

ENVIRONMENTAL  
PROTECTION  
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October 30, 1998

**VIA HAND DELIVERY**

Christopher G. Carpenter  
Office of the District Attorney  
7677 Oakport Street, Suite 400  
Oakland, Calif. 94621

**RE: People v. National Airmotive Corporation**  
***Alameda County Superior Court, Case No. H-179506-2***

**Alameda County Hazardous Materials Training and Resource Trust  
Account – NAC Oakland Airport Remediation Sub-Account**

Dear Mr. Carpenter:

This office currently represents National Airmotive Corporation ("NAC") with respect to the above-referenced matters. This letter is directed to you based upon the understanding that: (1) Gilbert Jensen, who originally handled this matter on behalf of the Alameda County District Attorney's Office and who is specified as the appropriate contact person in the documents, is no longer with your office, and (2) you have assumed responsibility for this matter or are in a position to forward it immediately to the appropriate person. Given various short time constraints, as described more fully below, your earliest attention to this matter is very much appreciated.

For your ease of reference, I have enclosed with this letter copies of the following relevant materials:

- (1) Stipulation for Consent Judgment ("Stipulation") and Consent Judgment, entered on October 21, 1994, in the above-referenced litigation;
- (2) Accounting pursuant to Section 5(l), and Agreement relating thereto between the Office of the District Attorney and NAC, dated June 10, 1996 (without attachments)("June, 1996 Accounting Agreement"); and,

1891 Landings Drive  
Mountain View, California 94043  
Telephone: (650) 428-3900  
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(3) Letter, dated October 14, 1998, from Lorne Dyke, NAC Vice-President, to Scott Seery, Alameda County Dept. of Environmental Health.

### **BACKGROUND**

As indicated by the enclosed Stipulation and June, 1996 Accounting Agreement, and as you may already be aware, certain environmental issues arose in 1994 relating to, among other things, NAC's Test Cell Facility located near the Oakland Airport. These issues resulted, in October, 1994, in the filing of a Complaint for Civil Penalties and Injunctive Relief against NAC along with a concurrent Stipulation for Consent Judgment reflecting the settlement that had been worked out between NAC and the District Attorney's Office (through Mr. Jensen). The Alameda County Department of Environmental Health (primarily through Mr. Seery) also participated in and approved the settlement.

Among other matters, the settlement and Stipulation related to two (2) pending items at the Test Cell Facility:

(1) Investigation and, if necessary, remediation of soil and/or groundwater impacts that may have resulted from a September 1992 Jet-A fuel spill on the surface near some fuel tanks located near the northwest corner of the facility; and,

(2) Investigation and, if necessary, remediation of soil and/or groundwater impacts that may have resulted from discharges in and around an oil-water separator and sump located near the southwest corner of the facility. This was sometimes referred to as the "gray-water discharge" issue, and it was separate from the Jet-A fuel spill incident.

Item (1) was specifically referenced in Section 5(C) of the Stipulation, which provided that "NAC shall undertake and complete such action, if any, as required by the [Dept. of Environmental Health]... to investigate, monitor, and/or remediate the effects of that certain spill of Jet A fuel, on or about September, 1992, as alleged in the Complaint herein."

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Item (2) was specifically referenced in a different section, Section 5(D) of the Stipulation, which provided that "NAC shall undertake and complete such action, if any, as required by the [Dept. of Environmental Health]...to investigate, monitor, and/or remediate the effects of the discharges of oil-containing water at or near the Test Cell Facility, as alleged in the Complaint herein."

Under Section 5(I) of the Stipulation, NAC was assessed costs of \$125,000, but was simultaneously given the opportunity to obtain a credit up to the full \$125,000 "for amounts expended by NAC in connection with its performance of any work required to comply with paragraphs (5)(C), (5)(D), and (5)(F) [of the Stipulation]." Section 5(I) further provided for an accounting of NAC expenses in this regard to take place within a year, at which time it would be determined how much, if any, of the credit remained unused and would be turned over to Alameda County as costs.

Following various agreed-upon extensions between the District Attorney's Office and NAC, the accounting was presented in June, 1996, as required by Section 5(I) of the Stipulation. This resulted in the June, 1996 Accounting Agreement (copy attached, without exhibits), which was executed on behalf of both parties.

The June, 1996 Accounting Agreement itself recites in detail the background regarding expenditures, work done, work remaining to be done, etc., and that discussion will not be repeated here. Although copies of the backup Exhibits are presumably in your files on this matter, if you need for me to send those to you, please don't hesitate to give me a call, and I would be glad to forward them.

Of particular relevance at this time are the following facts:

(1) As of June, 1996, the amount of the \$125,000 credit that either had not been spent or had not been committed to existing contractual obligations, was \$20,705.78;

(2) The parties expressly recognized that "it is possible...that the monitoring program, or other presently contemplated work at the Test Cell Facility (specifically, work related to removal or replacement of the underground fuel tanks) to be completed by the end of 1998, may reveal residual effects from the Jet-A fuel spill or the 'gray water' discharge with respect to which the County may require NAC to conduct additional investigation, prolonged or additional monitoring, or remediation work. In

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that event, the parties have agreed that NAC shall be entitled to use some or all of the remaining credit amount of \$20,705.78 for expenditures for such additional investigation, prolonged or additional monitoring, or remediation work." (June 1996 Accounting Agreement, page 3); and,

(3) On or about June 24, 1996, NAC submitted a check to Alameda County in the amount of \$20,705.78, which was to be (and, presumably, was) deposited in an Alameda County Hazardous Materials Training and Resource Trust Account – NAC Oakland Airport Remediation Sub-Account, to be handled pursuant to a detailed agreement spelled out on pages 3 and 4 of the Jun, 1996 Accounting Agreement.

