

Hong NguyenGardner  
1501 23<sup>rd</sup> Ave  
Oakland, CA 94606  
(510) 261-5888

September 26, 2007

Paul Chan P.E.  
Project Manager  
PWA DIO Electrical Services division  
7101 Edgewater Dr., Bldg. 2  
Oakland, CA 94621-3001

Ref: 7600 Mac Arthur Blvd Oakland, CA 94605, Underground tank removal project.

Dear Mr. Chan,

Thank you for taking the time to talk with me. Attached with this letter are a copy of The Torrent Laboratory Test dated 01/24/2007 and the letter from Public Works dated 07/31/2006.

We have paid for the tanks to be removed, transported, cleaned, after that we have disposed the scrap metal tanks with the approval of the waste company (a receipt is attached), then paid for State Certified Lab for soil testing under the Fire Department supervised. The whole project had cost me over \$35,000 and it has not been finalized yet.

Beside that we have agreed to eliminate two of the driveways on 76<sup>th</sup> and Mac Arthur with The City of Oakland Public Works and the Electrical Underground Construction Company so that they can install the utility box underneath without asking any compensation.

That project has been costly and has not benefited us at all. Please review the documents and feel free to call me any time at (510) 776-2304.

Best regards,



Hong Gardner

Cc: Keith Matthews, Fire Prevention Bureau  
Mark Arniola, Environmental Services division.  
Carl Sibley, Row Management.  
Dennis Larks, Row Management.  
Dan Clanton, Electrical Services Division Manager.



# Torrent Laboratory, Inc.

483 Sinclair Frontage Rd. • Milpitas, CA 95035-5414

Phone: (408) 263-5258 • Fax: (408) 263-8293

www.torrentlab.com

## Invoice

DATE	INVOICE NO.
1/24/2007	15234

**BILL TO:**

**Avalon Success Realestate  
1501 23rd Street  
Oakland, CA 94606  
Attn: Hong Gardner**

P.O. NUMBER	SAMPLE SITE	REPORTED TO	TERMS	DUE DATE
Verbal	7600 MacArthur Blvd	Keith Matthews	Pre payment	1/24/2007
DESCRIPTION		QTY.	PRICE	AMOUNT
Composite (method SW-846 Chap 9 Sec.2.4)		4	10.00	40.00
TPH-Gas/BTEX/MTBE		4	65.00	260.00
Oxygenates		4	90.00	360.00
TPH-Diesel		4	50.00	200.00
Lead		4	22.00	88.00
Oil and Grease		4	75.00	300.00
Waste Disposal Fee		5	3.00	15.00
<b>TORRENT'S PROJECT#</b> 0701076	<b>SAMPLE(S) RECEIVED ON</b> 01/17/07		<b>TOTAL</b>	<b>\$1,263.00</b>
<i>Thank you for your business.</i>				

Hong Gardner  
(510) 261-5888  
Fax (510) 261-5558

6/19/07

Fax: (415) 512-0964

To: Tim Hallen.  
Golden Gate Tank Removal Inc.

Memo: 7600 Mac Arthur Blvd  
Oakland.

proposal # 7491B

please call me about the fund deposit  
(510) 776-2304.

Thanks

Hong Gardner

\* EPA ID = CAC002612534 in file  
USA 420398 in file

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA

• OAKLAND, CALIFORNIA 94612

Fire Department  
Fire Prevention Bureau  
Hazardous Materials Management Program

(510) 238-2396  
FAX: (510) 238-6739  
TTY/TDD (510) 238-3927

January 15, 2008

Ms. Jong Gardner  
632 Rialto Road  
Oakland, CA 94619

Certified Mail #: 7005 0390 0000 0140 9844

Re: Administrative Enforcement Order - 7600 Mac Arthur Boulevard

Mrs. Jong Gardner:

The City of Oakland Coordinated Unified Program Agency has filed a final Administrative Enforcement order against you for the following reasons:

1. You removed a 2ea. underground storage tanks (UST(s)) without the approval of the City of Oakland Certified Unified Program Agency (CUPA);
2. You Failed to use an appropriately license contractor to remove the UST(s) (E.g. California Sate Licensing Board licenses A, B, C-33/C-61 or D-40);
3. You have not provided a Final Report of the UST removal project that is stamped by registered geologist

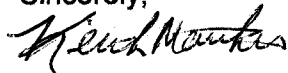
On May 15<sup>th</sup> you met with Leroy Griffin and my self to negotiate a settlement. During that meeting we agreed to waive all penalties if a work plan and time line was submitted to our office within 30-days, which would provide a timeline for the completion of the characterization of the parcel of property at 7600 Mac Arthur Boulevard. Since we did not receive the work plan and time line until 8/03/07, we do not consider that you honored the agreement reached on May, 15, 2007. Therefore you must pay 10% of the assessed penalty or \$3,300.00.

