

STATE WATER RESOURCES CONTROL BOARD

PAUL R. BONDERSON BUILDING

901 P STREET

P. O. BOX 100

SACRAMENTO, CALIFORNIA 95812-0100



(916) 657-0406

FAX: 653-0428

DEC 23 1993

Jeffery J. Scharff
 Scharff & Greben
 Wells Fargo Center
 400 Capitol Mall, Suite 1100
 Sacramento, CA 95814

Dear Scharff:

IN THE MATTER OF THE PETITION OF STEVEN SONG DBA MIKE'S ONE HOUR CLEANERS FOR REVIEW OF SITE CLEANUP ORDER NO. 93-139 OF THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION. OUR FILE NO. A-874.

You filed the above petition on November 19, 1993. In subsequent correspondence, you asked that the State Water Board hold the matter abeyance. We are happy to do so in hopes that the matter may be worked out between you and the Regional Water Board. However, we will hold the matter abeyance for no more than two years from the date the petition was filed. By that time, no resolution of the matter has taken place or the matter has not become the subject of an active dispute, the petition will be dismissed without prejudice.

93 DEC 27 PM 3:04
 HAZ MAT
 FILED

Please note the significance of the phrase "without prejudice". If, after the petition is dismissed, an actual dispute arises between you and the Regional Water Board over the interpretation or enforcement of the underlying order, you may file a new petition with the State Water Board within 30 days of the date of the dispute. Any issues relevant to that dispute, including but not limited to those raised in this petition, will be considered at that time in the same manner as if the petition were filed for the first time.

If you have any questions, please feel free to call Ted Cobb, Senior Staff Counsel, at (916) 657-0406.

Sincerely,

Craig M. Wilson
 Assistant Chief Counsel

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

cc: Interested Persons Mailing List

SCHARFF & GREBENALCO
ATTORNEYS AT LAW HAZMAT
WELLS FARGO CENTER
400 CAPITOL MALL, SUITE 2000
SACRAMENTO, CALIFORNIA 95814

JAN ADAM GREBEN
JEFFORY J. SCHARFF

TELEPHONE
(916) 558-6192
FACSIMILE
(916) 447-2414

93-DEC 17 PM 2:32

December 16, 1993

VIA FACSIMILE

916-653-0428

Mr. Philip G. Wyels, Esq., Staff Counsel
State Water Resources Control Board
Paul R. Bonderson Building
901 P Street
Sacramento, CA 95812-0100

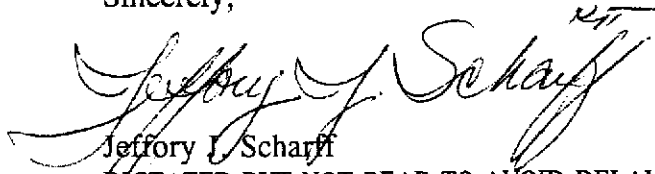
Re: Your File No: A-874
San Francisco Bay Regional Water Quality Control
Site Cleanup Order No. 93-139

Dear Mr. Wyels:

This will confirm our telephone conversation of December 15, 1993, regarding my request for a stay on any further proceedings in relation to the above-referenced Petition For Review. As we discussed and agreed, the State Board will hold in abeyance any further requirements for submission of requested information as to the dischargers Petition For Review.

Thank you for your assistance and courtesy in this matter.

Sincerely,


Jeffory J. Scharff
DICTATED BUT NOT READ TO AVOID DELAY

JJS:kit

cc: Interested persons (see attached list)

clients\song\wyels.lt2

JAN ADAM GREBEN
JEFFORY J. SCHARFF

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WELLS FARGO CENTER
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93 DEC -6 PM 1:57

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December 1, 1993

VIA HAND DELIVERY

Mr. Craig Wilson, Esq.
Assistant General Counsel
State Water Resources Control Board
901 P Street
Sacramento, CA 95801

Re: Regional Water Quality Control Board
Bay Area Region Site Cleanup Order No. 93-139

Dear Mr. Wilson:

This will confirm this morning's conversation regarding my request that Steve Song's Petition For Review in the above-referenced matter be held in abeyance. It is my understanding that with this request, the Petition For Review may be held in abeyance for a period of up to two years.

Thank you for your courtesies and assistance in this matter.

Sincerely,



Jeffory J. Scharff

JJS:kit

cc: All counsel
Interested parties
(see attached list)

clients\song\wilson.r2

INTERESTED PERSONS LIST
Grubb & Ellis v. Catellus

Ms. Annina Antonio
California EPA
DTSC/Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710-2737

Mr. Jerry Killingstad
Alameda County Flood Control District, Zone 7
5997 Parkside Drive
Pleasanton, CA 94588

Ms. Carol Browner, Administrator
United States EPA
Mail Code A-100
401 M Street, S.W.
Washington, D.C. 20460

Ms. Eva Chu
Alameda County Department of Environmental Health
80 Swan Way, Suite 200
Oakland, CA 94621

City of Livermore
Public Works Office, City Hall
1052 S. Livermore Avenue
Livermore, CA 94550

California Water Service
P.O. Box 1150
San Jose, CA 95108

Bay Area Air Quality Management Dist.
939 Ellis Street
San Francisco, CA 94109

GRUBB & ELLIS v. CATELLUS DEVELOPMENT CORPORATION, et al.
United States District Court
Northern District of California
Case No. C 93 0383 SBA

**Attorney for Grubb & Ellis Realty Income Trust,
Liquidating Trust**
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Oakland, CA 94612

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Peter C. Turner, Esq.
Derrick K. Watson
Landels, Ripley & Diamond
350 Steuart Street
San Francisco, CA 94105-150

Attorney for Grubb & Ellis Realty Advisors, Inc.
Dennis Shaunagher, Esq.
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595 Market Street, Sixteenth Floor
San Francisco, CA 94105

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Paul's Sparkle Cleaners**
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235 Montgomery Street
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Attorney for Multimatic, Inc.
Mark Shea, Esq.
Popelka Law Offices
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individually and dba Mike's One Hour Cleaners**
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P.O. Box 119

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Rodney Burrows

Transworld Consortium, Inc.

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ALCO
HAZMAT

93 NOV 22 PM 2:46

November 18, 1993

Mr. Steve Ritchie, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
2101 Webster Street, Suite 500
Oakland, CA 95612

Re: Site Cleanup Order for LASC and MOSC

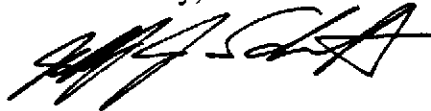
Dear Mr. Ritchie:

Pursuant to the provisions of Title 23 of the California Code of Regulations §2050(a)(9), enclosed please find a copy of Petition For Review which has been sent to the State Water Resources Control Board pertaining to the Site Cleanup Order which was adopted on October 20, 1993, for the Livermore Arcade Shopping Center ("LASC") and Miller's Outpost Shopping Center ("MOSC"), located in Livermore, California.

By this correspondence, the aforementioned provision is hereby satisfied, and the matter is requested for hearing for the purpose of presenting additional evidence to the State Board in support of the Petitioner's request for review.

Thank you for your consideration in this matter.

Sincerely,



Jeffory J. Scharff

JJS:kit

cc: Steve Song
Craig Wilson, SWRCB
Interested parties (see attached list)

clients\song\ritchie.lk2

INTERESTED PERSONS LIST
Grubb & Ellis v. Catellus

Ms. Annina Antonio
California EPA
DTSC/Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710-2737

Mr. Jerry Killingstad
Alameda County Flood Control District, Zone 7
5997 Parkside Drive
Pleasanton, CA 94588

Ms. Carol Browner, Administrator
United States EPA
Mail Code A-100
401 M Street, S.W.
Washington, D.C. 20460

Ms. Eva Chu
Alameda County Department of Environmental Health
80 Swan Way, Suite 200
Oakland, CA 94621

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Public Works Office, City Hall
1052 S. Livermore Avenue
Livermore, CA 94550

California Water Service
P.O. Box 1150
San Jose, CA 95108

Bay Area Air Quality Management Dist.
939 Ellis Street
San Francisco, CA 94109

GRUBB & ELLIS v. CATELLUS DEVELOPMENT CORPORATION, et al.
United States District Court
Northern District of California
Case No. C 93 0383 SBA

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93 NOV 22 PM 2:46
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November 18, 1993

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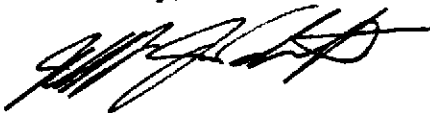
Re: Site Cleanup Order No. 93-139 for Livermore Arcade Shopping Center ("LASC") and
Miller's Outpost Shopping Center ("MOSC"), Livermore, California

Dear Mr. Ritchie:

I am writing to request the preparation of the Regional Board record as it pertains to the above-referenced matter. My client has submitted a Petition For Review to the State Board.

Thank you for your assistance in this matter.

