director of ACDEH, presenting her statement of facts in the case and arguing why she should not be considered a RP.

~~8/19/93~~ H.Herb letter to G. Jensen alleging ACDEH's "...direct and irreconcilable financial conflict in this matter..." and expressing his desire to be informed of the legality of the PERP procedures.

~~8/27/93~~ M. Johnson rebuttle to Gallegos/Garcia addendum to SWRCB petition including supporting documents which discuss, among other issues, the clear conveyance of "service station equipment" w/ property during distribution of estate in wake of 12/82 death of Joseph Garcia, former husband of B. Gallegos. Additionally presented are recorded documents with similar language, i.e., conveyance of service station equipment, during 4/71 discharge of guardianship to G. Garcia (son) and conveyance of ½ interest in property to same.

8/31/93 PERP meeting. H.Herb did not appear personally, but sent associate. No new facts presented. Petsases and M.Johnson present.

~~9/1/93~~ ACDEH letter to Dave Deaner (SWRCB) regarding recent SB2004 fund rejection to Petsas application for reimbursement and presenting mitigating facts which should allow Petsas eligibility.

~~9/14/93~~ H.Herb letter to G. Jensen warning him about Jensen's "misconduct."

9/27/93 M.Petsas letter to ACDEH indicating present financial peril they then faced following SB2004 eligibility rejection and because of no contribution from other RPs.

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~~9/27/93~~ RWQCB official directive following PERP presenting RP designation and request for technical reports. Petsas, Gallegos, Garcia named as RPs.

~~10/7/93~~ SWRCB response to Gallegos/Garcia addendum to SWRCB petition dated 7/15/93 presenting case law citations regarding ownership of "trade fixtures" (e.g., USTs) upon lease termination. **Gallegos/Garcia identified as "owners" with respect to UST laws.**

10/26/93 M.Petsas letter to Lori Casias (SWRCB-LOP liaison) enclosing ½ invoice amount for ACDEH case oversight, indicating other RPs (Gallegos/Garcia) have not contributed at all to the project costs.

~~11/4/93~~ H.Herb letter to Alameda Co. Board of Supervisors (BoS) requesting they "...instruct [G. Jensen] to fulfill his role as a public servant by responding to legitimate inquiry by a tax-paying citizen." Presents his version of case background (absent the issues which clearly identify his clients as RPs). Requests the matter to be placed on the BoS agenda ASAP.

~~12/17/93~~ H.Herb letter to Steve Ritchey (RWQCB), G.Jensen, ACDEH giving case "update" from his perspective.

~~12/20/93~~ G.Jensen letter to H.Herb in response to 12/17/93 H.Herb letter.

~~12/23/93~~ M.Johnson letter regarding (reported) refusal of Gallegos/Garcia to cooperate in complying with 9/27/93 RWQCB directive. Requests 60 day extension to comply.

12/27/93 ACDEH letter granting 60 day extension to Petsases.

~~1/4/94~~ Notice of Violation (NOV) issued to Gallegos/Garcia for their failure to submit required technical reports pursuant to 9/27/93 RWQCB directive.

~~1/6/94~~ H.Herb cover letter to "lawsuit" filed in Solano County against G.Jensen, SWRCB and RWQCB. (Note: suit never served.)

~~1/6/94~~ RWQCB letter regarding failure of Gallegos/Garcia to comply with 9/27/93 RWQCB directive.

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1/26/94 Meeting between RWQCB (L.Feldman), M.Johnson, H.Herb.

~~2/2/94~~ H.Herb letter to G.Jensen, ACDEH, RWQCB, SWRCB (T.Cobb et al.) erroneously and incorrectly presenting "facts" with respect to issues discussed and evidence presented during 1/26/94 meeting @ RWQCB. Indicates the presentation of a "...declaration indicating the tank had been in operation since..." purchase of the site by Petsases. This purported declaration was never presented at the subject meeting.

~~2/10/94~~ H.Herb letter "correcting" misstatement in 2/2/94 letter regarding so-called "declaration." Copy of subject "declaration" is attached yet does not speak to the issue of the USTs being operated after sale of site.

~~2/24/94~~ M.Johnson letter requesting another extension to comply with 9/27/93 RWQCB directive pending decision regarding Petsas's SB2004 application.

~~4/1/94~~ H.Herb letter indicating dismissal of lawsuit - places agencies "on notice."

~~4/8/94~~ SWRCB letter indicating denial to consider addendum to previous SWRCB petition on behalf of Gallegos/Garcia. Indicates Gallegos/Garcia **are correctly named as RPs.**

2/21/95 SWRCB approves SB2004 funding for Petsas.

Please inform me should you require additional assistance in your evaluation of this case. I may be reached at 510/567-6783.

Sincerely,


Scott O. Seery, CHMM
Senior Hazardous Materials Specialist

attacments

cc: Rafat A. Shahid, Agency Director
Gil Jensen, Alameda County District Attorney's Office
Kevin Graves, RWQCB

JOHNSON AND JOHNSON

ATTORNEYS AT LAW

44 MONTGOMERY STREET, SUITE 4100
SAN FRANCISCO, CALIFORNIA 94104
(415) 362-3503 (415) 989-1137 FAX

RECEIVED

APR 25 1995

Director of Environmental Health

February 11, 1993

Alameda County Health Agency
Department of Environmental Health
Division of Hazardous Materials,
Attn: Mr. Scott Seery
80 Swan Way, Room 200
Oakland, CA 94621

Re: Request For the Alameda County Health Agency To Identify Beatrice S. Gallegos and Gregory Joseph Gallegos as Responsible Parties For the Investigation and Possible Cleanup of the Unauthorized Petroleum Leak at 16035 E. 14th Street, San Leandro.

Dear Mr. Seery:

This letter is written on behalf of Mr. and Mrs. Jerry Petsas (the "Petsas"), the current owners of the property (the "Property") located at 16035 E. 14th Street, San Leandro, California. The Property contained three leaking underground petroleum storage tanks which were abandoned prior to the Petsas purchasing the Property in 1979. Beatrice S. Gallegos and Gregory Joseph Garcia owned the tanks when the use of the tanks was discontinued. As such, the Petsas request the Alameda County Health Agency identify Beatrice S. Gallegos and Gregory Joseph Garcia as responsible parties for the investigation and possible cleanup of the unauthorized petroleum release which occurred on the Property.

**Gallegos and Garcia Owned the Property
Prior to the Petsas**

In 1962, as an individual and as the guardian for the estate of Gregory Joseph Garcia, Beatrice S. Garcia obtained title to the Property and the gasoline service station operating on it. (Exhibit A, Judgment Settling First Account.) At that time, the Property was leased to Seaside Oil Company as a service station. (Exhibit A, p. 3.) In 1971, Beatrice S. Gallegos, formerly Beatrice S. Garcia, granted a one-half interest in the Property and the service station to Gregory Joseph Garcia. (Exhibit B, Grant Deed; and Exhibit C, Order Approving Guardian's

Petition.)

The Petsas purchased the Property from Beatrice S. Gallegos and Gregory Joseph Garcia in 1979 unaware that three underground petroleum storage tanks were located on it. (Exhibit D, Grant Deed.) In 1985, the Petsas learned of the existence of the tanks during a fire inspection. Immediately, they decommissioned the tanks causing them to become inoperable. Since owning the Property, neither the Petsas nor their tenants have ever used any of the underground storage tanks located on it.

In 1992, the Petsas removed the tanks and discovered that the tanks had leaked petroleum. Upon discovering the leak, the Petsas reported it to the Alameda County Health Agency. (Exhibit E, Underground Storage Tank Unauthorized Release (Leak)/ Contamination Site Report.) The Health Agency ordered the Petsas to investigate the spilled petroleum. (Exhibit F, Underground Storage Tank Unauthorized Release (Leak)/Contamination Site Report.) Because Beatrice S. Gallegos and Gregory Joseph Garcia owned the underground storage tanks immediately before the use of the tanks was discontinued, the Petsas request the Health Agency identify them as responsible parties for the investigation and possible cleanup of the spilled petroleum.

Owners Are Responsible For The Proper Closing of Underground Petroleum Storage Tanks

With regard to underground storage tanks, California law broadly defines the term "owner". An "'Owner' means the owner of an underground storage tank." (Health & Safety Code §25281(h).) The prevailing federal law, which is incorporated into California law, more definitively states that "the term 'owner' means . . . in the case of any underground storage tank in use before November 8, 1984, but no longer in used on November 8, 1984, any person who owned such a tank immediately before the discontinuation of its use." (42 USC §6991(3).)

Owners of underground storage tanks are responsible for assuring that the tanks are properly repaired, upgraded, or closed.

"[T]he owner [is] responsible for assuring that the underground storage tanks is repaired or upgraded . . . or closed . . . as appropriate." (23 CCR §2620(b).)

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February 11, 1993

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The closing of a tank includes responsibility for investigating and cleaning up spilled petroleum. (23 CCR §2672.)

**Gallegos and Garcia Are "Owners"
Responsible For Investigation and Cleanup
of the Leaking Tanks on the Property**

In this case, Beatrice S. Gallegos obtained title to the Property and the gasoline service station operating on it in 1962. Gregory Joseph Garcia obtained a half interest in the Property and the service station in 1971. When the Petsas purchased the property from Gallegos and Garcia, use of the underground storage tanks on the Property had been discontinued. Thus, the Beatrice S. Gallegos and Gregory Joseph Garcia were the owners of the underground storage tanks immediately before the use of the tanks was discontinued. Therefore, under California law, they are "owners" responsible for the investigation and possible cleanup of the leaking tanks on the Property.

Conclusion

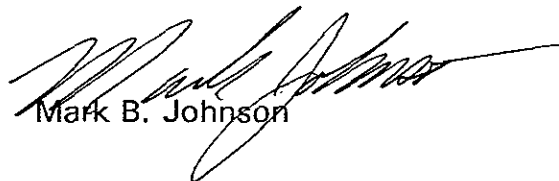
In light of the above, the Alameda County Health Agency is requested to identify Beatrice S. Gallegos and Gregory Joseph Garcia as responsible parties for the investigation and possible cleanup of the unauthorized petroleum spill which has occurred at 16035 E. 14th Street, San Leandro, California.

* * * * *

Thank you for your consideration of this request. If you have any questions, please contact me.

Very truly yours,

JOHNSON AND JOHNSON


Mark B. Johnson

cc: Mr. and Mrs. Petsas

Mr. Scott Seery
February 11, 1993

Page 4

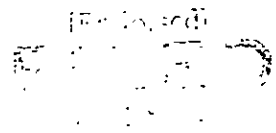
Enclosures: 6

- A. Judgment Settling First Account and Report of Administration For Allowance on Account of Statutory Compensation and of Preliminary Distribution
- B. Grant Deed From Beatrice S. Gallegos, Formerly Beatrice S. Garcia, to Gregory Joseph Garcia
- C. Order Approving Guardian's Petition For Final Discharge and Consent of Minor To Waiver of Accounting
- D. Grant Deed From Beatrice S. Gallegos and Gregory Joseph Garcia to Jerry and Mary Petsas
- E. Underground Storage Tank Unauthorized (Leak)/Contamination Site Report by Tank Protect Engineering
- F. Underground Storage Tank Unauthorized (Leak)/Contamination Site Report by the Alameda County Health Agency, Department of Environmental Health, Division of Hazardous Materials

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3700
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WICK G. W. E. Court Clerk
BY S. J. MICHIGAN

Attorney for Petitioner

In the State of California
County of Santa Clara

1911

JOSEPH GANGE
also known as JOE GANGE

ADMINISTRATIVE REPORT OF
ADMINISTRATOR OF
ESTATE OF JOSEPH GANGE

atrix of the estate of
the above named decedent. The said account
and report are submitted to the Court for allowance
as account of executor. The petitioner for preliminary
administration, and the public accountants regularly for
auditing, the Court clerk:

due and legal notice of the making of the petition
and of the settlement of the account has been regularly given for
the period and in the manner required by law.

The account and report of the administrator is full,
true, and correct, and all of the obligations of the petition
and its settlement are true. The account should be settled,
allowed, and a proved bill sent out to the estate and the said
public accountants be paid. It is so ordered. In
witness whereof, I have hereunto set my hand and the seal of the
Court at San Jose, California, this 15th day of August, 1911.

1 and in the manner provided by law. Within thirty days after
2 completion of publication of notice to creditors there was filed
3 with the clerk of this Court an affidavit showing due publication
4 of notice to creditors in the manner and form required by law.

5 None of the debts have elapsed since the issuance
6 of letters of administration in this estate and since the first
7 publication of notice to creditors, and the time for filing or
8 presenting claims has expired.

9 All claims against the estate have been paid.

10 The estate is not indebted.

11 A written report of the inheritance tax appraiser
12 appointed herein is on file with the court showing the in-
13 heritance tax has been paid to this Court. The receipt of the
14 appraiser of the Department of Taxation of California, is on
15 file with the court showing that the tax has been paid in full.

16 No federal estate tax is due or payable on this
17 estate, and no federal estate tax is due or payable.

18 All federal and California state income taxes due and
19 payable by the estate have been paid.

20 Although the estate is not now in a condition to be
21 closed, there may be distributed at this time, without loss to
22 the creditors or injury to the estate or any person interested
23 therein, the property described below in accordance with the
24 terms of the will, and allowances may be made on account of
25 unpaid debts and compensation as hereafter set forth.

26 The petitioner, as administrator of said estate, has
27 waived her statutory compensation for her services.

28 The distribution may be made without requiring any
29 distribution of the estate to be made to the administrator.

31 The petitioner prays that she may be appointed administrator of the estate.

32 The petitioner prays that she may be appointed administrator of the estate.

1 ... all acts and trans
2 ... relating to ...
3 ... north are ratified, confirmed, and approved; there is allowed
4 to GARCIA & BRUZZONE, who says, on account of statutory compensa-
5 tion, the sum of \$1037.50; there is distributed to the
6 following persons, in accordance with the provisions of the
7 ... property described below:

SEPARATE PREMISES

9 To MARIANA G. GARCIA, as part of the estate
10 and estate of JOSEPH G. GARCIA, an undivided
11 one-half (1/2) interest in the following described
property; and

12 To MRS. E. GARCIA, as surviving spouse of said
13 decedent, an undivided one-half (1/2) interest in
14 the following described premises:

15 ... Township of Eden, County of Alameda, described
16 as follows:

17 Parcel 1: Beginning at the intersection of the
18 eastern line of County Road Number 2552, known
19 as Ashland Avenue, with the southwestern line of
20 East 14th Street, as the said street is now laid
21 out and approved, and running thence along said
22 southwestern line south 48° 56' East 109.07 feet
23 (the bearing of the southwestern line of East
24 14th Street being taken as South 48° 56' East
25 for the purpose of making this description);
26 thence leaving said southwestern line of East
27 14th Street south 33° 04' West 111.22 feet;
28 thence north 39° 38' West 22.60 feet; to the
29 said eastern line of Ashland Avenue; thence
30 along the last named line north 0° 22' East
31 164.72 feet to the point of beginning.

32 Said premises are subject to a lease agreement
with Seaside Oil Company, a California corporation,
under which lease the premises are being used as a
service station located at 16035 East 14th Street,
San Leandro, California.

SEPARATE PREMISES

To MARIANA G. GARCIA, as part of the estate
and estate of JOSEPH G. GARCIA, an undivided

1 Miscellaneous jewelry, silver, books, pictures,
2 paintings, work of art, clothing and personal
3 effects at 18240 Via Arriba, San Lorenzo,
4 California;

5 c. Furniture and furnishings at 18240 Via Arriba,
6 San Lorenzo, California.

7 - IT IS FURTHER ORDERED AND ADJUDGED that the requirement
8 of a bond from any distributee above named is dispensed with.

9 DEC 18 1962

10 A. J. Woolsey

11 JUDGE OF THE SUPERIOR COURT

12 The foregoing instrument is a
13 correct copy of the original
14 on file in this office.

15 AT 176171

16 RECORDED AT REQUEST OF
17 ATTORNEY

18 ATTEST: DEC 21 1962

19 / / Min Past / M.

20 JACK G. BLUE, County Clerk

21 DEC 21 1962

22 OFFICIAL RECORDS OF
23 ALAMEDA COUNTY, CALIFORNIA
24 JACK G. BLUE
25 COUNTY RECORDER

26 Seal
27 Affixed

404 / U L U

RECORDING REQUESTED BY

RE: 2847 IM.620

AND WHEN RECORDED MAIL TO

71-55813 001

DOCUMENTARY TRANSFER TAX
NONE

Name Garcia, Bruzzone & Dunn
Street Address 16101 E. 14th Street
City & State San Leandro, California 94578

GARCIA, BRUZZONE & DUNN
By Anthony J. Garcia

MAIL TAX STATEMENTS TO

RECORDED at REQUEST OF
ATTORNEY

Name Beatrice S. Gallegos & Gregory Joseph Garcia
Street Address 16115 E. 14th Street
City & State San Leandro, California 94578

At _____ Min. Past 10:30 A

MAY 11 1971

OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
JACK G. BLUE
COUNTY RECORDER

Grant Deed ²⁰⁰

TO 405 C THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

BEATRICE S. GALLEGOS, formerly known as BEATRICE S. GARCIA,
Guardian of the Estate of GREGORY JOSEPH GARCIA,

hereby GRANT(S) to

GREGORY JOSEPH GARCIA, a single person,

an undivided one-half interest in and to

the following described real property in the Township of Eden
County of Alameda, State of California:

Parcel 1: Beginning at the intersection of the eastern line of County Road Number 2552, known as Ashland Avenue, with the southwestern line of East 14th Street, as the said street is now laid out and improved, and running thence along said southwestern line south 48°56' East 109.07 feet (the bearing of the southwestern line of East 14th Street being taken as South 48°56' East for the purpose of making this description); thence leaving said Southwestern line of East 14th Street South 33°04' West 111.22 feet; thence north 89°38' West 22.60 feet; to the said Eastern line of Ashland Avenue; thence along the last named line north 0°22' East 164.72 feet to the point of beginning.

Dated APR 30 1971

Beatrice S. Gallegos

STATE OF CALIFORNIA }
COUNTY OF ALAMEDA } ss.

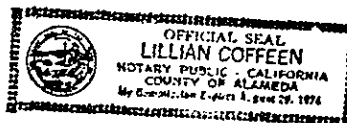
On April 30, 1971 before me, the undersigned, a Notary Public in and for said State, personally appeared BEATRICE S. GALLEGOS

known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same. WITNESS my hand and official seal.

Signature Lillian Coffeen

Lillian Coffeen

Name (Typed or Printed)



(This area for official notarial seal)

Title Order No. _____ Escrow or Loan No. _____

RE:2837 IM:812

4- 49334

After recording return to:

(ENDORSED)
FILED

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GARCIA, BRUZZONE & DUNN
ATTORNEYS AT LAW
16101 EAST FOURTEENTH STREET
SAN LEANDRO, CALIF. 94578
351-6161 OR 278-1172

RECORDED at REQUEST OF
ATTORNEY JACK G. BLUE, County Clerk
At 10:30 A Min. Post By: Peter Chinn, Deputy

APR 26 1971

APR 28 1971

OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
280
JACK G. BLUE
COUNTY RECORDER
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

Guardianship of the Estate of NO. 157701
GREGORY JOSEPH GARCIA, ORDER APPROVING GUARDIAN'S
A Minor PETITION FOR FINAL DISCHARGE
AND CONSENT OF MINOR TO
WAIVER OF ACCOUNTING

BEATRICE S. GALLEGOS, formerly known as BEATRICES. GARCIA,
as guardian of the estate of the above named minor, having heretofore filed
with the Clerk of this Court a Waiver of Accounting, Petition for Discharge
and Consent of Minor, and the matter coming on regularly for hearing this day,
and it appearing to the Court that due and legal notice of said hearing has been
given in all respects as required by law, the minor having consented in
writing to the guardian's petition for discharge and waiving the rendition of
an accounting by his said guardian, and no one appearing to except to said
petition or to contest the same, the Court, after hearing the evidence,
approves said notice and finds said petition to be true and correct.

IT IS ORDERED that the petition of said guardian be, and the same is
hereby approved, allowed and settled.

IT IS FURTHER ORDERED that said guardian be allowed from the
estate of said ward a reasonable sum in the amount of \$ 700 for the
services of her attorneys, GARCIA, BRUZZONE & DUNN, as ordinary fees
for their services to the guardian and the guardianship estate during this
accounting period.

IT IS FURTHER ORDERED that due to the fact the minor of this
guardianship has reached the age of majority a guardianship of his estate is

U- 49334

1 no longer necessary and that the estate of said minor in possession of the
2 guardian remaining after the payment of attorney fees be turned over to the
3 former ward of the guardian, GREGORY JOSEPH GARCIA, and the guardian
4 discharged one year from the date of this order. Said property of the ward
5 remaining for distribution after payment of the attorney fees consists of the
6 following:

- 7 1. Cash in the approximate amount of \$5,187.53
- 8 2. An undivided one-half interest in service station equipment
9 located at 16035 East 14th Street, San Leandro, California;
- 10 3. An undivided one-half interest in the following described real
11 property:

12 All that certain real property situated in the Township of Eden,
13 County of Alameda, State of California, described as:

14 Parcel 1: Beginning at the intersection of the eastern line of
15 County Road Number 2552, known as Ashland Avenue, with the
16 southwestern line of East 14th Street, as the said street is now
17 laid out and improved, and running thence along said south-
18 western line south 48°56' East 109.07 feet (the bearing of the
19 southwestern line of East 14th Street being taken as South 48°56'
20 East for the purpose of making this description); thence leaving
21 said Southwestern line of East 14th Street South 33°04' West
22 111.22 feet; thence north 89°38' West 22.60 feet; to the said
23 Eastern line of Ashland Avenue; thence along the last named
24 line north 0°22' East 164.72 feet to the point of beginning.

25 DATED APR 26 1971

26 DONALD K. QUAYLE

27 JUDGE OF THE SUPERIOR COURT

28 The foregoing instrument is a
29 correct copy of the original
30 on file in this office

31 ATTEST: APR 26 1971

32 JACK G. SLUE, County Clerk
County Clerk and ex-officio Clerk of the
Superior Court of the State of California in
and for the County of Alameda
DEPUTY

79-061446
Sm-10.00

RECORDING REQUESTED BY

RECORDED at REQUEST OF
Western Title Guaranty Co.
At 10:30 A.M.
APR - 3 1979
OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
RENE C. DAVIDSON
COUNTY RECORDER

TRANSFER
TAX PAID
ALAMEDA COUNTY

AND WHEN RECORDED MAIL TO
NAME [JERRY PETSAS]
ADDRESS [16518 TOLEDO ST]
CITY & STATE [SAN LEANDRO, CALIF 94518]

Title Order No. _____ Escrow No. 591609-IR

5.00

MAIL TAX STATEMENTS TO
NAME [Address Above]
ADDRESS []
CITY & STATE []

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Documentary transfer tax \$ 132.2
 Computed on full value of property conveyed, or
 Computed on full value less liens and encumbrances
remaining thereon at time of sale.

Justus N. ...
Signature of declarant or agent determining tax—firm name

Individual Grant Deed

850539 PV
(1)

WESTERN TITLE FORM NO. 104

FOR VALUE RECEIVED, BEATRICE S. GALLEGOS, formerly known as Beatrice S. Garcia under which name she acquired title, and GREGORY JOSEPH GARCIA

GRANT to JERRY PETSAS and MARY PETSAS, his wife as joint tenants

all that real property situate in the Township of Eden

County of Alameda, State of California, described as follows:

SEE EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF

Dated March 21, 1979

Beatrice S. Gallegos

Beatrice S. Gallegos
Beatrice S. Gallegos
Gregory Joseph Garcia
Gregory Joseph Garcia

STATE OF CALIFORNIA } ss.
County of Fresno

On March 28, 1979, before me, the undersigned,

a Notary Public, in and for said State, personally appeared
Beatrice S. Gallegos

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Ruth A. Kusamura
Notary Public

79-061446

FOR NOTARY SEAL OR STAMP

OFFICIAL SEAL
RUTH A. KUSAMURA
Notary Public, California
Principal Office in
Fresno County
My Com. Expires Oct. 4, 1981

STATE OF CALIFORNIA

City of San Francisco }
County of San Francisco }

79-061446 1/2

On March 30, 76, before me, John J. Risso

a Notary Public, in and for said State, personally appeared

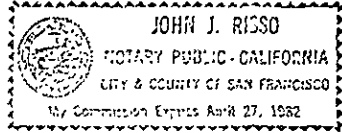
Estelita G. Salas Gregory Grayson

Grayson known to me to be the person whose name he subscribed

to the within instrument, and acknowledged to me that he executed the same.

My commission expires

John J. Risso
Notary Public



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

EMERGENCY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	HAS STATE OFFICE OF EMERGENCY SERVICES REPORT BEEN FILED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	FOR LOCAL AGENCY USE ONLY (REMOVED)
REPORT DATE: 0 2 2 4 9 2		CASE #

NAME OF INDIVIDUAL FILING REPORT Marc Zomorodi	PHONE (510) 429-8088	SIGNATURE
REPRESENTING <input type="checkbox"/> LOCAL AGENCY <input type="checkbox"/> OTHER	<input checked="" type="checkbox"/> OWNER/OPERATOR <input type="checkbox"/> REGIONAL BOARD	COMPANY OR AGENCY NAME Tank Protect Engineering of Northern California
ADDRESS 2821 Whipple Road Union City, CA 94587		

RESPONSIBLE PARTY NAME <input type="checkbox"/> UNKNOWN	CONTACT PERSON Mary Petsas	PHONE (510) 276-2828
ADDRESS 16518 Toledo Street San Leandro, CA 94578		

SITE LOCATION FACILITY NAME (IF APPLICABLE)	OPERATOR	PHONE ()
ADDRESS 16035 East 14th San Leandro, Alameda 94578		
CROSS STREET		

IMPLEMENTING AGENCIES LOCAL AGENCY Alameda County Health Care Services Agency	CONTACT PERSON Scott Seery	PHONE (415) 271-4320
REGIONAL BOARD CRWQCS - S.F. Bay Region		

SUBSTANCES INVOLVED (1) NAME Petroleum hydrocarbons - see below	QUANTITY LOST (GALLONS) <input type="checkbox"/> UNKNOWN
(2) <input type="checkbox"/> UNKNOWN	

DISCOVER/ABATEMENT DATE DISCOVERED 0 2 2 4 9 2	HOW DISCOVERED <input type="checkbox"/> INVENTORY CONTROL <input type="checkbox"/> SUBSURFACE MONITORING <input type="checkbox"/> NUISANCE CONDITIONS <input type="checkbox"/> TANK TEST <input checked="" type="checkbox"/> TANK REMOVAL <input type="checkbox"/> OTHER
DATE DISCHARGE BEGAN UNKNOW	METHOD USED TO STOP DISCHARGE (CHECK ALL THAT APPLY) <input type="checkbox"/> REMOVE CONTENTS <input checked="" type="checkbox"/> CLOSE TANK & REMOVE <input type="checkbox"/> REPAIR PIPING <input type="checkbox"/> REPAIR TANK <input type="checkbox"/> CLOSE TANK & FILL IN PLACE <input type="checkbox"/> CHANGE PROCEDURE <input type="checkbox"/> REPLACE TANK <input type="checkbox"/> OTHER
HAS DISCHARGE BEEN STOPPED? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, DATE	

SOURCE/CAUSE <input type="checkbox"/> TANK LEAK <input checked="" type="checkbox"/> UNKNOWN <input type="checkbox"/> PIPING LEAK <input type="checkbox"/> OTHER	CAUSE(S) <input type="checkbox"/> OVERFILL <input type="checkbox"/> RUPTURE/FAILURE <input type="checkbox"/> SPILL <input type="checkbox"/> CORROSION <input type="checkbox"/> UNKNOWN <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 <input checked="" type="checkbox"/> NO ACTION TAKEN <input type="checkbox"/> PRELIMINARY SITE ASSESSMENT WORKPLAN SUBMITTED <input type="checkbox"/> POLLUTION CHARACTERIZATION <input type="checkbox"/> LEAK BEING CONFIRMED <input type="checkbox"/> PRELIMINARY SITE ASSESSMENT UNDERWAY <input type="checkbox"/> POST CLEANUP MONITORING IN PROGRESS <input type="checkbox"/> REMEDIATION PLAN <input type="checkbox"/> CASE CLOSED (CLEANUP COMPLETED OR UNNECESSARY) <input type="checkbox"/> CLEANUP UNDERWAY
--

REMEDIAL ACTION CHECK APPROPRIATE ACTION(S) <input type="checkbox"/> CAP SITE (CS) <input type="checkbox"/> EXCAVATE & DISPOSE (ED) <input type="checkbox"/> REMOVE FREE PRODUCT (FP) <input type="checkbox"/> ENHANCED BIO DEGRADATION (BT) <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"/> VACUUM EXTRACT (VE) <input type="checkbox"/> NO ACTION REQUIRED (NA) <input type="checkbox"/> TREATMENT AT HOOKUP (HL) <input type="checkbox"/> VENT SOIL (VS) <input type="checkbox"/> OTHER (OT)
--

COMMENTS
 Two 1,000 - gallon gasoline and one 550 - gallon waste oil, underground, storage tanks were removed.