Please note, that section 25299 of the California Health and Safety Code states that any operator of an underground storage tank is liable for a civil penalty of not less than five

hundred dollars or more than five thousand dollars per day for failure to obtain a permit, or failing to properly close an underground tank, as required by section 25298.

If you have any questions regarding this matter, please contact me at (510) 238-2396.

Sincerely,

A handwritten signature in cursive script that reads "Keith Matthews".

Keith Matthews

# OAKLAND FIRE DEPARTMENT/FIRE PREVENTION BUREAU HAZARDOUS MATERIALS UNIT

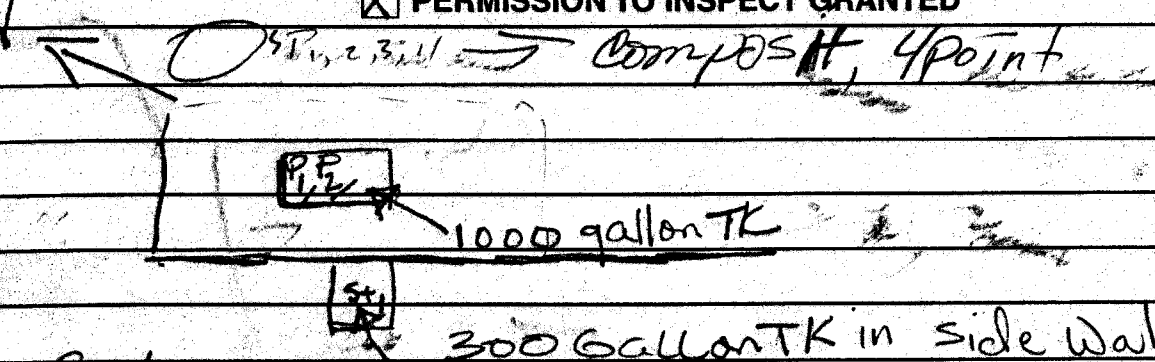
250 FRANK OGAWA PLAZA, SUITE 3341, OAKLAND, CA 94612-2032 • (510) 238-3927

## HAZARDOUS MATERIALS INSPECTION REPORT

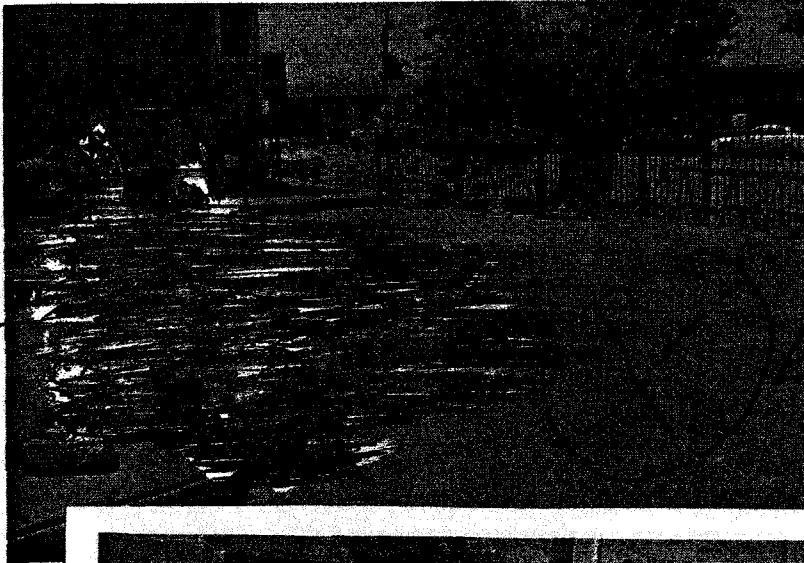
Site Number	Facility Name	Facility Address	Zip Code
	Hong Gardner Property	7600 MacArthur	05

### Inspection Report

PERMISSION TO INSPECT GRANTED

N  

  
 analyses: BTEX  
 TPH, TPA, TPF  
 Total Lead, Km  
 Oil/grease  
 Lab: Torrent Laboratory      Supv: Patti Sandrock  
 (408) 263-5258, Ext 208  
 2 TKs were removed Sunday by: unk  
 UST Permit fees must be paid  
 Tanks were filled w/ concrete during 1970  
 No ground water or odor from Tank/Excavation  
 or Stock pile