Sincerely,



Jeffory J. Scharff

JJS:kit

cc: Craig Wilson, SWRCB
Interested parties (see attached list)

clients\song\ritchie.ltr

INTERESTED PERSONS LIST
Grubb & Ellis v. Catellus

Ms. Annina Antonio
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700 Heinz Avenue, Suite 200
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Bay Area Air Quality Management Dist.
939 Ellis Street
San Francisco, CA 94109

GRUBB & ELLIS v. CATELLUS DEVELOPMENT CORPORATION, et al.
United States District Court
Northern District of California
Case No. C 93 0383 SBA

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

ALCO
HAZMAT

93 NOV 15 PM 3:27



November 10, 1993

File No. 2223.09

Mr. James Ellis
Grubb and Ellis Realty Income Trust
351 California, 11th Floor
San Francisco, CA 94104

SUBJECT: Pollution from Off-site Sources at Livermore Arcade

Dear Mr. Ellis:

Staff met with representatives of Safeway, Inc. on November 8, 1993 to discuss an issue of importance to you relative to the Livermore Arcade. This issue was previously discussed in a letter from Lester Feldman of my staff dated August 31, 1993. In this letter staff discussed the Board's posture on possible gasoline pollution migration onto the Livermore Arcade Site from an upgradient off-site source. My understanding is that this threatened pollution has not been verified and that Alameda County Environmental Health is overseeing site investigations for the reported leaking underground storage tanks in the area.

This letter is written to reiterate the position of the staff of the Regional Board and the practice of the Board on the issue of off-site upgradient migration onto another site. It has never been a practice of this Regional Board to hold affected parties financially liable for cleanup of pollution originating from adjacent properties. The gasoline contamination affecting or threatening to affect the Livermore Arcade Site has been determined to be from an off-site source(s). Therefore, Grubb and Ellis Realty Income Trust, as the property owner, shall not be held responsible for the cleanup of the gasoline contamination, provided cooperation with the responsible party(ies) towards investigation and cleanup of the problem occurs.

Please contact Lester Feldman of my staff if there are further questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "S. Ritchie", is written over a circular stamp or seal.

Steven R. Ritchie,
Executive Officer

cc: Eva Chu, ACDEH

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

2101 WEBSTER STREET, SUITE 500

OAKLAND, CA 94612

(510) 286-1255



October 29, 1993
File No.: 2223.09

Livermore Arcade Shopping Center and Miller's Outpost Shopping
Center Interested Parties (see attached lists):

Subject: Board Order No. 93-139

for

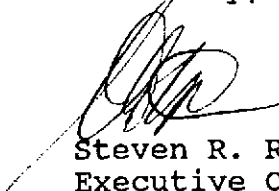
Livermore Arcade Shopping Center and
Miller's Outpost Shopping Center, Livermore,
California.

Ladies and Gentlemen:

Enclosed herewith is one certified copy of Board Order No. 93-139
adopted by the Regional Water Quality Control Board, San Francisco
Bay Region, on October 20, 1993.

Please contact Sumadhu Arigala at (510) 286-0434 or Gary Grimm at
(510) 286-0889 if you have any questions.

Sincerely,



Steven R. Ritchie,
Executive Officer.

Attachments: List of Dischargers and Interested Parties

93 NOV -3 PM 4:54

Livermore Arcade Shopping Center

Grubb & Ellis Realty Income Trust
Attn: Mr. James Ellis
351 California Street, 11 th Floor
San Francisco, CA 94104.

Stark Investment Company
Attn: Congressman Pete Stark
22320 Foothill Blvd., Suite 500
Hayward, CA 94541.

Cattellus Development Corporation
Attn: Ms. Kimberly Brandt, Env. Spec.
201 Mission Street, 29 th Floor
San Francisco, CA 94105.

Mr. Steven Song
Mike's One Hour Cleaners
1430 First Street
Livermore, CA 94550

Perry Neely and Michael Neely
2426 149 th Ct, SE
Mill Creek, WA 98012.

Miller's Outpost Shopping Center

Miller's Outpost Shopping Center Associates
C/O IMA Financial Corporation
Attn: Mr. Lawrence Holthaus
1700 South El Camino Real, Suite 404
San Mateo, CA 94402.

Kathleen, John, Pamela McCorduck & Sandra McCorduck Marona
C/O Mr. Bruce Paltenghi
Gordon, DeFraga, Watrous & Pezzaglia
P. O. Box 630
Martinez, CA 94553.

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Paul's Sparkle Cleaners
1332 Railroad Avenue
Livermore, CA 94550

Stark Investment Company and Fortney H. Stark
C/O Kent Robison, Esq. & Brian Sandoval, Esq.
Robison, Belaustegvi, Robb & Sharp
71 Washington Street
Reno, NV 89503.

DTSC/ Region 2
Attn: Ms. Annina Antonio
700 Heinz Avenue, Suite 200
Berkeley, CA 94710-2737.

Mr. Thomas Kalinowski (Catellus Development Corp.)
Erler & Kalinowski, Inc.
1730 So. Amphlett Blvd., Suite 320
San Mateo, CA 94402.

Mr. Richard Barron
Kitch, Saurbier, Drutchas, Wagner & Kenney, P. C.
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Detroit, Michigan 48226-3412.

Ms. Carol Browner, Administrator
United States Environmental Protection Agency
Mail Code A-100
401 M Street, S. W.
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Alameda County Department of Environmental Health
Attn: Ms. Eva Chu
80 Swan Way, Suite 200
Oakland, CA 94621.

Zone 7, Alameda County Flood Control District
Attn: Mr. Jerry Killingstad
5997 Parkside Drive
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City of Livermore
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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

2101 WEBSTER STREET, SUITE 500

OAKLAND, CA 94612

(510) 286-1255



93 SEP -1 AM 11:03

August 31, 1993
File No.: 2223.09

Mr. James Ellis
Grubb and Ellis Realty Income Trust
351 California, 11 th Floor
San Francisco, CA 94104

Subject: Gasoline Contamination at Livermore Arcade Shopping Center
(LASC) Site.

Dear Mr. Ellis:

This letter notifies all concerned parties, the San Francisco Bay Regional Board's stand on the subject issue. It has never been a practice of this Regional Board to hold affected parties financially liable for cleanup of pollution originating from adjacent properties. The gasoline contamination at the LASC property has been determined to be from an off-site source(s). Therefore, Grubb and Ellis Realty Income Trust (GERIT), as the property owner, shall not be held responsible for the cleanup of the gasoline contamination, if GERIT cooperates in providing access to the LASC property for investigation and cleanup purposes.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester Feldman", is written over a faint, illegible typed name.

Lester Feldman,
Section Leader,
Toxics Cleanup Division.

CC: Eva Chu, ACDEH.

LAW OFFICES OF
ALAN C. WALTNER
1786 FRANKLIN STREET, EIGHTH FLOOR
OAKLAND, CALIFORNIA 94612

TELEPHONE
(510) 465-4494

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(510) 465-6248

*understand that we do not need separate 30-day
responses to requests for copies to be made with similar
search*

April 16, 1993

Eva Chu
Hazardous Materials Specialist
Alameda County Department of Environmental Health
Hazardous Materials Division
80 Swan Way, Room 200
Oakland, CA 94621

Re: Public Records Act Request

Dear Ms. Chu:

As you may know, I represent the Grubb & Ellis Realty Income Trust, Liquidating Trust, in connection with a PCE contamination problem at the Livermore Arcade Shopping Center in Livermore California. As our consultants have discussed with you, hydrocarbon releases currently being investigated by your department are affecting portions of the area that is currently undergoing remediation for PCE.

I understand that you are investigating and have requested information from the owners/ operators of possible leaking underground storage tanks at the following locations in Livermore:

1. 1619 1st Street, Beacon Station
2. 1679 1st Street, ABC Smog and Tune
3. 1737 1st Street, Tri Valley Tune-up
4. 1771 1st Street, UNOCAL
5. 1682 1st Street, Goodyear

I would appreciate receiving copies from you of any reports submitted by these owners/ operators in response to your requests, as well as any documents reflecting your department's investigation of this problem. In addition, if you are investigating other locations in this vicinity, I would appreciate receiving any reports relating to those locations as well.

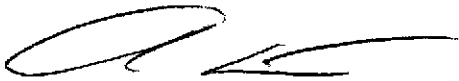
The request is being made under the California Public Records Act, Government Code Section 6250 et. seq. Since we may need to use this information in litigation against these parties,

Eva Chu
April 16, 1993
Page 2

and in order to avoid future inconvenience in authenticating these documents, please provide true and correct copies of the records in the files of your agency. We would appreciate either a certification in your cover letter to this effect or, if your agency has a stamp certifying copies as true and correct, that you so stamp the cover page of each document.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan Waltner', with a stylized flourish at the end.

Alan Waltner

LAW OFFICES OF
ALAN C. WALTNER
1736 FRANKLIN STREET, EIGHTH FLOOR
OAKLAND, CALIFORNIA 94612

TELEPHONE
(510) 465-4494

FACSIMILE
(510) 465-6248

March 31, 1993

Livermore Arcade Interested Parties:
(See attached list)

Re: Livermore Arcade Shopping Center Groundwater Cleanup -
Remedial Plan/Preliminary Remedial Design Document

Ladies and Gentlemen:

Enclosed for your information and comment is the *Remedial Plan/Preliminary Remedial Design for Livermore Arcade Site, Livermore, California* ("Remedial Plan"). The Remedial Plan is being provided to all persons and organizations who have expressed an interest in this site, are potentially responsible for cleanup costs, or have regulatory responsibilities or interests in the cleanup activities.