UNDERGROUND STORAGE TANK UNAUTHORIZED RELEASE (LEAK) CONTAMINATION SITE REPORT

EMERGENCY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	HAS STATE OFFICE OF EMERGENCY SERVICES REPORT BEEN FILED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	FOR LOCAL AGENCY USE ONLY I HEREBY CERTIFY THAT I HAVE DISTRIBUTED THIS INFORMATION ACCORDING TO THE DISTRIBUTION SHOW ON THE INSTRUCTION SHEET ON THE BACK PAGE OF THIS FORM. SIGNED: <i>[Signature]</i> DATE: <u>2/16/92</u>
---	---	---

REPORT DATE <u>02/06/92</u>	CASE # _____
---------------------------------------	------------------------

REPORTED BY	NAME OF INDIVIDUAL FILING REPORT <u>SCOTT O. SEERY</u>	PHONE <u>(510) 271-4320</u>	SIGNATURE <i>[Signature]</i>	
	REPRESENTING <input checked="" type="checkbox"/> LOCAL AGENCY <input type="checkbox"/> OWNER/OPERATOR <input type="checkbox"/> REGIONAL BOARD <input type="checkbox"/> OTHER	COMPANY OR AGENCY NAME <u>ALAMEDA CO. ENVIRON. HEALTH DEPT. HAZARDOUS MATERIALS DIV.</u>		
	ADDRESS <u>80 SWAN WAY, 2nd. 200 OAKLAND CA 94621</u>			

RESPONSIBLE PARTY	NAME <u>JERRY + MARY PETSAS</u> <input type="checkbox"/> UNKNOWN	CONTACT PERSON _____	PHONE <u>(510) 575-0505</u>
	ADDRESS <u>16518 TOLEDO STREET SAN LEANDRO CA 94578</u>		

SITE LOCATION	FACILITY NAME (IF APPLICABLE) <u>(UNITED AUTO CENTER)</u>	OPERATOR _____	PHONE ()	
	ADDRESS <u>16035 E. 14th Street SAN LEANDRO ALAMEDA 94578</u>			
	CROSS STREET <u>ASHLAND AVE.</u>			

IMPLEMENTING AGENCIES	LOCAL AGENCY <u>ALAMEDA Co. HEALTH</u>	CONTACT PERSON <u>SCOTT SEERY</u>	PHONE <u>(510) 271-4320</u>
	REGIONAL BOARD <u>SAN FRANCISCO BAY</u>	CONTACT PERSON <u>LESTER FELDMAN</u>	PHONE <u>(510)</u>

SUBSTANCES INVOLVED	(1) NAME <u>GASOLINE</u>	QUANTITY LOST (GALLONS) <input checked="" type="checkbox"/> UNKNOWN
	(2) NAME <u>WASTE OIL</u>	QUANTITY LOST (GALLONS) <input checked="" type="checkbox"/> UNKNOWN

DISCOVERY/ABATEMENT	DATE DISCOVERED <u>02/04/92</u>	HOW DISCOVERED <input type="checkbox"/> INVENTORY CONTROL <input type="checkbox"/> SUBSURFACE MONITORING <input type="checkbox"/> NUISANCE CONDITIONS <input type="checkbox"/> TANK TEST <input checked="" type="checkbox"/> TANK REMOVAL <input type="checkbox"/> OTHER _____		
	DATE DISCHARGE BEGAN <input checked="" type="checkbox"/> UNKNOWN	METHOD USED TO STOP DISCHARGE (CHECK ALL THAT APPLY) <input type="checkbox"/> REMOVE CONTENTS <input checked="" type="checkbox"/> CLOSE TANK & REMOVE <input type="checkbox"/> REPAIR PIPING <input type="checkbox"/> REPAIR TANK <input type="checkbox"/> CLOSE TANK & FILL IN PLACE <input type="checkbox"/> CHANGE PROCEDURE <input type="checkbox"/> REPLACE TANK <input type="checkbox"/> OTHER _____		
	HAS DISCHARGE BEEN STOPPED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YES, DATE <u>02/05/92</u>			

SOURCE/ CAUSE	SOURCE OF DISCHARGE <input checked="" type="checkbox"/> TANK LEAK <input type="checkbox"/> UNKNOWN <input type="checkbox"/> PIPING LEAK <input type="checkbox"/> OTHER _____	CAUSE(S) <input type="checkbox"/> OVERFILL <input type="checkbox"/> RUPTURE/FAILURE <input type="checkbox"/> SPILL <input checked="" type="checkbox"/> CORROSION <input type="checkbox"/> UNKNOWN <input type="checkbox"/> OTHER _____
----------------------	--	--

CASE TYPE	CHECK ONE ONLY <input 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 type="checkbox"/> NO ACTION TAKEN <input checked="" type="checkbox"/> PRELIMINARY SITE ASSESSMENT WORKPLAN SUBMITTED <input type="checkbox"/> POLLUTION CHARACTERIZATION <input type="checkbox"/> LEAK BEING CONFIRMED <input type="checkbox"/> PRELIMINARY SITE ASSESSMENT UNDERWAY <input type="checkbox"/> POST CLEANUP MONITORING IN PROGRESS <input type="checkbox"/> REMEDIATION PLAN <input type="checkbox"/> CASE CLOSED (CLEANUP COMPLETED OR UNNECESSARY) <input checked="" type="checkbox"/> CLEANUP UNDERWAY
-----------------------	--

REMEDIAL ACTION	CHECK APPROPRIATE ACTION(S) (SEE BACK FOR DETAILS) <input checked="" type="checkbox"/> EXCAVATE & DISPOSE (ED) <input type="checkbox"/> REMOVE FREE PRODUCT (FP) <input type="checkbox"/> ENHANCED BIO DEGRADATION (IT) <input type="checkbox"/> CAP SITE (CD) <input type="checkbox"/> EXCAVATE & TREAT (ET) <input type="checkbox"/> PUMP & TREAT GROUNDWATER (GT) <input type="checkbox"/> REPLACE SUPPLY (RS) <input type="checkbox"/> CONTAINMENT BARRIER (CB) <input type="checkbox"/> NO ACTION REQUIRED (NA) <input type="checkbox"/> TREATMENT AT HOOKUP (HU) <input type="checkbox"/> VENT SOIL (VS) <input type="checkbox"/> VACUUM EXTRACT (VE) <input type="checkbox"/> OTHER (OT) _____		
------------------------	--	--	--

COMMENTS
 3 USTs removed, all with corrosion holes. Contractor will be over-excavating affected soil. PSA will be required. Shallow (<20') ground water exists.

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

Certified Mail # P 367 604 563

APR 25 1995

04/02/93
STID# 4147

Director of Environmental Health

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

Notice of Requirement to Reimburse

Mary Petsas
n/a
16518 Toledo St
San Leandro, C A 94578

Responsible Party #1
Property Owner

Gregory J. Garcia
344 Rollingwood Drive
Vallejo, Ca 94591

Responsible Party #3
Contact Person
Contact Company

Mary Petsas
16035 E. - 14th St.
San Leandro, CA 94578

SITE

Date First Reported 02/04/92
Substance: Gasoline
Petroleum: (X)Yes

The federal Petroleum Leaking Underground Storage Tank Trust Fund (Federal Trust Fund) provides funding to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The legislature has authorized funds to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The direct and indirect costs of site investigation or remedial action at the above site are funded, in whole or in part, from the Federal Trust Fund. The above individual(s) or entity(ies) have been identified as the party or parties responsible for investigation and cleanup of the above site. YOU ARE HEREBY NOTIFIED that pursuant to Title 42 of the United States Code, Section 6991b(h)(6) and Sections 25297.1 and 25360 of the California Health and Safety Code, the above Responsible Party or Parties must reimburse the State Water Resources Control Board not more than 150 percent of the total amount of site specific oversight costs actually incurred while overseeing the cleanup of the above underground storage tank site, and the above Responsible Party or Parties must make full payment of such costs within 30 days of receipt of a detailed invoice from the State Water Resources Control Board.

Please contact Scott SEERY, Hazardous Materials Specialist at this office if you have any questions concerning this matter.

Edgar B. Howell, III, Chief
Contract Project Director

cc: Sandra Malos, SWRCB

SWRCB Use:

Add: X Reason: New Case

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

Certified Mail # P 367 604 561

04/02/93
STID# 4147

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

Notice of Requirement to Reimburse

Mary Petsas
n/a
16518 Toledo St
San Leandro, CA 94578

Responsible Party #1
Property Owner

Beatrice S. Gallegos
4650 No. Palm Avenue
Fresno, CA 93704

Responsible Party #2
Contact Person
Contact Company

Mary Petsas
16035 E. - 14th St.
San Leandro, CA 94578

SITE

Date First Reported 02/04/92
Substance: Gasoline
Petroleum: (X) Yes

The federal Petroleum Leaking Underground Storage Tank Trust Fund (Federal Trust Fund) provides funding to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The legislature has authorized funds to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The direct and indirect costs of site investigation or remedial action at the above site are funded, in whole or in part, from the Federal Trust Fund. The above individual(s) or entity(ies) have been identified as the party or parties responsible for investigation and cleanup of the above site. YOU ARE HEREBY NOTIFIED that pursuant to Title 42 of the United States Code, Section 6991b(h)(6) and Sections 25297.1 and 25360 of the California Health and Safety Code, the above Responsible Party or Parties must reimburse the State Water Resources Control Board not more than 150 percent of the total amount of site specific oversight costs actually incurred while overseeing the cleanup of the above underground storage tank site, and the above Responsible Party or Parties must make full payment of such costs within 30 days of receipt of a detailed invoice from the State Water Resources Control Board.

Please contact Scott SEERY, Hazardous Materials Specialist at this office if you have any questions concerning this matter.

Edgar B. Howell, III, Chief
Contract Project Director

cc: Sandra Malos, SWRCB

SWRCB Use:

Add: X Reason: New Case

LAW OFFICES OF HANS W. HERB

RECEIVED

APR 25 1995

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

Director of Environmental Health

Arizona
California
Washington

(707) 576-0757
Telecopier:
(707) 575-0364

May 2, 1993

MAY

HANS W. HERB

David J. Kears, Agency Director
ALAMEDA COUNTY HEALTH CARE
SERVICES AGENCY
80 Swan Way, Room 200
Oakland, CA 94621

RE: Site: 10635 E. 14th St., San Leandro, CA
Site I.D. No: 4147


Dear Mr. Kears:

This letter is to advise you that Beatrice S. Gallegos and Gregory J. Garcia have filed the attached Petition with the State Water Resources Control Board, appealing your agency's decision to name them as responsible parties in connection with the underground storage tank investigation at the above-referenced site.

Pursuant to California Code of Regulations, §2050, please provide the State Water Resources Control Board with a list of all persons other than those shown in the Petition, if any, known by your agency to have an interest in this matter.

Further, please prepare your record in this matter and submit it as required by the State Board.

Very truly yours,
LAW OFFICES OF HANS W. HERB



Hans W. Herb

HWH/mca
Enclosure

cc: Ms. Beatrice S. Gallegos
Mr. Gregory J. Garcia

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition
of Gregory J. Garcia and
Beatrice S. Gallegos

SWRCB No: _____

PETITION FOR REVIEW
OF DECISION BY ALAMEDA COUNTY
HEALTH CARE SERVICES AGENCY
NAMING PETITIONERS AS RESPONSIBLE PARTIES

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Fl.
Santa Rosa, CA 95404
(707) 576-0757
(800) 757-9562

Attorneys for
Gregory J. Garcia and
Beatrice S. Gallegos

INTRODUCTION

On April 6, 1993, Petitioners received notice from the Alameda County Health Care Services Agency ("Alameda County") that they had been named as responsible parties for the underground storage tank investigation at the property located at 16035 E. 14th Street in San Leandro, California. Petitioners had, at one time more than a dozen years ago, an ownership interest in the property, but never had any involvement with the operation of the underground storage tanks on the property. Petitioners are unaware of any unauthorized discharges from the underground storage tanks during the period of their ownership. Because petitioner's believe none of this Board's previous order's would require, or even authorize petitioners to be named as responsible parties, they respectfully bring this petition requesting that the State Board instruct Alameda County Health Care Services Agency to remove petitioners from the list of responsible parties.

BACKGROUND

In 1961, Joseph Raymond Garcia died and left the property located at 16035 E.14th Street in San Leandro, California, to the petitioners herein, Gregory J. Garcia and Beatrice S. Gallegos. At the time petitioners obtained the property, Seaside Oil Company, a Santa Barbara based oil jobber, had a lease on the premises. From information petitioners have discovered in historical documents, it appears that Seaside Oil

Company had leased the premises from the decedent and his predecessor owners for some period of time before 1940.

Seaside Oil Company continued its lease agreement on the property through December 21, 1965, and it continued operations on the station for several years after that. Specifically, after 1965, Seaside subleased the premises to a number of sub-operators, before finally leaving the property in the late 1960's. For a while thereafter (several months in early 1970), the station remained vacant. Later, it was leased by William and Peggy Gritzuk. The Gritzuks written lease indicates they leased the station from September of 1972 until at least March of 1979, but they are believed to have occupied the site for several years before that. The petitioners sold their interest in the subject property to the current owners, Jerry and Mary Petsas in March of 1979.

At no time did petitioners ever operate any of the underground storage tanks on the premises, nor did they operate any business on the site. Instead, all storage tank operations at the site were conducted by Seaside Oil Company and/or one of its subtenants and the Gritzuks.

Although petitioners have not yet been able to locate a copy of the written lease agreement between Seaside Oil Company and the late Joseph Raymond Garcia, they have located the 1972 lease between petitioners and the Gritzuks. Under the express terms of the lease, the Gritzuks were responsible to; at their own cost and expense, maintain the premises, "including the

plumbing", in good order and repair and, to; at their own cost and expense, make all repairs and replacements of whatever kind and nature to the premises. In addition to expressly agreeing to hold petitioners harmless from all costs and expense connected with the premises, the Gritzuks agreed not to use or permit the premises to be used in violation of any of the laws or ordinances, and to "comply with all federal, state or municipal regulations or ordinances now or hereinafter enacted concerning the conduct of the Gritzuks' business at the premises."

When the Petsases purchased the property in 1979, they insisted on taking the property as-is, accepting full responsibility for any defects on the premises. The tanks were obviously disclosed since the site was a service station. (However, as the Board can imagine, there was not the concern that exists today regarding the issue of underground fuel tanks.)

Following the sale of the property to the Petsases in 1979, fourteen years ago, petitioners had no further knowledge of or involvement with the site.

On April 6, 1993, petitioners received notice from the Alameda County Health Care Service Agency that they were responsible parties for the investigation of the underground storage tanks at their former San Leandro property. Petitioners have no knowledge whatsoever as to why or how they could have been named as responsible parties. Petitioners were given no opportunity to question or even address the agency that determined them to be responsible parties.

Because petitioners do not believe the federal or state regulations, nor prior decisions of the State Water Resources Control Board, authorize them to be named a responsible party, petitioners respectfully request the State Board reverse the decision of the Alameda County Health Care Agency and require the Alameda County Health Care Services Agency to provide substantial evidence before naming petitioners, or anyone else, as responsible parties for the cleanup of the site.

NAME AND ADDRESS OF PETITIONERS

Beatrice S. Gallegos, 4650 No. Palm Avenue, Fresno, California 93704; Gregory J. Garcia, 344 Rollingwood Drive, Vallejo, California 94591.

Petitioners request copies of all relevant correspondence be served on their counsel, Hans W. Herb, Law Offices of Hans W. Herb, 50 Santa Rosa Ave., 5th Floor, Santa Rosa, CA 95404; Telephone: (800) 767-9562.

SPECIFIC ACTION/COPY OF ORDER

A copy of the relevant documents received by petitioners is attached as Exhibit A. The letters are dated April 2, 1993.

THE DATE ON WHICH THE LOCAL AGENCY ACTED

April 2, 1993, according to their letters.

**STATEMENT OF REASONS WHY THE ACTION
WAS INAPPROPRIATE OR IMPROPER**

Petitioners contend that under well-established federal, state and local regulations, there is no basis for naming a responsible party for the cleanup of contamination of an unauthorized release, unless and until there is substantial evidence that the responsible party was the cause of an unauthorized release. By naming petitioners as responsible parties without any evidence, let alone substantial evidence, petitioners believe the Alameda County local agency exceeded its jurisdiction and is subject to reversal by the State Board.

THE MANNER IN WHICH PETITIONER IS AGGRIEVED

Petitioners are uniquely situated. Their last involvement at the site, some fourteen years ago, leaves them in a position where they have no information, nor the ability to obtain any information about any alleged discharges or spills on the property. One of the petitioners is disabled and the other lives month to month on income from Social Security. Being improperly named as responsible parties has created a huge financial burden on the petitioners and has caused extreme distress.

SPECIFIC ACTION REQUESTED

Petitioners request the State Board reverse the decision of the Alameda County Health Care Services Agency and require that agency to identify substantial evidence before

naming anyone as a responsible party for the cleanup of this site.

STATEMENT OF POINTS AND AUTHORITIES

It is now well-established that before naming a responsible party, a regional water board or local oversight agency must have substantial evidence. State Water Resources Control Board Resolution 92-49; In the Matter of the Petition of Wenwest, et al., Order No. 92-13; In the Matter of the Petitions of Robert S. Taylor, et al. and John F. Basta, Order No. WQ92-14; In the Matter of the Petition of Exxon Company, U.S.A., et al., Order No. WQ85-7.

The specific kinds of evidence to be considered are set forth in Resolution 92-49 and include such factors as hydrogeologic information, physical evidence, unauthorized release reports and complaints, agencies records of discharges, and, in limited cases, circumstantial evidence. However, in all cases, there must be substantial evidence to support the action. In this case, several factors indicate substantial evidence does not exist.

As the Wenwest opinion notes, the three factors this Board must consider in determining whether petitioners are properly named as responsible parties are:

- (1) Did the petitioners have a significant ownership interest in the property at the time of the discharge?

- (2) Did they have knowledge of the activities which resulted in the discharge?
- (3) Did they have the legal ability to prevent the discharge?

In this case, when that standard is applied, it is clear that petitioners have no responsibility for the alleged discharges at the site and should not have been named as responsible parties by Alameda County. Specifically, there is no evidence of any unauthorized release during the period of time petitioners had an ownership interest in the site.

Further, as noted, petitioner's ownership interest was solely that of an absentee landlord. Under the express terms of the written lease agreement, the tenants were required to comply with all laws, now and in the past, and were required to maintain all of the tanks and plumbing.

A number of other grounds exist, indicating a lack of liability on behalf of the petitioners. For example, Water Code §13304(f), by its express language, does not apply to actions occurring before January 1, 1981, if the acts were not in violation of the regulations at the time they occurred. There is absolutely no evidence whatsoever that petitioners had any responsibility for any discharges at the site. Assuming *arguendo* that the petitioners did have some responsibility, any such liability necessarily arose from conduct before 1979, when petitioners were last associated with the site.

Moreover, there is no evidence that petitioners ever operated the underground tanks at any time. At most, petitioners were passive landowners who had an ownership interest in a piece of property operated as a service station by an oil company. As the Wenwest opinion noted, it is not appropriate to name landowners where they have not been involved in the activity which created the pollution problem.

In this case, fairness and equity dictate that there should not be a blanket order naming anyone who was ever associated with a site as a responsible party for the site's investigation and cleanup. If that were to be the case, it would be more equitable and fair to name all those who purchased fuel from the site since they actually conducted operations at the service station, whereas petitioners never had anything to do with the service station's operations.

A number of equitable factors also indicate petitioners should not be named as responsible parties. For example, the persons who purchased the property from petitioners, expressly purchased the property as-is. This was a conscious decision by the purchaser of the property in order to have the price of the property reduced. In agreeing to accept a lower figure for the property, petitioners expressly agreed that the property would be sold as-is, and that the current owners, the Petsases, would be fully responsible for any defects then existing or thereafter occurring on the premises. Although the State Water Board is not bound by the "as-is clause" in the agreement, equity and fairness

dictate that someone who takes advantage of a situation and lowers a purchase price based on an as-is clause should not thereafter be entitled to seek the State Board's assistance in enforcing a contrary agreement with the seller.

Likewise, it is notable that petitioners' lease with the Gritzuks, and possibly with Seaside (we have not yet located the complete lease), requires that the risk of hazards such as environmental contamination be borne solely and exclusively by the lessee. In other words, the amount of control petitioners had over the oil companies was non-existent. As noted, petitioners had no knowledge of contamination until they received the Alameda County Agency's letter.

Finally, due process and fundamental fairness concerns indicate that petitioners should not be named as responsible parties for the cleanup. First, petitioners were never given the opportunity to review or even consider the alleged evidence against them (if there was in fact any evidence). Fundamental concepts of fairness and due process dictate that, as a minimum, petitioners should have been allowed the opportunity to review and comment on the evidence purportedly used against them.

In Staff's draft order, In the Matter of the Petition of The Phillips Petroleum Company, your file number A-828, the Staff recognized that in order to be accorded administrative due process and a fair hearing, a party should be given the opportunity to review and comment on the evidence presented and to be able to do so in the meaningful way. As the Staff

recognized, the rules of fair play require each side be given an opportunity to present, review and discuss the evidence to see if it meets the standard required (substantial evidence).

For the foregoing reasons, petitioners contend that the action by the Alameda County Health Care Services Agency was inappropriate and should be reversed by the State Board.

LIST OF INTERESTED PERSONS AND REGIONAL BOARD

Complete copies of the Petition have been provided to:

Alameda County Health Care Services Agency
80 Swan Way, Room 200
Oakland, CA 94621

Mary Petsas
16518 Toledo Street
San Leandro, CA 94578

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

Office of the Chief Counsel
State Water Resources Control Board
901 "P" Street
Sacramento, CA 95814

REQUEST FOR AGENCY TO PREPARE RECORD


Attached as Exhibit B is a copy of the letter requesting the Alameda Health Care Services Agency prepare their record.

CONCLUSION

Petitioners are not responsible for any unauthorized releases at the referenced property. There is no evidence, let alone substantial evidence, that petitioners are or should be responsible for any discharges at the site. For the foregoing reasons, petitioners respectfully request this Board grant the petition and reverse the action of the Alameda County Health Care Services Agency.

DATED: May 2, 1992

LAW OFFICES OF HANS W. HERB

BY: 

HANS W. HERB
Attorney for Petitioners

LAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

Certified Mail # p 367 604 562

04/02/93
STID# 4147

Notice of Requirement to Reimburse

Mary Petsas
n/a
16518 Toledo St
San Leandro, C A 94578

Responsible Party #1
Property Owner

Beatrice S. Gallegos
4650 No. Palm Avenue
Fresno, Ca 93704

Responsible Party #2
Contact Person
Contact Company

Mary Petsas
16035 E. - 14th St.
San Leandro, CA 94578

SITE

Date First Reported 02/04/92
Substance: Gasoline
Petroleum: (X)Yes

The federal Petroleum Leaking Underground Storage Tank Trust Fund (Federal Trust Fund) provides funding to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The legislature has authorized funds to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The direct and indirect costs of site investigation or remedial action at the above site are funded, in whole or in part, from the Federal Trust Fund. The above individual(s) or entity(ies) have been identified as the party or parties responsible for investigation and cleanup of the above site. YOU ARE HEREBY NOTIFIED that pursuant to Title 42 of the United States Code, Section 6991b(h)(6) and Sections 25297.1 and 25360 of the California Health and Safety Code, the above Responsible Party or Parties must reimburse the State Water Resources Control Board not more than 150 percent of the total amount of site specific oversight costs actually incurred while overseeing the cleanup of the above underground storage tank site, and the above Responsible Party or Parties must make full payment of such costs within 30 days of receipt of a detailed invoice from the State Water Resources Control Board.

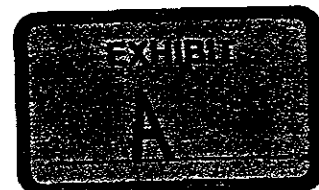
Please contact Scott SEERY, Hazardous Materials Specialist at this office if you have any questions concerning this matter.

Edgar B. Howell, III, Chief
Contract Project Director

cc: Sandra Malos, SWRCB

SWRCB Use:

Add: X Reason: New Case



ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J KEARS, Agency Director



RAFAT A. SHAHID, ASST AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
LST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

Certified Mail # P 367 604 563

04/02/93
STID# 4147

Notice of Requirement to Reimburse

Mary Petsas
n/a
16518 Toledo St
San Leandro, CA 94578

Responsible Party #1
Property Owner

Gregory J. Garcia
344 Rollingwood Drive
Vallejo, CA 94591

Responsible Party #3
Contact Person
Contact Company

Mary Petsas
16035 E. - 14th St.
San Leandro, CA 94578

SITE

Date First Reported 02/04/92
Substance: Gasoline
Petroleum: (X)Yes

The federal Petroleum Leaking Underground Storage Tank Trust Fund (Federal Trust Fund) provides funding to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The legislature has authorized funds to pay the local and state agency administrative and oversight costs associated with the cleanup of releases from underground storage tanks. The direct and indirect costs of site investigation or remedial action at the above site are funded, in whole or in part, from the Federal Trust Fund. The above individual(s) or entity(ies) have been identified as the party or parties responsible for investigation and cleanup of the above site. YOU ARE HEREBY NOTIFIED that pursuant to Title 42 of the United States Code, Section 6991b(h)(6) and Sections 25297.1 and 25360 of the California Health and Safety Code, the above Responsible Party or Parties must reimburse the State Water Resources Control Board not more than 150 percent of the total amount of site specific oversight costs actually incurred while overseeing the cleanup of the above underground storage tank site, and the above Responsible Party or Parties must make full payment of such costs within 30 days of receipt of a detailed invoice from the State Water Resources Control Board.

Please contact Scott SEERY, Hazardous Materials Specialist at this office if you have any questions concerning this matter.


Edgar B. Howell, III, Chief
Contract Project Director

cc: Sandra Malos, SWRCB

SWRCB Use:

Add: X Reason: New Case

LAW OFFICES OF HANS W. HERB

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

Arizona
California
Washington

(707) 576-0757
Telecopier:
(707) 575-0364

May 2, 1993

HANS W. HERB

David J. Kears, Agency Director
ALAMEDA COUNTY HEALTH CARE
SERVICES AGENCY
80 Swan Way, Room 200
Oakland, CA 94621

RE: Site: 10635 E. 14th St., San Leandro, CA
Site I.D. No: 4147

Dear Mr. Kears:

This letter is to advise you that Beatrice S. Gallegos and Gregory J. Garcia have filed the attached Petition with the State Water Resources Control Board, appealing your agency's decision to name them as responsible parties in connection with the underground storage tank investigation at the above-referenced site.

Pursuant to California Code of Regulations, §2050, please provide the State Water Resources Control Board with a list of all persons other than those shown in the Petition, if any, known by your agency to have an interest in this matter.

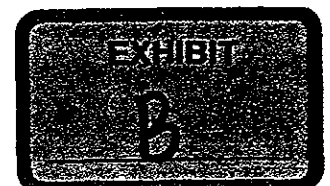
Further, please prepare your record in this matter and submit it as required by the State Board.