Facility Contact/Print Name: <p style="text-align: center; font-weight: bold;">HONG GARDNER</p>	Inspected By: <input type="checkbox"/> Insp. Griffin      238-7759 <input type="checkbox"/> Insp. Kupers      238-7054 <input checked="" type="checkbox"/> Insp. Matthews      238-2396 <input type="checkbox"/> Insp. Gomez      238-7253
Facility Contact/Signature: <p style="font-size: 1.5em; font-family: cursive;">Liona Gardner</p>	Date: 1/18/2007



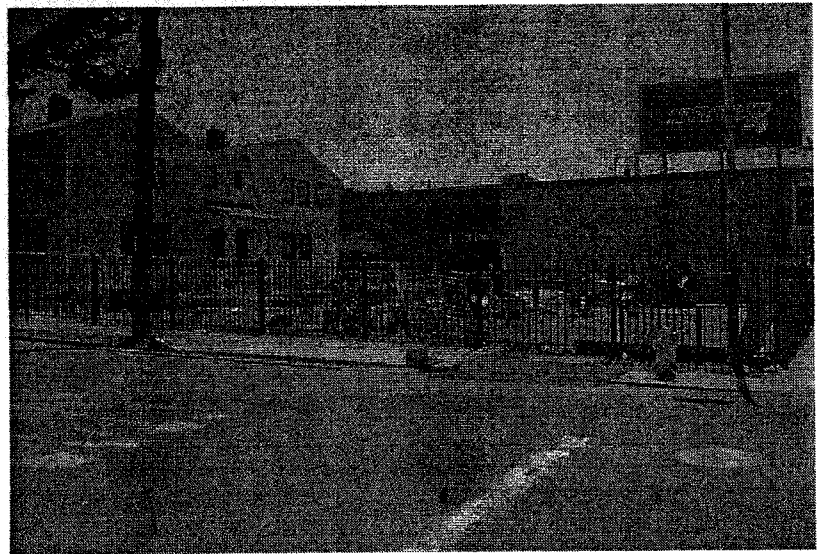
... A picture of a second area where a fourth UST may be located.



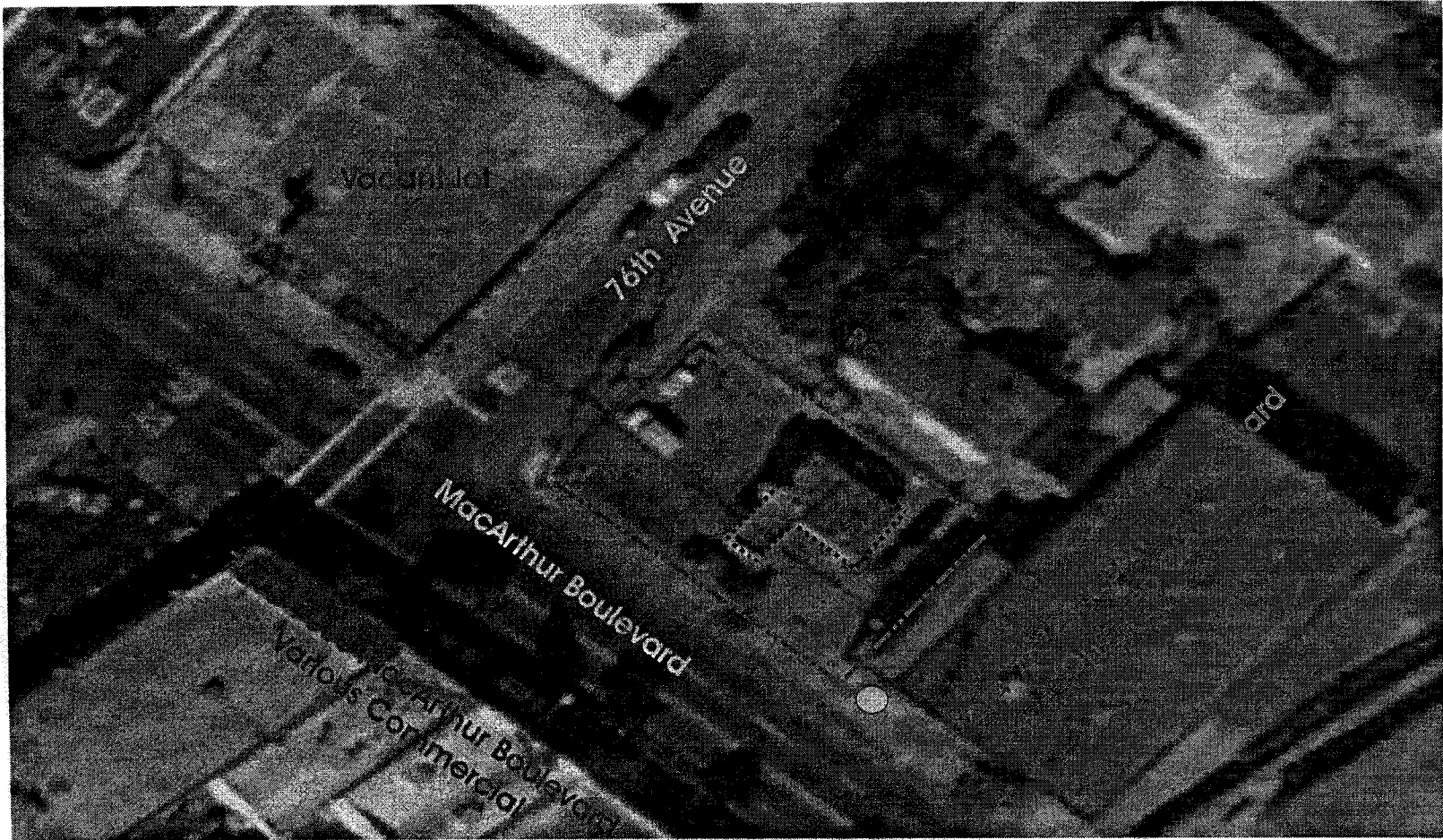
. A picture of a suspected UST location area on the subject property.