### PRESENT SITUATION

On October 1, 1998, NAC was performing work relating to upgrade of underground piping for an underground storage tank -- which is located at the Test Cell Facility in the vicinity of the oil-water separator and sump related to the "gray-water discharges" described above and specified in Section 5(D) of the Stipulation. In the course of this work, a petroleum-based substance was observed on the surface of ground water seeping into a portion of trenching that had been dug up for access to the existing piping near the oil-water separator and sump. As indicated by the enclosed October 14, 1998 letter from Mr. Dyke to Scott Seery, prompt notifications were made to appropriate agencies and various immediate actions were taken to investigate the situation. That investigation continues, and, at this point, the following tentative assumptions exist.

Initial analysis of the substance indicates that it may be a mixture of old motor oil, diesel, and/or kerosene. The precise source and the extent remains undetermined, although no evidence has been found in a number of other trenches that have been dug elsewhere on the property. The fuel tanks and relevant piping have been tested and inspected, revealing no apparent leakage. the situation appears localized in the vicinity of the oil-water separator and sump.

To this point, NAC has already spent (or been invoiced for) approximately \$14,288.75 by the firm handling the underground storage tank work exclusively for change orders to deal with this specific situation (i.e., additional amounts resulting from the discovery, testing, current investigation/remediation efforts, etc., and not relating to the planned underground tank and piping work. These charges to date are documented in Attachment A to this letter. It is anticipated that additional

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amounts are substantially likely to be incurred in the near future, although NAC is not in a position to provide any precise estimate at this time.

### REQUEST FOR REIMBURSEMENT

It is clear that all of the facts relating to this situation are not yet known. However, based upon what is known to date, NAC believes that the evidence strongly supports that NAC is entitled to reimbursement for the above-referenced expenditures from the remaining \$20,705.78 in the Sub-Account due to the fact that these expenses were incurred in connection with work performed to comply with Section 5(D) of the Stipulation (relating to the "gray-water discharges").

Accordingly, pursuant to the terms of the June, 1996 Accounting Agreement, NAC formally requests reimbursement of: \$14,288.75, as reflected in Attachment A, as well as such additional amounts as may be incurred in the future, to the extent such amounts do not exceed the remaining balance in the Sub-Account.

### PROPOSAL FOR EXTENSION OF TIME

As is clear from the June, 1996 Accounting Agreement, the timing of this discovery and request for reimbursement requires immediate consideration and handling by your office to meet the various deadlines specified therein. If the District Attorney's Office does not believe that it is in a position to respond immediately to the request for reimbursement, NAC would be amenable to a reasonable extension of the various deadlines specified on pages 3 and 4 of the June, 1996 Accounting Agreement to allow for full consideration of the issues involved. Please contact me at your earliest opportunity if you wish to discuss putting such an extension into effect.

Thank you for your prompt attention to the matters set forth in this letter. I look forward to discussing this with you, or with whomever the appropriate person is in the District Attorney's Office, at your earliest opportunity.

Very truly yours,



WILLIAM D. CONNELL

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October 30, 1998  
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Enclosures and Attachments

cc: National Airmotive Corporation (with enclosures and attachments)

1 JOHN J. MEEHAN  
District Attorney  
2 County of Alameda  
3 GILBERT A. JENSEN  
State Bar # 42060  
4 Senior Deputy District Attorney  
Consumer & Environmental Protection  
5 7677 Oakport Street, Suite 400  
Oakland, CA. 94621  
6 (510) 569-9281

7 Attorneys for Plaintiff  
8  
9

ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 21 1994

HONALD G. OVERHOLT, Exec. Off./Clerk  
By Gerardo E. Cuerrero

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ALAMEDA

12 H-179506-2  
13 THE PEOPLE OF THE STATE OF CALIFORNIA, )

CASE NO. -

14 Plaintiff, )

STIPULATION FOR  
CONSENT  
JUDGMENT

15 v. )

16 )  
17 NATIONAL AIRMOTIVE CORPORATION, )

18 Defendant. )  
19 )  
20 )

21 THIS STIPULATION is entered into by and between plaintiff. THE PEOPLE OF  
22 THE STATE OF CALIFORNIA ("the people"), appearing through its attorneys, John J. Meehan,  
23 District Attorney for the County of Alameda, by Gilbert A. Jensen, Senior Deputy District  
24 Attorney, and defendant, NATIONAL AIRMOTIVE CORPORATION ("NAC"), appearing  
25 through its attorneys, Gibson, Dunn & Crutcher, by William D. Connell, Esq.  
26

27 Without the taking of proof, without a trial or adjudication of any facts or law  
28 herein, and without admission by NAC of any of the matters set forth in the Complaint herein or of  
29

1 any other act, omission to act, or any thing whatsoever.

2 THE PEOPLE AND NATIONAL AIRMOTIVE CORPORATION DO HEREBY  
3 STIPULATE IN COMPROMISE AND SETTLEMENT OF THIS ACTION AS FOLLOWS:

4 1. This stipulation by agreement for compromise and settlement shall settle and  
5 conclude for all time all claims of any type or nature, whether civil, criminal, or administrative, by  
6 plaintiff against defendant, including any officer, director, agent, employee, or representative of  
7 defendant, arising out of the acts, omissions to act, and /or occurrences and matters alleged in the  
8 Complaint on file herein;

9  
10 2. The Judgment that will be entered pursuant to the signing of this Consent Decree is  
11 without the presentation of any evidence and without trial or adjudication of any issue of fact or  
12 law. No findings or determination of any kind with respect to the merits of this action have been  
13 or shall be made. This Stipulation and Judgment shall not have any collateral estoppel effect or  
14 precedential effect in any other criminal, civil or administrative action involving plaintiff or  
15 defendant, except as provided herein;

16  
17 3. NAC acknowledges that it has been served with the Complaint herein and further  
18 acknowledges that the Superior Court of California for the County of Alameda has personal  
19 jurisdiction of the defendant and has jurisdiction of the subject matter herein. The People  
20 acknowledge that NAC has cooperated fully in the investigation and resolution of this matter;

21  
22 4. Defendant acknowledges that nothing in this Stipulation and Judgment may in any  
23 way be construed to lessen its obligation to conform to California state law;

24  
25 5. The Superior Court of the State of California for the County of Alameda may enter  
26 a Judgment in the above-captioned matter providing as follows:



1 A. NAC and its agents, employees, and representatives, and any and all  
2 of them, are restrained and enjoined from violating the provisions of :

- 3 1. Section 25189 of the California Health and Safety Code,
- 4 2. Section 25359.4 of the California Health and Safety Code,
- 5 3. Section 25507 of the California Health and Safety Code,
- 6 4. Section 13272, 13385 and 13387 of the California Water Code,
- 7 5. Sections 5650 and 5650.1 of the California Fish and Game Code,
- 8 6. Sections 8670.64 (a) (3) and 8670.66 (a) (3) of the California  
9 Government Code,
- 10 7. Sections 374.8 of the California Penal Code,
- 11 8. Section 17200 of the California Business and Professions Code,  
12 with respect to the acts cited in the complaint filed herein.