Very truly yours,
LAW OFFICES OF HANS W. HERB


Hans W. Herb

HWH/mca
Enclosure

cc: Ms. Beatrice S. Gallegos
Mr. Gregory J. Garcia



STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS
2014 T STREET, SUITE 130
P.O. BOX 944212
SACRAMENTO, CA 94244-2120
916/227-4325
Facsimile 916/227-4349



RECEIVED

APR 25 1995

JUN 15 1993

Director of Environmental Health

CERTIFIED MAIL NO. P 088 542 564

Mr. Hans W. Herb
Attorney at Law
50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, CA 95404

Dear Mr. Herb:

ACKNOWLEDGMENT OF RECEIPT OF PETITION, SITE NO. 4147, 16035 EAST 14TH STREET,
SAN LEANDRO, ALAMEDA COUNTY

This will acknowledge receipt of the petition submitted on behalf of Beatrice Gallegos and Gregory Garcia (Petitioners). The petition challenges a decision made by Alameda County to name the Petitioners jointly responsible with the current property owner (Mary Petsas) for the cleanup costs.

The petition states that the Petitioners sold the subject site to Ms. Petsas in March of 1979 and that they had no other connections to the property from that point on.

According to information obtained from Alameda County, the tanks were never used after the sale of the property to Ms. Petsas. In other words, the Petitioners were the last owners of the tanks before the discontinuance of their use.

Oversight costs for this site are funded from the Federal Petroleum Trust Fund (Trust Fund). The Trust Fund is regulated under the Resource Conservation Recovery Act (RCRA) which defines a responsible party in 42 U.S.C. Section 6991(3) as:

(A) In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances, and

(B) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use. (Emphasis added).

California Code of Regulations, Title 23, Division 3, Section 2720 (Corrective Action Requirements) defines a responsible party as "any owner of property where an unauthorized release of a hazardous substance from an underground storage tank has occurred".

Mr. Hans W. Herb

-2-

Ms. Petsas has been identified as a responsible party because she is an owner of contaminated property. The Petitioners have been identified because they were the last owners of the tanks before the discontinuation of their use.

If after reviewing the above information, you still wish to proceed with the petition, an amended petition must be submitted within 30 days from the date of this letter. The amended petition should include additional issues since the issue in the original petition has now been resolved.

If you have any questions, please telephone Lori Casias at (916) 227-4325.

Sincerely,

Donna Schmeck

for Sandra L. Malos, Chief
Local Oversight Program

cc: Beatrice S. Gallegos
Gregory J. Garcia
Mary Petsas
✓ Scott Seery
Dorothy Jones,
State Water Board Legal Counsel

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

RECEIVED

APR 25 1995

Director of Environmental Health

In the Matter of the Petition
of Gregory J. Garcia and
Beatrice S. Gallegos

SWRCB No: _____

**ADDENDUM TO THE
PETITION FOR REVIEW
OF DECISION BY ALAMEDA COUNTY
HEALTH CARE SERVICES AGENCY
NAMING PETITIONERS AS RESPONSIBLE PARTIES**

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Fl.
Santa Rosa, CA 95404
(707) 576-0757
(800) 767-9562

Attorneys for
Gregory J. Garcia and
Beatrice S. Gallegos

INTRODUCTION

On May 2, 1992, the Petitioners herein filed a Petition for Review of the Alameda County Health Care Service Agency's naming them as responsible parties for the cleanup of the property located at 16035 East 14th Street, in San Leandro, California. In their Petition, Petitioners maintained that they were not responsible for the contamination at the property because there was no evidence, let alone "substantial evidence," of their liability.

In a June 15, 1993 letter, Sandra L. Malos, Chief of the Local Oversight Program, responded to the Petition, declared the Petitioners were responsible for the cleanup, and stated, "if after reviewing the above information, [sic] you still wish to proceed with the petition, an amended petition must be submitted within 30 days from the date of this letter. The amended petition should include additional issues since the issue in the original petition has now been resolved." A copy of Ms. Malos' letter is attached hereto.

Petitioners bring this Amended Petition for two reasons. First, the factual basis relied on by the Division to establish the Petitioners' alleged liability is incorrect. Second, and more importantly, there is no provision in California law which allows one regulator to review the acts of another regulator as a substitution to an impartial review by an independent third party. By analogy, the response from the Division of Clean Water Programs is like a police sergeant

determining the guilt of a criminal arrested by a police officer. Basic and fundamental concepts of due process under constitutional law require that regulatory actions be reviewed by an impartial and neutral third party such as an elected or appointed official or Board. In light of the fact that representatives of local oversight programs have testified at public hearings that regulators attempt to handle these matters "in-house" without bringing this to the attention of the appropriate supervisory officials, Petitioners are deeply disturbed. For that reason, Petitioners request the due process they are entitled to under the United States and California Constitutions.

**FEDERAL LAW, 42 U.S.C. §6991(3)
DOES NOT ESTABLISH LIABILITY,
IT SIMPLY DEFINES THE TERM "OWNER"**

The purpose of the definition section of the statute is to identify how a term is used in the balance of the statute. A definition section, by its own design, cannot establish liability for anyone. Instead, only the regulations themselves can establish some liability. Nevertheless, the Division seeks to hold Petitioners liable based on a definition of "owner" found in federal RCRA statutes. (See letter.) This is incorrect and nonsensical. Consequently, in this case, there is no basis for establishing liability against the Petitioners based solely on a definitional statute.

**THERE IS NO "EVIDENCE" LET ALONE
"SUBSTANTIAL EVIDENCE" THAT PETITIONERS
WERE EVER THE "OWNERS" OF THE
UNDERGROUND STORAGE TANKS**

After submission of the original Petition, Sandra L. Malos, Chief of the Local Oversight Program, wrote a letter to Petitioners, claiming that Petitioners were responsible parties for the investigation at the site in San Leandro because they met the definition of "owners" under RCRA. Petitioners challenge this assertion, factually and legally.

First, as was noted in the original Petition, Petitioners were owners of the property. Owners of the property are not necessarily owners of fixtures placed thereon by third parties.

While Petitioners are aware that the State Underground Storage Tank Cleanup Fund ("Fund") has allowed claims for "de facto" tank owners, neither federal nor state law recognizes any such basis for imposing liability.

By analogy, if a gasoline tanker truck was to crash into your home spilling gasoline, the responsibility for the cleanup would be solely on the trucking company and the driver. There would be no good legal reason, nor would it foster sound public policy, to require the owner of the property to clean it up simply because he or she owned the property.

From the information presently available to the Petitioners, it appears that the underground storage tanks were owned last by the Seaside Oil Company. Petitioners are not affiliated in any way with the Seaside Oil Company. Under these

facts Petitioners fail to see any legal basis in which liability could or should be imposed on them.

**FAILURE TO AFFORD PETITIONERS
THE OPPORTUNITY TO HAVE THEIR CASE
HEARD BEFORE AN IMPARTIAL AND NEUTRAL
BOARD VIOLATES THE PETITIONERS' DUE
PROCESS RIGHTS AND IS REPUGNANT TO THE
AMERICAN AND CALIFORNIA CONSTITUTIONAL SYSTEM**

California Health & Safety Code §25297.1 provides that local oversight programs may exist subject to certain requirements. Among the requirements are those found at §25297.1(d)(3). This section requires local oversight programs to assure that responsible parties be given a meaningful procedure to petition the Board for review of the actions or decisions of the local agency. By statute, the local agency must follow the procedure set forth in Water Code §13320, *et seq.* Under §13320, *et seq.*, any aggrieved person may petition the "State Board" to review such action or failure to act. The "State Board" is defined in California Water Code §175. It includes the five-member California State Water Resources Control Board. Notably absent from the five members identified on the State Board is the Chief of the Local Oversight Program. In other words, only the five members of the State Water Resources Control Board ("SWRCB") may review a petition under California Water Code §13320 (See California Water Code §13100).

Administrative proceedings which affect property and personal rights are required to meet constitutional protections of due process. Anderson National Bank v. Lockett, 31 U.S. 233, 64 S.Ct. 599, 606, 88 L.Ed. 692, 705 (1944).

It is necessary that the right to a fair and open hearing be maintained as the right to such a hearing is one of the rudiments of fair play assured by the 14th Amendment as a minimal requirement. Blender, Robinson & Company v. Tom, 181 Cal.App.3d 283, 289, 226 Cal.Rptr. 339 (1986). Proceedings which wholly deny a hearing or provide inadequate review procedures, lack due process. Morgan v. United States, 298 U.S. 468, 56 Sup.Ct. 906, 80 L.Ed. 1288 (1936); Trans-Oceanic Oil Corporation v. Santa Barbara, 85 Cal.App.2d 776, 797, 194 Pac.2d 148 (1948).

The type of hearing required varies. The adequacy of administrative hearings is a creature of mostly judge-made law. The standards are the same whether judges are given meaning to statutory provisions (such as §25297.1(d)(3)) or whether they are developing a form of general administration "common law". Roth v. Los Angeles, 53 Cal.App.3d 679, 692, 126 Cal.Rptr. 163 (1975).

Consideration of the procedures which due process requires under a given set of circumstances begins with the determination of the nature of the government function involved and the private interest which has been affected by the governmental action. Matthews v. Eldridge, 424 U.S. 319, 96 Sup.Ct. 893 (1976), 47 L.Ed.2d 18, 33 (1976). Here the action is severe. The Petitioners, who are disabled and on social security, will lose their life savings and their remaining property if the action is not halted.

It is a hallmark of administrative due process that hearing must be held before an impartial body or officer. See

Wang Yang Sing v. McGraff, 339 U.S. 33, 70 Sup.Ct. 445, 452, 94 L.Ed. 616, 626 (1950); Saks and Co. v. Beverly Hills, 107 Cal.App.2d 260, 264, 237 P.2d 32 (1951). In the leading case on administrative due process, Morgan v. United States, supra, the United States Supreme Court analyzed who may pass judgment on an administrative matter. The Court declared that the person who makes the determination must be impartial and must consider and appraise all the evidence. A fair hearing, and therefore due process, is denied where subordinates hold the hearing and the decision is thereafter affirmed by an officer who has not attended the hearing. Id. Due process demands that decisions be made by an impartial authority. Applebaum v. Board of Directors, 104 Cal.App.3d 648, 657, 163 Cal.Rptr. 831 (1980).

Here, Petitioners have been denied any hearing whatsoever. More repugnant is that their right to a hearing has been purportedly cut off by the same individuals whose decisions Petitioners seek to reverse. This procedure clearly violates fundamental notions of due process and fair play as well as the California and Federal Constitutions. See, Volst v. Stockton, 220 Cal.App.3d 265, 269 Cal.Rptr. 404 (1990).

It is clear from a review of these authorities that Petitioners have been denied due process. They have been denied due process substantively and procedurally.

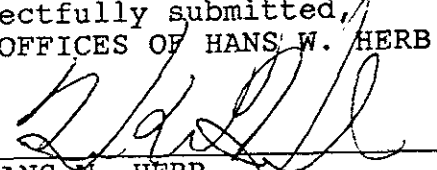
CONCLUSION

Petitioners are victims of bad laws, bad facts and bad procedures. Because they were named in someone's will 30 years ago, Petitioners are now expected to participate in a financially devastating cleanup. As noted, one of the Petitioners is permanently disabled. The other is on Social Security. They last had any connection with the site more than a dozen years ago. They never used any underground storage tanks nor operated any business on the property. They were never given the opportunity to participate and defend themselves in a fair way. This action has sentenced them to financial and emotional ruin. It is unfair, unconstitutional, and unjust, to punish Petitioners in the manner proposed.

For the foregoing reasons, Petitioners respectfully request the Petition be granted, the decision of the Alameda Health Care Service Agency be reversed and that Petitioners be afforded the procedural and substantive due process guaranteed to all Americans.

DATED: July 15, 1993

Respectfully submitted,
LAW OFFICES OF HANS W. HERB

By: 
HANS W. HERB
Attorney for Petitioners

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner _____ a _____ of _____

_____ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on _____, 19____, at _____, California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

PROOF OF SERVICE

1013A (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of Sonoma, State of California.

I am over the age of 18 and not a party to the within action; my business address is:
50 Santa Rosa Ave., Fifth Floor, Santa Rosa, California 95404

On July 15, 1998, I served the foregoing document described as Addendum to the Petition for Review of Decision by Kameda County Health Care Services Agency Naming Petitioners as Responsible Parties on all parties

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
 by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL
 I deposited such envelope in the mail at Santa Rosa, California.
The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Santa Rosa California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on July 15, 1998, at Santa Rosa, California.

*(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
Executed on _____, 19____, at _____, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
 (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Alicia Hinojosa

Type or Print Name

Alicia Hinojosa

Signature

LIST OF INTERESTED PERSONS AND REGIONAL BOARD

Alameda County Health Care Services Agency
80 Swan Way, Room 200
Oakland, CA 94621

Ms. Mary Petsas
16518 Toleda Street
San Leandro, CA 94578

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

Office of the Chief Counsel
State Water Resources Control Board
901 "P" Street
Sacramento, CA 95814

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH

RECEIVED

APR 25 1995

State Water Resources Control Board

Division of Clean Water Programs

UST Local Oversight Program

80 Swan Way Rm 200

Oakland, CA 94621

(510) 271-4530

Director of Environmental Health

STID 4147

August 3, 1993

Mr. Theodore A. Cobb, Senior Staff Council
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

RE: PETITIONS SUBMITTED ON BEHALF OF BEATRICE GALLEGOS AND
GREGORY GARCIA (PETITIONERS) - 16035 EAST 14TH STREET, SAN
LEANDRO, ALAMEDA COUNTY

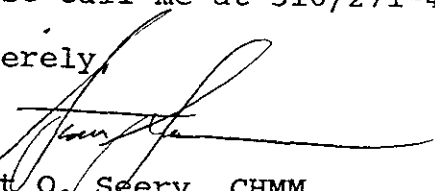
Dear Mr. Cobb:

Attached please find copies of "Pre-Enforcement Review Panel" notices sent to the attorneys representing the petitioners and current property owner for the Review Panel convening August 31, 1993. Attached please also find for your reference a copy of the petitioners' original petition notice to the SWRCB and attorney's cover letter addressed to Alameda County.

We understand that a recent appeal made to the SWRCB on behalf of the petitioners will be placed on hold until after the Review Panel has met August 31st and revised orders, if any, are issued.

Please call me at 510/271-4530 should you have any questions.

Sincerely,


Scott O. Seery, CHMM
Senior Hazardous Materials Specialist

cc: Rafat A. Shahid, Assistant Agency Director
Gil Jensen, Alameda County District Attorney's Office
Rich Hiatt, RWQCB
Hans Herb, Hans Herb Law Firm
Mark Johnson, Johnson and Johnson
files

**Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division**

In Re The Property Known As :) Notice of
) Pre-Enforcement
) Review Panel

Mary Petsas
16035 East 14th Street, San Leandro 94578)

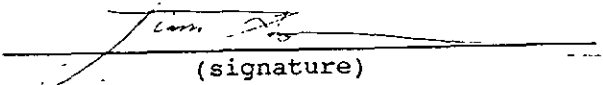
Notice is hereby given that upon the motion of the Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board a Review Panel will convene on August 31, 1993 at 10:45 a.m. in the offices of the Alameda County Hazardous Materials Division located at 80 Swan Way, Room 200, Oakland, CA 94621. This Review Panel will convene for the purpose of determining responsible parties as well as appropriate closure, site assessment, clean-up and mitigation of contamination at the above location.

The Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board have named and served notice of this Review Panel on the following persons or entities as having proposed responsibility for closure, site assessment, clean-up and mitigation of contamination at the above location, and by this notice all parties named herein are informed of the right to appear and show cause, if any they have, for the exclusion or inclusion of any of the parties served herein from said responsibility or obligations:

✓ 1. Beatrice S. Gallegos
Gregory J. Garcia
c/o Hans Herb
50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, CA 95404

2. Mary Petsas
c/o Mark Johnson
Johnson and Johnson
44 Montgomery Street, Ste. 4100
San Francisco, CA 94104

Dated: July 30, 1993


(signature)

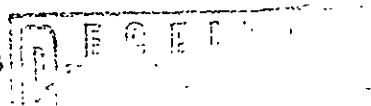
LAW OFFICES OF HANS W. HERB

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

Arizona
California
Washington

(707) 576-0757
Telecopier:
(707) 575-0364

May 2, 1993



MAY

HANS W. HERB

David J. Kears, Agency Director
ALAMEDA COUNTY HEALTH CARE
SERVICES AGENCY
80 Swan Way, Room 200
Oakland, CA 94621

RE: Site: 10635 E. 14th St., San Leandro, CA
Site I.D. No: 4147

Dear Mr. Kears:

This letter is to advise you that Beatrice S. Gallegos and Gregory J. Garcia have filed the attached Petition with the State Water Resources Control Board, appealing your agency's decision to name them as responsible parties in connection with the underground storage tank investigation at the above-referenced site.

Pursuant to California Code of Regulations, §2050, please provide the State Water Resources Control Board with a list of all persons other than those shown in the Petition, if any, known by your agency to have an interest in this matter.

Further, please prepare your record in this matter and submit it as required by the State Board.

Very truly yours,
LAW OFFICES OF HANS W. HERB

Hans W. Herb

HWH/mca
Enclosure

cc: Ms. Beatrice S. Gallegos
Mr. Gregory J. Garcia

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition
of Gregory J. Garcia and
Beatrice S. Gallegos

SWRCB No: _____

PETITION FOR REVIEW
OF DECISION BY ALAMEDA COUNTY
HEALTH CARE SERVICES AGENCY
NAMING PETITIONERS AS RESPONSIBLE PARTIES

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Fl.
Santa Rosa, CA 95404
(707) 576-0757
(800) 757-9562

Attorneys for
Gregory J. Garcia and
Beatrice S. Gallegos

LAWS OFFICES OF HANS W. HERB

AUG - 5 1993

APR 25 1995

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

Director of Environmental Health

Arizona
California
Washington

August 4, 1993

ED please (707) 576-0757
review and take Telecopier:
the necessary (707) 575-0364

VIA OVERNIGHT MAIL

Mr. David J. Kears, Agency Director
Mr. Rafat A. Shahid, Assistant Agency Director
Mr. Edgar Howell
ALAMEDA COUNTY HEALTH SERVICES AGENCY
HAZARDOUS MATERIALS PROGRAM
80 Swan Way Room 200
Oakland, CA 94621

Corrective Action **HANS W. HERB**
8/5/93
Contacted *Del*
" *scott*

RE: L.O.P. Site: 16035 East 14th Street,
San Leandro, CA
Our Clients: Beatrice S. Gallegos/
Gregory Garcia
Our File No: 01-126-01

Dear Messrs. Kears, Shahid & Howell:

In our mail today we received a curious document purporting to be from your offices (see attached). The hand-addressed certified mail letter contained a single piece of paper captioned "Notice of Pre-Enforcement Review Panel."

According to the document, a "star chamber" of regulatory officials will meet in Oakland on August 31, 1993, at 10:45 a.m. to discuss how to avoid the legal constraints which prohibit our clients' participation in the cleanup of the above-referenced site. The letter contains no reference to any legal authority for such a procedure. The reason for this is that the procedure is clearly illegal, unconstitutional, and violative of our clients' due process rights.

I implore the County to seek the advice of competent legal counsel regarding the County's concerns. I know the County is upset and frustrated and is looking to "lash out" wherever it can. Unfortunately, however, there are legal constraints which must be respected by the County. To learn more about the legal constraints prohibiting such activity, you should ask your attorney to review the California Health and Safety Code, beginning at §25280, and §13300 et. seq. of the California Water Code. The procedure to address your concerns can be found at Title 23, Chapter 6, §2050 et. seq. More importantly, the attorney you select would do well to review your local oversight contract with the State Water Resources Control Board which requires that all disputes be resolved following the procedures established by the State Water Resources Control Board. The State Water Board has a procedure whereby petitions may be reviewed by the five member State Water Resources Control Board. The State Water

Mr. David Kears, Agency Director
Mr. Rafat A. Shahid, Assistant Agency Director
Mr. Edgar Howell
ALAMEDA COUNTY HEALTH SERVICES AGENCY
HAZARDOUS MATERIALS PROGRAM
August 4, 1993
Page 2

Resources Control Board has a legal department which can assist you with understanding the procedures. Their decisions form the basis for establishing future cases.

In this case, we have already explained to the State Water Resources Control Board that fundamental notions of due process and constitutional law are implicated. With all due respect to you and your staff, the issues involved in our petition to the State Board are legal issues which require the attention of experienced lawyers familiar with California law. Once the State Board has issued its decision on our petition, you will be advised by them of the result. In the meantime, although I appreciate your frustration, there is simply no legal way to proceed as suggested by the mystery document (if it in fact really did come from your office).

The purpose of this letter is to advise you that under California Code of Civil Procedure §1021.5, we have the right and duty to bring a legal action to enjoin and prohibit the Alameda County Health Care Services Agency, Department of Environmental Health, Hazardous Material Division from proceeding with this action. If it is necessary for us to proceed with legal action we will be entitled to recover all of the legal fees. The Alameda County Health Care Services Agency will be responsible for payment of those fees.

You should also note that it is not our desire "to beat up" misguided agencies. Instead, we seek to encourage governmental agencies to voluntarily comply with their legal obligations. It is only if an agency will not voluntarily cease and desist in illegal and unconstitutional conduct that we will pursue legal action. Should we find it necessary to proceed with legal action in this case we will argue that your agency was well aware of the illegality of the practice and was given ample opportunity to voluntarily cease and desist the practice.

In our experience courts award substantially higher attorney's fees in cases where the offending governmental agency was informed that a practice was illegal, was encouraged to obtain legal counsel, and continued despite the clear lack of authority. For that reason, we again encourage and implore you to consider consultation with an attorney at least marginally familiar with the issues raised by this matter.

Finally, should you decide to proceed with this matter, please advise me of all the applicable procedures, rules, authority, and regulation for such a procedure. Please also provide me with written confirmation of the independent neutral third-party's qualifications, experience and expertise in this field. We also demand a full, complete, and accurate written transcript of any proceedings along with copies of all evidence, charges, and other relevant documents.

Mr. David Kears, Agency Director
Mr. Rafat A. Shahid, Assistant Agency Director
Mr. Edgar Howell
ALAMEDA COUNTY HEALTH SERVICES AGENCY
HAZARDOUS MATERIALS PROGRAM
August 4, 1993
Page 3

If you have any comments or questions, please feel free to contact me at 800-767-9562.

Very truly yours,
LAW OFFICES OF HANS W. HERB

A handwritten signature in cursive script, appearing to read 'Hans W. Herb', written in dark ink.

Hans W. Herb

HWH/bm

cc: Attached List

Mr. David Kears, Agency Director
Mr. Rafat A. Shahid, Assistant Agency Director
Mr. Edgar Howell
ALAMEDA COUNTY HEALTH SERVICES AGENCY
HAZARDOUS MATERIALS PROGRAM
August 4, 1993
Page 4

William Attwater, Esq.
Office of Chief Counsel
STATE WATER RESOURCE CONTROL BOARD
P.O. Box 100
Sacramento, CA 95812-0100

Gil Jenson, Esq.
District Attorney's Office
COUNTY OF ALAMEDA
1225 Fallon #100
Oakland, CA 94612

Mary Petsas
c/o Mark Johnson
JOHNSON & JOHNSON
44 Montgomery St. Suite 4100
San Francisco, CA 94104

CALIFORNIA ENVIRONMENTAL INSIDER
P.O. Box 884973
San Francisco, CA 94188-4973

CALIFORNIA ENVIRONMENTAL LAW REPORTER
136 Carlin Road
Conklin, NY 13748-1531

BNA TOXIC LAW REPORTER
1231 25th Street, N.W.
Washington, D.C. 20037

THE DAILY JOURNAL
1390 Market St., Suite 1210
San Francisco, CA 94102

THE RECORDER
625 Polk St., Suite 500
San Francisco, CA 94123

Alameda County Health Care Services Agency, Department of
Environmental Health, Hazardous Materials Division

In Re The Property Known As :)

Notice of
Pre-Enforcement
Review Panel

Mary Petsas

16035 East 14th Street, San Leandro 94578)

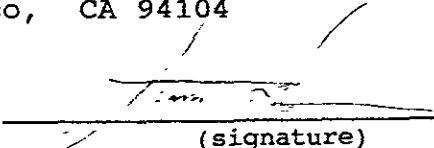
Notice is hereby given that upon the motion of the Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board a **Review Panel** will convene on August 31, 1993 at 10:45 a.m. in the offices of the Alameda County Hazardous Materials Division located at 80 Swan Way, Room 200, Oakland, CA 94621. This **Review Panel** will convene for the purpose of determining responsible parties as well as appropriate closure, site assessment, clean-up and mitigation of contamination at the above location.

The Alameda County Hazardous Materials Division, and the San Francisco Bay Regional Water Quality Control Board have named and served notice of this **Review Panel** on the following persons or entities as having proposed responsibility for closure, site assessment, clean-up and mitigation of contamination at the above location, and by this notice all parties named herein are informed of the right to appear and show cause, if any they have, for the exclusion or inclusion of any of the parties served herein from said responsibility or obligations:

- ✓ 1. **Beatrice S. Gallegos**
Gregory J. Garcia
c/o Hans Herb
50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, CA 95404

2. **Mary Petsas**
c/o Mark Johnson
Johnson and Johnson
44 Montgomery Street, Ste. 4100
San Francisco, CA 94104

Dated: July 30, 1993



(signature)

RECEIVED

APR 25 1995

LAW OFFICES OF HANS W. HERB

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

93 AUG 10 PM 1:42

Director of Environmental Health

Arizona
California
Washington

August 6, 1993

(707) 576-0757
Telecopier:
(707) 575-0364

VIA PRIORITY MAIL

HANS W. HERB

Mr. Theodore A. Cobb
Senior Staff Council
STATE WATER RESOURCES CONTROL BOARD
P.O. Box 100
Sacramento, CA 95812-0100

Mr. Scott O. Seery, CHMM
Senior Hazardous Materials Specialist
ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
80 Swan Way, room 200
Oakland, CA 94621

Re: Petitions of Gallegos and Garcia
Site: 16035 East 14th Street, San Leandro, CA
(Alameda County LOP)
Our File No.: 01-126-01

Dear Messrs. Cobb and Seery:

This will acknowledge receipt of a copy of Mr. Seery's August 3, 1993 letter addressed to Mr. Cobb.

We must take exception to and forcefully resist the suggestion by Mr. Seery that the Alameda County Health Care Service Agency can unilaterally derail our petition pending before the State Water Resources Control Board. The idea that a County employee could overrule the five member State Board is preposterous. If one party to the dispute could have unilaterally resolved the matter, we would have already done so in our own favor.

We again register our most strenuous objection to Alameda County's intentional interference with our clients' ability to exercise their constitutionally guaranteed civil rights. We have already placed Alameda County on written notice that such conduct abridges our clients Fifth and Fourteenth amendment Constitutional rights, as well as common sense notions of due process and fairness.

The idea that a regulatory agency would unilaterally, without any hearing, without any evidence, and without any direct contact whatsoever with an individual attempt to essentially levy a fine that may run into the millions of dollars is, to put it

Mr. Theodore A. Cobb
Mr. Scott O. Seery, CHMM
August 6, 1993
Page 2

mildly, shocking to the conscience. America is a free and democratic society that is based on a Constitution. Our Constitution, unlike others, does not condone a regulatory free-for-all where the "rule of the individual" prevails over the "rule of law." Our clients ask nothing more than the rights guaranteed to them by the U. S. and California Constitutions. Those rights include fundamental fairness and due process.

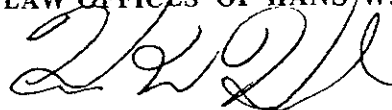
Please accept this letter as it is offered. I understand the frustration, hassle and hardship of working within the confines of the legal system. Environmental statutes and regulations are complex and difficult. They are understood by few, if any practitioners. The legal framework is a maze of double talk, complicated rules and procedures that often appear at odds with each other and frustrate the rights of appeal and due process. Nevertheless, the solution is not to throw out the Constitution or ignore the law, but instead to operate within the system. Just as we don't allow the police to shoot the murderer, we cannot let the regulator ignore the protections the Constitution offers our clients.