*outside property fence  
on side walk / bus stop*

A general view of the subject property from the intersection of 76th Avenue and MacArthur Boulevard.






<b>AEI CONSULTANTS</b>	
<b>PROPERTY PHOTOGRAPHS</b>	
7600 MacArthur Boulevard Oakland, California	Job No: 118073



**LEGEND**



- Subject Property Line 
- Former service station area 
- Pole-mounted transformer 

**AEI CONSULTANTS**

2500 Camino Diablo, Suite 200, Walnut Creek, CA 94597

Google Earth 2006

Scale: Not to Scale

**SITE PLAN**

7600 MacArthur Boulevard  
Oakland, California

**FIGURE 2A**  
Job No: 118073



**UNIFIED PROGRAM CONSOLIDATED FORM  
TANKS  
UNDERGROUND STORAGE TANKS - FACILITY**

(One page per site) Page \_\_\_\_ of \_\_\_\_

TYPE OF ACTION (Check one item only)  1. NEW PERMIT  3. RENEWAL PERMIT  5. CHANGE OF INFORMATION  7. PERMANENTLY CLOSED SITE  8. TANK REMOVED  2. DISTRIBUTOR  4. AMENDED PERMIT (Specify change)  6. TEMPORARY SITE CLOSURE  9. OTHER \_\_\_\_\_

**I. FACILITY/SITE INFORMATION**

BUSINESS NAME (Same as FACILITY NAME or DBA - Doing Business As) 3. <b>AVALON SUCCESS LLC</b>			FACILITY ID#			1.		
NEAREST CROSS STREET 401. <b>76TH Ave Oakland</b>			FACILITY OWNER TYPE			402. <input type="checkbox"/> 4. LOCAL AGENCY/DISTRICT* <input type="checkbox"/> 5. COUNTY AGENCY* <input checked="" type="checkbox"/> 2. INDIVIDUAL <input type="checkbox"/> 6. STATE AGENCY* <input type="checkbox"/> 3. PARTNERSHIP <input type="checkbox"/> 7. FEDERAL AGENCY*		
BUSINESS TYPE 403. <input type="checkbox"/> 1. GAS STATION <input type="checkbox"/> 3. FARM <input type="checkbox"/> 5. COMMERCIAL <input checked="" type="checkbox"/> 6. OTHER <input type="checkbox"/> 2. DISTRIBUTOR <input type="checkbox"/> 4. PROCESSOR			Is facility on Indian Reservation or trust lands? 405. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			*If owner of UST is a public agency: name of supervisor of division, section or office which operates the UST. (This is the contact person for the tank records.) 406.		
TOTAL NUMBER OF TANKS REMAINING AT SITE 404. <b>2</b>								