The full Remedial Plan includes as appendices the previously released *Remedial Investigation Report* (April, 1992) and *Feasibility Study/ Draft Remedial Action Plan* (July, 1992). The enclosed copy omits those appendices due to their length and the fact that most recipients of this letter previously have been provided copies of those documents. If you would like to receive a copy of either of these appendices, we will provide one promptly upon request.

Any comments should be delivered no later than May 1, 1993, to Jim Ellis, Grubb & Ellis Realty Income Trust, Liquidating Trust, 351 California Street, 11th Floor, San Francisco, CA 94104. It is anticipated that Grubb & Ellis will select the remedial action for the site, after consultation with the Regional Water Quality Control Board, in a record of decision to be issued shortly after the close of this comment period.

Sincerely,



Alan Waltner

Enclosure

Distribution: See attached list

Livermore Arcade Cleanup Interested Parties
March 31, 1993
Page 2

Addressees:

Former operators of Mike's Cleaners, their insurers and attorneys:

Perry, Michael & Gary Neely
2426 149th Ct, SE
Mill Creek, WA 98012

Christine K. Noma
Wendel, Rosen, Black, Dean & Levitan
Twentieth Floor Clorox Building
1221 Broadway
Oakland, CA 94612

Robert Koscielniak
The Kemper Group
1 Kemper Drive
Long Grove, Ill. 60049

Linda Tatka
Fireman's Fund
Environmental Claims Facility
1330 B Redwood Way
Petaluma, CA 94954

Owner during 1982, and its attorneys:

Catellus Development Corporation
Attn: Mr. Ric Notini
201 Mission Street, 30th Floor
San Francisco, CA 94105

Maureen Sullivan, Esq.
Catellus Development Corporation
201 Mission Street, 30th Fl.
San Francisco, CA 94105

Peter Turner
Landels, Ripley & Diamond
350 Stuart Street
San Francisco, CA 94105-1250

Owner from 1982 through 1987, and its attorneys:

Stark Investment Company
Attn: Congressman Pete Stark
22320 Foothill Blvd., Suite 500
Hayward, CA 94541

Livermore Arcade Cleanup Interested Parties
March 31, 1993
Page 3

Brian Sandoval
Robison, Belaustegvi, Robb & Sharp
71 Washington Street
Reno, NV 89503

Dry cleaning equipment manufacturer and supplier and their attorneys:

Multimatic Corporation
Attn: Harold Yamcek, General Counsel
162 Veterans Drive
Northvale, NJ 07647

Mark Shea, attorney for Multimatic
160 W. Santa Clara St, 13th Floor
San Jose, CA 95115

Western State Design
PO Box 57106
Hayward, CA 94545

Kenneth W. Pritikin, attorney for Western State Design, Inc.
Foley, McIntosh & Foley
3675 Mt. Diablo Blvd, Ste 250
Lafayette, CA 94549

Potential petroleum source:

Mr. Terry Fox (re: Beacon Oil Co)
Ultramar, Inc.
5225 West 3rd Street
Hanford, CA 93230

Current owners/ operators and their attorneys:

Steven Song
Mike's One Hour Cleaners
1430 First Street
Livermore, CA 94550

Mr. Chuck Hartz
Paul's Sparkle Cleaners
1332 Railroad Avenue
Livermore, CA 94550

Robert C. Goodman, attorney for Paul's Sparkle Cleaners
Feldman, Waldman & Kline
235 Montgomery St
San Francisco, CA 94104

Livermore Arcade Cleanup Interested Parties
March 31, 1993
Page 4

Mr. Kirk Bennett
IMA Financial Corporation (re: Miller's Outpost)
260 California Street, Suite 700
San Francisco, CA 94111

Gary C. Sheppard, attorney for IMA Financial Corporation
Broad, Schulz, Larson & Wineberg
One California Street, 14th Floor
San Francisco, CA 94111

Site investigator:

TransWorld Consortium, Inc.
123 Townsend Street, Suite 610
San Francisco, CA 94107

Eric R. Haas, attorney for Transworld Consortium
Larson & Burnham
P.O. Box 119
Oakland, CA 94604

Interested parties and oversight agencies:

City of Livermore
Public Works Office
City Hall
1052 S. Livermore Avenue
Livermore, CA 94550

California Water Service
P.O. Box 1150
San Jose, CA 95108

Carol Browner, Administrator
United States Environmental Protection Agency
Mail Code A-100
401 M Street, S.W.
Washington, D.C. 20460

William F. Soo Hoo, Director
Department of Toxic Substances Control
PO Box 806
Sacramento, CA 95812-0806

Lester Feldman
Regional Water Quality Control Board
1800 Harrison, Suite 700
Oakland, CA 94621

Livermore Arcade Cleanup Interested Parties
March 31, 1993
Page 5

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109

Eva Chu
Alameda County Health Department
Dept. of Environmental Health
80 Swan Way, Suite 200
Oakland, CA 94621

LAW OFFICES OF
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OAKLAND, CALIFORNIA 94612

TELEPHONE
(510) 465-4494

FACSIMILE
(510) 465-6248

May 1, 1992

Eva Chu
Alameda County Health Agency
Division of Hazardous Materials
80 Swan Way, Room 200
Oakland, CA 94621

Re: Livermore Arcade PCE Cleanup

Dear Ms. Chu:

Enclosed as requested by Lester Feldman at the Regional Water Quality Control Board is a copy of a recently issued report on the remedial investigation at the Livermore Arcade. While the remedial investigation largely focused on PCE contamination at the site, which is being overseen by the Regional Board, the investigation also identified an apparent petroleum leak at the nearby Beacon Oil Station.

If you have any questions about this report, please feel free to call me, or Karl Novak at H+GCL.

Sincerely,



Alan Waltner

Enclosure

92 FEB 21 11:59

February 20, 1992

Mr. Rico Duazo
California Regional Water Quality Control Board
2101 Webster Street, Suite 500
Oakland, California 94612

RE: Livermore Arcade Shopping Center - Subsurface Investigation

Dear Mr. Duazo:

We have received your letter dated January 30, 1992, approving our proposed work plan. In response to your requirement that the presence of PCE in the ground water will necessitate a ground water extraction and treatment system H+GCL is providing the following information.

H+GCL has completed the two (2) soil borings recommended in our work plan and discussed in our earlier meeting. H+GCL completed each boring as a monitoring well at both upgradient and downgradient locations.

H+GCL found that a clay aquitard, which acts as the bottom of the aquifer, is at approximately 70 feet below the surface, just below the completed depth of the deepest monitoring wells installed earlier at the Site. Ground water has been found at about 3 feet above the top of the aquitard at the upgradient location (Mike's Cleaners). The downgradient well yielded no water at all. Pump tests have not been possible because of insufficient ground-water.

A ground-water sample from the upgradient well nearest to the source of PCE contamination (MW17) found PCE at 49 parts per billion. This represents a concentration reduction of approximately 2000%. Higher PCE concentrations were found in the soil at depths corresponding to the earlier, higher ground-water level. The findings confirm that the soil retained the vast majority of the PCE contamination as was earlier predicted.

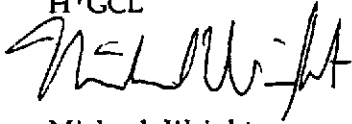
The extremely low volume of ground-water above the aquitard excludes ground-water extraction and treatment as an effective remediation alternative. We believe that a vapor extraction system using the existing wells, combined with natural degradation and aeration processes will remediate the soil contamination and prevent future recontamination of a restored ground-water table at the site. We request your acknowledgment that ground-water extraction and treatment are no longer necessary in light of these conditions.

February 20, 1992
Page Two

Please do not hesitate to contact me if you have any questions, or if I can be of further assistance.

Sincerely,

H+GCL



Michael Wright
Project Geologist

cc: John Hyjer, Grubb & Ellis
Larry Seto, Alameda County Dept. of Environmental Health
Alan Waltner, Attorney-at-Law

48016.08/Livermore Arcade #1/L-Add'l/Investigation

LAW OFFICES OF
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52 JUN 04 2:35
FACSIMILE
(510) 465-6248

VIA FEDERAL EXPRESS

January 31, 1992

Stark Investment Company
22300 Foothill Blvd., Suite 1031
Hayward, CA 94541
Attn: Mr. Chuck Kline

Catellus Development Corporation
201 Mission Street, 30th Floor
San Francisco, CA 94105
Attn: Mr. Ric Notini

Perry J. Neely
2426 149th Ct, SE
Mill Creek, WA 98012

Re: Livermore Arcade Shopping Center Groundwater Cleanup -
Notification of Responsibility for Cleanup Costs and
Demand

Gentlemen:

I have been retained by the Grubb & Ellis Realty Income Trust ("Grubb & Ellis") to represent Grubb & Ellis in negotiations and/or litigation to recover contaminated site cleanup costs presently being incurred at the Livermore Arcade Shopping Center ("Arcade"). Cleanup is necessary to address a plume of groundwater contaminated with tetrachloroethylene ("PCE") originating from Mike's One-Hour Dry Cleaners ("Mike's" or "Mike's Cleaners") in the Arcade. The plume currently is approaching 1000 feet in length, has been travelling at a rate of up to 100 feet per year, and is located in shallow groundwater some distance above a significant drinking water supply.