If Alameda County feels the current legal system is unfair, its remedy is with the Legislature not with the Petitioners.

While I commend Alameda County for having the foresight to explore new options and possibilities, I encourage it to seek counsel with a competent lawyer familiar with the applicable laws. Once it does, I am certain it will realize the errors of its ways and perhaps be able to fashion a remedy that meets with basic constitutional and legal protections. Until then we must again demand that the County cease and desist in interfering with our client's civil rights.

If you have any questions or comments, please feel free to contact me.

Very truly yours,
LAW OFFICES OF HANS-W. HERB



Hans W. Herb

HWH/tcf

cc: Mr. David J. Kears, Agency Director
Mr. Rafat A. Shahid, Assistant Agency Director
Mr. Edgar Howell
Interested party mailing list

INTERESTED PARTY'S LIST

William Attwater, Esq.
Office of Chief Counsel
STATE WATER RESOURCES CONTROL BOARD
P.O. Box 100
Sacramento, CA 95812-0100

Gil Jenson, Esq.
District Attorney's Office
COUNTY OF ALAMEDA
1225 Fallon #100
Oakland, CA 94612

Mary Petsas
c/o Mark Johnson
JOHNSON & JOHNSON
44 Montgomery St. Suite 4100
San Francisco, CA 94104

CALIFORNIA ENVIRONMENTAL INSIDER
P.O. Box 884973
San Francisco, CA 94188-4973

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136 Carlin Road
Conklin, NY 13748-1531

BNA TOXIC LAW REPORTER
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Washington, D.C. 20037

THE DAILY JOURNAL
1390 Market St., Suite 1210
San Francisco, CA 94102

THE RECORDER
625 Polk St., Suite 500
San Francisco, CA 94123

Mark Borsuk, Esq.
1626 Vallejo St.
San Francisco, CA 94123



Alameda County
District Attorney's Office
John J. Meehan, District Attorney

RECEIVED

APR 25 1995

93 AUG -9 AM 11: 22

Director of Environmental Health

August 6, 1993

Hans W. Herb
Attorney at Law
50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, CA 95404

Re: ***In Re the Property Know As 16035 East 14th Street, Oakland CA
Mary Petsas, Beatrice S. Gallegos and Gregory J Garcia Potentially
Responsible Parties***

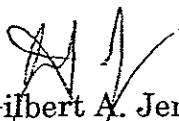
Dear Mr. Herb:

This office represents the San Francisco Bay Regional Water Quality Control Board, and the Alameda County Health Care Services Agency, Department of Environmental Health Hazardous Materials Program in the above matter. We are in receipt of the enclosed letter dated August 4, 1993 to representatives of the Agency apparently protesting a scheduled fact-finding pre enforcement meeting to be attended by the above agencies and our office.

While it is rare for persons potentially subject to prosecution for administrative, civil or criminal violations to not be interested in meeting with our office and the interested agencies before the necessity for legal action, we honor your clients apparent decision. Nevertheless, since the other potentially responsible party Ms Petsas wishes to attend, the scheduled Review Panel will meet as previously scheduled. Should your clients change their mind, they are of course welcome to attend.

Very truly yours,

JOHN J. MEEHAN
District Attorney

By: 
Gilbert A. Jensen
Senior Deputy District Attorney

JJM:GAJ:gj

cc: Attached List

Hans W. Herb
August 6, 1993
Page 2

David Kears, Agency Director

Rafat Shahid, Assistant Agency Director

Edgar Howell

William Attwater, Esq.

Mary Petsas
c/o Mark Johnson Esq.

California Environmental Insider

California Environmental Law Reporter

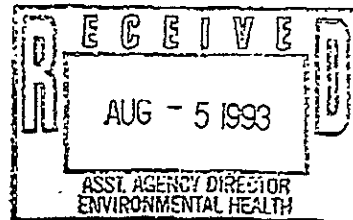
BNA Toxic Law Reporter

The Daily Journal

The Recorder

LAW OFFICES OF HANS W. HERB

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404



Arizona
California
Washington

August 4

(707) 578-0757
Telecopier:

VIA OVERNIGHT MAIL

Mr. David J. Kears, Agency Director
Mr. Rafat A. Shahid, Assistant Agency Director,
Mr. Edgar Howell
ALAMEDA COUNTY HEALTH SERVICES A
HAZARDOUS MATERIALS PROGRAM
80 Swan Way Room 200
Oakland, CA 94621

RE: L.O.P. Site: 16035 East 14th Street,
San Leandro, CA
Our Clients: Beatrice S. Gallegos/
Gregory Garcia
Our File No: 01-126-01

Dear Messrs. Kears, Shahid & Howell:

In our mail today we received a curious document purporting to be from your offices (see attached). The hand-addressed certified mail letter contained a single piece of paper captioned "Notice of Pre-Enforcement Review Panel."

According to the document, a "star chamber" of regulatory officials will meet in Oakland on August 31, 1993, at 10:45 a.m. to discuss how to avoid the legal constraints which prohibit our clients' participation in the cleanup of the above-referenced site. The letter contains no reference to any legal authority for such a procedure. The reason for this is that the procedure is clearly illegal, unconstitutional, and violative of our clients' due process rights.

I implore the County to seek the advice of competent legal counsel regarding the County's concerns. I know the County is upset and frustrated and is looking to "lash out" wherever it can. Unfortunately, however, there are legal constraints which must be respected by the County. To learn more about the legal constraints prohibiting such activity, you should ask your attorney to review the California Health and Safety Code, beginning at §25280, and §13300 et. seq. of the California Water Code. The procedure to address your concerns can be found at Title 23, Chapter 6, §2050 et. seq. More importantly, the attorney you select would do well to review your local oversight contract with the State Water Resources Control Board which requires that all disputes be resolved following the procedures established by the State Water Resources Control Board. The State Water Board has a procedure whereby petitions may be reviewed by the five member State Water Resources Control Board. The State Water

Mr. David Kears, Agency Director
Mr. Rafat A. Shahid, Assistant Agency Director
Mr. Edgar Howell
ALAMEDA COUNTY HEALTH SERVICES AGENCY
HAZARDOUS MATERIALS PROGRAM
August 4, 1993
Page 2

Resources Control Board has a legal department which can assist you with understanding the procedures. Their decisions form the basis for establishing future cases.

In this case, we have already explained to the State Water Resources Control Board that fundamental notions of due process and constitutional law are implicated. With all due respect to you and your staff, the issues involved in our petition to the State Board are legal issues which require the attention of experienced lawyers familiar with California law. Once the State Board has issued its decision on our petition, you will be advised by them of the result. In the meantime, although I appreciate your frustration, there is simply no legal way to proceed as suggested by the mystery document (if it in fact really did come from your office).

The purpose of this letter is to advise you that under California Code of Civil Procedure §1021.5, we have the right and duty to bring a legal action to enjoin and prohibit the Alameda County Health Care Services Agency, Department of Environmental Health, Hazardous Material Division from proceeding with this action. If it is necessary for us to proceed with legal action we will be entitled to recover all of the legal fees. The Alameda County Health Care Services Agency will be responsible for payment of those fees.

You should also note that it is not our desire "to heat up" misguided agencies. Instead, we seek to encourage governmental agencies to voluntarily comply with their legal obligations. It is only if an agency will not voluntarily cease and desist in illegal and unconstitutional conduct that we will pursue legal action. Should we find it necessary to proceed with legal action in this case we will argue that your agency was well aware of the illegality of the practice and was given ample opportunity to voluntarily cease and desist the practice.

In our experience courts award substantially higher attorney's fees in cases where the offending governmental agency was informed that a practice was illegal, was encouraged to obtain legal counsel, and continued despite the clear lack of authority. For that reason, we again encourage and implore you to consider consultation with an attorney at least marginally familiar with the issues raised by this matter.

Finally, should you decide to proceed with this matter, please advise me of all the applicable procedures, rules, authority, and regulation for such a procedure. Please also provide me with written confirmation of the independent neutral third-party's qualifications, experience and expertise in this field. We also demand a full, complete, and accurate written transcript of any proceedings along with copies of all evidence, charges, and other relevant documents.

Mr. David Kears, Agency Director
Mr. Rafat A. Shahid, Assistant Agency Director
Mr. Edgar Howell
ALAMEDA COUNTY HEALTH SERVICES AGENCY
HAZARDOUS MATERIALS PROGRAM
August 4, 1993
Page 3

If you have any comments or questions, please feel free to contact me at 800-767-9562.

Very truly yours,
LAW OFFICES OF HANS W. HERB



Hans W. Herb

HWH/bm

cc: Attached List

Mr. David Kears, Agency Director
Mr. Rafat A. Shahid, Assistant Agency Director
Mr. Edgar Howell
ALAMEDA COUNTY HEALTH SERVICES AGENCY
HAZARDOUS MATERIALS PROGRAM
August 4, 1993
Page 4

William Attwater, Esq.
Office of Chief Counsel
STATE WATER RESOURCE CONTROL BOARD
P.O. Box 100
Sacramento, CA 95812-0100

Gil Jenson, Esq.
District Attorney's Office
COUNTY OF ALAMEDA
1225 Fallon #100
Oakland, CA 94612

Mary Petsas
c/o Mark Johnson
JOHNSON & JOHNSON
44 Montgomery St. Suite 4100
San Francisco, CA 94104

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P.O. Box 884973
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Washington, D.C. 20037

THE DAILY JOURNAL
1390 Market St., Suite 1210
San Francisco, CA 94102

THE RECORDER
625 Polk St., Suite 500
San Francisco, CA 94123

RECEIVED

APR 25 1995

Director of Environmental Health

Mrs. Beatrice S. Gallegos
4650 N. Palm Ave.
Fresno, CA 93704

August 16, 1993

In Re: Property Known As
Mary Petsas
16035 E. 14th St. San Leandro, CA 94578
Site 4147

Mr. David J. Kears, Agency Director
Alameda County Health Care Services Agency
80 Swan Way Room 200
Oakland, CA 94612

Dear Sir:

I have received your notices imposing liabilities upon my role as an unsuspecting innocent heir. Needless to say, this struck a blunt impact upon my mental and physical health --- an unbelievable shocker.

Briefly, a short history of events involving the situs property, related to the best of my recollection.

On or about March, 1945 my late husband, Joseph Garcia, 1922 - 1961, inherited this property from his parents. It was improved commercial property with an automobile service station operating under lease with Seaside Oil Company, Santa Barbara, CA. Seaside maintained the petroleum/gasoline equipment and negotiated with it's own station operators.

Throughout the entire ownership, my husband was lessor to Seaside Oil Co. and after his death in 1961, I and our son Gregg inherited by descent. We continued with the lease performing simply as landlords with lessees. We did not at any time operate a business on the land. Never did the question of underground storage tanks' ownership arise. Being underground additions we had no information they were either improvements or land components. At no time during our ownership did any municipality or government agency inform us that regulation permits were required concerning underground storage tanks. No problems, discussions or suspicion of leakage from storage tanks were ever mentioned by any lessee, or anyone else, to us at any time.

→ ED/Armed please advise my
situation and
advise me of
how can we
help.
A/C
8/24/93

We sold the situs property to Mr. & Mrs Jerry Petsas of San Leandro, Calif. in March 1979. Since that date we have had no knowledge of or involvement with the property. First notice we have ever received about any problem is by certified mail from Alameda County Health Care Services Agency dated April 2, 1993, informing us about "release" from underground storage tanks that was first reported 02/04/92 and that I and my son (Gregg) are identified as "responsible parties".

Suddenly, we are confronted with the alarming and intimidating notice from ACHCS Agency with the caption

"Notice of Requirement to Reimburse".

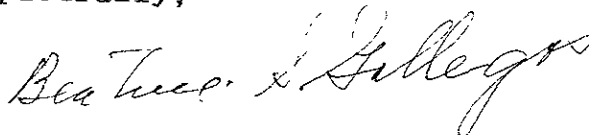
We were immediately bewildered, confused and in shock.

Our retirement livelihood is wholly dependent on Social Security benefits assisted by Supplement Security Income (MediCal) assistance. That is, total dependence on these sources for month-to-month subsistence.

A woman age 74 yrs. afflicted with diabetes mellitus, cirrhosis of the liver, high blood pressure, etc. and my husband (79 yrs) with chronic cardiac arrhythmia, are both under doctors' care. We ardently thank God for SSA, SSI AND Medicare protection.

I attest that the above information is true and correct to the best of my recollection and present knowledge.

Respectfully,



Mrs Beatrice S. Gallegos

cc's: List on attached page.

Attachment -- page 3

Copies have been sent to the following:

Stephen R. Ritchie
John Caffrey
Theodore A. Cobb
Dorothy Jones, Legal Counsel
Hans W. Herb, Esq.

LAW OFFICES OF HANS W. HERB

RECEIVED

APR 25 1995

Director of Environmental Health

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

Arizona
California
Washington

(707) 576-0757
Telecopier:
(707) 575-0364

August 19, 1993

RECEIVED HANS W. HERB
APR 25 1993

VIA TELECOPIER (510) 569-0505

Gilbert A. Jenson, Esq.
Senior Deputy District Attorney
Alameda County District Attorney's Office
7677 Oakport Street, Suite 400
Oakland, CA 94621

DISTRICT ATTORNEY
ALAMEDA COUNTY
CEPD

Re: Alameda County Health Care
Services Agency v. Garcia/Gallegos
Site: 16035 East 14th Street, Oakland, California
Our File No.: 01-126-01
Your File No.: Unknown

Dear Mr. Jenson:

This will acknowledge receipt and thank you for your August 6, 1993 letter.

Your letter misconstrues our client's intent. Our letter was to inform you that our clients will not be attending the "hearing" on August 31, 1993 absent some legal basis for holding such a hearing. However, because our client's interest will be at issue, we will be sending counsel to appear on our client's behalf.

As you can imagine, we are understandably confused about the procedures, if any, which will govern this proceeding. While we are familiar with the California Water Code and the procedures set forth for review by the State Board, we do not know what your procedures are. We follow the legal procedure in the Water Code for resolving these types of disputes. Since the hearing will apparently go forward outside of the existing legal system, we need to know what procedural safeguards, if any, will be afford our clients.

For example, the California Code of Regulations sections applicable to the Water Boards, (§ 648 et seq) sets forth the procedure Boards utilize for review in similar matters. It also sets forth the procedures by which we can subpoena and cross-examine witnesses and review the evidence. (See also California Code of Regulations § 2050 et seq.) There will need to be a reporter and we would like to know how we can obtain copies of the transcript. Likewise, we would like to know what, if any, evidence may be introduced in advance of the hearing.

Gilbert A. Jenson, Esq.
August 19, 1993
Page 2

We need to know the qualifications and expertise of the hearing officer. Is this someone with knowledge of the law in an understanding of the technical issues raised in this matter? Is this person subject to bias such as receiving financial gain or professional acknowledgment for their work?¹ Whoever thought up this procedure must have had someone in mind for a hearing officer and we would need to know who that individual will be.

Finally, if there are any written procedures that need to be followed, particularly any that require filings in advance of the hearing, we would like to know of them as soon as possible. Please send by return fax any written procedures which will apply.

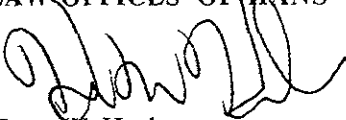
Please note that by appearing at the hearing to cross-examine witnesses and challenge the evidence, our clients are not in any way waiving their right to assert that the procedure is illegal and void per se. Further, should the proceedings be determined by a court to be illegal, we will seek to recover all of our attorney's fees.

Again, it is not our desire to make this an adversarial process. Having handled over 400 underground storage tank claims, I know the frustration people and agencies go through in trying to work out the thorny and complicated liability issues involved. However, I still believe that we must ultimately operate within the system of laws in our society. No matter how frustrating, difficult and aggravating these laws are, I do not believe the solution is to simply ignore them.

Again, I do encourage you and your office to work within the system legislature and the State Board to seek ways to make meaningful changes to the laws to avoid these problems.

If you have any questions or comments, please feel free to contact me at (800) 767-9562.

Very truly yours,
LAW OFFICES OF HANS W. HERB



Hans W. Herb

HWH/tcf

¹ As I am sure you know, the Alameda County Health Care Services Agency has a direct and irreconcilable financial conflict in this matter. The issue to be decided at the hearing is whether the Gallegos/Garcia petitioners need to hire the Alameda Health Care Services Agency at 150% of the agency's costs to oversee the cleanup.

RECEIVED

APR 25 1995

ITO AND JOHNSON
ATTORNEYS AT LAW
MILLS TOWER, SUITE 1500
220 MONTGOMERY STREET
SAN FRANCISCO, CA 94104-9736

Director of Environmental Health
(415) 362-3503
(415) 989-1137 FAX

August 27, 1993

Alameda County Health Care Services Agency
Division of Hazardous Materials,
Attn: Mr. Scott Seery
80 Swan Way, Room 200
Oakland, CA 94621

Re: 16035 East 14th Street, San Leandro, CA
Opposition to the Addendum Protesting the Naming of Petitioners Garcia and Gallegos as Responsible Parties

Dear Mr. Seery:

This letter is written, on behalf of Mr. and Mrs. Jerry Petsas, in opposition to the Addendum to the Petition for Review of the Decision by the Alameda County Health Care Services Agency Naming Petitioners, Mr. Garcia and Mrs. Gallegos, as Responsible Parties.

Mr. and Mrs. Jerry Petsas are the current owners of the property (the "Property") located at 16035 E. 14th Street, San Leandro, California. The Property is the site of a former service station which operated three underground petroleum storage tanks (the "tanks").

Petitioners Beatrice S. Gallegos and Gregory Joseph Garcia are the former owners of the Property. While the Petitioners owned the Property, the use of the tanks was discontinued. Because the Petitioners were the owners of the tanks when the use of the tanks was discontinued, Mr. and Mrs. Petsas request the Alameda County Health Care Services Agency confirm its decision naming Petitioners as responsible parties.

Petitioners Are Responsible Parties

In 1962, Beatrice S. Garcia obtained title to the Property. (Exhibit A, Judgment Settling First Account.) Petitioners admit that Seaside Oil Company operated the service station on the Property between 1965 and 1970. [Exhibit B,

operated the service station on the Property between 1965 and 1970. [Exhibit B, Petition For Review of Decision By Alameda County Health Care Services Agency Naming Petitioners As Responsible Parties, pp. 1-2]

In 1971, Petitioner Beatrice S. Gallegos, formerly Beatrice S. Garcia, granted a one-half interest in the Property and the service station to Petitioner Gregory Joseph Garcia. (Exhibit C, Grant Deed; and Exhibit D, Order Approving Guardian's Petition.) Petitioners admit that between 1972 and 1979 the Property and the service station was leased for use. [Exhibit B, p. 2]

The Petitioners sold the Property to Mr. and Mrs. Petsas in 1979. (Exhibit E, Grant Deed.) Mr. and Mrs. Petsas first learned that the tanks were located on the Property during a 1985 fire inspection. They immediately decommissioned the tanks causing them to become inoperable. Since Mr. and Mrs. Petsas have owned the Property, the tanks have never been used or operated.

In 1992, Mr. and Mrs. Petsas removed the tanks and discovered that the tanks had leaked petroleum. Upon discovering the leak, Mr. and Mrs. Petsas reported the leak to the Alameda County Health Care Services Agency. Because Mrs. Gallegos and Mr. Garcia owned the tanks immediately before the use of the tanks was discontinued, Mr. and Mrs. Petsas request the Alameda County Health Care Services Agency confirm its decision naming the Petitioners as responsible parties.

Petitioners Are Responsible Parties
Under 23 California Code of Regulations §2720

The Petitioners owned the Property between 1962 and 1979. They admit that while they owned the Property the tanks were operated. In 1979, when Mr. and Mrs. Petsas purchased the Property, the use of the tanks had been discontinued. The tanks have not been used since 1979.

A responsible party is defined as follows:

"In the case of any underground storage tank no longer in use, any person who owned or operated the underground storage tank immediately before the discontinuation of its use" [23 Cal Code of Regulations §2720 (Responsible Party) (2)]

Because Mrs. Gallegos and Mr. Garcia were the persons who owned the

underground storage tanks immediately before the use of the tanks was discontinued, they are, by definition, responsible parties.

The Petitioners' Claim that Seaside Is The Owner of the Tanks is False

* In their Addendum to their Petition, Mrs. Gallegos and Mr. Garcia claim that Seaside Oil Company is the owner of the tanks located on the Property.

"From the information presently available to the Petitioners, it appears that the underground storage tanks were owned last by the Seaside Oil Company." [Exhibit F, Addendum to the Petition For Review of Decision By Alameda County Health Care Services Agency Naming Petitioners As Responsible Parties, p. 3]

This claim is false. Unless otherwise specified, a conveyance of realty transfers all fixtures and appurtenances to the buyer even though they are not specifically mentioned in the contract or deed. [Civ. Code §1084; Trask v. Moore (1944) 24 Cal.2d 365, 370, 149 P.2d 854] When the Petitioners granted the Property to Mr. and Mrs. Petsas, the Petitioners either granted Mr. and Mrs. Petsas all the rights in the Property with no exceptions, or the grant deed was a fraudulent transfer and Mr. and Mrs. Petsas have a basis on which to rescind the sale of the Property.

Conclusion

In light of the above, the Alameda County Health Care Services Agency is requested to confirm its decision naming Petitioners Beatrice S. Gallegos and Gregory Joseph Garcia as responsible parties for the investigation and possible cleanup of the unauthorized petroleum spill which has occurred at 16035 E. 14th Street, San Leandro, California.

* * * * *

Thank you for your consideration of this request. If you have any questions,

Mr. Scott Seery
August 27, 1993

Page 4

please contact me.

Very truly yours,

ITO AND JOHNSON



Mark B. Johnson

cc: Mr. Gil Jenson, Esq., Alameda County District Attorney's Office
Mr. Hans Herb, Esq., Counsel for Petitioners
Mr. and Mrs. Petsas

Enclosures: 6

- A. Judgment Settling First Account and Report of Administration For Allowance on Account of Statutory Compensation and of Preliminary Distribution
- B. Petition For Review of Decision By Alameda County Health Care Services Agency naming Petitioners as Responsible Parties, p. 3
- C. Grant Deed From Beatrice S. Gallegos, Formerly Beatrice S. Garcia, to Gregory Joseph Garcia
- D. Order Approving Guardian's Petition For Final Discharge and Consent of Minor To Waiver of Accounting
- E. Grant Deed From Beatrice S. Gallegos and Gregory Joseph Garcia to Jerry and Mary Petsas
- F. Addendum to the Petition For Review of Decision By Alameda County Health Care Services Agency Naming Petitioners As Responsible Parties, p. 3

Mr. Scott Seery
August 27, 1993

Page 5

Exhibit A

755

545

RE: 755 HM:545

AT176171

1 GARCIA & BRUZZONE
 2 Attorneys at Law
 3 16101 East 14th St.
 4 San Leandro, California
 5 351-6161
 6
 7 Attorneys for Petitioner

(En. Jorscd)
 FILED
 DEC 18 1972
 JACK G. BLUE, County Clerk
 By S.J. McGIBBEN

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

11 Estate of

12 JOSEPH R. GARCIA, also
 13 known as JOSEPH GARCIA,
 14 also known as JOE GARCIA,
 15 Deceased.

NO. HAV 229

JUDGMENT SETTLING FIRST
 ACCOUNT AND REPORT OF
 ADMINISTRATRIX FOR ALLOW-
 ANCE ON ACCOUNT OF
 STATUTORY COMPENSATION
 AND OF PRELIMINARY DISTRI-
 BUTION.

17 BEATRICE L. GARCIA, as administratrix of the estate of
 18 the above named decedent, having filed herein a first account
 19 and report and petition for settlement thereof and for allowance
 20 on account of statutory compensation and a petition for preliminary
 21 distribution, and the petition coming on this day regularly for
 22 hearing, the Court finds:

23 Due and legal notice of the hearing of the petition
 24 and of the settlement of the account has been regularly given for
 25 the period and in the manner required by law.

26 The account and report of the administratrix is full,
 27 true, and correct, and all of the allegations of the petition
 28 for its settlement are true. The account should be settled,
 29 allowed, and approved as filed and all the acts and transactions
 30 of the administratrix relating to the actions set forth in it
 31 should be ratified, confirmed, and approved.

32 Notice to creditors has been published for the period

755

546

RE: 755 IM:546

1 and in the manner prescribed by law. Within thirty days after
2 completion of publication of notice to creditors there was filed
3 with the clerk of this Court an affidavit showing due publication
4 of notice to creditors in the manner and form required by law.

5 More than six months have elapsed since the issuance
6 of letters of administration in this estate and since the first
7 publication of notice to creditors, and the time for filing or
8 presenting claims has expired.

9 All claims against the estate have been paid.
10 The estate is but little indebted.

11 A written report of the inheritance tax appraiser
12 appointed herein is on file herein and an order fixing the in-
13 heritance tax has been made by this Court. The receipt of the
14 Treasurer of the County of Alameda, State of California, is on
15 file herein showing that the tax has been paid in full.

16 A federal estate tax return has not been filed for this
17 estate, and no federal estate tax is due or payable.

18 All federal and California State income taxes due and
19 payable by the estate have been paid.

20 Although the estate is not now in a condition to be
21 closed, there may be distributed at this time, without loss to
22 the creditors or injury to the estate or any person interested
23 in it, the property described below in accordance with the
24 laws of succession, and allowances may be made on account of
25 statutory compensation as hereafter set forth.

26 The petitioner, as administratrix of said estate, has
27 waived her statutory commission for her services.

28 The distribution may be made without requiring any
29 distributees here named to execute a bond payable to the Adminis-
30 tratrix.

31 IF IT IS THEREFORE ORDERED BY THE COURT THAT
32 the Court should of FAVORABLE ORDER D TO ALLOWANCE THAT

755

547

RE: 755 IM:547

1 settled, allowed, and approved as filed, and all acts and trans-
 2 actions relating to the matters in that account and report set
 3 forth are ratified, confirmed, and approved; there is allowed
 4 to GARCIA & BRUZZONE, attorneys, on account of statutory compensa-
 5 tion, the sum of \$1037.94; and there is distributed to the
 6 following persons, in accordance with the laws of succession,
 7 the property described below:

SEPARATE PROPERTY

8
 9 To BEATRICE S. GARCIA, as guardian of the person
 10 and estate of GREGORY JOSEPH GARCIA, an undivided
 11 one-half (1/2) interest in the following described
 12 property; and

13 To BEATRICE S. GARCIA, as surviving spouse of said
 14 decedent, an undivided one-half (1/2) interest in
 15 the following described property:

1. Real Estate as follows:

16 All that certain real property situated in the
 17 Township of Eden, County of Alameda, described
 18 as follows:

19 Parcel 1: Beginning at the intersection of the
 20 eastern line of County Road Number 2552, known
 21 as Ashland Avenue, with the southwestern line of
 22 East 14th Street, as the said street is now laid
 23 out and improved, and running thence along said
 24 southwestern line south 48° 56' east 109.07 feet
 25 (the bearing of the southwestern line of East
 26 14th Street being taken as South 48° 56' East
 27 for the purpose of making this description);
 28 thence leaving said southwestern line of East
 29 14th Street South 33° 04' West 111.22 feet;
 30 thence north 89° 38' West 22.60 feet; to the
 31 said eastern line of Ashland Avenue; thence
 32 along the last named line north 0° 22' East
 164.72 feet to the point of beginning.

Said premises are subject to a lease agreement
 with Seaside Oil Company, a California corpora-
 tion, which lease terminates on December 31,
 1965 at a monthly rental of \$250.00.

Said premises are commonly known and designated
 as 10035 East 14th Street, San Leandro, California.

2. * Service station equipment located at 10035 East
 14th Street, San Leandro, California.