13 B. NAC and its agents, employees and representatives, and any and all  
14 of them, shall, within Sixty (60) days from the date of the filing of the Judgment issued pursuant  
15 to this Stipulation, present to the County of Alameda Health Care Services Agency, Department of  
16 Environmental Health, through the Office of the District Attorney of Alameda County a plan for  
17 the training of all field, supervisory, and management personnel employed by NAC in the State of  
18 California, with respect to the environmental laws of the State of California and of the United  
19 States. The plan shall provide that all said field, supervisory, and management personnel shall  
20 receive said training within one (1) year from the date of the filing of the Judgment issued herein;

21 C. NAC shall undertake and complete such action, if any, as required  
22 by the Alameda County Health Care Services Agency, Department of Environmental Health,  
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1 acting as lead agency on behalf of such agencies of the State of California, or any political entity  
2 or subdivision thereof, as may have jurisdiction of the subject matter, to investigate, monitor, and  
3 /or remediate the effects of that certain spill of Jet A Fuel, on or about September, 1992, as alleged  
4 in the Complaint herein;

5 D. NAC shall undertake and complete such action, if any, as required  
6 by the Alameda County Health Care Services Agency, Department of Environmental Health,  
7 acting as lead agency on behalf of such agencies of the State of California, or any political entity  
8 or subdivision thereof, as may have jurisdiction of the subject matter, to investigate, monitor,  
9 and/or remediate the effects of the discharges of oil-containing water at or near the Test Cell  
10 Facility, as alleged in the Complaint herein;

11 E. NAC shall undertake and complete such action, if any, as required  
12 by the California Environmental Protection Agency, Department of Toxic Substances Control  
13 ("DTSC"), to respond to the matters set forth in the DTSC Report of Violations, dated June 29,  
14 1994, served upon National Airmotive Corporation;

15 F. NAC shall undertake and complete an environmental review of its  
16 facilities, operations, and processes located or conducted at or in the vicinity of 7200 Lockheed  
17 Street, Oakland, California, including the main facilities and the Test Cell Facility, and shall take  
18 such actions as directed by the Alameda County Health Care Services Agency, Department of  
19 Environmental Health, if any, as may be necessary to bring such facilities, operations, and  
20 processes into compliance with all applicable environmental statutes and regulations;

21 G. NAC shall develop, within Nine (9) months from the date of the  
22 filing of the Judgment issued pursuant to this Stipulation, a plan for preparation of a curriculum  
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1 for use in a single one-day training program for Alameda County Regulatory Personnel as well as  
2 interested industries in Alameda County, generally regarding : (i) the implementation of corporate  
3 plant-wide environmental assessments: (ii) review of waste handling procedures: (iii) techniques  
4 and policies designed to minimize waste generation: and, (iv) establishment of pollution  
5 prevention procedures. In developing the curriculum, and any course materials relating thereto,  
6 NAC shall be entitled to rely on its own experiences in the subject matter area and on its own staff  
7 and consultants retained for the projects designated herein and shall not be required to investigate  
8 other industries or businesses or retain other consultants or personnel. Subject to the foregoing,  
9 and subject to the consent of any outside consultants to participation in such curriculum, NAC  
10 shall make available to the Alameda County Environmental Training Program, at no expense to  
11 Alameda County, appropriate NAC staff and/or outside consultants for the development of the  
12 curriculum and training materials, as well as for the presentation of the one-day training at a  
13 mutually agreeable date within One (1) year from the date of the filing of the Judgment issued  
14 pursuant to this Stipulation. NAC shall not be required to include any proprietary or confidential  
15 information in the curriculum or course materials. The course materials and curriculum shall be  
16 made available to the Alameda County Environmental Training Program for future presentations  
17 of the training, provided, however, that, except for the one-day training program specified above,  
18 NAC shall not be required to furnish staff or consultants for any future programs in which the  
19 materials or curriculum may be used. NAC shall be entitled to assert an appropriate disclaimer of  
20 liability in connection with the information presented in the curriculum and materials.  
21  
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25 H. NAC shall pay to plaintiff, THE PEOPLE OF THE STATE OF  
26 CALIFORNIA, through John J. Meehan, District Attorney of the County of Alameda, the amount  
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1 of Two Hundred Thousand Dollars (\$200,000), as costs and penalties according to the following  
2 terms:

3 1. Twenty-five Thousand Dollars (\$25,000) as civil  
4 penalties pursuant to section 25192 of the California Health  
5 and Safety Code, by three checks payable to the following parties in  
6 the following amounts and manner:

7 (a). Twelve Thousand Five Hundred Dollars  
8 (\$12,500) by check made payable to The California  
9 Hazardous Substance Account on behalf of the  
10 (DTSC), and sent to the Office of the District  
11 Attorney for transmittal according to law,  
12

13 (b). Six Thousand Two Hundred Fifty Dollars  
14 (\$6,250) by check made payable to the Office of the  
15 Alameda County District Attorney,  
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17 (c). Six Thousand Two Hundred Fifty Dollars  
18 (\$6,250) by check made payable to the Alameda  
19 County Department of Environmental Health and  
20 sent to the Office of the District Attorney for Deposit  
21 in the Alameda County Hazmat Training Trust Fund.  
22