Site cleanup is anticipated to require expenditures of approximately \$602,500, not including the expense of any cost recovery litigation or costs of operation, maintenance and sampling beyond the first year, and assuming a cleanup based upon vapor extraction. Of this amount, approximately \$260,000 has already been incurred in site investigation, monitoring, remedial action development, management oversight, and legal review.

We have identified your firm as a party responsible for cleanup costs. You are being sent this letter for two principal reasons. First, Grubb & Ellis is requesting your participation in the remedial investigation/ feasibility study ("RI/FS") process currently underway. The RI/FS is presently being drafted by Grubb & Ellis' consultant, H+GCL, to evaluate three primary cleanup alternatives. These include vapor extraction, groundwater extraction and treatment, and natural remediation (no treatment). Based upon the evaluation to date, it appears that vapor extraction will prove to be the cost-effective remedy that will adequately protect public health, safety and welfare. The anticipated RI/FS activities are detailed more fully in the attached RI/FS workplan enclosed with this letter.

There are several factors that presently motivate prompt action to address this problem. First, due to increased groundwater pumping at local California Water Service wells, and suspended groundwater recharge activities in the vicinity, shallow groundwater levels have dropped approximately 35 feet this year. H+GCL anticipates that the falling groundwater has left much of the contamination in the shallow unsaturated soil area, where it is now amenable to vapor extraction. Vapor extraction generally is less costly and requires less time than groundwater extraction and treatment. As such, it appears that there may be a window of opportunity before groundwater levels rise and foreclose this remedial option. A second concern is avoiding the potential for migration of the plume into drinking water supplies, or into residential areas nearby that will make cleanup activities more difficult. For that reason, we intend to proceed promptly to select and implement a remedial action.

This responsible party notification and demand letter also invites negotiations regarding your participation in cleanup and/or payment of cleanup costs. Grubb & Ellis is not responsible for these costs and will, in the absence of settlement, proceed to litigation to recover expenditures from the owners and operator at the time that the contamination occurred, which includes your firm. Superfund enforcement costs, including attorneys fees, have been determined to be recoverable from responsible parties. Pease & Curren Refining, Inc. v. Spectrolab, Inc., (C.D.Cal, 1990) 744 F.Supp. 945. Therefore, failure to negotiate a mutually satisfactory resolution of cleanup liabilities will likely result ultimately in increased costs to you or your firm.

In order to establish the basis for subsequent litigation, if that becomes necessary, demand is hereby made pursuant to the Comprehensive Environmental, Response, Compensation and Liability Act ("CERCLA") that you, as a responsible party under Section 107, 42 U.S.C. § 7607, reimburse Grubb & Ellis within sixty (60)

days for the necessary costs of response it has incurred to date, totalling \$260,000 as detailed below, and assume responsibility for paying for and/or taking all further corrective action necessary to remedy the contamination on the property, including any action required by the Regional Water Quality Control Board ("RWQCB") and/or other public agencies. This demand is made independently, and in addition to, claims based upon express or implied warranties, fraud, misrepresentation, breach of contract, or otherwise, in connection with the use and/or sale of the property.

If you decline to accept responsibility, Grubb & Ellis will commence an action for cost recovery and declaratory relief in federal district court, inter alia, pursuant to CERCLA Section 107.

In addition, as to Mike Neely, Perry Neely, ("the Neelys") and any other individuals responsible for discharge of PCE into the groundwater at Mike's Cleaners, Grubb & Ellis will also maintain an action for "the past . . . handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." 42 U.S.C. § 6972(a)(1)(B). In addition to the recovery of cleanup costs and a declaration of cleanup liability, this provision permits the Court to grant injunctive relief ordering site remediation.

Regardless of whether the question of cost liability is resolved through settlement or negotiation, the cleanup costs will obviously be influenced by the selected remedy. You are therefore urged to participate in the RI/FS process and comment on the draft remedial plan when it is released, so that cleanup can proceed with the benefit of your participation.

In order to assist your review of liability for these cleanup costs as a responsible party, the following discussion describes the site and the contamination problem that has occurred, and summarizes the results to date of our responsible party search and investigation. You may also be aware of additional information pertinent to these questions or additional parties that may be responsible for this contamination problem; if so, we urge you to disclose that information so that discussions can proceed based upon all of the facts and all parties may be involved in settlement as appropriate.

I. SITE DESCRIPTION

The Livermore Arcade Shopping Center is located on an 11.475 acre site located at the northwest corner of First Street and South "P" Street in Livermore, California. It is improved with

five single story buildings containing 15 businesses, including Safeway, Sears Roebuck, Orchard Supply, Long's Drugs, as well as a number of smaller businesses, including Mike's Cleaners, discussed ^{1/}below. The center also has a parking area for 558 cars.

It is our understanding that the Arcade was first developed in 1972, and that the portion of the Arcade presently containing Mike's Cleaners was previously a pet shop. Records indicate that significant alterations, including plumbing work, occurred in late 1981 and early 1982, when Mike's Cleaners was established by the Neelys.

In 1979, Southern Pacific Land Company purchased the property and sold it to Stark Investment Company ("Stark") in 1983. Grubb and Ellis bought the property in December 1988 and is the current owner.

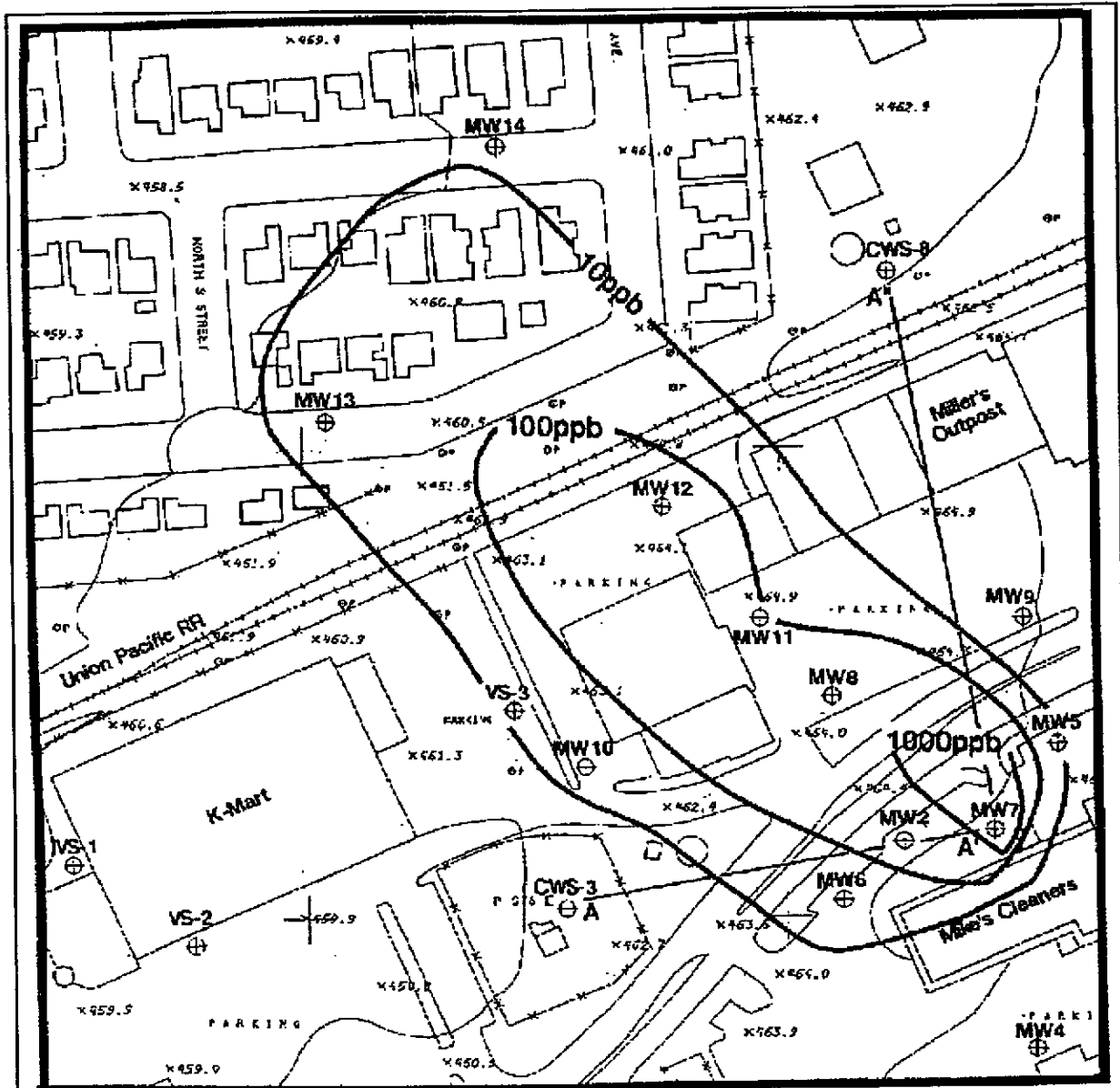
Six California Water Service water wells are located near the Site, within a one-mile radius. Wells 3 and 8 are closest to the Site. All wells are supposed to be tested for VOC (Volatile Organic Compounds) at least once a year. The latest VOC Sample results from 1988, show no VOC's detected except in well #10. ^{2/}The Site is located in a critical groundwater recharge area according to the RWQCB.