COMMUNITY PROPERTY

To BEATRICE S. GARCIA, as surviving spouse of
 said decedent

1962

OK

755

548

RE: 755 IM:548

- 1 1. Miscellaneous jewelry, silver, books, pictures,
- 2 paintings, works of art, clothing and personal
- 3 effects at 18200 Via Arriba, San Lorenzo,
- 4 California;
- 5 2. Furniture and furnishings at 18200 Via Arriba,
- 6 San Lorenzo, California.

IT IS FURTHER ORDERED AND ADJUDGED that the requirement of a bond from any distributee above named is dispensed with.

DATED: DEC 18 1962

A. J. Woolsey

JUDGE OF THE SUPERIOR COURT

The foregoing instrument is a correct copy of the original on file in this office.

ATTEST: DEC 21 1962

JACK G. BLUE, County Clerk
County of Alameda, California

17176171

RECORDED at REQUEST OF ATTORNEY

1 Min. Past 2 M.

DEC 21 1962

OFFICIAL RECORDS OF ALAMEDA COUNTY, CALIFORNIA
JACK G. BLUE
COUNTY RECORDER

Seal Affixed

Mr. Scott Seery
August 27, 1993

Page 6

Exhibit B

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition
of Gregory J. Garcia and
Beatrice S. Gallegos

SWRCB No: _____

PETITION FOR REVIEW
OF DECISION BY ALAMEDA COUNTY
HEALTH CARE SERVICES AGENCY
NAMING PETITIONERS AS RESPONSIBLE PARTIES

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Fl.
Santa Rosa, CA 95404
(707) 576-0757
(800) 757-9562

Attorneys for
Gregory J. Garcia and
Beatrice S. Gallegos

INTRODUCTION

On April 6, 1993, Petitioners received notice from the Alameda County Health Care Services Agency ("Alameda County") that they had been named as responsible parties for the underground storage tank investigation at the property located at 16035 E. 14th Street in San Leandro, California. Petitioners had, at one time more than a dozen years ago, an ownership interest in the property, but never had any involvement with the operation of the underground storage tanks on the property. Petitioners are unaware of any unauthorized discharges from the underground storage tanks during the period of their ownership. Because petitioner's believe none of this Board's previous order's would require, or even authorize petitioners to be named as responsible parties, they respectfully bring this petition requesting that the State Board instruct Alameda County Health Care Services Agency to remove petitioners from the list of responsible parties.

BACKGROUND

In 1961, Joseph Raymond Garcia died and left the property located at 16035 E.14th Street in San Leandro, California, to the petitioners herein, Gregory J. Garcia and Beatrice S. Gallegos. At the time petitioners obtained the property, Seaside Oil Company, a Santa Barbara based oil jobber, had a lease on the premises. From information petitioners have discovered in historical documents, it appears that Seaside Oil

Company had leased the premises from the decedent and his predecessor owners for some period of time before 1940.

Seaside Oil Company continued its lease agreement on the property through December 21, 1965, and it continued operations on the station for several years after that. Specifically, after 1965, Seaside subleased the premises to a number of sub-operators, before finally leaving the property in the late 1960's. For a while thereafter (several months in early 1970), the station remained vacant. Later, it was leased by William and Peggy Gritzuk. The Gritzuks written lease indicates they leased the station from September of 1972 until at least March of 1979, but they are believed to have occupied the site for several years before that. The petitioners sold their interest in the subject property to the current owners, Jerry and Mary Petsas in March of 1979.

At no time did petitioners ever operate any of the underground storage tanks on the premises, nor did they operate any business on the site. Instead, all storage tank operations at the site were conducted by Seaside Oil Company and/or one of its subtenants and the Gritzuks.

Although petitioners have not yet been able to locate a copy of the written lease agreement between Seaside Oil Company and the late Joseph Raymond Garcia, they have located the 1972 lease between petitioners and the Gritzuks. Under the express terms of the lease, the Gritzuks were responsible to; at their own cost and expense, maintain the premises, "including the

Mr. Scott Seery
August 27, 1993

Page 7

Exhibit C

RECORDING REQUESTED BY

RE: 2847 IM: 620

AND WHEN RECORDED MAIL TO

71-55813 001

Garcia, Bruzzone & Dunn
16101 E. 14th Street
San Leandro, California 94578

DOCUMENTARY TRANSFER TAX
NONE

GARCIA, BRUZZONE & DUNN

By Archie J. Garcia

AND THE STATEMENTS TO

Beatrice S. Gallegos & Gregory
Joseph Garcia
16115 E. 14th Street
San Leandro, California 94578

RECORDED at REQUEST OF
ATTORNEY

At Min. Post 10:30 A

MAY 11 1971

Grant Deed ²⁰⁰

OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
JACK G. BLUE
COUNTY RECORDER

TD 485 C

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

BEATRICE S. GALLEGOS, formerly known as BEATRICE S. GARCIA,
Guardian of the Estate of GREGORY JOSEPH GARCIA,

hereby GRANT(S) to

GREGORY JOSEPH GARCIA, a single person,

an undivided one-half interest in and to

the following described real property in the Township of Eden
County of Alameda, State of California:

Parcel 1: Beginning at the intersection of the eastern line of County Road Number 2552, known as Ashland Avenue, with the southwestern line of East 14th Street, as the said street is now laid out and improved, and running thence along said southwestern line south 48°56' East 109.07 feet (the bearing of the southwestern line of East 14th Street being taken as South 48°56' East for the purpose of making this description); thence leaving said Southwestern line of East 14th Street South 33°04' West 111.22 feet; thence north 89°38' West 22.60 feet; to the said Eastern line of Ashland Avenue; thence along the last named line north 0°22' East 164.72 feet to the point of beginning.

Dated APR 30 1971

Beatrice S. Gallegos

STATE OF CALIFORNIA
COUNTY OF ALAMEDA } ss

On April 29, 1971 before me, the undersigned, a Notary Public in and for said State, personally appeared

BEATRICE S. GALLEGOS

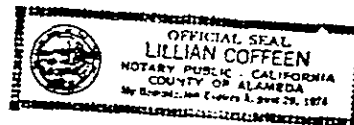
known to me to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal

Signature Lillian Coffeen

Lillian Coffeen

Name (Typed or Printed)



(This area for official notarial seal)

Title Order No. _____

Escrow or Loan No. _____

MAIL TAX STATEMENTS AS DIRECTED ABOVE

Mr. Scott Seery
August 27, 1993

Page 8

Exhibit D

#- 49334

After recording return to:

(ENDORSED)
FILED

APR 26 1971

1 **GARCIA, BRUZZONE & DUNN**
2 ATTORNEYS AT LAW
3 16101 EAST FOURTEENTH STREET
4 SAN LEONARD, CALIF. 94578
5 351-8161 OR 278-1172

RECORDED at REQUEST OF
ATTORNEY

JACK G. BLUE, County Clerk

At _____ Min. Past 10:30 A

By: Peter Chinn, Deputy

ATTORNEYS FOR GUARDIAN

APR 28 1971

OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
JACK C. BLUE
COUNTY RECORDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

10 Guardianship of the Estate of

NO. 157701

11 GREGORY JOSEPH GARCIA,

ORDER APPROVING GUARDIAN'S
PETITION FOR FINAL DISCHARGE
AND CONSENT OF MINOR TO
WAIVER OF ACCOUNTING

12 A Minor

14 BEATRICE S. GALLEGOS, formerly known as BEATRICES. GARCIA,

15 as guardian of the estate of the above named minor, having heretofore filed
16 with the Clerk of this Court a Waiver of Accounting, Petition for Discharge
17 and Consent of Minor, and the matter coming on regularly for hearing this day
18 and it appearing to the Court that due and legal notice of said hearing has been
19 given in all respects as required by law, the minor having consented in
20 writing to the guardian's petition for discharge and waiving the rendition of
21 an accounting by his said guardian, and no one appearing to except to said
22 petition or to contest the same, the Court, after hearing the evidence,
23 approves said notice and finds said petition to be true and correct.

24 IT IS ORDERED that the petition of said guardian be, and the same is
25 hereby approved, allowed and settled.

26 IT IS FURTHER ORDERED that said guardian be allowed from the
27 estate of said ward a reasonable sum in the amount of \$ 700 for the
28 services of her attorneys, GARCIA, BRUZZONE & DUNN, as ordinary fees
29 for their services to the guardian and the guardianship estate during this
30 accounting period.

31 IT IS FURTHER ORDERED that due to the fact the minor of this
32 guardianship has reached the age of majority a guardianship of his estate is

1- 49334

1 no longer necessary and that the estate of said minor in possession of the
2 guardian remaining after the payment of attorney fees be turned over to the
3 former ward of the guardian, GREGORY JOSEPH GARCIA, and the guardian
4 discharged one year from the date of this order. Said property of the ward
5 remaining for distribution after payment of the attorney fees consists of the
6 following:

- 7 1. Cash in the approximate amount of \$5,187.53
- 8 * 2. An undivided one-half interest in service station equipment
- 9 located at 16035 East 14th Street, San Leandro, California;
- 10 3. An undivided one-half interest in the following described real
- 11 property:

12 All that certain real property situated in the Township of Eden,
13 County of Alameda, State of California, described as:

14 Parcel 1: Beginning at the intersection of the eastern line of
15 County Road Number 2552, known as Ashland Avenue, with the
16 southwestern line of East 14th Street, as the said street is now
17 laid out and improved, and running thence along said south-
18 western line south 48°56' East 109.07 feet (the bearing of the
19 southwestern line of East 14th Street being taken as South 48°56'
20 East for the purpose of making this description); thence leaving
21 said Southwestern line of East 14th Street South 33°04' West
22 111.22 feet; thence north 89°38' West 22.60 feet; to the said
23 Eastern line of Ashland Avenue; thence along the last named
24 line north 0°22' East 164.72 feet to the point of beginning.

25 DATED APR 26 1971

26 DONALD K. QUAYLE

27 JUDGE OF THE SUPERIOR COURT

28
29
30
31
32

RECORDED
INDEXED
APR 26 1971
COUNTY CLERK
ALAMEDA COUNTY
CALIFORNIA

The foregoing instrument is a correct copy of the original on file in this office

ATTEST: APR 26 1971

JACK G. BLUE, County Clerk
County Clerk and ex-officio Clerk of the
Superior Court of the State of California in
and for the County of Alameda
BY _____
DEPUTY

Mr. Scott Seery
August 27, 1993

Page 9

Exhibit E

79-061446

Sm-10.00

RECORDING REQUESTED BY

RECORDED at REQUEST OF
Western Title Guaranty Co.
At 10:30 A.M.

APR - 3 1979
OFFICIAL RECORDS OF
ALAMEDA COUNTY, CALIFORNIA
RENE C. DAVIDSON
COUNTY RECORDER

TRANSFER
TAX PAID
ALAMEDA COUNTY

AND WHEN RECORDED MAIL TO
NAME JERRY PETSAS
ADDRESS 16518 TOLADO ST
CITY & STATE SAN LEANDRO, CALIF 94558

Title Order No. _____ Escrow No. 591609-JR

5.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO
NAME _____
ADDRESS _____
CITY & STATE _____

Documentary transfer tax \$ 132.00
 Computed on full value of property conveyed, or
 Computed on full value less liens and encumbrances
remaining thereon at time of sale.

Justine Westwood
Signature of declarant or agent determining tax—firm name

Individual Grant Deed

850539 PV
(1)

WESTERN TITLE FORM NO. 104

FOR VALUE RECEIVED, BEATRICE S. GALLEGOS, formerly known as Beatrice S. Garcia, under which name she acquired title, and GREGORY JOSEPH GARCIA

GRANT to JERRY PETSAS and MARY PETSAS, his wife as joint tenants

all that real property situate in the Township of Eden
County of Alameda, State of California, described as follows:

SEE EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF

Dated March 21 1979

Beatrice S Gallegos
Beatrice S. Gallegos
Gregory Joseph Garcia
Beatrice S. Gallegos
Gregory Joseph Garcia

STATE OF CALIFORNIA }
County of Fresno }

On March 28, 1979, before me, the undersigned,

a Notary Public, in and for said State, personally appeared
Beatrice S. Gallegos

known to me to be the person whose name is
subscribed to the within instrument, and acknowledged to me that
he executed the same.

Ruth A. Kusamura
Notary Public

79-061446

FOR NOTARY SEAL OR STAMP
OFFICIAL SEAL
RUTH A. KUSAMURA
Notary Public, California
Principal Office in
Fresno County
My Com. Expires Oct. 4, 1981

MAIL TAX STATEMENTS AS DIRECTED ABOVE

STATE OF CALIFORNIA

City of San Francisco County of San Francisco

On March 3, 70 before me, Remond

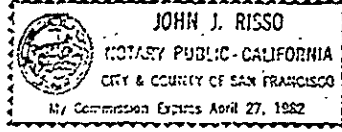
a Notary Public, in and for said State, personally appeared

Donald G. Ballou Gregory J. Gray
Barcia known to me to be the person whose name is subscribed

to the within instrument, and acknowledged to me that he executed the same.

My commission expires _____
John J. Rizzo
Notary Public

7-061446 12



Notary Public
San Francisco, California

John J. Rizzo
Notary Public

Mr. Scott Seery
August 27, 1993

Exhibit F

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition
of Gregory J. Garcia and
Beatrice S. Gallegos

SWRCB No: _____

ADDENDUM TO THE
PETITION FOR REVIEW
OF DECISION BY ALAMEDA COUNTY
HEALTH CARE SERVICES AGENCY
NAMING PETITIONERS AS RESPONSIBLE PARTIES

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Fl.
Santa Rosa, CA 95404
(707) 576-0757
(800) 767-9562

Attorneys for
Gregory J. Garcia and
Beatrice S. Gallegos .

**THERE IS NO "EVIDENCE" LET ALONE
"SUBSTANTIAL EVIDENCE" THAT PETITIONERS
WERE EVER THE "OWNERS" OF THE
UNDERGROUND STORAGE TANKS**

After submission of the original Petition, Sandra L. Malos, Chief of the Local Oversight Program, wrote a letter to Petitioners, claiming that Petitioners were responsible parties for the investigation at the site in San Leandro because they met the definition of "owners" under RCRA. Petitioners challenge this assertion, factually and legally.

First, as was noted in the original Petition, Petitioners were owners of the property. Owners of the property are not necessarily owners of fixtures placed thereon by third parties.

While Petitioners are aware that the State Underground Storage Tank Cleanup Fund ("Fund") has allowed claims for "de facto" tank owners, neither federal nor state law recognizes any such basis for imposing liability.

By analogy, if a gasoline tanker truck was to crash into your home spilling gasoline, the responsibility for the cleanup would be solely on the trucking company and the driver. There would be no good legal reason, nor would it foster sound public policy, to require the owner of the property to clean it up simply because he or she owned the property.

From the information presently available to the Petitioners, it appears that the underground storage tanks were owned last by the Seaside Oil Company. Petitioners are not affiliated in any way with the Seaside Oil Company. Under these

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J KEARS, Agency Director



RECEIVED

APR 25 1995

Director of Environmental Health

RAFAT A SHAHID ASST AGENCY DIRECTOR

September 1, 1993

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

Mr. David Deaner
State Water Resources Control Board
Division of Clean Water Programs
2014 T Street, Ste. 130
P.O. Box 944212
Sacramento, CA 94244-2120

RE: SB2004 FUND APPLICATION - PETSAS PROPERTY, 16035 EAST 14TH
STREET, SAN LEANDRO, ALAMEDA COUNTY

Dear Mr. Deaner:

It has come to our attention that an application for SB2004 funds has been submitted to your office on behalf of Mr. and Mrs. Jerry Petsas ("applicants"), owners of the referenced site. We understand that an initial review of the applicants' funding request resulted in it being rejected. Mr. Mark Johnson, council for the applicants, informed me yesterday that an appeal has, or will be, submitted to your office for further reconsideration. Mr. Johnson indicated that he does not expect to hear of a decision regarding this appeal until sometime around March 1994.

Mr. Johnson informed me that the original application was rejected because the tanks at the subject site were not in compliance with the underground storage tank laws as of the established cut off date of January 1, 1990. Our records do not dispute this fact. However, there are several other issues surrounding this apparent noncompliance which we hope your office will additionally consider when re-evaluating the applicants' case.

The applicants purchased the property in March 1979 to supplement their retirement income. A used car lot was reportedly on the site at the time of the property transfer, as continues to the present. There was no service station operating at the site at time of the property transfer, nor has one operated since. The applicants were not openly aware that underground storage tanks (UST) were even present at the site.

During August 1985, the Eden Consolidated Fire Protection District (ECFPD) advised the applicants that the USTs had to be removed, per Alameda County Fire Code Section 79.221. This was the first time the applicants apparently became aware that the USTs were still in place, and that some regulation governed their use, or, in this case, non-use. The applicants did not have the means to remove the USTs at this time. Upon a request from the

Mr. David Deaner
RE: 16035 E. 14th Street, San Leandro
September 1, 1993
Page 2 of 3

applicants and approval from ECFPD, the tanks were capped and a one year extension granted before the tanks were either to be removed or reused. The following year (December 1986) another 8-12 month extension was requested by the applicants. Our records do not reflect that a response from ECFPD to this last request was made.

The Alameda County Environmental Health Department, Hazardous Materials Division (ACDEH), first began implementation of the UST laws and regulations during 1987. An attempt was made to identify all the USTs in our jurisdiction in order to notify tank owners of the requirement to register and monitor their tanks, and to receive an operating permit. Invariably, even with the best intent, certain sites escaped our initial attention. The subject site was apparently amongst the group of tank sites overlooked during this initial registration drive. The ACDEH was never advised of the subject USTs by the ECFPD.

The applicants did not become aware of the state UST regulations until sometime around April 1990. The applicants were advised of their requirement to register the USTs in correspondence from this office dated May 31, 1990. The applicants complied with this request immediately, and submitted registration forms dated June 11, 1990. The applicants were also advised of the need to close the USTs should they not be placed back into service. Once the applicants had the means to perform these closures, they did, commencing in February 1992. Unfortunately, these tanks had leaked, causing marked environmental impact.

Please consider that the applicants were never in the gas station owner/operator "loop." They never operated or purchased fuel for the tanks. They were not recipients of petroleum industry literature. And they were never advised of any requirements beyond the Alameda County Fire Code, until April 1990. Further, the applicants purchased the site before the UST laws were in affect, and before case law established the need for prudent "due diligence" investigations prior to purchasing such properties.

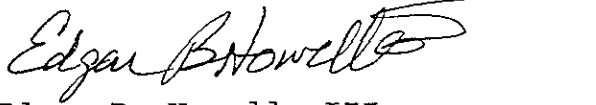
The applicants are, however, a retired couple of modest means faced with tens of thousands of dollars of assessment and potential clean-up costs. They have already spent over \$20,000 on this project. A recently-completed Preliminary Site Assessment identified significant ground water impact, and the need to expand the case into a Soil and Water Investigation and off-site assessment. This work will require liquid assets the applicants simply do not have, and, hence, the work will not proceed at any but a glacial pace.

Mr. David Deaner
RE: 16035 E. 14th Street, San Leandro
September 1, 1993

Clearly, the spirit of the UST cleanup fund was to assist responsible parties finding themselves in the financial predicament in which the applicants are presently found. Our experience has shown that the subject applicants and their story are not unique. Many responsible parties have similar tales to tell.

In closing, we respectfully request that your office consider the mitigating issues associated with the applicants' appeal, rule in their favor, and accelerate the rate at which this appeal is processed and funding provided. Please feel free to contact me at 510/271-4320, or Mr. Scott Seery of my staff at 510/271-4530, to discuss the case in more detail.

Sincerely,



Edgar B. Howell, III
Chief, Hazardous Materials Division

EBH/SOS

cc: Rafat A. Shahid, Assistant Agency Director
Mark Johnson, Esq., council for applicants
files

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APR 25 1995

LAW OFFICES OF HANS W. HERB

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

Director of Environmental Health

Arizona
California
Washington

September 14, 1993

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HANS W. HERB

Gilbert Jensen, Esq.
Senior Deputy District Attorney
ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE
7677 Oakport St., Ste. 400
Oakland, California

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SEP 16 1993

RE: Alameda County Health Care Services Agency
Garcia/Gallegos
Site: 160 East 14th St., Oakland, California
Our File No. 01-126-01

DISTRICT ATTORNEY
ALAMEDA COUNTY
CEPD

Dear Mr. Jensen:

I have yet to receive a substantive response from your office concerning any possible legal basis you might have for the "star chamber" you have been conducting in Alameda County.¹ The lack of a response on your part leads me to believe that there is no legal basis for holding such hearings. After all, you are a public servant and were there such authority, you would be duty bound to so advise me and the public you serve as to the basis for your actions.

Separate and apart from your public servant role in this matter, I am extremely concerned about this matter as an attorney, and in particular, a District Attorney. As you know, you are an officer of the court. As I am sure you are aware, acting outside of your authority could subject you to possible disciplinary action. The fact that you are working as a government employee, to my knowledge, is not an established immunity under the State Bar Act for violating the Rules of Professional Conduct. Further, under these rules, you as a District Attorney, are held to a higher standard of care. Your job is to ferret out justice. If the District Attorney's office is involved in an illegal conspiracy to violate citizens' rights, that is a sad commentary on the state of our profession. I certainly hope I am mistaken.

Although you purport to represent both the Regional Water Quality Control Board and the Alameda Health Care Services Agency, our office has received conflicting reports regarding your representation. In particular, our clients in the Garcia/Gallegos action

¹ I think a better description is an auto-de-fe'. See attached.

Mr. Gilbert Jensen
September 14, 1993
Page 2

received a Notice of Responsibility from the State Water Resources Control Board purporting to act under the Local Oversight Program contract. I had discussions in Sacramento with Sandra Malos, the Program Administrator, who vehemently assured me that she, not you, was the final arbitrator of decisions concerning actions taken by their contractors. Further, the Regional Water Quality Control Board has counsel, Gary Grimm, who is employed by the State Water Resources Control Board, Office of Chief Counsel. The State Board has no knowledge of you representing the Bay Area RWQCB. We have asked the Board to investigate this matter and report to us as to your legal standing to represent RWQCB. In short, our office is receiving conflicting reports about your authority to represent any agency (other than the District Attorney's Office) in connection with this matter.

In addition, in order to clear this matter up, we are asking the State to audit the billing to the Local Oversight Program. If billing reflects that time spent on the auto-de-fe' is billed to the Local Oversight Program, then we will assume that the Local Oversight Program is the responsible agency and follow the appropriate direction from the Contract Administrator. However, that would obviously raise a very severe issue as to how your time was billed to an LOP Contract if the auto-de-fe' procedure involved was governed by the Regional Water Quality Control Board. In fact, there would be, at a minimum, a billing irregularity, and possibly something much more severe.

Either way, our clients want to set the record straight. They want to know who they are dealing with, under what authority those seeking to sanction them believe they are operating, and to whom they may appeal. Under the facts, as you have explained them, we are in a quandary to figure out who is telling the truth.

I trust you will do me the courtesy and perform your role as a public servant by providing me, in writing, and in detail, the specific factual and legal basis for your belief that you are authorized to act in the manner in which you are acting.

If I do not receive a satisfactory response, we will take further legal action.²

² I can tell you that we have already addressed this issue with the Chairman of the State Water Resources Control Board, who is, I am sure, also anxiously awaiting a reply.

Mr. Gilbert Jensen
September 14, 1993
Page 3

If you have any comments or questions, please feel free to contact me.

Very truly yours,
LAW OFFICES OF HANS W. HERB

A handwritten signature in black ink, appearing to read 'Hans W. Herb', written in a cursive style.

Hans W. Herb

HWH/bm

cc: Dan Lungren, Esq.
John J. Meehan, Esq.
Ms. Sandra Malos, SWRCB
Mr. John Caffrey
Special Interested Parties Mailing List

The *Suprema*, as the court became known, was not only feared from its very inception but also perceived as a threat in the sense that no one was entirely sure as to the full extent of its power. With its methods and virtually unfettered powers, the *Suprema* became a power unto itself; not only did the court dissociate itself increasingly from the influence and the intervention of the Curia, but also from the power of the Spanish kings.

Even before the *Suprema* began its activities, the work of the Inquisition had already been associated with some of the most ruthless men in history. Joining this infamous group was Tomás Torquemada who became Grand Inquisitor at the age of eighteen. About 100,000 people were sentenced under his jurisdiction.

It can be said without exaggeration that he was not only the "practitioner" of the Inquisition but also the "theoretician" behind it. His guidelines, which represented a summary of the philosophy and methods of the Inquisition in Spain and elsewhere, soon became an established handbook for the work of the courts. It details the secret workings of the Inquisition, its role as a court of first and last resort for accused heretics, the finality of its irreversible decisions, the immediate excommunication and burning of all who refused to confess their guilt and the penalties of those who did. Thus it sets forth the general procedures of all medieval Inquisitions which were shamelessly carried out by the secular authorities in conjunction with the Church.

Although some of these principles were extended following the spread of the Reformation in Spain, Torquemada's guidelines never lost their authority. The *actus fidei*—in Portuguese the *auto-da-fé* (Spanish: *auto-da-fé*)—soon passed into the language as a byword.

It is evident that under these circumstances, the Inquisition was not only feared but also, very rapidly, came to be hated. In Spain, as previously in other countries, inquisitors met unpleasant deaths. In 1485, for example, Inquisitor Peter Arbueze was murdered in Saragossa Cathedral. Nor did the Spanish clergy ever really fully accept the methods used by the inquisitors, although their reservations were of no avail in bringing about change. The Spanish alliance of "the throne and the altar" proved highly effective; the confiscation of property from heretics provided the king with an appreciable source of revenue. Not only that, but the Inquisition did achieve a kind of peace, albeit uneasy, in the country. The common people grudgingly accepted the activities of the Inquisition, and the *auto-da-fé* became a popular, if gruesome, form of public spectacle.

In many ways, the initial work of the Spanish Inquisition can be explained though not exonerated. Nevertheless, there were—and still are today—many ready excuses as to the necessity for such an institution. It is clear that the complex circumstances on the Pyrenean Peninsula toward the end of the 15th century and at the

beginning of the 16th did not exactly make the task of unification under one government easy, but that fact did not automatically justify all the means that were brought to bear, including the *Suprema* itself. As for the inquisitors themselves, the conduct of Tomás Torquemada can be condemned without hesitation, but the case of another major inquisitor and politician, Francisco Jiménez (Ximénez) de Cisneros, is not so clear-cut. Jiménez was a member of the Minorite Order and had progressed from being Queen Isabella's confessor to being one of her advisers. He was also a man of learning and had extraordinary political abilities which he sought to use in the reform of the Church in Spain. He founded the university in Alcalá which for a long time remained a center of humanistic theology. Jiménez himself, working with other scholars, compiled a polyglot Bible text and had it printed at his own expense. His role as a politician was such an important one that before the government of Charles V took over in Spain, he had been at the head of the government. He was Archbishop of Toledo and a cardinal, and later held office as Grand Inquisitor. He decided the life or death of many guilty or innocent people.



Francisco González Jiménez (Ximénez) de Cisneros (1437–1517). Copperplate engraving by François Edelinck based on a contemporary painting. Staatliche Kunstsammlungen Dresden, Kupferstichkabinett.

William Attwater, Esq.
Office of Chief Counsel
STATE WATER RESOURCE CONTROL BOARD
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Gil Jenson, Esq.
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Mary Petsas
c/o Mark Johnson
JOHNSON & JOHNSON
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THE RECORDER
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San Francisco, CA 94123

bcc:

Mark Borsuk, Esq.
1626 Vallejo St.
San Francisco, CA 94123

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

APR 25 1995

SAN FRANCISCO BAY REGION
2101 WEBSTER STREET, SUITE 500
OAKLAND, CA 94612
(510) 286-1255

93 SEP 28 PM 3:13

Director of Environmental Health



Jerry and Mary Petsas
16518 Toledo Street
San Leandro, CA 94578

September 27, 1993
File: 01-1164 & 2198.17

Beatrice S. Gallegos
4650 No. Palm Avenue
Fresno, CA 93704

Gregory J. Garcia
344 Rollingwood Drive
Vallejo, CA 94591

RE: Legal Designation of Responsible Party and Request for Submittal of a Technical Report Resulting from the Alameda County Department of Environmental Health's Pre-Enforcement Review Panel Meeting on August 31, 1993

Dear Mr. and Mrs. Petsas, Mr. Gallegos, and Mr. Garcia:

It has been brought to my attention by Regional Board staff that a condition of soil and groundwater pollution exists on the property located at 16035 E. 14th Street, San Leandro, from an underground storage tank release. The Alameda County Department of Environmental Health (ACHD) staff have requested technical reports from you to fulfill your obligations per California Code of Regulations, Title 23 Waters, Chapter 16, Underground Storage Tank Regulations, Article 11, Corrective Action Requirements. It is my understanding that ACHD staff were unsuccessful in eliciting your co-operation in resolving these issues through normal correspondence.