23 2. Twenty-five Thousand Dollars (\$25,000) as civil  
24 penalties pursuant to section 5650.1 of the California Fish and Game  
25 Code, by two checks payable to the following parties in the  
26

1 following amounts and manner:

2 (a). Twelve Thousand Five Hundred Dollars  
3 (\$12,500) pursuant to section 12017 (2) of the Fish and  
4 Game Code, by check made payable to the Fish and Wildlife  
5 Pollution Cleanup and Abatement Account in the Fish and  
6 Game Preservation Fund, and sent to the Office of the  
7 District Attorney for transmittal according to law,  
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9 (b). Twelve Thousand Five Hundred Dollars  
10 (\$12,500) by check made payable to the Treasurer of  
11 Alameda County and sent to the Office of the District  
12 Attorney for transmittal according to law.  
13

14 3. One Hundred Thousand Dollars (\$100,000) as and for cost of  
15 investigation and environmental protection on behalf of the  
16 following agencies in the following amounts and manner:

17 (a) One Thousand Five Hundred Dollars (\$1500.00) by  
18 check made payable to the Department of Fish and Game  
19 Water Pollution Control Laboratory and sent to the Office of  
20 The District Attorney for transmittal by law.  
21

22 (b) Thirty-Eight Thousand Five Hundred Dollars (\$38,500)  
23 costs on behalf of the Office of the District Attorney, its  
24 assisting agencies, and the Department of Fish and Game by  
25 check made payable to the Alameda County Hazmat Trust  
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1 Fund and sent to the Office of the District Attorney for  
2 deposit in the following manner:

3 (1). Twenty Thousand Dollars (\$20,000) shall be  
4 deposited in the General Sub Account of said fund,

5 (2). Fifteen Thousand Dollars (\$15,000) shall be  
6 deposited in the Fish and Game Sub Account of said  
7 fund.  
8

9 (3). Three Thousand Five Hundred Dollars (\$3,500)  
10 shall be deposited in the General Sub Account of said  
11 fund for the purchase of laboratory equipment for the  
12 Peralta College District to be used in support of  
13 environmental enforcement in Alameda County.  
14

15 (c). Sixty Thousand Dollars (\$60,000) costs on  
16 behalf the County of Alameda by check made  
17 payable to the Treasurer of Alameda County and sent  
18 to the Office of the District Attorney for transmittal  
19 by law.  
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21 4. Fifty Thousand Dollars (\$50,000.00), denominated as civil  
22 penalties pursuant to Section 17200 of the California Business &  
23 Professions Code, by check made payable to the District Attorney of  
24 Alameda County.  
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1 I. Within thirty (30) days following the expiration of the twelve month  
2 period following the date of the Judgment, NAC shall pay additional costs in the amount of One  
3 Hundred Twenty-Five Thousand Dollars (\$125,000), to the Treasurer of Alameda County.  
4 However, NAC shall be entitled to, and receive, a credit of up to , but not exceeding, One  
5 Hundred, Twenty-Five Thousand Dollars (\$125, 000) against the foregoing One Hundred,  
6 Twenty-Five Thousand Dollars (\$125,000) costs for amounts expended by NAC in connection  
7 with its performance of any work required to comply with paragraphs (5) (C), (5) (D), and (5) (F)  
8 above. Within thirty (30) days following the expiration of the twelve-month period, NAC shall  
9 submit to the District Attorney an accounting of the amounts for which a credit is claimed. In the  
10 event, and to the extent, that the amount claimed as credit is less than One Hundred, Twenty-Five  
11 Thousand Dollars (\$125, 000), NAC shall, at the time the accounting is submitted, pay such  
12 difference by check made payable to the Treasurer of Alameda County. In the event of a dispute  
13 between the parties with respect to the amount of credit claimed, the matter shall be submitted to  
14 the Court, by noticed motion of either party, for determination of the proper credit amount;

17 6. Judgment may be entered by the Court in this action, pursuant to this  
18 Stipulation, on request of any party without notice to the other parties.

20 7. The Court may retain jurisdiction of this matter for the purpose of enforcing  
21 any provisions of the Judgment herein.

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DATED: October 17, 1994

JOHN J. MEEHAN  
District Attorney

By: S. GILBERT A. JENSEN  
Gilbert A. Jensen  
Sr. Deputy District Attorney

Attorneys for Plaintiff

GIBSON, DUNN & CRUTCHER  
WILLIAM D. CONNELL

By: William D. Connell  
William D. Connell

Attorneys for Defendant



1 JOHN J. MEEHAN  
2 District Attorney  
3 County of Alameda  
4 GILBERT A. JENSEN  
5 Senior Deputy District Attorney  
6 State Bar # 42060  
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8 7677 Oakport Street, Suite 400  
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11 Attorneys for Plaintiff

**ENDORSED  
FILED  
ALAMEDA COUNTY**

OCT 21 1994

RONALD G. OVERHOLT, Exec. Off./Clerk  
By Gerardo E. Guerrero

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF ALAMEDA

**H-179506-2**

14 THE PEOPLE OF THE STATE OF CALIFORNIA, )

CASE NO.

15 Plaintiff, )

CONSENT JUDGMENT

16 v. )

17 NATIONAL AIRMOTIVE CORPORATION, )

18 Defendant. )  
\_\_\_\_\_ )

19 It appearing to the Court that the Court has jurisdiction of the subject matter herein  
20 and the parties hereto; that plaintiff has filed a civil Complaint; that defendant has been served  
21 with a copy of the Complaint and has appeared; that plaintiff has appeared through its attorney,  
22 John J. Meehan, District Attorney, by Gilbert A. Jensen, Senior Deputy District Attorney, and  
23 defendant NATIONAL AIRMOTIVE CORPORATION has appeared through its attorneys,  
24 Gibson, Dunn & Crutcher, by William D. Connell, Esq.; and that plaintiff and defendant have  
25 stipulated to entry of this Judgment without the taking of proof, without trial or adjudication of  
26 any facts or issues of law herein, and without this Judgment constituting any evidence or  
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1 admission by defendant of any act, omission to act, or any thing whatsoever, or of any allegation  
2 of the Complaint,