II. SUMMARY OF CONTAMINATION PROBLEM AND NECESSITY OF CLEANUP

Groundwater sampling undertaken subsequent to acquisition of the Arcade by Grubb & Ellis has identified a plume of PCE emanating from Mike's Cleaners. The plume is graphically portrayed in the following diagram on the following page:

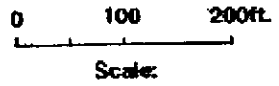
1/ The Site is listed at the Alameda County Assessors Office on Map 98, Page 403, Parcel 8-4. The City of Livermore Zoning District Map shows the Site zoned as CB (Commercial, Central Business). Title information shows ownership prior to 1979 as a family farm. The shopping center itself was apparently constructed in 1972. Sanborne Insurance Rate Maps show the Site in 1907, 1917, and 1944. The 1907 map shows the existence of warehouses (hay and grain) along the railroad tracks and from the Site to the east.

2/ California Water Service well #10 has been shut down for over two years because of PCE contamination, at levels exceeding the EPA and California MCL (maximum concentration level).

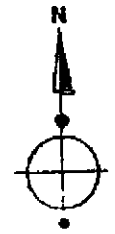


LEGEND

- MW 10 Hygienics Monitoring Well
- VS-1 Versar Monitoring Well
- CWS-3 California Water Service Well
- 10ppb- PCE Concentration Contour



Cross Section



It is clear from the nature of the plume in terms of length, location, and the pollutant involved that the principal source of PCE at this site is Mike's Cleaners. Specifically, the most concentrated upgradient areas of contamination are located at Mike's Cleaners. Based upon the rate of groundwater flow and the length of the contaminated plume, the discharge first began approximately ten years ago, when Mike's Cleaners first began operation. Mike's Cleaners is the only potential source of PCE within the contaminated area.

Investigation has disclosed that a sewer line from Mike's cleaners was installed improperly and has allowed waste to discharge into the adjacent soil since it was constructed. Thus, PCE placed in that sewer line appears to have resulted in soil and groundwater contamination. Grubb & Ellis' consultants, H+GCL, have modelled the groundwater movement in the vicinity of the plume and determined that given the rate of flow the discharge first began in early 1982, corresponding to the commencement of operations of Mike's Cleaners by the Neelys.

Over the past ten years, the contaminated plume has moved laterally approximately 1000 feet. To our knowledge, the discharge has not yet contaminated sources of drinking water, but may do so if left uncontrolled. For that reason, Grubb & Ellis has advanced the planning efforts and funds to put the cleanup into effect.

III. PLANNING AND DEVELOPMENT OF THE REMEDIAL ACTION

In 1990, Grubb & Ellis directed its consultant, H+GCL, to investigate the potential for contamination at the site. At that time, shallow groundwater was still present at levels approximately 42 feet below the surface. Preliminary discussions with the RWQCB and the County Department of Environmental Health ("DEH") therefore centered around evaluating the most promising option at that time -- pumping and treating the contaminated groundwater. The RWQCB specifically indicated that cleanup to a 5 ppb level would be required. It is therefore proposed that to the extent practicable the cleanup be to a residual groundwater level of the maximum contaminant level (MCL) for PCE, which is 5 parts per billion.

Subsequent to this initial design work, it was observed that groundwater levels have dropped significantly from those in 1990. In addition, advances in vapor extraction technology have occurred over the past several years. As a result, Grubb & Ellis has again met with the RWQCB, which concurs in the present proposal to evaluate a vapor extraction system as the preferred option. This alternative, among others, will be evaluated in the RI/FS currently being developed. Final approval of a remedial

plan by Grubb & Ellis will occur following public comment on the RI/FS, presently anticipated to be released in draft form in early 1992.

IV. SUMMARY OF CLEANUP COSTS

Cleanup costs incurred to date include the costs of hydrogeologic testing, agency negotiations, aquifer modelling, access negotiations, groundwater sampling and analysis, and preparation of reports regarding the preliminary assessment, site inspection, and early remedial investigation phases. These costs presently total \$260,000 and reflect the following:

Site investigation and analysis:	\$206,000
Project management:	\$30,000
Legal review:	\$24,000

Future costs include those that will be incurred in connection with the RI/FS, preparation of the remedial action plan and record of decision, remedial design, capital costs of the treatment system, operation and maintenance, monitoring, attorney and consultant fees. These costs are anticipated to include the following:

Site investigation and analysis:	\$91,500
Remedial design, permitting:	\$37,000
Capital costs of treatment system:	\$135,000
Operation and maintenance expenses:	\$29,000 first year
Project management:	\$30,000
Legal review and negotiations:	\$20,000

The future cost estimates are subject to change and generally assume implementation of a vapor extraction system. Should cost recovery litigation be required, significant additional attorneys fees and expenses will also be incurred.

Demand is therefore made that you pay immediately the sums already expended (\$260,000) and that you agree to pay those future expenses identified above that may be incurred in the future.

V. RESPONSIBLE PARTIES

A. GENERAL DISCUSSION OF RESPONSIBLE PARTY LIABILITY

Under federal law, any person who owned or operated a facility at the time of disposal of any hazardous substance is a "responsible party" liable for contaminated site cleanup costs. 42 U.S.C. § 9607. Your firm is a responsible party as the owner or operator of the facility when PCE was discharged onsite.

Responsible parties are all jointly, severally and strictly liable for cleanup costs. Joint and several liability means that any of the responsible parties could be assessed the entire cost of cleanup if the matter proceeds to court. The costs that may be recovered from a responsible party include all "necessary costs of response incurred by any other person consistent with the national contingency plan . . ." 42 U.S.C. § 9607(a)(4). These costs include testing, monitoring, administrative and other costs in addition to costs of the direct physical cleanup.

With this background, each of the parties responsible for cleanup costs are discussed below.

B. MICHAEL NEELY AND PERRY NEELY

As discussed above, the source of PCE contamination was Mike's Cleaners during the tenancy of the Neelys. The Neelys operated Mike's One Hour Dry Cleaners from late 1981 to 1987. During that time, PCE was disposed to the sanitary sewer and released to groundwater through faulty plumbing. This practice appears to have been continuous through the period of their operation. As a result, the Neelys clearly are liable as responsible parties both as the "operator" of the facility at the time of disposal, and also as the "generator" of the waste.

C. STARK INVESTMENT COMPANY

Stark Investment Company, a California General Partnership, owned the property from December 1982 ^{3/} to December 30, 1988. This represents approximately 85% of the time period that the facility was operated by the Neelys. As an owner of the facility at the time of disposal, Stark is a responsible party. We are aware of no facts that would lead to Stark having any defenses to liability and, given the direct contractual relationship with the Neelys, it does not appear that Stark would be able to assert the third party defense, discussed with respect to Grubb & Ellis below.

3/ The deed was executed November 24, 1982.

Due to its position as a solvent, locally-based organization that by any allocation measure would bear most if not all of the liability for cleanup costs, Stark will likely be the principal party from which Grubb & Ellis will seek cleanup costs if the matter proceeds to litigation. Our present position is that Stark should bear responsibility for obtaining any contribution of cleanup costs from the Neelys and/ or from Catellus, discussed below. Stark is the party with the direct contractual relationships with each of these other principal responsible parties and is in a much better position to pursue such contribution or similar claims. Nonetheless, this demand letter includes all of the presently identified responsible parties in order to further negotiations with all concerned.

D. CATELLUS DEVELOPMENT CORPORATION

Southern Pacific Land Company, a California Corporation predecessor to Catellus Development Corporation, owned the property from February through December, 1982, during which Mike's One Hour Dry Cleaners was first being operated by the Neelys. In its August 26, 1991 letter to Grubb & Ellis, Catellus recognized that "Catellus would be potentially liable for cleanup costs only if hazardous substances were released into the soil or groundwater during the time that Catellus owned the Property."

As discussed above, the Neelys discharged PCE throughout their tenancy, including the nine month period during which Catellus' predecessor, Southern Pacific Land Company, owned the property. The continuity of disposal is confirmed both by the failure of the Neelys to manifest any of the PCE generated at the facility at any time, and by the amount that the contaminated groundwater plume has spread, indicating that the contamination began at the beginning of the Neelys' tenancy. As a result, we are confident that we will be able to prove that Catellus is a responsible party that should be allocated a significant share of cleanup costs.

E. A NOTE REGARDING INSURERS

As you may know, a 1990 decision of the California Supreme Court held that comprehensive general liability ("CGL") policies, which provided coverage for all sums that an insured became legally obligated to pay as "damages" or "ultimate net loss" because of property damage, covered costs of reimbursing government agencies and complying with injunctions ordering cleanup under the Comprehensive Environmental Response Compensation and Liability Act and similar statutes. AIU Insurance Company v. FMC Corporation, 51 Cal.3d 807 (1990). Each responsible party will be responsible for recovering cleanup

costs through their respective CGL policies, to the extent that coverage may be available.

VI. PARTIES ELIGIBLE FOR A THIRD PARTY DEFENSE

Under Section 107 of CERCLA, current owners and operators are also potentially responsible parties. The Superfund law, however, contains an affirmative defense to responsible party liability, known as the "third party" defense. In summary, it avoids responsible party liability upon showing that (1) the release of hazardous substances was caused solely by a third party, (2) the third party was not in a "contractual relationship" with the responsible party, (3) the responsible party exercised due care regarding the hazardous substance, and (4) the responsible party took precautions against the third party's acts. 42 U.S.C. § 9607(B)(3).