A Pre-Enforcement Review Panel was held at the ACHD offices on August 31, 1993, attended by Mr. Richard Hiett of my staff. Pursuant to the Regional Board's authority under Section 13267 (b) of the California Water Code, you are hereby found to be a responsible party as defined by Title 23 of the California Code of Regulations, Division 3, Chapter 16, Article 11, Section 2720. A Responsible Party is "any person who owned or operated the underground storage tank immediately before the discontinuation of its use." A responsible party also includes any owner of property from which an unauthorized release of a hazardous substance from an underground storage tank has occurred.

As a responsible party, you are required to conduct both soil and groundwater investigations to determine the extent of the environmental contamination resulting from the release. You are also required to perform a minimum of monitoring and sampling of the wells presently located at the site, and submit summary reports documenting the results of this work. Therefore you are requested to submit technical reports within 90 days of the date of this letter specifically addressing the following numbered items:

- 1) A work plan to define the lateral and vertical extent of pollution in soil and groundwater;
- 2) Technical summary reports due quarterly, summarizing the results of quarterly groundwater monitoring and sampling.

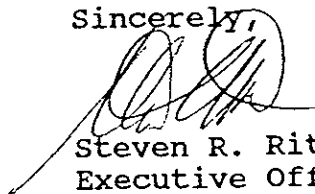
All work should adhere to the requirements of the Tri-Regional Board Staff Recommendations for the Preliminary Evaluation and Investigation of Underground Storage Tank Sites - August 10, 1990 and Article 11 of Title 23, Waters, California Code of Regulations.

I am hereby transmitting this request for a technical report to ACHD for service and continued case handling. You should be aware that failure on your part to submit the requested technical report, or late submittal may result in fines up to \$1000 per day of delinquency. Your response to this technical report request should be sent to the attention of Mr. Scott Seery at ACHD. Please inform Mr. Seery at least three working days in advance of all field activities.

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

If you have any questions regarding the contents of this letter, Please contact Mr. Seery, of ACHD, at (510) 271-4530.

Sincerely,



Steven R. Ritchie
Executive Officer

cc: Gil Jensen, ACDA, 7677 Oakport Street, Suite 400, Oakland
94621
Scott Seery, ACHD, 80 Swan Way, Suite 200, Oakland 94621

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF CLEAN WATER PROGRAMS

2014 T STREET, SUITE 130

P.O. BOX 944212

SACRAMENTO, CA 94244-2120

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FACSIMILE (916) 227-4349

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APR 25 1995



93 OCT -8 PM 12: 50 Director of Environmental Health

OCT 07 1993

CERTIFIED MAIL NO. P 088 542 572

Mr. Hans W. Herb, Esq.
Attorney at Law
50 Santa Rosa, Avenue, 5th Floor
Santa Rosa, CA 95404

Dear Mr. Herb:

PETITION, UNDERGROUND STORAGE TANK LOCAL OVERSIGHT PROGRAM, SITE NO. 4147,
SONOMA COUNTY, FILE NO. 93-110

This is in response to the Addendum to the Petition dated July 15, 1993 submitted on behalf of Beatrice Gallegos and Gregory Garcia (Petitioners). This addendum was submitted in response to our letter dated June 15, 1993. We will address the issues in the order presented in this addendum.

Our letter dated June 15, 1993 was an attempt to mediate the petition or to resolve it informally and in no way was intended to prevent a hearing by the State Water Board if such a hearing is appropriate. The petition procedures adopted by the State Water Board do have provisions to dismiss a petition at any time if the petition is withdrawn or the petition fails to raise substantial issues that are appropriate for review.

Section 6991(3) of 42 U.S.C. (RCRA) defines the terms "owner" and "operator". Sections 6991b(h)(6)(a), 6991b(h)(7)(A) and 6991b(h)(4) make owners and operators liable for corrective action and for local oversight costs.

As we explained in our June 15, 1993 letter, Petitioners have been identified as responsible parties because they were the last owners of the tanks before the discontinuation of their use. As you indicate in the original petition, a number of subleasees operated the tanks after Seaside Oil Company vacated the property and prior to Petitioners selling the property to Mr and Mrs. Petsas in 1979.

Unless there is an express agreement in a lease to the contrary, any improvements constructed on the leased premises are the property of the landlord at the termination of the lease (*Gett v. McManus* (1873) 47 Cal. 56; *Long v. Keller* (1980) 104 Cal. App 3d 312, 321). Also, under California law, a tenant has a statutory right to remove certain fixtures, known as trade fixtures, at the end of the lease (Cal. Civil Code Section 1019). Once the term of the lease ends and the tenant surrenders the property, trade fixtures not previously removed are deemed abandoned and become the property of the landlord (*Rinaldi v. Goller* (1987) 48 Cal. 2d. 276, 282; *Wolfen v. Clinical Data Inc.* (1993) 16 Cal. App 4th 171, 178 n. 2.). Therefore, at the end of the lease, when the tanks were abandoned, the property owner would become the owner of the tanks.

Mr. Hans W. Herb, Esq.

-2-

Unless we hear from you to the contrary, we will assume you wish to proceed with the petition. You will be notified of further action by the State Water Board on this matter. If you have any questions, please telephone Lori Casias at (916) 227-4325.

Sincerely,



for Mike Harper, Chief
Local Oversight Program

cc: Beatrice S. Gallegos
Gregory J. Garcia
Mary Petsas
Scott Seery, Alameda County
Dorothy Jones, State Water
Board Legal Counsel

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APR 25 1995

LAW OFFICES OF HANS W. HERB

Director of Environmental Health

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404Arizona
California
Washington(707) 576-0757
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(707) 575-0364

November 4, 1993

HANS W. HERB

ALAMEDA COUNTY BOARD OF SUPERVISORS

Ms. Gail Steele
Mr. Keith Carson
Mr. Don Perata
Mr. Edward R. Campbell
Ms. Mary King
1221 Oak Street, Suite 536
Oakland, CA 946112John J. Meechan, Esq.
ALAMEDA COUNTY DISTRICT ATTORNEY
7677 Oakport St., Ste. 400
Oakland, CaliforniaRECEIVED
NOV 08 1993DISTRICT ATTORNEY
ALAMEDA COUNTY
CEPD

RE: Alameda County Health Care Services Agency
Garcia/Gallegos
Site: 160 East 14th St., Oakland, California
Our File No. 01-126-01

Ladies & Gentlemen:

I am writing to request your assistance with a matter of great concern to me and the 22,500 citizens of California faced with the devastating financial and emotional impact of the high cost of cleanup from leaking underground storage tanks.

Specifically, despite my repeated requests, all of my polite requests for even a simple letter from the Alameda County District Attorney's Office have gone unanswered. Therefore, I am asking that you please instruct your Assistant Deputy District Attorney, Gil Jensen, to fulfill his role as a public servant by responding to a legitimate inquiry by a tax-paying citizen.

If, for any reason, you are unable to persuade Mr. Jensen to answer my letters, I will have no alternative other than to bring this matter to the attention of other elected officials in an attempt to achieve compliance.

ALAMEDA COUNTY BOARD OF SUPERVISORS
ALAMEDA COUNTY DISTRICT ATTORNEY
November 4, 1993
Page 2

BACKGROUND

By way of background, we represent Beatrice Gallegos and Greg Garcia. In the 1960s, Mrs. Gallegos, a retired citizen existing on social security, and her son Greg, a permanently disabled Vietnam veteran, inherited a former gasoline service station located on East 14th Street in San Leandro. In 1977, after Mr. Garcia returned from Vietnam, the property, which had been held in trust for him as a minor, was sold by the trustee to Mr. and Mrs. Petsas. The Petsases operated a used car lot and automobile repair facility on the property. At the time of the sale, two underground storage tanks and two pumps existed on the property. The sale was "as is" with full disclosure of all defects. The tanks were in good working order and were in use by a tenant at the time of the sale.

The underground storage tanks had previously been utilized by Seaside Oil Company, which leased the site from Mrs. Gallegos and Mr. Garcia. At no time did Mrs. Gallegos or Mr. Garcia ever operate any business on the site nor did they use the tanks. They were merely passive land owners, who leased their property.

In 1993, fourteen years after they were last involved with the property, Mrs. Gallegos and Mr. Garcia were informed by the Alameda County Health Care Services Agency that they were responsible for a potential half-million dollar cleanup from the underground storage tanks previously used at the site. This news was devastating, as one can imagine, to a retired social security recipient and a permanently disabled Vietnam veteran.

It was particularly troublesome since, at the time Mrs. Gallegos and Mr. Garcia owned the site, it was in full compliance with all state and federal governmental regulations. In fact, at the time the Garcia/Gallegos parties sold this site, no underground storage tank laws existed. In fact, it would be almost half a dozen years before any laws governing the topic would finally be implemented.

Nevertheless, the Garcia/Gallegos have been vigorously pursued by the Alameda County District Attorney's Office in an attempt to force them to pay the Alameda County Health Care Services Agency and the District Attorney more than \$100 per hour for the privilege of being harassed. The entire concept is unconscionable and must be dealt with promptly to avoid making a mockery of the free society in which we live.

Ironically, the State of California through its Environmental Protection Agency (EPA) actually agrees with the Garcia/Gallegos and contends that Alameda County has no business interfering with a program administered by the State of California. However, equally ironic is the fact that the Alameda County District Attorney's Office and Health Care Services

ALAMEDA COUNTY BOARD OF SUPERVISORS
ALAMEDA COUNTY DISTRICT ATTORNEY
November 4, 1993
Page 3

Agency have refused to comply with any of the State-wide laws or regulations, since they appear to want to keep all of the "reward" money for themselves.

Despite repeated requests that the District Attorney's office provide the Garcia/Gallegos with some shred of legal authority for this "witch-hunt," no response has been received.

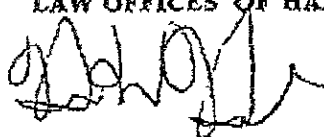
In fact, we understand that the Alameda County District Attorney's Office has refused to speak to anyone, including the media, about the lack of legal authority for the conduct in which it is engaging. (The D.A. even refuses to give information to the legal papers about why he thinks he has the authority to overrule the Garcia/Gallegos petition to the State Water Resources Control Board.)

The purpose of this letter is to request your assistance in the following matters:

- (1) We ask that you require your employees to promptly respond to legitimate requests for information by citizens regarding the County's conduct; and,
- (2) We also ask that this matter be set on the agenda as soon as possible. Further, we ask that you not execute any contracts with the State over how similar cases will be dealt with until a full inquiry is conducted.

Should you have any questions or comments, please do not hesitate to contact me at (800) 767-9562.

Very truly yours,
LAW OFFICES OF HANS W. HERB



Hans W. Herb

HWH/mca

cc: Interested Party Mailing List

William Attwater, Esq.
Office of Chief Counsel
STATE WATER RESOURCE CONTROL BOARD
P.O. Box 100
Sacramento, CA 95812-0100

Gil Jenson, Esq.
District Attorney's Office
COUNTY OF ALAMEDA
1225 Fallon #100
Oakland, CA 94612

Mary Petsas
c/o Mark Johnson
JOHNSON & JOHNSON
44 Montgomery St. Suite 4100
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LAW OFFICES OF HANS W. HERB

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APR 25 1995

Director of Environmental Health

50 Santa Rosa Avenue, Fifth Floor
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Arizona
California
Washington

December 17, 1993

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VIA FACSIMILE AND U.S. MAIL

HANS W. HERB

Steven R. Richie, Executive Officer
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

Gilbert A. Jensen, Esq.
OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ALAMEDA
7677 Oakport Street, Suite 400
Oakland, CA 94621

Mr. Scott Seery
ALAMEDA COUNTY HEALTH DEPARTMENT
800 Swan Way, Suite 200
Oakland, CA 94621

Re: RWQCB File 01-1164 and 2198.17
Site 16035 East 14th Street, San Leandro, CA
Our Client: Garcia/Gallegos
Our File No: 01-126-01

Gentlemen:

I am writing to update the status of the above-referenced matter.

As I am sure you are all aware, the Governor's office has appointed a special task force to determine how to establish a proper dispute resolution and appeal process for local over-site programs. I understand from conversations with Mr. McDonald at the State Board, as well as written communications from the office of Mr. Pettit (the SWRCB Executive Officer), that the task force will be completing its work early in the first quarter of 1994.

At that time, we understand recommendations will be submitted on how to address the inconsistencies in the handling of matters between local agencies and the State Board. It is our understanding that all appeals, state wide, have been put on hold until the task force determines the proper forum for appeals and the procedures which will be followed.

Mr. Steven R. Richie
Gilbert A. Jensen, Esq.
Mr. Scott Seery
December 17, 1993
Page 2

Second, we have been working actively with the Alameda County Board of Supervisors as to how to deal with the local issues involving the Health Department and District Attorney's office. I understand that two members of the Board of Supervisors, Supervisor Carson and Supervisor Perata, have indicated that the Board of Supervisors is willing to intervene and assist in resolving this problem on the local level to the extent possible.

Unfortunately, as we read Health and Safety Code ss25297.1(d)(3) and (h), as well as Health and Safety Code ss25299.37(c),(d), it appears there may be nothing immediate the local Board can legally do. As you know, the Health and Safety Code could not be more clear that an appeal of an Order issued by a local agency must proceed along the detailed procedure set forth in the code sections referred to above. Since the State Board has not taken any action on the Garcia/Gallegos petition at this point, we believe there is nothing the Board of Supervisors can do other than to make sure that individual employees are restrained from interfering with the legal process. Since we understand everyone has voluntarily agreed to wait for proper direction from the Governor's task force and the State Board, we assume that the Board of Supervisors' intervention at this time will be unnecessary.

I am please that this issue appears to be on the way to a rational and common-sense solution. Frankly, we are ecstatic with the positive responses which have arisen out of this situation. As I am sure you know, this event, in part, caused the State Board to implement a state-wide priority ranking system for the cleanup of sites. The unreasonable hardships which were being placed on individual property owners by arbitrary, capricious and unscrupulous staff actions have been curtailed. Further, through efforts of this office and the Environmental Resource Council, streamlining of the underground tank cleanup program has been greatly expanded. With new information brought to the table by the California and U.S. Environmental Protection Agencies and the correction of erroneous information which had been promulgated by uninformed regulators, we are actually beginning to see cleanups moving forward.

Most important to me, as an American, is the fact that due process is finally being added to the cleanup system. The egregious actions in this case got the attention of environmental officials throughout the State, and indeed the Country. It caused even the most ardent environmentalist to question whether the actions should have been condoned. We are glad to see the system working and a rational, common-sense balance being put into practice.

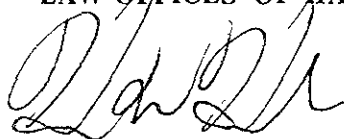
Mr. Steven R. Richie
Gilbert A. Jensen, Esq.
Mr. Scott Seery
December 17, 1993
Page 3

Our goal is, and always has been, to cleanup sites, not to see money frivolously wasted on lawyers and legal fees. By establishing a system that is fair and reasonable, effort, energy and expense can now be spent where it is truly needed --cleaning up contaminated sites.

We are glad that we have been able to be of service in this matter and that we are well on our way toward achieving sound and common-sense solutions. We applaud the efforts of all of you who assisted in this process. If you have any questions or comments, please contact me at 800-767-7692.

Very truly yours,

LAW OFFICES OF HANS W. HERB

A handwritten signature in cursive script, appearing to read 'Hans W. Herb', written in black ink.

Hans W. Herb

HWH/tcf

cc: Interested Party Mailing List

William Attwater, Esq.
Office of Chief Counsel
STATE WATER RESOURCE CONTROL BOARD
P.O. Box 100
Sacramento, CA 95812-0100

Mary Petsas
c/o Mark Johnson
ITO AND JOHNSON
220 Montgomery St. Suite 1500
San Francisco, CA 94104-9736

CALIFORNIA ENVIRONMENTAL
INSIDER
P.O. Box 884973
San Francisco, CA 94188-4973

CALIFORNIA ENVIRONMENTAL
LAW REPORTER
136 Carlin Road
Conklin, NY 13748-1531

BNA TOXIC LAW REPORTER
1231 25th Street, N.W.
Washington, D.C. 20037

THE DAILY JOURNAL
1390 Market St., Suite 1210
San Francisco, CA 94102

THE RECORDER
625 Polk St., Suite 500
San Francisco, CA 94123



Alameda County
District Attorney's Office
John J. Meehan, District Attorney

RECEIVED

APR 25 1995

Director of Environmental Health

December 20, 1993

Hans W. Herb
Attorney at Law
50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, CA 95404

Re: People v Garcia, Gallegos and Petsas RWQCB 01-1164 & 2198.17, LOP 4147

Dear Mr Herb:

This office is in receipt of your latest correspondence in the above matter dated December 17, 1993. We feel compelled to respond to some erroneous assumptions contained in this letter, which, if not corrected, could be potentially very harmful to the interests of your clients.

On September 27, 1993 the San Francisco Bay Regional Water Quality Control Board issued you clients together with co-responsible parties Petsas, a legally binding request for environmental protection actions within 90 days pursuant to Water Code Section 13267 (b). The order clearly indicates that the Water Code, and not the Health and Safety Code, as recited in your letter, was the basis of the RWQCB action. This self executing statutory process will be enforced by this office. It is an act of the Regional Board and not the State Water Resources Board. I am sure you are aware that this action is a specific enforcement proceeding running to the jeopardy of your clients and the Petsas which cannot be stayed by policy appeals to local, state or federal political bodies which you cite in your most recent letter.

The office of the District Attorney is required to enforce the laws of the State of California in an independent fashion which does not allow for the kinds of policy input which your letter suggests. We apply the evidences which is brought to us, to the law, in thousands of cases each year, to make independent prosecutorial decisions. Such a decision has been arrived at in the case of your clients. We suggest you use the protections guaranteed your client by the law, to protect their interests, and are concerned that you seem to be relying on other issues in this case.

Very truly yours,

JOHN J. MEEHAN
District Attorney

By: 
Gilbert A. Jensen
Senior Deputy District Attorney

JJM:GAJ:gaj

cc: Mark B. Johnson, Attorney at Law

RECEIVED

APR 25 1995

Director of Environmental Health

ITO AND JOHNSON
ATTORNEYS AT LAW
MILLS TOWER, SUITE 1500
220 MONTGOMERY STREET
SAN FRANCISCO, CA 94104-9736

(415) 362-3503
(415) 989-1137 FAX

December 23, 1993

Mr. Scott Seery
Alameda County Health Agency
Department of Hazardous Materials,
80 Swan Way, Room 200
Oakland, CA 94621

Re: 16035 E. 14th Street, San Leandro, California
LOP Site ID # 4147

Dear Mr. Seery:

In its September 27, 1993 letter, the California Regional Water Quality Control Board ("RWQCB") identified Mrs. Beatrice Gallegos, Mr. Gregory J. Garcia and Mr. and Mrs. Jerry Petsas as responsible parties for the cleanup of the site located at 16035 East 14th Street, San Leandro, California. Additionally, the RWQCB requested the responsible parties to submit "a work plan to define the lateral and vertical extent of pollution in soil and groundwater" at the site.

During the past two months, Mr. and Mrs. Jerry Petsas have repeatedly requested that Mr. Garcia and Mrs. Gallegos cooperate in complying with the RWQCB's requests. Mr. Garcia and Mrs. Gallegos have refused to cooperate. Because negotiations have not been as successful as anticipated and Mr. and Mrs. Petsas desire to cooperate with the RWQCB, they request a sixty day extension in which to comply with the requests stated in the RWQCB's September 27 letter.

From our informal discussions, I understand that a request to your office is the proper means to obtain an extension. If there is any additional information you need, please contact me. Thank you for your assistance and best wishes for the

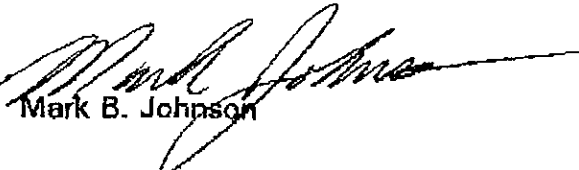
Scott Seery
December 23, 1993

Page 2

New Year.

Very truly yours,

ITO AND JOHNSON



Mark B. Johnson

cc: Mr. and Mrs. Petsas

ALAMEDA COUNTY
HEALTH CARE SERVICES
AGENCY

DAVID J. KEARS, Agency Director



RAFAT A. SHAHID, ASST. AGENCY DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
State Water Resources Control Board
Division of Clean Water Programs
UST Local Oversight Program
80 Swan Way, Rm 200
Oakland, CA 94621
(510) 271-4530

STID 4147

January 4, 1994

Ms. Beatrice S. Gallegos
4650 No. Palm Avenue
Fresno, CA 93704

Mr. Gregory J. Garcia
344 Rollingwood Drive
Vallejo, CA 94591

RE: 16035 East 14th Street, San Leandro, Alameda County

NOTICE OF VIOLATION

Dear Ms. Gallegos and Mr. Garcia:

On September 27, 1993, the San Francisco Bay Regional Water Quality Control Board (RWQCB) issued a letter in which you were legally designated responsible parties (RP), as defined under Section 2720 of Article 11, Title 23, California Code of Regulations. A copy of this RWQCB letter was attached to covers from this office, sent via certified mail, dated September 29, 1993. Mr. and Mrs. Petsas were also named as co-responsible parties with notice served in the same fashion.

The cited September 27 RWQCB letter requests, under authority of California Water Code Section 13267(b), the submittal of a work plan, among others, for the further assessment of soil and ground water pollution associated with leaks from the underground storage tanks (UST) formerly located at this site. This work plan was due within 90 days, on December 27, 1993. This date has since passed, and no work plan has been submitted on your behalf.

This office had hoped that you would have taken the opportunity during this 90 day period to open channels of communication with your co-responsible parties, the Petsases, to pursue a joint investigation. We understand that this has not occurred. For your information, the Petsases, at the request of their attorney, were recently granted a 60 day extension to the due date for work plan submittal after demonstration of their intent and desire to fulfill their responsibility to complete the assessment of the site. It is unfortunate that such intent has not been communicated to this agency on your behalf.

Ms. Gallegos and Mr. Garcia
RE: 16035 E. 14th Street, San Leandro
January 4, 1994
Page 2 of 2

Please be advised that California Water Code Section 13267(b) provides for fines of up to \$1000 per day of delinquency. Please be further advised that your case has been referred to the Alameda County District Attorney's Office for enforcement of the RWQCB request for technical reports.

Please contact me at 510/271-4530 should you have any questions about the content of this letter.

Sincerely,

ORIGINAL SIGNED

Scott O. Seery, CHMM
Senior Hazardous Materials Specialist

cc: Rafat A. Shahid, Assistant Agency Director
Gil Jensen, Alameda County District Attorneys Office
Edward Laudani, Alameda County Fire Department
Steven Ritchie, RWQCB
Mark Johnson, Esq.
Hans Herb, Esq.

LAW OFFICES OF HANS W. HERB

RECEIVED

APR 25 1995

Director of Environmental Health

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

Arizona
California
Washington

January 6, 1994

(707) 576-0757
Telecopier:
(707) 575-0364

Via Facsimile

HANS W. HERB

Mr. Scott O. Seery, CHMM
Sr. Hazardous Material Specialist
ALAMEDA COUNTY HEALTH CARE
SERVICES AGENCY
80 Swan Way, Room 200
Oakland, CA 94621

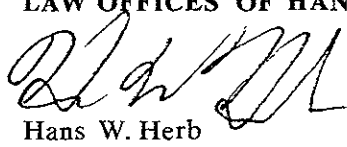
Re: Garcia & Gallegos
Site: 16035 East 15th Street, San Leandro, CA
Our File No. 01-126-01

Dear Mr. Seery:

Enclosed is a copy of a lawsuit we recently filed to abate the actions of the Alameda County Health Care Services Agency in the above-captioned matter.

Please review this material and contact me at your convenience so that we can discuss how to proceed.

Very truly yours,
LAW OFFICES OF HANS W. HERB



Hans W. Herb

HWH/pdp

Enclosure

cc: Mr. Garcia
Ms. Gallegos

ALCO
HAZMAT
94 JAN 10 PM 2:52

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO
600 UNION AVENUE, FAIRFIELD, CA 94533

PLAINTIFF:

Gregory J. Garcia, et al.

DEFENDANT:

Silbert A. Jensen, et al.

CASE NO. LC02217

NOTICE OF STATUS CONFERENCE

ONE TWO

Pursuant to local rules and by order of this court, this matter has been calendared for Status Conference:

DATE: 4/25/94

TIME: 9:00 A.M.

DEPT: 3

THE OBLIGATIONS OF COUNSEL, OR ANY PARTY NOT REPRESENTED BY COUNSEL, IN REGARD TO STATUS CONFERENCE ONE AND STATUS CONFERENCE TWO ARE AS FOLLOWS (Rule 4.6, Local Rules of Court):

- 1) Plaintiff shall serve a copy of Notice of Status Conference One on all defendants with the complaint.
- 2) Any party serving a cross-complaint shall serve a copy of Notice of Status Conference One on each cross-defendant with the cross-complaint.
- 3) Any cross-complaint served after Status Conference One has been held shall have a Notice of Status Conference Two served with it.
- 4) A Status Conference One Report shall be filed with the court and served on all parties by each counsel by the 7th calendar day before the date set for Status Conference One.
- 5) At Status Conference One the court shall inform counsel of the date, time, and place for Status Conference Two and shall make any orders regarding what is expected that counsel will accomplish in regard to the case before the filing of the Status Conference Two Report for Status Conference Two.
- 6) Each counsel shall complete, file and serve on all parties a completed Status Conference Two Report by the 7th calendar day before the date set for Status Conference Two.
- 7) At any Status Conference, counsel shall be completely aware of all procedural, factual, and legal aspects of the case, and have full authority to discuss and resolve any issues that arise at the conference, including settlement of the case.
- 8) The court may impose sanctions in the event that a Status Conference Report is not timely filed and/or served, or is not fully completed, or; the requirements of #7, above, are not met.

COUNSEL ARE OBLIGATED TO REVIEW AND COMPLY WITH LOCAL RULES REGARDING CIVIL LITIGATION.

* * * * *

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: (Aviso a Acusado)

GILBERT A. JENSEN; COUNTY OF ALAMEDA DISTRICT ATTORNEY'S OFFICE; SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD; STATE WATER RESOURCES CONTROL BOARD; DOES 1 through 100, inclusive.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le est., demandando)

GREGORY J. GARCIA, and BEATRICE S. GALLEGOS

You have 30 CALENDAR DAYS after this Summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book.)

Despues de que la entreguen esta citacion judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una repuesta escrita a maquina en esta corte.

Una carta o una llamada telefonica no le ofrecera proteccion su repuesta escrita a maquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su repuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefonico).

CASE NUMBER (Numero del Caso)

1002217

The name and address of the court is: (El nombre y direccion de la corte es)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

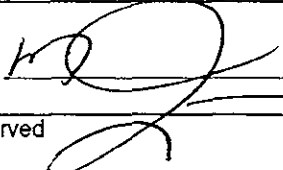
(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)

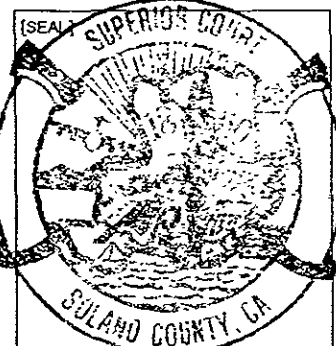
Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE: DEC 28 1993
(Fecha)

CHARLES D. RAMEY

Clerk, by , Deputy
(Actuario) (Delegado)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (individual)
- other:

- 4. by personal delivery on (date):

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: (Aviso a Acusado)

GILBERT A. JENSEN; COUNTY OF ALAMEDA DISTRICT ATTORNEY'S OFFICE; SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD; STATE WATER RESOURCES CONTROL BOARD; DOES 1 through 100, inclusive.