3 NOW THEREFORE:

4 IT IS ORDERED, ADJUDGED, AND DECREED that defendant, its agents,  
5 officers, employees, and all persons acting in concert with defendant, with actual or constructive  
6 notice of this Judgment, are restrained and enjoined as provided for in the Stipulation attached  
7 hereto and incorporated herein by this reference.  
8

9  
10 DATED: October 20, 1994

11 RONALD J. [unclear]

12 \_\_\_\_\_  
13 Judge of the Superior Court  
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GIBSON, DUNN & CRUTCHER LLP

LAWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
INCLUDING PROFESSIONAL CORPORATIONS

ONE MONTGOMERY STREET

TELESIS TOWER

SAN FRANCISCO, CALIFORNIA 94104-4505

(415) 393-8200

FACSIMILE: (415) 986-5309

June 10, 1996

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AFFILIATED SAUDI ARABIA OFFICE  
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OUR FILE NUMBER

JAS. A. GIBSON, 1852-1922  
W. E. DUNN, 1861-1925  
ALBERT CRUTCHER, 1860-1931

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WRITER'S DIRECT DIAL NUMBER

JUN 11 1996

(415) 393-8342  
Gilbert A. Jensen  
Sr. Deputy District Attorney  
District Attorney's Office  
7677 Oakport Street, Suite 400  
Oakland, Calif. 94621

64324-00012

Re: People v. National Airmotive Corporation  
Alameda County Sup. Court, Case No. H-179506-2

Dear Mr. Jensen:

1. INTRODUCTION

This letter is written pursuant to Section (5)(I) of the Stipulation for Consent Judgment ("Stipulation") entered in the above-referenced matter on or about October 21, 1994. The following, including the attachments hereto, is an accounting for amounts spent or presently contracted by National Airmotive Corporation ("NAC") in connection with its performance of work required to comply with paragraphs (5)(C), (5)(D), and (5)(F) of the Stipulation.<sup>1</sup> NAC is entitled to a credit for these expenditures of up to \$125,000 towards the

<sup>1</sup> You should also be aware that NAC has spent substantial additional amounts in performance of work to comply with other sections of the Stipulation (e.g., Section (5)(G) relating to development and presentation of a training curriculum). However, according to the terms of the Stipulation, those amounts have not been included in determining the amount of Section (5)(I) credit available.

Gilbert A. Jensen, Esq.  
June 10, 1996  
Page 2

\$125,000 "additional costs" to be paid to the Treasurer of Alameda County.

In addition, pursuant to discussions between the parties, this letter also sets forth the parties' understanding regarding handling of the currently unused credit amount of \$20,705.78 pending anticipated completion of the on-going monitoring activities at the Test Cell Facility.

## 2. ACCOUNTING FOR AMOUNTS SPENT/CONTRACTED

Attached as Exhibit A hereto is a spreadsheet detailing the amounts already spent or currently contracted by NAC in connection with work performed on: (1) the investigation and monitoring of the Jet-A fuel spill effects at the Test Cell Facility (Stipulation §(5)(C)); (2) the investigation and monitoring of the oil-containing water discharges at the Test Cell Facility (Stipulation §(5)(D)); and, (3) the Environmental Compliance Audit (Stipulation §(5)(F)). Attached as numbered exhibits to Exhibit A are invoices detailing the amounts reflected on the spreadsheet.

As indicated in Exhibit A, NAC has, to date, spent or contracted to spend \$104,294.22, for which it is entitled to credit under the Stipulation.

The amount of the credit remaining unused at this time is \$20,705.78.

## 3. REMAINING CREDIT - TRUST FUND

On February 21, 1996, the Alameda County Department of Environmental Health ("the County") outlined in a letter its requirements for a monitoring program "to complete the Jet-A fuel release and 'gray water' investigations at the Test Cell Facility." A copy of that letter is attached as Exhibit B hereto. Pursuant to that letter, NAC submitted a proposal for such a program, which has been approved by the County. A copy of that proposal is attached as Exhibit C.

NAC has already contracted for and commenced the monitoring described in Exhibit C. In the event no further work is required as a result of findings made during the course of the monitoring, that work is scheduled to be completed by in or about June, 1998, with no additional expenditures involved beyond the current contract amount (which is already included in the accounting set forth in Exhibit A).

Gilbert A. Jensen, Esq.

June 10, 1996

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It is possible, however, that the monitoring program, or other presently contemplated work at the Test Cell Facility (specifically, work related to removal or replacement of the underground fuel tanks) to be completed by the end of 1998, may reveal residual effects from the Jet-A fuel spill or the "gray water" discharge with respect to which the County may require NAC to conduct additional investigation, prolonged or additional monitoring, or remediation work. In that event, the parties have agreed that NAC shall be entitled to use some or all of the remaining credit amount of \$20,705.78 for expenditures for such additional investigation, prolonged or additional monitoring, or remediation work.

Accordingly, the parties agree to the following with respect to the remaining credit amount of \$20,705.78:

(1) On or before June 24, 1996, NAC shall deliver to the District Attorneys' Office a check in the amount of \$20,705.78, made payable to "Alameda County Hazardous Materials Training and Resource Trust Account." This check shall then be deposited forthwith in a sub-account of the Alameda County Hazardous Materials Training and Resource Trust Account, which shall be designated as the "NAC Oakland Airport Remediation Sub-Account" ("Sub-Account").

(2) In the event that, on or before December 31, 1998, NAC is required to incur and pay expenses, not already provided for in the Envirometrix Proposal, dated March 1, 1996, and attached as exhibit 13 to Exhibit A hereto, in connection with work performed to comply with Stipulation Sections (5)(C) or (5)(D), NAC shall be entitled to reimbursement of such expenditures from the Sub-Account up to the amount of the funds remaining in the Sub-Account at the time reimbursement is sought according to the procedures set forth below.