The current owner and operator of the facility have no liability for cleanup costs in this instance because both are eligible for the "third party" defense set out in the Superfund law.^{4/} The basis for this defense is set out in greater length below. As a result of this defense, the entire cleanup liability resides with the Neelys, Stark and Catellus.

^{4/} This assumes that the current operator, Steve Song, is not disposing PCE to the sanitary sewer as had the previous operator, the Neelys. From the beginning of his tenancy, Song has manifested waste PCE from the facility, having obtained a generator identification number from EPA. Song has represented to Grubb & Ellis that all of the waste PCE has been lawfully treated or disposed offsite. Grubb & Ellis has discovered no information that would undermine this conclusion.

In its August 26, 1991 letter to Grubb & Ellis, Catellus stated that "an inspection report . . . by the Alameda County Department of Environmental Health . . . indicates the current owner of Mike's has operated in violation of the State Health and Safety Code and may have been disposing of perchloroethylene into the sewer during his current operations." A review of the inspection report shows that no potential violation of the prohibition on onsite disposal was identified by the inspector (item 12 is not checked) and the report simply contains a comment placing Song on notice of the need to avoid PCE disposal to the sewer. Any storage or recordkeeping violations would have no bearing on Song's or Grubb & Ellis' responsibility for cleanup costs resulting from contamination caused by the Neelys.

A. CURRENT OPERATOR STEVEN SONG

Steven Song has operated Mike's Cleaners from 1987 to the present, which includes all of the period that the Arcade has been owned by Grubb & Ellis. During operations by Mr. Song, to our knowledge PCE has been treated or disposed lawfully and none has been disposed to the sanitary sewer. Mr. Song obtained the required generator ID number from EPA and manifests have been provided demonstrating lawful disposal of PCE from 1987 to the present.

In this instance, since the contamination was caused by the Neelys, and to our knowledge did not occur during the tenancy of Song, Song may be able to assert a third party defense to liability. However, should evidence be obtained indicating that Mr. Song is in fact a responsible party, Grubb & Ellis will seek appropriate participation by Mr. Song in the cleanup activities.

B. GRUBB & ELLIS

Grubb & Ellis Realty Income Trust, the present owner of the site, purchased in January 3, 1989, after Song (the present operator) had begun operations apparently in full compliance with applicable laws and without discharging PCE to the sanitary sewer. Therefore, Grubb & Ellis was not the owner of the facility at the time the discharge of PCE occurred. ^{5/}

Grubb & Ellis has had no role in the discharge of PCE at the site, and that discharge has occurred solely due to the actions of third parties, the Neelys. As a result, Grubb & Ellis will assert a third party defense to any cleanup cost liability, and in any litigation will seek a declaratory judgment that it bears none of the cleanup obligations.

All of the other requirements for successfully asserting a third party defense are satisfied here. That is, first, Grubb & Ellis had no contractual arrangement with the Neelys. Second, Grubb & Ellis has clearly exercised due care with respect to the hazardous substance concerned and has advanced considerable funds and effort in addressing the cleanup problem and ensuring that no further contamination occurs. Third, Grubb & Ellis has taken precautions against foreseeable acts or omissions of third parties, such as the present lessee, to ensure that no further

^{5/} Some eight months before, on April 11, 1988, Grubb & Ellis had entered into a management agreement to supervise management of the facility, but that role also began after termination of operations by the Neelys.

contamination occurs. ^{6/}

The definition of contractual relationship set out in CERCLA preserves the third party defense even for purchasers in a contractual relationship with the third party responsible for the contamination where the purchaser acquires the property after disposal of the hazardous material on the site and, when he or she acquired the facility, he or she "did not know and had no reason to know that any hazardous substance. . . . was disposed of on, in, or at the facility. . . ." 42 U.S.C. Section 9601(35)(A). Due diligence is demonstrated where the purchaser undertook, at the time of acquisition "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability." Id. The following factors may be considered:

any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

Grubb & Ellis exercised due diligence when it purchased the property. Under contract with TransWorld Consortium, Inc., an Initial Environmental Survey was undertaken when the property was acquired. The report of that survey, dated January 4, 1989, concluded:

Based on the available information concerning the site, we do not feel that any additional testing or on-site investigation is warranted for the site; we would strongly recommend, however, that a copy of the Chain-of-Title is obtained for the subject property, if that is at all possible. Although it is difficult to provide an absolute guarantee of the "nonexistence" of pollution at the site, we are confident that there is very little possibility of a serious environmental liability associated with this project site.

Id. at 6. Grubb & Ellis further relied upon the following representations of Stark as seller of the property, which

^{6/} There obviously would be no question regarding Grubb & Ellis' due care regarding the Neelys, since Grubb & Ellis had no involvement with the property when the Neelys were operating Mike's Cleaners.

claimed:

(iv) To the best of Owner's knowledge, the Property is not in violation of any federal, state, municipal or other law, ordinance or regulation relating to the environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions; and during the time in which Owner owned the Property and, to the best of Owner's knowledge, during any prior time, neither Owner nor, to the best of Owner's knowledge, any third party, used, generated, stored (other than as disclosed in that certain letter from Sears to Owner dated January 20, 1988 a copy of which has been delivered to Optionee) or disposed of on, under or about the Property or transported to or from the Property any hazardous waste, toxic substances or related materials or any friable asbestos or any substance containing asbestos ("Hazardous Materials").

Option Agreement entered into as of April 11, 1988, at p. 7. ^{7/}

^{7/} In addition, as to Stark, the breach of this representation, warranty and covenant is independently enforceable.

Furthermore, in assigning the existing leases, including the lease for Mike's Cleaners, Stark agreed as follows:

Assignor shall indemnify, defend by counsel acceptable to Assignee, and hold Assignee harmless from and against all obligations, liabilities, or claims asserted against Assignee with respect to the Leases, Contracts, Warranties and Guaranties and arising from events which occurred prior to the date of this Assignment and the transfer of title to the Property to Assignee.

Assignment of Leases, Service Contracts, Warranties and Guaranties, dated as of January 3, 1989.

The April 11, 1988 Management Agreement also provided:

Owner shall defend and indemnify and hold harmless Manager, with counsel approved by Manager, from and against all claims, suits and liabilities arising out of or in any way in connection with the Property or the performance of its obligations under this Agreement, reserving in the case of the negligence or willful misconduct of Manager, its agents or employees, the right to take any appropriate action against Manager and further reserving to Owner the right to
(continued...)

The due diligence exercised by Grubb & Ellis was more than adequate given the hidden nature of the source of contamination (a leaking sewage pipe) and the illegal nature of the discharge which left no evidence that would have been apparent to even the most diligent purchaser of the property. Moreover, the operator of the facility at the time Grubb & Ellis purchased the property was undertaking proper hazardous waste management practices, so no information was available that would have placed Grubb & Ellis on notice of the need to investigate further the potential for contamination from the previous operator.

Thus, given the due diligence exercised in connection with the property acquisition, Grubb & Ellis cannot be deemed to have had any contractual relationship with any third party that may have caused the contamination before it acquired the property. Grubb & Ellis' third party defense is therefore secure and Grubb & Ellis will likely bear no liability if the matter proceeds to litigation.

VII. PROPOSED ALLOCATION OF CLEANUP COSTS

As discussed above, Grubb & Ellis has a complete defense to CERCLA liability for cleanup costs, and is confident that if the matter is litigated no portion of the costs will be allocated to it. As a result, at this juncture the allocation of cleanup costs is one of primary concern to the responsible parties -- Stark, Catellus and the Neelys.

The law on the matter has been stated succinctly by the Ninth Circuit in Mardan Corp. v. C.G.C. Music, Ltd., 804 F.2d 1454, 57 (9th Cir. 1986):

Most district courts that have faced the issue have interpreted section 107 of CERCLA to impose, as a matter of federal law, joint and several liability for indivisible injuries with a correlative right of contribution. [citations omitted]. The commentators have also concluded that a federal right of contribution attends CERCLA. CERCLA Section 113(f)(1) provides that "[i]n resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate."

7/ (...continued)
take appropriate action against Manager for breach of this Agreement by Manager.

Management Agreement at p. 5.

That is, each of the responsible parties potentially is liable for the full cost of cleanup but each may have a claim against the others for an equitable share of costs.

Since liability for cleanup costs is joint and several, since Stark is the party most likely to bear most or all of the liability for cleanup costs if the matter proceeds to litigation, and since Stark is in the best position to make derivative claims against Catellus and/or the Neelys, Grubb & Ellis will seek cost recovery principally from Stark if the matter proceeds to court.

However, for purposes of settlement discussions among the potentially responsible parties, Grubb & Ellis offers the following proposal regarding an equitable allocation which would appear to be most conducive to settlement. This proposal is made for purposes of settlement only. By making this proposal, Grubb & Ellis does not admit that this is the only or the most appropriate allocation and, in the event of litigation Grubb & Ellis reserves the right to propose any other measure of allocation that it considers appropriate. In particular, if a settlement is reached with less than all of the responsible parties, Grubb & Ellis will seek any uncompensated costs from the nonsettling parties, including attorneys fees and other costs of enforcement.