FOR COURT USE ONLY
(SOLIC PARA USO DE LA CORTE)

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(A Ud. le est., demandando)

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CASE NUMBER. (Numero del Caso)

LC02217

The name and address of the court is: (El nombre y direccion de la corte es)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE: **DEC 28 1993**
(Fecha)

CHARLES D. RAMEY

Clerk, by

M. JACKSON

, Deputy

(Actuario)

(Delegado)

[SEAL]

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- 3. on behalf of (specify):

- under:
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 - CCP 416.20 (defunct corporation)
 - CCP 416.40 (association or partnership)
 - other:
 - CCP 416.60 (minor)
 - CCP 416.70 (conservatee)
 - CCP 416.90 (individual)

- 4. by personal delivery on (date):

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: (Aviso a Acusado)

GILBERT A. JENSEN; COUNTY OF ALAMEDA DISTRICT ATTORNEY'S OFFICE; SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD; STATE WATER RESOURCES CONTROL BOARD; DOES 1 through 100, inclusive.

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The name and address of the court is: *(El nombre y direccion de la corte es)*
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

CASE NUMBER (Numero del Caso)
1002217

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)
Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE: **DEC 28 1993**
(Fecha)

CHARLES D. RAMEY Clerk, by **M. JACKSON**, Deputy
(Actuario) (Delegado)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of *(specify)*:
3. on behalf of *(specify)*:

under:	<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (individual)
	<input type="checkbox"/> other:	
4. by personal delivery on (date):

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLG PARA USO DE LA CORTE)

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GILBERT A. JENSEN; COUNTY OF ALAMEDA DISTRICT ATTORNEY'S OFFICE; SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD; STATE WATER RESOURCES CONTROL BOARD; DOES 1 through 100, inclusive.

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CASE NUMBER. (Numero del Caso)

1002217

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE: **DEC 28 1993**

(Fecha)

CHARLES D. RAMEY Clerk, by **M. JACKSON**

(Actuario)

Deputy

(Delegado)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under:	<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (individual)
	<input type="checkbox"/> other:	
4. by personal delivery on (date):

1 Hans W. Herb, Esq., SBN 136018
2 LAW OFFICES OF HANS W. HERB
3 50 Santa Rosa Avenue, Fifth Floor
4 Santa Rosa, California 95404
5 (707) 576-0757

ENDORSED FILED

Clerk of the Superior Court

DEC 23 1993

4 Attorneys for Plaintiffs
5 GREGORY J. GARCIA and
6 BEATRICE S. GALLEGOS

CHARLES D. RAMEY
By M. JACKSON

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SOLANO

10
11

12 GREGORY J. GARCIA, and)
13 BEATRICE S. GALLEGOS,)
14 Plaintiffs,)
15 vs.)
16 GILBERT A. JENSEN; COUNTY OF)
17 ALAMEDA DISTRICT ATTORNEY'S)
18 OFFICE; SAN FRANCISCO BAY)
19 REGIONAL WATER QUALITY CONTROL)
20 BOARD; STATE WATER RESOURCES)
21 CONTROL BOARD; DOES 1 through)
22 100, inclusive,)
23 Defendants.)

CASE NO. 1002217
COMPLAINT FOR INJUNCTION;
DECLARATORY RELIEF AND DAMAGES

23 Plaintiffs allege as follows:

24 THE PARTIES

25 1. Plaintiff, Gregory J. Garcia ("GARCIA"), is and was
26 at all times relevant to this matter a resident of Solano
27 County, California.

COPY

1 2. Plaintiff, Beatrice S. Gallegos ("GALLEGOS"), is,
2 and was at all times relevant to this matter, a resident of
3 Fresno County, California.

4 3. The acts alleged herein occurred, in part, in Solano
5 County, California.

6 4. Defendant Gilbert A. Jensen (hereinafter "JENSEN")
7 is, on information and belief, an attorney duly licensed to
8 practice law in the State of California. Although JENSEN has
9 purported to represent the State Water Resources Control Board
10 and Regional Water Quality Control Board as well as other
11 regulatory agencies, on information and belief, JENSEN is an
12 assistant attorney at the County of Alameda District Attorney's
13 office. Because it is unclear what capacity, if any, JENSEN is
14 involved in the matters alleged herein, he is named as an
15 individual defendant as well as an agent of any organization who
16 ultimately takes responsibility for his conduct.

17 5. Alameda County is a duly authorized and existing
18 public corporation organized under California law. The District
19 Attorney's Office is a subdivision of Alameda County.

20 6. The Regional Water Quality Control Board for the San
21 Francisco Bay Region (hereinafter "RWQCB") is a duly organized
22 political subdivision of the State of California. The RWQCB is
23 a subordinate agency of the State Water Resources Control Board.

24 7. The State Water Resources Control Board (hereinafter
25 "SWRCB") is a duly authorized and existing governmental entity
26 of the State of California. It is a part of the California
27 Environmental Protection Agency.

28

GENERAL ALLEGATIONS

1
2 8. In 1961, Joseph R. Garcia died in Alameda County,
3 California. In December of 1962, his estate was distributed.
4 Among the items in his estate was the piece of property located
5 at 16035 E. 14th Street in San Leandro, California (the
6 "property"). At that time, the property was improved by a
7 service station operated by the Seaside Oil Company of Santa
8 Barbara, California.

9 9. In accordance with Joe Garcia's wishes, his son,
10 plaintiff herein, Gregory J. GARCIA, received a 50% interest in
11 the property to be held in trust until he reached the age of
12 majority. The remaining 50% was deeded by the court to Joe
13 Garcia's widow and plaintiff herein, Beatrice S. GALLEGOS.

14 10. At no time did either of the plaintiffs have any
15 operational control over the service station or the equipment on
16 the property. Instead, the plaintiffs simply acted as passive
17 landlords for the piece of property they inherited.

18 11. In 1974, after Gregory J. GARCIA returned from
19 military service in Vietnam, the trust administered for him by
20 his mother deeded him the property. It was later disposed of by
21 sale.

22 12. In 1979, Jerry Petsas and Mary Petsas (hereinafter
23 referred to as "Petsases"), purchased the property and all the
24 service station equipment from the plaintiffs. The Petsases
25 purchased the property "as-is" and without any right of recourse
26 against the plaintiffs.

1 13. At the time the property was sold to the Petsases,
2 the underground storage tanks, pumps and all service station
3 equipment at the San Leandro property were in good working
4 condition. The property was leased and the improvements were
5 being used by the tenants who were operating an automobile
6 repair business on the property.

7 14. At no time were there ever any improper or illegal
8 spills, leaks, discharges, or releases of petroleum products
9 known to plaintiffs. In fact, the equipment was sold as-is at
10 the demand of the purchasers, not the sellers. The property was
11 discounted substantially by the sellers to satisfy the as-is
12 clause.

13 15. In 1983, the State of California first enacted
14 requirements for the permitting of underground storage tanks.
15 In accordance with the requirements of the State permitting
16 statutes, the Petsases apparently notified the appropriate
17 permitting agency of the presence of the underground storage
18 tanks on their property. After receiving several extensions of
19 time within which to comply with the permit requirements or
20 remove the tanks, the Petsases were ordered by Alameda County to
21 have the tanks removed. According the public records, this took
22 place beginning in 1985. The Petsases took no action to remove
23 the tanks for several more years.

24 16. In 1991, the Petsases finally removed the
25 underground storage tanks from their property pursuant to Orders
26 issued by various regulatory and permitting agencies. When the
27
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1 tanks were removed, trace amounts of contamination were
2 apparently detected in the soil and groundwater at the site.

3 17. From information gathered from public records,
4 plaintiffs are informed and believe that in 1991, the Petsases
5 became subject to local agency oversight by the Alameda County
6 Healthcare Services Agency (hereinafter referred to as "ACHSA").
7 The ACHSA operates as a "deputy" water board pursuant to a
8 contract with the SWRCB.

9 18. Under the terms of the ACHSA's oversight contract,
10 the Petsases were to be provided with assistance and advice from
11 ACHSA in dealing with their contamination problem. In exchange
12 for paying the SWRCB a service charge of approximately \$125 per
13 hour, the Petsases were to be assisted by the ACHSA in cleanup
14 of the unauthorized releases at the site.

15 19. Unfortunately, the expert advice offered by the
16 ACHSA apparently turned out to be incorrect. As a result, on
17 information and belief, the Petsases were required to expend
18 tens of thousands of dollars frivolously while the toxic problem
19 at the site, to the extent it existed, was not being addressed.

20 20. On information and belief, after becoming
21 financially destitute due to the advice provided by the ACHSA,
22 the Petsases sought to bring in other potentially responsible
23 parties to assist them with the high cost of dealing with the
24 cleanup requirements.

25 21. On information and belief, in accordance with
26 instructions from the ACHSA, the Petsases requested that
27 plaintiffs be named as "responsible parties" for the cleanup of
28

1 the San Leandro site. This was based on the ACHSA's erroneous
2 belief that all operators and owners of an underground storage
3 tank are responsible for the cleanup of any contamination
4 discovered once the tank is removed.

5 22. As a result of the request by the Petsases, the
6 ACHSA, by letter dated March 2, 1993, informed plaintiffs that
7 the ACHSA had declared them to be responsible parties in
8 connection with the property.

9 23. In the time provided by statute, and in accordance
10 with California Health and Safety Code §25297.1(d)(3) and (h),
11 as well as Health and Safety Code §§25299.37(c) and (d),
12 plaintiffs filed a proper appeal to the SWRCB, objecting to the
13 requirement that they participate in the investigation and
14 cleanup at the San Leandro property.

15 24. While the petition was pending before the SWRCB,
16 defendant JENSEN appointed himself as a hearing officer and
17 conducted what he termed a "Pre-enforcement Review Panel."
18 Also present at the review panel were members of the ACHSA and a
19 staff employee of the RWQCB.

20 25. At the end of the "hearing", which plaintiffs were
21 not present at, JENSEN announced that plaintiffs were
22 responsible parties for the cleanup of this site.

23 26. Upon receiving information that JENSEN had
24 determined that plaintiffs were responsible parties at the site,
25 plaintiffs, through their attorneys, contacted the SWRCB to
26 inquire as to how to proceed in order to avoid inconsistant
27 adjudications. The SWRCB, via letters and verbal

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1 communications, indicated that the matter was still pending
2 before the SWRCB. Further, the SWRCB advised plaintiffs that
3 JENSEN was neither authorized to represent the SWRCB, nor did
4 the State approve of his conduct in holding illegal hearings in
5 which he appointed himself a hearing officer. In addition, the
6 State Board advised that the issue of plaintiff's liability for
7 the cleanup at the site would be presented to the State Board
8 for review and that any determination of JENSEN was null and
9 void.

10 27. Subsequently, plaintiffs received yet another
11 directive, this one from the executive officer of the Bay Area
12 RWQCB, again ordering the plaintiffs to participate in the
13 cleanup at the San Leandro property. Plaintiffs timely appealed
14 that decision to the SWRCB and, in accordance with local
15 practice, appealed to the executive officer of the RWQCB to have
16 a full hearing on the issue. The hope was to resolve the
17 conflict informally since three appeals were already pending.

18 28. On December 20, 1993, plaintiffs received a letter
19 from the Mr. JENSEN regarding his position on these various
20 cleanup orders and their appeals. In Mr. JENSEN's letter, Mr.
21 JENSEN implied that he was not bound by the decisions of either
22 the SWRCB or the RWQCB and that he was going to exercise his
23 independent judgment, outside of the legal and statutory
24 process, to determine how to proceed with various sanctions
25 against plaintiffs.

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1 29. According to defendant JENSEN, these sanctions
2 include fines of up to \$1000 per day for each day plaintiffs
3 failed to comply with defendant JENSEN's directives.

4 30. At this point, plaintiffs are left in a quandary.
5 They have purportedly been named as responsible parties by no
6 less than three agencies and/or organizations (the ACHSA, the
7 RWQCB and the Alameda County District Attorney's Office). At
8 the same time, appeals have been filed, as required by statute,
9 of the decision of these entities in naming petitioners as
10 responsible parties. Nevertheless, despite the fact that
11 appeals are pending, defendant JENSEN, of his own volition,
12 apparently contends that the appeals do not bind him and that he
13 alone can make an independent decision, outside of the statutory
14 process, to sanction the plaintiffs.

15 31. Plaintiffs have repeatedly attempted to establish
16 communications with the Alameda County District Attorney's
17 Office to resolve the issues in this matter. JENSEN has refused
18 to return any phone calls or to substantively answer any letters
19 concerning this matter.

20 32. Although the Alameda County Board of Supervisors,
21 the Bay Area RWQCB and the SWRCB have all attempted to work, in
22 good faith, to resolve this matter, the ultimate ability of
23 those agencies to affect a proper resolution depends on being
24 able to properly control and restrain defendant JENSEN. Under
25 such circumstances, any settlement with the legally authorized
26 agencies would be meaningless since, according to defendant

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1 JENSEN, he has the power to ultimately overrule any decision of
2 any of the agencies.

3 33. Under California Code of Civil Procedure §1021.5,
4 plaintiffs are entitled to recover attorneys' fees for acting in
5 the public interest. Plaintiffs base their claim to attorneys'
6 fees in this case on at least three separate and independent
7 grounds. First, the actions of JENSEN, as a representative of
8 the Alameda County District Attorney's Office, threatens to harm
9 the environment by diverting resources from the cleanup of
10 environmental contamination instead to finance litigation and
11 attorneys' fees to the detriment of the people of the State of
12 California. Second, despite acknowledging the fact that its
13 conduct is without legal authority, the Alameda County District
14 Attorney's Office has continued to proceed with its claims
15 against the plaintiffs. Third, plaintiffs are entitled, if they
16 so choose, to damages under U.S.C. 1983. Because plaintiffs
17 believe they will prove that this same improper conduct has
18 happened to others, they request reasonable attorneys' fees for
19 abating this illegal practice as a private attorney general.

20 FIRST CAUSE OF ACTION

21 (Declaratory Relief)

22 34. Plaintiffs refer to each and every paragraph set
23 forth in the preceding allegations and incorporate those
24 paragraphs as though set forth in full in this cause of action.

25 35. Plaintiffs allege that an actual and present
26 controversy now exists between plaintiffs and defendants in that
27 plaintiffs contend that they have a right to seek redress of the
28

1 erroneous decisions of the ACHSA and the Bay Area RWQCB. The
2 defendants, dispute these contentions, and contend that
3 plaintiffs have no rights of appeal and that JENSEN, either
4 individually or as an agent of the District Attorney's Office,
5 is not bound by the statutory or decisional law of the State of
6 California.

7 36. As a result of the foregoing, plaintiffs request a
8 declaration of their rights pursuant to §1060 of the Code of
9 Civil Procedure and §11350(a) of the Government Code.

10 WHEREFORE, plaintiff prays for judgment as follows:

11 (a) For an injunction restraining defendant JENSEN from
12 illegally interfering with the exercise of due process rights by
13 the plaintiffs;

14 (b) For a declaratory judgment that plaintiffs are
15 entitled to due process under the local oversight program
16 contract;

17 (c) For a declaratory judgment that plaintiffs are
18 entitled to due process under the Water Code;

19 (d) For attorneys' fees pursuant to C.C.P. §1021.5;

20 (e) For such other and further relief as the Court rules
21 is just and proper.

22 DATED: December 23, 1993

Respectfully submitted,
LAW OFFICES OF HANS W. HERB

23
24
25 BY: 

HANS W. HERB
Attorney for Plaintiffs
GREGORY J. GARCIA and
BEATRICE S. GALLEGOS

LAW OFFICES OF HANS W. HERB

Arizona
California
Washington

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

(707) 576-0757
Telecopier:
(707) 575-0364

RETAIN THIS NUMBER-CUSTOMER
RECEIPT WILL BE MAILED TO YOU.

TB 827924690 US

HANS W. HERB

OUR FILE NO.: 01-126-01
YOUR FILE NO.: _____
RE: GARCIA / GALLOS
DATE: 12/23/93

Enclosed herewith please find the following:

- Complaint
- Answer and/or counterclaim
- Summons
- Acknowledgment of Service
- Judgement
- Stipulation of Dismissal
- Self Addressed Stamped Envelope
- Petition
- Notice
- Crossclaim
- Writ of Execution

- Notice of Motion
- Affidavit/Declaration
- Proof of Services
- Order
- Interrogatories (Demanded)
- Interrogatories (Answered)
- Release
- Check in the amount of \$ 182⁰⁰
- Amended Complaint
- Notice of Depositions

Would you please:

- File
- Acknowledge Receipt
- Return "Filed" copy
- Present for signing
- Advise Date of Service
- Return

- Charge our Account
- Credit our Account
- Record and Return
- Execute and Return
- Reply as requested
- Serve defendant(s) at:

Very truly yours,

LAW OFFICES OF HANS W. HERB

Hans W. Herb

RETAIN THIS NUMBER-CUSTOMER
RECEIPT WILL BE MAILED TO YOU.

TB 827924701 US

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
 SAN FRANCISCO BAY REGION
 2101 WEBSTER STREET, SUITE 500
 OAKLAND, CA 94612
 (510) 286-1255

RECEIVED
 APR 25 1995

Director of Environmental Health

January 6, 1994
 File No. 198.17(LF)
 HAZMAT
 ALCO



Hans W. Herb
 Attorney At Law
 50 Santa Rosa Ave., Fifth Floor
 Santa Rosa, CA 95404

SUBJECT: 16035 East 14th Street, Oakland, California

↳ Leando

Dear Mr. Herb:

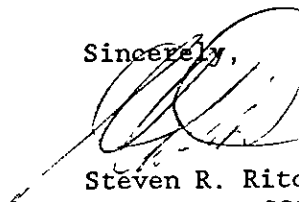
This letter is written as follow-up to this Regional Board's staff request for a technical report under Section 13267 (b) of the California Water Code for the subject site dated September 27, 1993. This letter required your clients, Gallegos and Garcia, as well as the Petsas', as dischargers under the California Water Code, to comply with the technical report request by December 27, 1993. My understanding is that there has been no substantive attempt towards compliance with this technical report request. Therefore, all of the above named dischargers are in violation of the California Water Code and subject to civil penalties per Section 13268.

This Regional Board staff has received numerous letters relative to this site from you addressed to Alameda County officials, who work in cooperation with this Board on the leaking underground storage tank (UST) program. The non-compliance with the requirements of the UST program for this site resulted in referral of the subject site to this Board for appropriate follow-up enforcement action. Hence, the issuance of the previously discussed "13267 letter". For your information, referral of cases to this Board is contained in the Local Oversight Program (LOP) contract between Alameda County and the State Water Resources Control Board. No meeting, hearing or other procedure currently exists for this activity. You have written about the "Pre-EnforcementHearing Panel" conducted by Alameda County on this matter. This Panel was created by my staff and Alameda County staff as a method to allow for responsible parties to show why a pending referral should not occur. These panels are simply meetings, a chance to have Regional Board staff involved prior to any referral, and thus I do not believe any special procedures should be established. You have continually referred to these meetings as criminal proceedings without due process. Our intent in creating and supporting this Panel program is to provide one additional chance to resolve these matters at the LOP level, prior to entering the Water Board enforcement process.

You have indicated in your letters that the naming of your clients as responsible parties was not a proper action in this Board's 13267 letter of September 27, 1993. I made this decision based upon the evidence which I and staff reviewed. You have the right to appeal to the State Board both the local agency decision, as well as my decision to name your clients as dischargers, which I understand that you have done. Please understand that an appeal of the Regional Board's action to the State Board does not "stay" the action. However, in the interest of fairness, and in providing complete communication on this matter, I will not initiate enforcement action against the dischargers for 30 days allowing your clients and the other named dischargers another opportunity to discuss the case with my staff. Of course, Alameda County staff will be invited to attend the meeting.

Please contact Lester Feldman of my staff at (510) 286-1332 to arrange a meeting.

Sincerely,



Steven R. Ritchie,
Executive Officer

cc: Mark B. Johnson, attorney for Petsas'
Ed Howell, Alameda County LOP
Gil Jensen, Alameda County DA's Office
Mike Harper, State Water Resources Control Board, LOP Manager
William Attwater, Esq., SWRCB

LAW OFFICES OF HANS W. HERB

Tom for file
ED

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

APR 25 1995

Director of Environmental Health
(707) 576-0757
Telecopier:
(707) 575-0364

Arizona
California
Washington

ALAMEDA COUNTY
HAZARDOUS MATERIALS

94 FEB -3 12:17

February 2, 1994

HANS W. HERB

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Senior Deputy District Attorney
ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE
7677 Oakport St., Ste. 400
Oakland, CA 94621

Mr. Edgar Howell
ALAMEDA COUNTY HEALTH CARE SERVICES AGENCY
HAZARDOUS MATERIALS PROGRAM
80 Swan Way, RM 200
Oakland, CA 94621

Mr. Steven R. Richie
Mr. Lester Feldman
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
San Francisco Bay Region
2101 Webster St., Ste. 500
Oakland, CA 94612

William Attwater, Esq.
Theodore A. Cobb, Esq.
STATE WATER RESOURCES CONTROL BOARD
P.O. Box 100
Sacramento, CA 95812-0100

Re: Garcia/Gallegos v. Gilbert Jensen; Alameda County; SWRCB;
BARWOCB; et al.
Solano County Superior Court Case No.: L223317
Our File No. 01-126-01

Gentlemen:

The purpose of this letter is to update you on the status of this lawsuit.

First, we were encouraged recently when we were informed that we were going to be provided with an opportunity to meet with the Regional Water Quality Control Board to dispute the erroneous finding of our clients' liability by the Alameda Local Oversight Program. While I was unable to attend the January 26, 1994 meeting at the Bay Area

Gilbert A. Jensen, Esq.
Mr. Edgar Howell
Mr. Steven R. Richie
Mr. Lester Feldman
William Attwater, Esq.
Theodore A. Cobb, Esq.
February 2, 1994
Page 2

Regional Water Quality Control Board (due to an unexpected emergency), I understand the meeting was productive.

Specifically, I understand the Garcia/Gallegos petitioners were able to provide the Regional Board with a declaration indicating that the tanks had been in operation since they sold the site almost two decades ago. There is no dispute that the Petsases (the current property owners) were the "owners" of the tanks pursuant to Health & Safety Code §25299.20. They provided documents confirming the fact that they purchased the tanks when they purchased the property. The only remaining issue was whether the tank had been operated since the Garcias and Gallegos had sold the property. With this issue finally put to rest, we hope that everyone will realize there is no basis, under current law, to have our clients held liable. Again, it is worthy of note that our clients are not alleged to have caused or permitted any discharges at the site. In fact, the evidence is uncontroverted that neither Mr. Garcia nor Mrs. Gallegos had anything to do with the operation of the site. The sole basis to attempt to hold them responsible was that they were in the chain of title and were erroneously assumed to be strictly liable.

I have also been informed that a formal decision from the Regional or State Board may be forthcoming. Presumably before any formal decision is issued, there will have to be some opportunity to be heard.¹

Although I am disappointed that it took this level of action to cause changes to occur, I am greatly encouraged by the progress that has been made in this matter. Further, I understand even more positive changes will be forthcoming.

Finally, we have repeatedly stressed that it is not our desire to engage in litigation if voluntary compliance can be obtained. One of the true travesties of the current system is that it encourages so much litigation. We have long advocated the use of science and common sense rather than the legal process to resolve disputes of this nature.

Further, we are encouraged that attention is finally being focused on the true issues. That is, we are concerning ourselves with how to actually implement cleanup rather than how we can point more fingers. It is no secret that neither the current property owners, the

¹If the Board is inclined to remove petitioners from the order, petitioners will almost certainly waive any right to a hearing.

Gilbert A. Jensen, Esq.
Mr. Edgar Howell
Mr. Steven R. Richie
Mr. Lester Feldman
William Attwater, Esq.
Theodore A. Cobb, Esq.
February 2, 1994
Page 3

Petsases, nor our clients, a permanently disabled Vietnam veteran and an elderly widow on social security have the financial resources to address this problem even if their liability was ultimately established. Threatening someone with fines and penalties of \$10,000 a day when they do not have the money to perform the cleanup in the first place is highly counterproductive. Further, the only thing these threats do is force people to spend their last few dollars defending themselves rather than addressing the concerns of the environment.

Based on the good progress that has been made thus far and the prudent exercise of restraint by all parties, I believe we are finally on the right course. Hence, true to our word of putting the environment before the lawyers, we intend to hold off on serving our lawsuit. However, this does not mean, nor should it be construed to mean, that we will not aggressively assert our rights in the future should compliance not be maintained. It simply means we want to see the effort, energy and focus put on the environment not on the attorneys.

We will keep you informed of our progress and hope to be able to report a positive resolution of this matter shortly. Meanwhile, if you have any questions, please feel free to contact me at (800) 767-9562.

Very truly yours,
LAW OFFICES OF HANS W. HERB



Hans W. Herb

HWH/tcf

cc: Mr. Gregory J. Garcia
Mrs. Beatrice S. Gallegos
Interested Party Mailing List

Gilbert A. Jensen, Esq.
Mr. Edgar Howell
Mr. Steven R. Richie
Mr. Lester Feldman
William Attwater, Esq.
Theodore A. Cobb, Esq.
February 2, 1994
Page 4

INTERESTED PARTY MAILING LIST

Mary Petsas
c/o Mark Johnson
ITO AND JOHNSON
220 Montgomery St. Suite 1500
San Francisco, CA 94104-9736

CALIFORNIA ENVIRONMENTAL
INSIDER
P.O. Box 884973
San Francisco, CA 94188-4973

CALIFORNIA ENVIRONMENTAL
LAW REPORTER
136 Carlin Road
Conklin, NY 13748-1531

BNA TOXIC LAW REPORTER
1231 25th Street, N.W.
Washington, D.C. 20037

THE DAILY JOURNAL
1390 Market St., Suite 1210
San Francisco, CA 94102

THE RECORDER
625 Polk St., Suite 500
San Francisco, CA 94123

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Director of Environmental Health

LAW OFFICES OF HANS W. HERB

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

Arizona
California
Washington

February 10, 1994

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HANS W. HERB

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Mr. Edgar Howell
ALAMEDA COUNTY HEALTH CARE
SERVICES AGENCY
Hazardous Materials Program
80 Swan Way, Room 200
Oakland, California 94621

VIA FACSIMILE AND
U.S. MAIL TO ALL

Mr. Steven R. Richie
Mr. Lester Feldman
CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
2101 Webster St., Suite 500
Oakland, California 94612

William Atwater, Esq.
Theodore A. Cobb, Esq.
STATE WATER RESOURCES CONTROL BOARD
P. O. Box 100
Sacramento, California 95812-0100

Re: Garcia/Gallegos v. Gilbert Jensen, Alameda County, SWRCB,
BARWQCB, et al.
Solano County Superior Court Case No.: L002217
Our File No.: 01-126-01

Gentlemen:

I am writing this letter to correct a misstatement contained in my previous correspondence of February 2, 1994. Specifically, although I referred to a declaration which I understood had been provided to the Regional Water Quality Control Board at a recent

February 9, 1994
Page 2

meeting, I now understand no such declaration was provided. However, I am providing a copy of the declaration with this letter.

As you will recall, this matter arises out of a request by the Alameda County Health Care Services Agency and the Regional Water Quality Control Board that our clients Gregg Garcia and Beatrice Gallegos, a permanently disabled Vietnam veteran and his widowed mother who is on Social Security, pay for the cleanup from an underground storage tank located in San Leandro, California. The purported basis for seeking to hold our clients responsible was the erroneous belief that the tank was not operated after our clients sold the property two decades ago. However, as the declaration demonstrates, the tank and gas pumps were in a safe operating condition in 1983 -- four years after the Garcia/Gallegos petitioners were involved at the site.