(3) To obtain reimbursement from the Sub-Account, NAC shall submit to the Alameda County District Attorneys' Office (Attention: Gilbert Jensen, or such other person as Mr. Jensen may designate) a description of the work performed and copies of all related invoices paid by NAC for which reimbursement from the Sub-Account is sought.

(4) Within thirty (30) days of NAC's submission of a request for reimbursement, the District Attorneys' Office shall: (1) deliver to NAC a check, drawn on the Sub-Account, for the amount sought or for such portion of that amount as the County does not dispute (not to exceed the balance

Gilbert A. Jensen, Esq.  
June 10, 1996  
Page 4

remaining in the Sub-Account), and/or (2) in the event that the County disputes all or any portion of the amount sought, deliver to NAC a statement, in writing, setting forth the specific grounds upon which the County disputes that such amount should be paid.

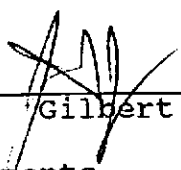
(5) In the event of any dispute, following the County's submission of its detailed statement and pursuant to Sections (5)(I) and (7) of the Stipulation and Consent Order thereon, either party may submit the matter to the Court by noticed motion for determination of the proper amount to be paid from the Sub-Account, if any. Any such motions shall be noticed for hearing no later than November 30, 1998.


(6) If, at any time on or before December 31, 1998, as a result of reimbursements paid to NAC, the balance of the Sub-Account shall decrease to zero, the Sub-Account shall be closed, and the provisions of Section (5)(I) of the Stipulation shall be deemed fulfilled. In any event, on January 1, 1999, or the first business day thereafter, any and all funds remaining in the Sub-Account shall be paid over to the Treasurer of Alameda County, the Sub-Account shall be closed, and the provisions of Section (5)(I) of the Stipulation shall be deemed fulfilled.

By their signatures below, the undersigned, on behalf of the respective parties, agree to the foregoing accounting and to the terms for handling and disbursement of the remaining credit amount.

JOHN J. MEEHAN  
GILBERT A. JENSEN  
OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF ALAMEDA

WILLIAM D. CONNELL  
GIBSON, DUNN & CRUTCHER LLP

By:  \_\_\_\_\_  
Gilbert A. Jensen

By:  \_\_\_\_\_  
William D. Connell

Attachments

cc: Scott O. Seery, CHMM (with attachments)  
National Airmotive Corporation (with attachments)



ISO 9001 Registered Company

Department of Environmental Health  
1131 Harbor Bay Parkway  
Alameda, CA 94502-6577  
Attn.: Scott Seery, Hazardous Materials Specialist

10/14/98

Dear Mr. Seery,

On October 1, 1998, during the federally mandated Underground Storage Tank (UST) upgrade at the National Airmotive Corp. Engine Testing Facility, a petroleum based substance was discovered on the surface of ground water by the Foss Environmental and Infrastructure crew led by Mr. Bill Bassett. The substance was tentatively identified as "oil". It was seeping into a portion of the trench (West end) where the old fuel line had been removed and the new system was to be installed. NAC's management was notified and Woody Ano, Facilities/Environmental Manager, and I responded. Subsequently, calls were placed in the following sequence:

1. Mr. Leroy Griffin Oakland Fire Department
2. Mr. Dale Klettke Port of Oakland
3. Mr. Doug Herman Port of Oakland
4. Mr. Scott Seery Alameda County Health Dept.

After reviewing the situation with all parties the following course of action was agreed upon:

- The original permitted scope of work, including fuel line replacement and upgrade to tank being performed by Foss Environmental, would continue and trench would be closed.
- A recovery sump and associated piping has been installed at the West end of the trench.
- A passive skimmer will be used to separate the water from the substance and the substance would be collected for analysis.
- Analysis of recovered substance will be done to determine source.
- Samples of affected soils from the trench have been submitted for analysis.

These actions are being executed and follow-up communications will be disseminated to all parties on an on-going basis as a means of updating as the project proceeds. Please advise us if your agency recommends any additional immediate actions.

Finally, it is our belief that this event should be included in the existing Local Oversight Program (LOP) case and continued under that account. If needed we will make necessary deposits into the account to assure funds are available.

For additional information or if you have questions, please contact Woody Ano or the undersigned at (510)613-1000 or write to: National Airmotive Corp., 7200 Earhart St., Oakland, Ca 94621.

Sincerely yours,

Lorne Dyke  
Vice-President, Remanufacturing

cc: Leroy Griffin, Oakland Fire Department  
Doug Herman, Port of Oakland  
Dale Klettke, Port of Oakland  
Michael Visconte, Port of Oakland

WA/LD:jm



*Always Ready*

October 27, 1998

Mr. Woody Ano  
Facility Manager  
National Airmotive Corporation  
7200 Earhart Road  
Oakland, CA 94621

**Re: Change Order No. 1: Removal of Additional Underground Piping  
National Airmotive Corporation Test Facility, Oakland, California**

Dear Mr. Ano:

This letter presents a summary of the scope of work and a breakdown of the estimated total charges for Change Order No. 1 to the original contract between Foss Environmental Services Company (FES) and National Airmotive Corporation (NAC) for tank upgrade work at the NAC Test Facility.

The labor hours and expenses presented on the attached table include time and material charges for our work to date plus our estimate of the charges yet to be incurred through our completion of this additional scope of work. The actual charges to be invoiced to NAC will depend on actual hours worked and actual expenses incurred.

### Scope of Work

The scope of work of Change Order No. 1 includes removal/closure of two additional sections of underground fuel piping at the site. One piping run (hereinafter referred to as Piping Section 1) runs approximately 100 feet from the fenced enclosure to the area near Cell 2; this section of piping is to be removed. The other piping run (hereinafter referred to as Piping Section 2) runs approximately 15 feet from a point approximately five feet west of Cell 3 to the inside of Cell 3. Most of this piping run lies beneath the Cell 3 building; therefore, this piping run will be closed in place by filling it with a cement grout mixture.