A variety of measures have been applied for allocation of cleanup costs, such as the quantity of waste discharged, its hazard, or similar factors. Here, it appears that the discharge was at a relatively constant rate throughout the period of the Neelys' tenancy. Therefore, period of ownership is a reasonable proxy for the quantity of waste discharged, which again is a common basis for cleanup cost allocation.

We therefore propose that the costs of cleanup be allocated to Catellus and Stark in proportion to the period of ownership of the property while the Neelys were operating Mike's Cleaners. Allocating cleanup liability according to the period of ownership results in the following proposed shares:

Party	Period of Ownership During Neely's Operation	Percent Share
Catellus	2/82 - 12/82 (9 months)	15%
Stark	12/82 - 2/87 (51 months)	85%

This proportion should provide a useful starting point for responsible party negotiations.

Livermore Arcade Cleanup Responsible Parties
January 31, 1992
Page 16

VIII. CONCLUSION

As discussed above, Grubb & Ellis invites your participation in the remedial investigation, feasibility study, remedial design and remedial implementation phases of the response at this site. We also intend to schedule a meeting among the responsible parties that wish to discuss this matter further, and would appreciate receiving a list of available dates for such a meeting in mid to late February.

Sincerely,



Alan Waltner

Attachments: H+GCL work plan with references

Livermore Arcade Cleanup Responsible Parties
January 31, 1992
Page 17

ccs (with work plan but without references):

Steven Song
Mike's One Hour Cleaners
1430 First Street
Livermore, CA 94550

Michael Neely
c/o Perry J. Neely
2426 149th Ct, SE
Mill Creek, WA 98012

William Reilly, Administrator
United States Environmental Protection Agency
Mail Code A-100
401 M Street, S.W.
Washington, D.C. 20460

The Honorable William Barr
Attorney General of the United States
10th Street and Constitution Ave., N.W.
Washington, D.C. 20530

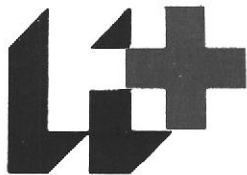
National Response Center
Duty Officer
Headquarters, United States Coast Guard
2100 2d Street SW
Washington, DC 20593

Lester Feldman
Regional Water Quality Control Board
1800 Harrison, Suite 700
Oakland, CA 94621

Larry Seto
Alameda County Health Department
Dept. of Environmental Health
80 Swan Way, Suite 200
Oakland, CA 94621

Walt Pettit
Executive Director
State Water Resources Control Board
901 P Street
Sacramento, CA 95814

Maureen Sullivan, Esq.
Catellus Development Corporation
201 Mission Street, 30th Fl.
San Francisco, CA 94105



Hygienetics, Inc.

2200 Powell Street
Suite 880
Emeryville, CA 94608
(415) 547-3886
Telecopy: (415) 547-3631

November 20, 1991

Mr. Larry Seto
Alameda County Environmental Health
80 Swan Way, Room 200
Oakland, CA 94621

RE; Status of Livermore Arcade Project

Dear Mr. Seto:

I am writing, at your request, to summarize what has occurred at the Livermore Arcade Shopping Center (the Site). H+GCL detected tetrachloroethene (PCE) contamination in the groundwater beneath the Site. The plume was defined through the installation of fifteen ground water monitoring wells in accordance with Regional Water Quality Control Board (RWQCB) and Alameda County Environmental Health Department requirements. All wells were set at a depth fifty-five to sixty-five feet. The groundwater static level was at an approximate depth of forty feet. The plume extended from Mike's Cleaner's to 900 feet north of the Site.

A 36 hour pump test was performed and aquifer characteristics were calculated from that data. A pump and treat remediation system was chosen as the best alternative method to control and eliminate the PCE groundwater contamination. A groundwater extraction system utilizing three extraction wells was designed. Liquid phase carbon absorption filters were chosen as the appropriate method to treat the extracted groundwater. The treated groundwater would be discharged into the sanitary sewer under the conditions of a discharge permit obtained from the City of Livermore. For a more detailed description of the remediation plan, please refer to H+GCL letters to Gil Wistar, dated December 4, 1990, and to Rico Duarzo, of the RWQCB, dated November 19, 1990. The H+GCL remediation plan was approved by both Alameda County and the RWQCB.

A quarterly monitoring program began in March, 1991. In June, 1991, H+GCL observed that groundwater levels were decreasing. Earlier this month we found all of our monitoring wells to be dry. No groundwater samples could be collected. Alameda County Zone 7 (Zone 7) was contacted. They reported that because of the on-going draught conditions their artificial recharge program has been temporarily discontinued. California Water Service (CWS) reported that they have significantly increased the volume of water pumped from groundwater wells in the Livermore area. CWS will continue the increased pumping until December 1, 1991.

November 20, 1991

Page Two

At this time the groundwater level is at least 25 feet lower than the level sustained over the past several years. If the drought conditions continue into 1992, the artificial recharge program of Zone 7 will not continue and CWS may be forced to continue heavy pumping to meet their demands. Under these conditions, Zone 7 estimates that the groundwater elevation could drop another fifteen feet.

H+GCL would like to meet with the RWQCB and Alameda County Environmental Health to discuss alternative actions to be taken at the Site. Lester Feldman of RWQCB indicated in a telephone conversation with H+GCL on November 19, 1991, that CWS wells #3 and #8 should be tested for PCE. In addition, he suggested that a deeper monitoring well be installed at the Site in the vicinity of Mike's Cleaners. He said that soil samples and a groundwater sample should be collected and analyzed for PCE to determine what conditions exist in the subsurface at this time.

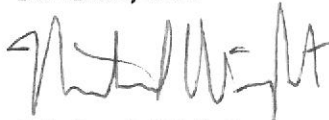
H+GCL has contacted CWS to obtain permission to sample their wells and we hope to complete that task by the end of next week. H+GCL is reluctant to drill a deeper well at this time. CWS well logs indicate that a thick yellow clay zone may be immediately below our wells. This clay zone may be acting as an aquiclude. Penetrating the clay zone may allow the PCE to move into the deeper aquifer.

H+GCL is preparing a comprehensive plan of action. An interim remediation plan will be designed to operate under the irregular and rapidly changing groundwater conditions at the Site. These tasks should be performed within the next month. We would appreciate your attention in this matter as we prepare to implement our plan of action.

Please contact Michael Wright or Karl Novak if you have any questions or comments.

Sincerely,

H+GCL, Inc.



Michael Wright
Project Geologist

MW:sh
Project No.
MW1/Livermore Arcade/Summary Letter



Hygienetics, Inc.

2200 Powell Street
Suite 880
Emeryville, CA 94608
(415) 547-3886
Telecopy: (415) 547-3631

91 JUN 5 11:26

June 3, 1991

Ms Roberta James, Mail Code HM-142
Manager of Environmental Affairs
Security Pacific National Bank
600 Wilshire Blvd., Suite 460
Los Angeles, CA 90017

Dear Ms James,

Hygienetics is the environmental consultant for Grubb and Ellis Realty Income Trust who own the Livermore Arcade Shopping Center on the northwest corner of the intersection of First and South P Streets in Livermore California. A significant concentration of gasoline was detected in monitoring well MW1 located near the southeast corner of their property. We know that the groundwater flow direction is due north and therefore consider the source of the gasoline to be from an off-site location.

Security Pacific Bank is due east of monitoring well MW1 at the Livermore Arcade Shopping Center and is believed to be directly down gradient from the primary suspected source of the gasoline contamination, a Beacon Gasoline Service Station.

Grubb and Ellis has been asked by the Regional Water Quality Control Board and Alameda County Environmental Health department to determine where the gasoline is coming from. We believe that by placing a monitoring well in the southwest corner of your property that we will be able to accomplish that task.

Hygienetics has installed numerous groundwater monitoring wells in this area, but north of your site. We are familiar with the geology and can complete the well on your property within one day. Of course, Hygienetics will inform Security Pacific of all analytical results from samples collected from the monitoring well on your property

All health and safety procedures will be followed. A restricted area will be established and monitored but the bank patrons access to the parking area and the bank will not be obstructed. These facts have been discussed with Gene Huber, Mike Miller, and Lissa Cordero, Assistant Vice President of the Livermore Branch Office.


As we discussed during our telephone conversation on June 3, 1991, Hygienetics will supply Security Pacific with a certificate of insurance showing Security Pacific as additional insured for professional liability, errors and omissions up to one (1) million dollars. I expect to have the certificate in my hands by Friday June 7, 1991, and will send it to you by express mail as soon as it arrives.

We are hoping to drill the well with Layne Environmental (drilling contractor, CA license # 480802) on Wednesday, June 12, 1991. Lissa Cordero saw no problem with that time or with the logistics of our preferred well location. I will discuss these topics with you again before we mobilize.

We appreciate your assistance in this project. I look forward to meeting you and your group in the near future. If we may be of help to Security Pacific please do not hesitate to contact us.

Sincerely,

Hygienetics, Inc.