How does any of this bear on the salient issue of who lost owned the US when lost the were operators on the conts this statement whether based on substantia facts or not only indicates the USTs were last used prior to Petreas' purchase of the site

Given this information, we believe the legal assertions in our letter to be sound (i.e., that petitioners cannot be held responsible under existing Water Board law absent some demonstrable evidence that they were owners or operators at the time contamination was discovered). Further, I believe this action to be consistent with recent guidelines promulgated by the State Board concerning who should be named as responsible parties.

I, again, wish to apologize for the misstatement in my letter and any hardship which resulted therefrom. As most of you have been informed, at the time my letter was drafted, I was operating under the assumption that William Hand had provided the documents to the Regional Board as he had been instructed. Unfortunately, he apparently did not. For what it's worth, appropriate disciplinary action has been taken with regard to Mr. Hand's malfeasance.

If you have any comments or questions, please feel free to contact me.

Very truly yours,

LAW OFFICES OF HANS W. HERB

[Handwritten Signature]
Hans W. Herb

HWH/ach
Enclosure

COPY

STATEMENT OF WILLIAM GRITZUR
SAN LEANDRO CALIF. ^R

^R

As far back as early 1972 I had wanted to establish my retail used car sales business at the corner of E. 14th St and Ashland Ave. in San Leandro, Calif. I had seen the corner property operating continuously as a gasoline service station. I knew the service station had been there several years operated by or under Seaside Oil Company. Later in 1972 I knew I had to relocate my business, so in Sept 1972 I approached the land owner Mrs. Beatrice Gallegos and her husband Bernard Gallegos about leasing the service station property for retail sales of used cars.

I remember Saside Oil Co. occupied the property for several years and operated in sales of gasoline and petroleum products either directly or under sub-tenants.

When I took over the station on Sept. 15, 1972 it had been rented and occupied less than one year by two partners named Thorpe and Phiffer. They sold gasoline and petroleum products and repaired Volkswagen automobiles. About two or three months after they left one of the partners (Mr. Thorpe) returned and removed about 50 gallons of gasoline from the tanks and took it with him. I did not buy at wholesale nor sell at retail or otherwise any gasoline and petroleum products. My principle and only business interests was sales of used cars.

I remained tenent of Mrs. Gallegos and her son Gregg Garcia from Sept. 1972 until after sale of the property on April 3, 1979. I continued as tenent under ownership of Mr. Jerry and Mary Petsas until May or June 1983.

From my experiences around and on the service station property I knew that the underground tanks and the gasoline pumps were in safe operating conditions. Never in all the years did I receive or hear of any information, news, report or even an inkling of dangerous or pollution discharge from the underground tanks.

I will testify about the safe conditions of the tanks and pumps.

This statement is made as to the information therein to the best knowlege and recollection of the undersigned.

Signed William Gritzur

Date January 14, 1994

State of California)
County of Alameda)

On January 14, 1994 before me, the undersigned notary public, personally appeared William Gritzuk _____ personally known to me -OR- X proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Deanna Nunes
Signature of Notary

ALCO
HAZMAT LAW OFFICES OF HANS W. HERB

94 APR -8 PM 1:40

50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, California 95404

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Director of Environmental Health

Arizona
California
Washington

(707) 576-0757
Telecopier:
(707) 575-0364

April 1, 1994

HANS W. HERB

All Parties on Attached List

Re: Your File Nos.: 01-01164 and 02-1937
Site: 16035 East 14th St., San Leandro, CA
Our Clients: Beatrice S. Gallegos and Gregory J. Garcia
Our File No.: 01-126-01
Solano County Superior Court Case No.: L002217

Ladies and Gentlemen:

I am pleased to report that we continue to be making progress in this matter. Despite threats of unwarranted intervention by the Alameda County District Attorney's office, we have been able to voluntarily restrain it without proceeding with our litigation. We consider this to be a very positive and important step.

In our view, attention is best focused now on how to cleanup the site, not how the lawyers can clean up. By directing our efforts away from the legal process and toward the cleanup, all of society is better off.

In light of the foregoing, our client has authorized us to dismiss, without prejudice, our lawsuit against the Alameda County District Attorney's office, the State and Regional Water Quality Control Boards, and Mr. Jensen personally. However, we would like to make one point abundantly clear. By making this accommodation, we are in no way relieving any of the defendants, or potential defendants, of any liability nor are we dropping any of our claims. We simply want to be true to our word and focus our efforts and energy on cleanup, not on lawyering.

However, if voluntary compliance is not maintained, or if circumstances change, we stand ready, willing and able to immediately refile our lawsuit. Should that become necessary, we will ask for significantly more relief including substantial damages, as well as court-ordered sanctions. We will also seek to recover our attorney's fees, costs and other expenses.

All Parties on Attached List
April 1, 1994
Page 2

The foregoing reminder is not meant to threaten or inflame matters. On the contrary, we want to keep things calm now that we have established a level of control. Further, we want to continue a mutually acceptable and amiable working relationship. Our goal is to protect the environment and to proceed with the cleanup. We anticipate that once funding becomes available from the State Underground Storage Tank Cleanup Fund, this entire problem will go away.

Should you have any questions, please feel free to contact me.

Very truly yours,
LAW OFFICES OF HANS W. HERB



Hans W. Herb

HWH/tcf

INTERESTED PARTY MAILING LIST

Mr. Edgar Howell
HEALTH CARE SERVICES AGENCY
OF ALAMEDA COUNTY
HAZARDOUS MATERIALS PROGRAM
80 Swan Way, RM 200
Oakland, CA 94621

Steven R. Richie
Lester Feldman
CALIFORNIA RWQCB
San Francisco Bay Region
2101 Webster St., Ste. 500
Oakland, CA 94612

William Attwater, Esq.
Mr. Theodore A. Cobb
STATE WATER RESOURCE
CONTROL BOARD
P.O. Box 100
Sacramento, CA 95812-0100

Gilbert A. Jensen, Esq.
District Attorney's Office
COUNTY OF ALAMEDA
1225 Fallon #100
Oakland, CA 94612

Name, Address and Telephone No. of Attorney(s)

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404
(707) 576-0757

Space Below for Use of Court Clerk Only

Attorney(s) for Plaintiffs

Superior COURT OF CALIFORNIA, COUNTY OF Solano
(SUPERIOR, MUNICIPAL, or JUSTICE)

(Name of Municipal or Justice Court District or of branch court, if any)

Plaintiff(s):
Gregory J. Garcia, and Beatrice
S. Gallegos

CASE NUMBER L002217

Defendant(s):
Gilbert A. Jensen, et al.

(Abbreviated Title)

REQUEST FOR DISMISSAL

TYPE OF ACTION

- Personal Injury, Property Damage and Wrongful Death:
 - Motor Vehicle Other
- Domestic Relations Eminent Domain
- Other: (Specify) Injunction,

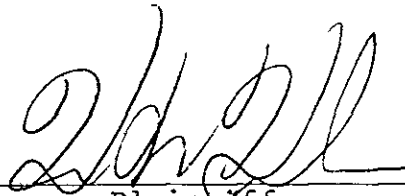
Declaratory Relief

TO THE CLERK: Please dismiss this action as follows: (Check applicable boxes.)

- 1. With prejudice Without prejudice
- 2. Entire action Complaint only Petition only Cross-complaint only
- Other: (Specify)*

Dated:

*If dismissal requested is of specified parties only, of specified causes of action only or of specified cross-complaints only, so state and identify the parties, causes of action or cross-complaints to be discussed.



Plaintiffs
Attorney(s) for

Hans W. Herb
(Type or print attorney(s) name(s))

TO THE CLERK: Consent to the above dismissal is hereby given. **

Dated:

**When a cross-complaint (or Response (Marriage) seeking affirmative relief) is on file, the attorney(s) for the cross-complainant (respondent) must sign this consent when required by CCP 581(1), (2) or (5).

Attorney(s) for

(Type or print attorney(s) name(s))

(To be completed by clerk)

- Dismissal entered as requested on
- Dismissal entered on as to only.....
- Dismissal not entered as requested for the following reason(s), and attorney(s) notified on

....., Clerk
Dated By Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO
600 UNION AVENUE, FAIRFIELD, CA 94533

PLAINTIFF:

Gregory J. Garcia, et al.

DEFENDANT:

Silbert A. Jensen, et al.

CASE NO. LC02217

NOTICE OF STATUS CONFERENCE

ONE TWO _____

Pursuant to local rules and by order of this court, this matter has been calendared for Status Conference:

DATE: 4/25/94

TIME: 9:00 A.M.

DEPT: 3

THE OBLIGATIONS OF COUNSEL, OR ANY PARTY NOT REPRESENTED AT STATUS CONFERENCE ONE AND STATUS CONFERENCE TWO ARE AS FOLLOWS

- 1) Plaintiff shall serve a copy of Notice of Status Conference One with the complaint.
- 2) Any party serving a cross-complaint shall serve a copy of Notice of Status Conference One on each cross-defendant with the cross-complaint.
- 3) Any cross-complaint served after Status Conference One shall have a copy of Notice of Status Conference Two served with it.
- 4) A Status Conference One Report shall be filed by each counsel by the 7th calendar day before Status Conference One.
- 5) At Status Conference One the court shall inform the parties of the place for Status Conference Two and shall make it expected that counsel will accomplish in regard to the case before the filing of the Status Conference Two Report for Status Conference Two.
- 6) Each counsel shall complete, file and serve on all parties a completed Status Conference Two Report by the 7th calendar day before the date set for Status Conference Two.
- 7) At any Status Conference, counsel shall be completely aware of all procedural, factual, and legal aspects of the case, and have full authority to discuss and resolve any issues that arise at the conference, including settlement of the case.
- 8) The court may impose sanctions in the event that a Status Conference Report is not timely filed and/or served, or is not fully completed, or; the requirements of #7, above, are not met.

1/26
LTR

COUNSEL ARE OBLIGATED TO REVIEW AND COMPLY WITH LOCAL RULES REGARDING CIVIL LITIGATION.

* * * * *

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: (Aviso a Acusado)

GILBERT A. JENSEN; COUNTY OF ALAMEDA DISTRICT ATTORNEY'S OFFICE; SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD; STATE WATER RESOURCES CONTROL BOARD; DOES 1 through 100, inclusive.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le est., demandando)

GREGORY J. GARCIA, and BEATRICE S. GALLEGOS

You have 30 CALENDAR DAYS after this Summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book.)

Despues de que la entreguen esta citacion judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una repuesta escrita a maquina en esta corte.

Una carta o una llamada telefonica no le ofrecera proteccion su repuesta escrita a maquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su repuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefonico).

The name and address of the court is: (El nombre y direccion de la corte es)
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

CASE NUMBER. (Numero del Caso)

LC02217

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)

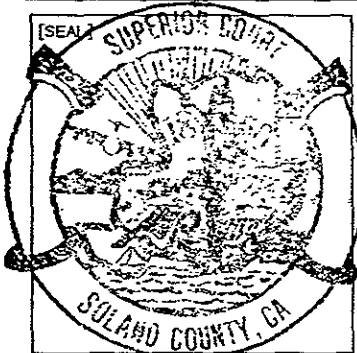
Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE: DEC 28 1993
(Fecha)

CHARLES D. RAMEY

Clerk, by  Deputy
(Actuario) (Delegado)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):
- 3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (individual)
- other:

- 4. by personal delivery on (date):

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: (Aviso a Acusado)

GILBERT A. JENSEN; COUNTY OF ALAMEDA DISTRICT ATTORNEY'S OFFICE; SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD; STATE WATER RESOURCES CONTROL BOARD; DOES 1 through 100, inclusive.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le est., demandando)**

GREGORY J. GARCIA, and BEATRICE S. GALLEGOS

You have 30 CALENDAR DAYS after this Summons is served on you to file a typewritten response at this court.

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CASE NUMBER: (Numero del Caso)

1002217

The name and address of the court is: (El nombre y direccion de la corte es)
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)
Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE: **DEC 28 1993**
(Fecha)

CHARLES D. RAMEY

Clerk, by

M. JACKSON

, Deputy

(Actuario)

(Delegado)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

- under:
- | | |
|--|---|
| <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (individual) |
| <input type="checkbox"/> other: | |

4. by personal delivery on (date):

**SUMMONS
(CITACION JUDICIAL)**

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GILBERT A. JENSEN; COUNTY OF ALAMEDA DISTRICT ATTORNEY'S OFFICE; SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD; STATE WATER RESOURCES CONTROL BOARD; DOES 1 through 100, inclusive.

YOU ARE BEING SUED BY PLAINTIFF:

(A Ud. le est., demandando)

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LC02217

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO
Hall of Justice, 600 Union Ave.
Fairfield, CA 94533-6394

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)

Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE: DEC 28 1993
(Fecha)

CHARLES D. RAMLEY Clerk, by M. JACKSON, Deputy
(Actuario) (Delegado)

[SEAL]

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**SUMMONS
(CITACION JUDICIAL)**

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COUNTY OF SOLANO
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CASE NUMBER (Numero del Caso)

1002217

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la direccion y el numero de telefono del abogado del demandante, o del demandante que no tiene abogado, es)
Hans W. Herb, Esq.
LAW OFFICES OF HANS W. HERB
50 Santa Rosa Ave., 5th Floor
Santa Rosa, CA 95404

(707) 576-0757

DATE: DEC 28 1993
(Fecha)

CHARLES D. RAMEY Clerk, by M. JACKSON, Deputy
(Actuario) (Delegado)

[SEAL]

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- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (individual)
- other:

4 by personal delivery on (date):

1 Hans W. Herb, Esq., SBN 136018
2 LAW OFFICES OF HANS W. HERB
3 50 Santa Rosa Avenue, Fifth Floor
4 Santa Rosa, California 95404
5 (707) 576-0757

ENDORSED FILED
Clerk of the Superior Court

DEC 23 1993

4 Attorneys for Plaintiffs
5 GREGORY J. GARCIA and
6 BEATRICE S. GALLEGOS

By CHARLES D. RAMEY
M. JACKSON

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SOLANO

12 GREGORY J. GARCIA, and)
13 BEATRICE S. GALLEGOS,)
14 Plaintiffs,)
15 vs.)
16 GILBERT A. JENSEN; COUNTY OF)
17 ALAMEDA DISTRICT ATTORNEY'S)
18 OFFICE; SAN FRANCISCO BAY)
19 REGIONAL WATER QUALITY CONTROL)
20 BOARD; STATE WATER RESOURCES)
21 CONTROL BOARD; DOES 1 through)
22 100, inclusive,)
23 Defendants.)

CASE NO. 1C02217
COMPLAINT FOR INJUNCTION;
DECLARATORY RELIEF AND DAMAGES

23 Plaintiffs allege as follows:

24 THE PARTIES

25 1. Plaintiff, Gregory J. Garcia ("GARCIA"), is and was
26 at all times relevant to this matter a resident of Solano
27 County, California.

COPY

1 2. Plaintiff, Beatrice S. Gallegos ("GALLEGOS"), is,
2 and was at all times relevant to this matter, a resident of
3 Fresno County, California.

4 3. The acts alleged herein occurred, in part, in Solano
5 County, California.

6 4. Defendant Gilbert A. Jensen (hereinafter "JENSEN")
7 is, on information and belief, an attorney duly licensed to
8 practice law in the State of California. Although JENSEN has
9 purported to represent the State Water Resources Control Board
10 and Regional Water Quality Control Board as well as other
11 regulatory agencies, on information and belief, JENSEN is an
12 assistant attorney at the County of Alameda District Attorney's
13 office. Because it is unclear what capacity, if any, JENSEN is
14 involved in the matters alleged herein, he is named as an
15 individual defendant as well as an agent of any organization who
16 ultimately takes responsibility for his conduct.

17 5. Alameda County is a duly authorized and existing
18 public corporation organized under California law. The District
19 Attorney's Office is a subdivision of Alameda County.

20 6. The Regional Water Quality Control Board for the San
21 Francisco Bay Region (hereinafter "RWQCB") is a duly organized
22 political subdivision of the State of California. The RWQCB is
23 a subordinate agency of the State Water Resources Control Board.

24 7. The State Water Resources Control Board (hereinafter
25 "SWRCB") is a duly authorized and existing governmental entity
26 of the State of California. It is a part of the California
27 Environmental Protection Agency.

28

GENERAL ALLEGATIONS

1
2 8. In 1961, Joseph R. Garcia died in Alameda County,
3 California. In December of 1962, his estate was distributed.
4 Among the items in his estate was the piece of property located
5 at 16035 E. 14th Street in San Leandro, California (the
6 "property"). At that time, the property was improved by a
7 service station operated by the Seaside Oil Company of Santa
8 Barbara, California.

9 9. In accordance with Joe Garcia's wishes, his son,
10 plaintiff herein, Gregory J. GARCIA, received a 50% interest in
11 the property to be held in trust until he reached the age of
12 majority. The remaining 50% was deeded by the court to Joe
13 Garcia's widow and plaintiff herein, Beatrice S. GALLEGOS.

14 10. At no time did either of the plaintiffs have any
15 operational control over the service station or the equipment on
16 the property. Instead, the plaintiffs simply acted as passive
17 landlords for the piece of property they inherited.

18 11. In 1974, after Gregory J. GARCIA returned from
19 military service in Vietnam, the trust administered for him by
20 his mother deeded him the property. It was later disposed of by
21 sale.

22 12. In 1979, Jerry Petsas and Mary Petsas (hereinafter
23 referred to as "Petsases"), purchased the property and all the
24 service station equipment from the plaintiffs. The Petsases
25 purchased the property "as-is" and without any right of recourse
26 against the plaintiffs.

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1 13. At the time the property was sold to the Petsases,
2 the underground storage tanks, pumps and all service station
3 equipment at the San Leandro property were in good working
4 condition. The property was leased and the improvements were
5 being used by the tenants who were operating an automobile
6 repair business on the property.

7 14. At no time were there ever any improper or illegal
8 spills, leaks, discharges, or releases of petroleum products
9 known to plaintiffs. In fact, the equipment was sold as-is at
10 the demand of the purchasers, not the sellers. The property was
11 discounted substantially by the sellers to satisfy the as-is
12 clause.

13 15. In 1983, the State of California first enacted
14 requirements for the permitting of underground storage tanks.
15 In accordance with the requirements of the State permitting
16 statutes, the Petsases apparently notified the appropriate
17 permitting agency of the presence of the underground storage
18 tanks on their property. After receiving several extensions of
19 time within which to comply with the permit requirements or
20 remove the tanks, the Petsases were ordered by Alameda County to
21 have the tanks removed. According the public records, this took
22 place beginning in 1985. The Petsases took no action to remove
23 the tanks for several more years.

24 16. In 1991, the Petsases finally removed the
25 underground storage tanks from their property pursuant to Orders
26 issued by various regulatory and permitting agencies. When the
27
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1 tanks were removed, trace amounts of contamination were
2 apparently detected in the soil and groundwater at the site.

3 17. From information gathered from public records,
4 plaintiffs are informed and believe that in 1991, the Petsases
5 became subject to local agency oversight by the Alameda County
6 Healthcare Services Agency (hereinafter referred to as "ACHSA").
7 The ACHSA operates as a "deputy" water board pursuant to a
8 contract with the SWRCB.

9 18. Under the terms of the ACHSA's oversight contract,
10 the Petsases were to be provided with assistance and advice from
11 ACHSA in dealing with their contamination problem. In exchange
12 for paying the SWRCB a service charge of approximately \$125 per
13 hour, the Petsases were to be assisted by the ACHSA in cleanup
14 of the unauthorized releases at the site.

15 19. Unfortunately, the expert advice offered by the
16 ACHSA apparently turned out to be incorrect. As a result, on
17 information and belief, the Petsases were required to expend
18 tens of thousands of dollars frivolously while the toxic problem
19 at the site, to the extent it existed, was not being addressed.

20 20. On information and belief, after becoming
21 financially destitute due to the advice provided by the ACHSA,
22 the Petsases sought to bring in other potentially responsible
23 parties to assist them with the high cost of dealing with the
24 cleanup requirements.

25 21. On information and belief, in accordance with
26 instructions from the ACHSA, the Petsases requested that
27 plaintiffs be named as "responsible parties" for the cleanup of
28

1 the San Leandro site. This was based on the ACHSA's erroneous
2 belief that all operators and owners of an underground storage
3 tank are responsible for the cleanup of any contamination
4 discovered once the tank is removed.

5 22. As a result of the request by the Petsases, the
6 ACHSA, by letter dated March 2, 1993, informed plaintiffs that
7 the ACHSA had declared them to be responsible parties in
8 connection with the property.

9 23. In the time provided by statute, and in accordance
10 with California Health and Safety Code §25297.1(d)(3) and (h),
11 as well as Health and Safety Code §§25299.37(c) and (d),
12 plaintiffs filed a proper appeal to the SWRCB, objecting to the
13 requirement that they participate in the investigation and
14 cleanup at the San Leandro property.

15 24. While the petition was pending before the SWRCB,
16 defendant JENSEN appointed himself as a hearing officer and
17 conducted what he termed a "Pre-enforcement Review Panel."
18 Also present at the review panel were members of the ACHSA and a
19 staff employee of the RWQCB.

20 25. At the end of the "hearing", which plaintiffs were
21 not present at, JENSEN announced that plaintiffs were
22 responsible parties for the cleanup of this site.

23 26. Upon receiving information that JENSEN had
24 determined that plaintiffs were responsible parties at the site,
25 plaintiffs, through their attorneys, contacted the SWRCB to
26 inquire as to how to proceed in order to avoid inconsistent
27 adjudications. The SWRCB, via letters and verbal

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1 communications, indicated that the matter was still pending
2 before the SWRCB. Further, the SWRCB advised plaintiffs that
3 JENSEN was neither authorized to represent the SWRCB, nor did
4 the State approve of his conduct in holding illegal hearings in
5 which he appointed himself a hearing officer. In addition, the
6 State Board advised that the issue of plaintiff's liability for
7 the cleanup at the site would be presented to the State Board
8 for review and that any determination of JENSEN was null and
9 void.

10 27. Subsequently, plaintiffs received yet another
11 directive, this one from the executive officer of the Bay Area
12 RWQCB, again ordering the plaintiffs to participate in the
13 cleanup at the San Leandro property. Plaintiffs timely appealed
14 that decision to the SWRCB and, in accordance with local
15 practice, appealed to the executive officer of the RWQCB to have
16 a full hearing on the issue. The hope was to resolve the
17 conflict informally since three appeals were already pending.

18 28. On December 20, 1993, plaintiffs received a letter
19 from the Mr. JENSEN regarding his position on these various
20 cleanup orders and their appeals. In Mr. JENSEN's letter, Mr.
21 JENSEN implied that he was not bound by the decisions of either
22 the SWRCB or the RWQCB and that he was going to exercise his
23 independent judgment, outside of the legal and statutory
24 process, to determine how to proceed with various sanctions
25 against plaintiffs.

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1 29. According to defendant JENSEN, these sanctions
2 include fines of up to \$1000 per day for each day plaintiffs
3 failed to comply with defendant JENSEN's directives.

4 30. At this point, plaintiffs are left in a quandary.
5 They have purportedly been named as responsible parties by no
6 less than three agencies and/or organizations (the ACHSA, the
7 RWQCB and the Alameda County District Attorney's Office). At
8 the same time, appeals have been filed, as required by statute,
9 of the decision of these entities in naming petitioners as
10 responsible parties. Nevertheless, despite the fact that
11 appeals are pending, defendant JENSEN, of his own volition,
12 apparently contends that the appeals do not bind him and that he
13 alone can make an independent decision, outside of the statutory
14 process, to sanction the plaintiffs.

15 31. Plaintiffs have repeatedly attempted to establish
16 communications with the Alameda County District Attorney's
17 Office to resolve the issues in this matter. JENSEN has refused
18 to return any phone calls or to substantively answer any letters
19 concerning this matter.

20 32. Although the Alameda County Board of Supervisors,
21 the Bay Area RWQCB and the SWRCB have all attempted to work, in
22 good faith, to resolve this matter, the ultimate ability of
23 those agencies to affect a proper resolution depends on being
24 able to properly control and restrain defendant JENSEN. Under
25 such circumstances, any settlement with the legally authorized
26 agencies would be meaningless since, according to defendant
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1 JENSEN, he has the power to ultimately overrule any decision of
2 any of the agencies.

3 33. Under California Code of Civil Procedure §1021.5,
4 plaintiffs are entitled to recover attorneys' fees for acting in
5 the public interest. Plaintiffs base their claim to attorneys'
6 fees in this case on at least three separate and independent
7 grounds. First, the actions of JENSEN, as a representative of
8 the Alameda County District Attorney's Office, threatens to harm
9 the environment by diverting resources from the cleanup of
10 environmental contamination instead to finance litigation and
11 attorneys' fees to the detriment of the people of the State of
12 California. Second, despite acknowledging the fact that its
13 conduct is without legal authority, the Alameda County District
14 Attorney's Office has continued to proceed with its claims
15 against the plaintiffs. Third, plaintiffs are entitled, if they
16 so choose, to damages under U.S.C. 1983. Because plaintiffs
17 believe they will prove that this same improper conduct has
18 happened to others, they request reasonable attorneys' fees for
19 abating this illegal practice as a private attorney general.

20 FIRST CAUSE OF ACTION

21 (Declaratory Relief)

22 34. Plaintiffs refer to each and every paragraph set
23 forth in the preceding allegations and incorporate those
24 paragraphs as though set forth in full in this cause of action.

25 35. Plaintiffs allege that an actual and present
26 controversy now exists between plaintiffs and defendants in that
27 plaintiffs contend that they have a right to seek redress of the
28

1 erroneous decisions of the ACHSA and the Bay Area RWQCB. The
2 defendants, dispute these contentions, and contend that
3 plaintiffs have no rights of appeal and that JENSEN, either
4 individually or as an agent of the District Attorney's Office,
5 is not bound by the statutory or decisional law of the State of
6 California.

7 36. As a result of the foregoing, plaintiffs request a
8 declaration of their rights pursuant to §1060 of the Code of
9 Civil Procedure and §11350(a) of the Government Code.

10 WHEREFORE, plaintiff prays for judgment as follows:

11 (a) For an injunction restraining defendant JENSEN from
12 illegally interfering with the exercise of due process rights by
13 the plaintiffs;

14 (b) For a declaratory judgment that plaintiffs are
15 entitled to due process under the local oversight program
16 contract;

17 (c) For a declaratory judgment that plaintiffs are
18 entitled to due process under the Water Code;

19 (d) For attorneys' fees pursuant to C.C.P. §1021.5;

20 (e) For such other and further relief as the Court rules
21 is just and proper.

22 DATED: December 23, 1993

Respectfully submitted,
LAW OFFICES OF HANS W. HERB

23
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25 BY: 

HANS W. HERB
Attorney for Plaintiffs
GREGORY J. GARCIA and
BEATRICE S. GALLEGOS

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27
28

STATE WATER RESOURCES CONTROL BOARD

PAUL R. BONDERSON BUILDING
901 P STREET
P.O. BOX 100
SACRAMENTO, CALIFORNIA 95812-0100
(916) 657-0941
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are the appropriate parties being named by the LOP?
PPP

PETE WILSON, Governor



APR 8 1994

CERTIFIED MAIL

REC'D

APR 25

Director of Environmental...

Mr. Hans W. Herb
Attorney at Law
50 Santa Rosa Avenue, Fifth Floor
Santa Rosa, CA 95404

Dear Mr. Herb:

PETITION FOR REVIEW FOR LOCAL OVERSIGHT PROGRAM OF BEATRICE GALLEGOS/GREGORY GARCIA, SITE NO. 00004147. FILE NO. 93-110.

The State Water Resources Control Board (SWRCB) will not review this petition. The dispute concerning the former owner of the service station site does not raise a significant issue meriting the consideration of the SWRCB. Prior precedent supports the inclusion of former property owners if the pollution can be attributed to activities they allowed and benefited from on their property.

If you have any questions about this matter, please call Ted Cobb in the Office of the Chief Counsel at (916) 657-0406.

Sincerely,

ORIGINAL SIGNED BY

Walt Pettit
Executive Director

cc: Mr. Steven R. Ritchie, Executive Officer ✓
California Regional Water Quality
Control Board, San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 94612

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