The following list includes tasks that have been or will be performed by FES within the scope of work of this change order:

#### Prior to Site Work:

- Revision of Oakland Fire Department tank upgrade permit to include piping removal/closure

#### Piping Section 1:

- Sawcutting of concrete surfaces above piping
- Removal of concrete
- Removal of soil above piping
- Removal of piping
- Collection and laboratory analysis of soil samples from beneath the piping
- Loading of excavated soil into waste bins (based on laboratory analytical results)
- Storage, transportation, and disposal of the contaminated soil
- Backfilling the excavated area with imported clean fill
- Resurfacing the excavated area with concrete

1605 Ferry Point ■ Alameda, CA 94501

Phone 510.749.1390 ■ 24-HR Hotline 1 800 FE SPILL ■ Fax 510.749.1391



Piping Section 2:

- Coring of an access hole (for soil sample collection) through the concrete surface adjacent to the piping
- Collection and laboratory analysis of a soil sample from beneath the piping
- Filling the pipe with a concrete grout mixture
- Resurfacing the excavated area with concrete

After Site Work:

- Preparation of a pipe removal/closure report including a description of site activities and copies of laboratory analytical results

Breakdown of Charges

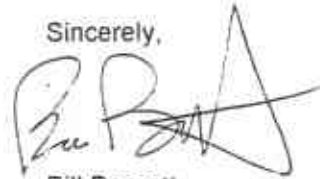
The attached table is a summary of the estimated total charges to be invoiced to NAC by FES under Change Order No. 1.

Acceptance and Closure

Please sign on the space provided below to acknowledge receipt and acceptance of this change order.

If you have any questions regarding this change order, please call me at (510) 749-4131.

Sincerely,



Bill Bassett  
Project Manager

ACCEPTANCE:

SIGNED: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

**Foss Environmental Services**  
**Estimated Charges: Change Order**

Client: National Airmotive  
 Date: October 22, 1998

Site Name: Engine Test Facility  
 Address: 7200 Earhart Road  
 City, State: Oakland, CA 94621

Scope of Work: Removal/closure of two additional sections of underground fuel piping

Explanation of Rates: The labor rates shown are FES standard labor rates from our 1998 Price List. The rates for FES-owned materials and equipment are FES standard materials and equipment rates from our 1998 Price List. The rates for purchased or rented materials or equipment are cost plus 18%.

The scope of work of this change order is described in the letter by FES dated October 22, 1998.

						Quantity	Units		Rate	Charge
<b>Labor</b>										
Project Manager						2.0	hrs	Ⓜ	\$100.00 per hour	\$200.00
Field Supervisor						12.0	hrs	Ⓜ	\$65.00 per hour	\$780.00
Equipment Operator						20.0	hrs	Ⓜ	\$55.00 per hour	\$1,100.00
Senior Technician						20.0	hrs	Ⓜ	\$48.00 per hour	\$960.00
Circular						2.0	hrs	Ⓜ	\$26.00 per hour	\$52.00
<b>Labor subtotal</b>										<b>\$3,092.00</b>

<b>Equipment</b>										
Bobcat loader						1.0	days	Ⓜ	\$474.95 per day	\$474.95
Pick up truck						1.0	days	Ⓜ	\$100.00 per day	\$100.00
Cell phone						1.0	days	Ⓜ	\$50.00 per day	\$50.00
<b>Equipment subtotal</b>										<b>\$624.95</b>

<b>Materials</b>										
Pea gravel (delivered)						2.0	tons	Ⓜ	\$28.00 per ton	\$56.00
Concrete						2.0	c y	Ⓜ	\$90.00 each	\$180.00
						0.0	each	Ⓜ	\$0.00 each	\$0.00
						0.0	days	Ⓜ	\$0.00 per day	\$0.00
						0.0	days	Ⓜ	\$0.00 per day	\$0.00
<b>Materials subtotal</b>										<b>\$236.00</b>

<b>Subcontractors</b>										
Sawcut concrete						170.0	ft.	Ⓜ	\$1.50 each	\$255.00
Concrete core						1.0	each	Ⓜ	\$50.00 each	\$50.00
							each	Ⓜ	\$0.00 each	\$0.00
Soil disposal						2.0	tons	Ⓜ	\$23.60 per ton	\$47.20
<b>Subcontractors subtotal</b>										<b>\$352.20</b>

<b>Laboratory</b>										
TPH-Jet fuel						7.0	each	Ⓜ	\$59.00 each	\$413.00
<b>Laboratory subtotal</b>										<b>\$413.00</b>

<b>SUMMARY</b>	
Labor subtotal	\$3,092.00
Equipment subtotal	\$624.95
Materials subtotal	\$236.00
Subcontractors subtotal	\$352.20
Laboratory subtotal	\$413.00
<b>Estimated Total Charges</b>	<b>\$4,718.15</b>



*Alvin Brady*

October 27, 1998

Mr. Woody Ano  
Facility Manager  
National Airmotive Corporation  
7200 Earhart Road  
Oakland, CA 94621

**Re: Change Order No. 2: Contaminated Soil  
National Airmotive Corporation Test Facility, Oakland, California**

Dear Mr. Ano:

This letter presents a summary of the scope of work and a breakdown of the estimated total charges for Change Order No. 2 to the original contract between Foss Environmental Services Company (FES) and National Airmotive Corporation (NAC) for tank upgrade work at the NAC Test Facility.

The labor hours and expenses presented on the attached table include time and material charges for our work to date plus our estimate of the charges yet to be incurred through our completion of this additional scope of work. The actual charges to be invoiced to NAC will depend on actual hours worked and actual expenses incurred.

#### Scope of Work

The scope of work of Change Order No. 2 includes out-of-scope work performed by FES due to the presence of contaminated soil and ground water encountered during performance of the original scope of work. The following list includes tasks that have been or will be performed by FES within the scope of work of this change order plus summaries of extra costs associated with each task:

#### Task #1: Increased costs to perform tasks that were included in the original work scope

- Expenses: Import of clean backfill material (pea gravel) to replace exported contaminated soil and additional use of a backhoe to handle the pea gravel.
- Labor: Ordering and coordinating delivery of pea gravel; on-site handling of pea gravel (movement of material from stockpile to trenches and cleanup of stockpile area); work interruptions while the situation was assessed; NAC and agency representatives were notified and briefed, and the revised work plan was determined; work interruptions while oil/water was pumped from the trench; and work inefficiencies caused by necessary rescheduling of tasks.