Michael Wright, R.E.A.
Environmental Geologist

CC: John Hyjer, Grubb & Ellis
Gil Wistar, Alameda County

EE/mw/secpac

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY

DAVID J. KEARS, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

May 13, 1991

Mr. John Hyjer
Grubb & Ellis Realty Income Trust
One Montgomery St., West Tower 32nd Fl.
San Francisco, CA 94104

**Re: Petroleum hydrocarbons found in monitoring well MW-1, Livermore
Arcade Shopping Center**

Dear Mr. Hyjer:

The Alameda County Department of Environmental Health, Hazardous Materials Division has been in contact with Mike Wright of Hygienetics regarding the pump-and-treat system for PCE in groundwater at the Livermore Arcade site. We appreciate the proactive approach you have taken in remediating this contamination, and hope that the system designed will clean up groundwater in a timely manner.

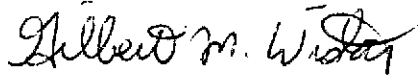
However, it has recently come to our attention that monitoring well MW-1, at the southeast corner of the parcel, was sampled in December 1990 and contained even higher levels of dissolved gasoline and benzene than when sampled in March 1990. As you may recall, the Hygienetics sample contained 84 ppm TPH-G; the most recent sample was collected by Delta Environmental Consultants under contract to Ultramar, Inc. (Beacon), and it contained 91 ppm TPH-G. Based on this information, we are requesting that Grubb & Ellis characterize the hydrocarbon contamination in this area by installing additional monitoring wells and having them sampled at least quarterly for TPH-G and BTEX. If this characterization clearly points towards an off-site source, we will approach that party for further assessment and remediation, as needed. Otherwise, Grubb & Ellis will be required to define the plume, as has occurred with the PCE contamination.

Please submit a work plan for hydrocarbon assessment to this office and to the Water Board by **June 21, 1991**. Because we are overseeing this site under the designated authority of the Water Board, this letter constitutes a formal request for technical reports, per Sec. 13267(b) of the California Water Code. Failure to respond in a timely manner could result in civil liabilities under the Water Code of up to \$1,000 per day. Other violations of California law may also be cited.

Mr. John Hyjer
May 13, 1991
Page 2 of 2

If you have any questions about this letter or about site investigation requirements established by the RWQCB, please contact me at 271-4320.

Sincerely,



Gil Wistar
Hazardous Materials Specialist

cc: Mike Wright, Hygienetics (2200 Powell St., Suite 880, Emeryville,
CA 94608)
Danielle Stefani, Livermore Fire Department
Lester Feldman, San Francisco Bay RWQCB
Rafat Shahid, Asst. Agency Director, Environmental Health
files





Hygienetics, Inc.

91 APR 15 10:15

2200 Powell Street
Suite 880
Emeryville, CA 94608
(415) 547-3886
Telecopy: (415) 547-3631

April 12, 1991

Mr. Gil Wistar
Department of Environmental Health
80 Swan Way, Room 200
Suite 200
Oakland, CA 94621

RE: Livermore Arcade Remediation Sampling Plan

Dear Mr. Wistar,

This letter documents our agreement today that the sampling program submitted in the Arcade Remediation Plan, dated December 4, 1990, can be adjusted. Hygienetics stated in the Remediation Plan that five monitoring wells would be sampled once a month for the first year after the start-up of the groundwater extraction system and quarterly thereafter. We agreed today that the five monitoring wells would be sampled once a month for the first six months after the start-up of the groundwater extraction system and quarterly thereafter. Rico Duazo of the Regional Water Quality Control Board (RWQCB) approved of this change.

Hygienetics is in the final stages of designing the groundwater extraction system. From our present projections, we are anticipating that the start-up of the extraction system will be in mid July, 1991. In the mean time, Hygienetics has implemented a quarterly monitoring program. The first quarterly monitoring report should be in your possession at this time. The next sampling is scheduled for June, 1991.

Thank you for your attention. I will keep you informed of our progress.

Sincerely

Michael Wright, R.E.A.
Environmental Geologist

cc: Rico Duazo, RWQCB

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

October 31, 1990

Mr. Karl Novak
Hygienetics Inc.
2200 Powell St., Suite 880
Emeryville, CA 94608

**RE: Response to the Hygienetics remediation plan for PCE
contamination in groundwater, Livermore Arcade site, Livermore**

Dear Mr. Novak:

Thank you for meeting with me and Rico Duazo from the Water Board on October 18 to update us on your groundwater remediation proposal for the above site. As Rico and I indicated at the conclusion of the meeting, both our office and the Water Board concur with the pump-and-treat approach. Obviously, details need to be worked out regarding exact placement of extraction wells, how many of these wells will be required, and optimum pumping rates from them. We are confident that you will continue to work with us on this fine-tuning. From our standpoint, the most important goal of the pump-and-treat program will be to capture and remediate the entire plume of PCE-contaminated groundwater.

If you have any questions about this letter, please contact me at 271-4320.

Sincerely,

Gil Wistar
Hazardous Materials Specialist

cc: John Hyjer, Grubb & Ellis (One Montgomery St., San Francisco, CA 94104)
Rico Duazo, RWQCB
Rafat A. Shahid, Asst. Agency Director, Environmental Health
files

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

FACSIMILE TRANSMITTAL

TO:

547-3631

Fax Phone Number

Floor/Room # _____

Name:

Michael Wright

Title/Section

Agency:

Hygiene

Address: _____

Phone #: () _____

FROM:

Fax Phone Number

Floor/Room # _____

Date:

10/29/90

Time Sent:

4:40 p.m.

Sender:

Phil Wright

Title/Section

Phone #: ()

271-4320

Number of Pages Including Transmittal Sheet: _____

2

Special Instructions/Comments:

MW locations on K-mart property
with 7/90 sample results.

ALAMEDA COUNTY
HEALTH CARE SERVICES

AGENCY
DAVID J. KEARS, Agency Director



DEPARTMENT OF ENVIRONMENTAL HEALTH
Hazardous Materials Program
80 Swan Way, Rm. 200
Oakland, CA 94621
(415)

FACSIMILE TRANSMITTAL

TO:

547-3631 Floor/Room # _____
Fax Phone Number
Name: Michael Wright Title/Section
Agency: Hygiene
Address: _____
Phone #: () _____

FROM:

_____ Floor/Room # _____
Fax Phone Number
Date: 8/23/90 Time Sent: _____
Sender: Gil Wistar Title/Section
Phone #: () 271-4320

Number of Pages Including Transmittal Sheet: 5

Special Instructions/Comments:

Key excerpts from a report on Miller's Outpost
property. No groundwater contamination from PCE -
Gmw

BROAD, SCHULZ, LARSON & WINEBERG

ATTORNEYS AT LAW

ONE CALIFORNIA STREET
FOURTEENTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-5482
TELEPHONE (415) 986-0300
FAX (415) 982-1035,
TELEX 172 604 BSLW

GARY C. SHEPPARD
A PROFESSIONAL CORPORATION

File: 3521

August 20, 1990

Alameda County Environmental Health Department
Hazardous Materials Division
80 Swan Way
Suite 200
Oakland, California 94621

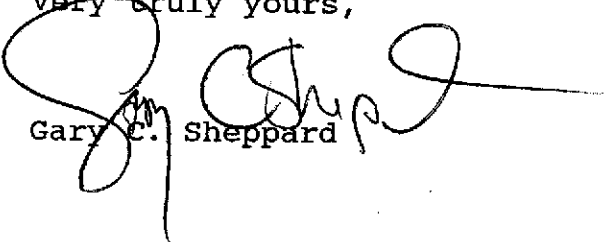
ATTN: Gil Wistar

Re: Miller's Outpost Shopping Center
Railroad Avenue and North P Street
Livermore, California

Dear Mr. Wistar:

We represent Miller's Outpost Shopping Center Associates, and Raymond C. Benech and Sheila E. Benech, owners of the above-referenced real property improved with a shopping center commonly known as "Miller's Outpost". On August 13, 1990 you telephoned and requested that I send you a copy of the results of the soil/water tests last conducted by the owners at Miller's Outpost. Enclosed for your review is a copy of that report, dated January 25, 1988, issued by Pavlak & Associates. Please call if you have any further questions.

Very truly yours,


Gary C. Sheppard

enclosure

90 AUG 21 AM 10:40

FILE OR PER NO.]	ENVELOPE No. _____ of _____	PLAN REVIEW		By	Date	By	Date	By	Date
		\$	Rec'd.						
<input type="checkbox"/> OWNER LIVERMORE ARCADE SHOPPING CENTER Address SOUTH P AND FIRST STS. LIVERMORE Phone _____		No.	Plans Rec'd.						
		Plans Approved							
		Layout Made							
		Rejected							
		Applicant Notified							
		Plans Returned							
		Permit Issued							
<input type="checkbox"/> OTHER (Specify) Address _____ Phone _____		CONSTRUCTION PROGRESS ACCEPTANCE							
		Pre-Plaster/drywall							
		Pool Pre-Final							
		Final							
<input checked="" type="checkbox"/> CONTACT FOR INVESTIGATION									

XR	REMARKS	Date	By	REMARKS	LOCATION
12/6/90	GW			Deposit submitted and remediation plan for site approved	3058A 619.25
4/12/91				Review quarterly report submitted by Hygentica - plume of PCE has not changed appreciably. GW treatment system should be up + running by July, according to Mike Wright	* 4/29/97 Vicinity Map project detailed 893, remaining project 3058A
5/19				Receive data from Deacon's consultants that showed 91 ppm TPH-G in M.W.1. Prepare letter to Hubbs & Ellis requiring a hydrocarbon assessment.	577158 \$800.00 12/6/90

Stid 4/19