#### Task #2: Client and regulatory interaction

- Labor: Meetings and telephone conversations with client and agency representatives; research into oil recovery devices and soil disposal options; and preparation of documents including this change order and the expanded final report.

#### Task #3: On-site handling of contaminated soil from pipe trenches

- Expenses: use of a backhoe required for moving of soil around the site (to place into bins).
- Labor: loading of soil into waste bins and decontamination of tools and equipment.

1605 Ferry Point ■ Alameda, CA 94501

Phone 510.749.1390 ■ 24-HR Hotline 1 800 FE SPILL ■ Fax 510.749.1391

Task #4: Purchase and installation of recovery well and passive oil recovery device

- Expenses: Well materials (casing and well box); passive recovery device; truck to pick up well materials.
- Labor: Ordering, purchasing, and picking up well materials and passive recovery device; installation of well and passive recovery device.

Task #5: Sample collection and analysis; and transportation, storage, and disposal of contaminated soil

- Expenses: Laboratory analyses (based on four soil samples from the trench analyzed for TPH as jet fuel; one oil/water sample analyzed for fuel fingerprint; and one composite stockpile sample analyzed for TPH as jet fuel, BTEX, and toxicity by fish bioassay); bin dropoff, rental, pickup, and transportation to/offloading at disposal facility (based on rental of two bins for 20 days each and disposal at Chem Waste Altamont landfill); and soil disposal (based on disposal of 25 tons of Class II non-hazardous waste at Chem Waste Altamont landfill at the standard gate rate).
- Labor: Collection and handling of samples; and ordering and coordination of laboratory services, bin rental, and soil disposal.

Breakdown of Charges

The attached table is a summary of the estimated total charges to be invoiced to NAC by FES under Change Order No. 2.

Acceptance and Closure

Please sign on the space provided below to acknowledge receipt and acceptance of this change order.

If you have any questions regarding this change order, please call me at (510) 749-4131.

Sincerely,



Bill Bassett  
Project Manager

ACCEPTANCE:

SIGNED: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

**Foss Environmental Services**  
**Estimated Charges: Change Order No. 2**

Client: National Airmotive  
 Date: October 20, 1998

Site Name: Engine Test Facility  
 Address: 7200 Earhart Road  
 City, State: Oakland, CA 94621

Scope of Work: Additional tasks related to presence of contaminated soil and ground water

Explanation of Rates: The labor rates shown are FES standard labor rates from our 1998 Price List. The rates for FES-owned materials and equipment are FES standard materials and equipment rates from our 1998 Price List. The rates for purchased or rented materials or equipment are cost plus 18%.

Task Definitions: The scopes of work of the listed tasks are described in the letter by FES dated October 20, 1998.

	Task #1	Task #2	Task #3	Task #4	Task #5	Quantity	Units		Rate	Charge
<b>Labor</b>										
Project Manager	2	8		1	1	12.0	hrs	Ⓢ	\$100.00 per hour	\$1,200.00
Field Supervisor	4		2	1	4	14.0	hrs	Ⓢ	\$65.00 per hour	\$910.00
Equipment Operator	4		2	2		8.0	hrs	Ⓢ	\$55.00 per hour	\$440.00
Senior Technician	4		2	2	1	9.0	hrs	Ⓢ	\$48.00 per hour	\$432.00
Clerical	1	2		1	1	5.0	hrs	Ⓢ	\$26.00 per hour	\$130.00
<b>Labor subtotal</b>										<b>\$3,112.00</b>

<b>Equipment</b>										
Backhoe	2		2			4.0	days	Ⓢ	\$375.00 per day	\$1,500.00
Backhoe mob/demob	1		1			2.0	each	Ⓢ	\$200.00 per mob	\$400.00
Pick up truck	1					3.0	days	Ⓢ	\$40.00 per day	\$120.00
<b>Equipment subtotal</b>										<b>\$2,020.00</b>

<b>Materials</b>										
Pea gravel (geljyered)	25					25.0	tons	Ⓢ	\$28.00 per ton	\$700.00
Well casing and box				1		1.0	each	Ⓢ	\$177.00 each	\$177.00
Passive recovery device				1		1.0	each	Ⓢ	\$450.00 each	\$450.00
PPE	4		4	2		10.0	days	Ⓢ	\$25.00 per day	\$250.00
Cell phones	1	1				2.0	days	Ⓢ	\$50.00 per day	\$100.00
<b>Materials subtotal</b>										<b>\$1,677.00</b>

<b>Subcontractors</b>										
Bin dropoff					2	2.0	each	Ⓢ	\$306.80 each	\$613.60
Bin rental					40	40.0	days	Ⓢ	\$5.90 per day	\$236.00
Bin pickup and unloading					2	2.0	each	Ⓢ	\$324.50 each	\$649.00
Soil disposal					25	25.0	tons	Ⓢ	\$23.60 per ton	\$590.00
<b>Subcontractors subtotal</b>										<b>\$2,088.60</b>

<b>Laboratory</b>										
TPH-Jet fuel					5	5.0	each	Ⓢ	\$59.00 each	\$295.00
BTEX					1	1.0	each	Ⓢ	\$59.00 each	\$59.00
Fuel fingerprint					1	1.0	each	Ⓢ	\$59.00 each	\$59.00
Fish bioassay					1	1.0	each	Ⓢ	\$260.00 each	\$260.00
<b>Laboratory subtotal</b>										<b>\$673.00</b>

<b>SUMMARY</b>	
Labor subtotal	\$3,112.00
Equipment subtotal	\$2,020.00
Materials subtotal	\$1,677.00
Subcontractors subtotal	\$2,088.60
Laboratory subtotal	\$673.00
<b>Estimated Total Charges</b>	<b>\$9,570.60</b>