**II. PROPERTY OWNER INFORMATION**

PROPERTY OWNER NAME 407. <b>HONG JACQUELINE NGUYEN GARDNER</b>			PHONE 408. <b>(510) 776-2300</b>		
MAILING OR STREET ADDRESS 409. <b>1501 23rd Ave</b>					
CITY 410. <b>Oakland</b>		STATE 411. <b>Ca</b>		ZIP CODE 412. <b>94606</b>	
PROPERTY OWNER TYPE 413. <input type="checkbox"/> 1. CORPORATION <input checked="" type="checkbox"/> 2. INDIVIDUAL <input type="checkbox"/> 4. LOCAL AGENCY / DISTRICT <input type="checkbox"/> 6. STATE AGENCY <input type="checkbox"/> 3. PARTNERSHIP <input type="checkbox"/> 5. COUNTY AGENCY <input type="checkbox"/> 7. FEDERAL AGENCY					

**III. TANK OWNER INFORMATION**

TANK OWNER NAME 414. <b>NA</b>			PHONE 415.		
MAILING OR STREET ADDRESS 416.					
CITY 417.		STATE 418.		ZIP CODE 419.	
TANK OWNER TYPE 420. <input type="checkbox"/> 1. CORPORATION <input type="checkbox"/> 2. INDIVIDUAL <input type="checkbox"/> 4. LOCAL AGENCY/DISTRICT <input type="checkbox"/> 6. STATE AGENCY <input type="checkbox"/> 3. PARTNERSHIP <input type="checkbox"/> 5. COUNTY AGENCY <input type="checkbox"/> 7. FEDERAL AGENCY					

**IV. BOARD OF EQUALIZATION UST STORAGE FEE ACCOUNT NUMBER**

TY (TK) HQ 44-	Call (916) 322-9669 if questions arise					421.
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**V. PETROLEUM UST FINANCIAL RESPONSIBILITY**

INDICATE METHOD(S) 422. <input type="checkbox"/> 1. SELF-INSURED <input type="checkbox"/> 4. SURETY BOND <input type="checkbox"/> 7. STATE FUND <input type="checkbox"/> 10. LOCAL GOVT MECHANISM <input type="checkbox"/> 2. GUARANTEE <input type="checkbox"/> 5. LETTER OF CREDIT <input type="checkbox"/> 8. STATE FUND & CFO LETTER <input type="checkbox"/> 99. OTHER: _____ <input type="checkbox"/> 3. INSURANCE <input type="checkbox"/> 6. EXEMPTION <input type="checkbox"/> 9. STATE FUND & CD					
--	--	--	--	--	--

**VI. LEGAL NOTIFICATION AND MAILING ADDRESS**

Check one box to indicate which address should be used for legal notifications and mailing. Legal notifications and mailings will be sent to the tank owner unless box 1 or 2 is checked.  1. FACILITY  2. PROPERTY OWNER  3. TANK OWNER 423.

**VII. APPLICANT SIGNATURE**

Certification: I certify that the information provided herein is true and accurate to the best of my knowledge.

SIGNATURE OF APPLICANT 424. <b>Hong Gardner</b>		DATE 425. <b>2/15/2007</b>	PHONE 425. <b>(510) 776-2300</b>
NAME OF APPLICANT (print) 426. <b>HONG GARDNER</b>		TITLE OF APPLICANT 427. <b>property owner</b>	
STATE UST FACILITY NUMBER (Agency use only) 428. <b>(See Data Element 1, above.)</b>		1998 UPGRADE CERTIFICATE NUMBER (Agency use only) 429.	

## GOVERNMENT CODE

### **Section 11507.5. Exclusivity of discovery provisions**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

### **Section 11507.6. Request for discovery**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions (or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

#### **Section 11507.7. Motion to compel discovery**

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

You may inform the Agency at the conference whether you wish to pursue a formal appeal or waive your right to a formal hearing, as explained below.

#### FORMAL APPEAL RIGHTS

YOU MUST FILE A WRITTEN REQUEST FOR A HEARING WITHIN TWENTY DAYS AFTER THE DATE OF THE COVER LETTER YOU RECEIVED WITH YOUR COPY OF THE ORDER IF YOU WISH TO APPEAL.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Agency within twenty days after the date of the cover letter you received with your copy of the Order, you will be deemed to have waived your right to a hearing in this matter. If you do not file a timely hearing request, the Enforcement Order becomes final automatically.

The request for a hearing may be made by delivering or mailing one copy of the enclosed form entitled "Notice of Defense" or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code to the person who issued the Order at the address following his or her signature on the Order or by delivering the Notice of Defense to the person conducting the Informal Conference at the time and place specified above.

The enclosed Notice of Defense, if signed and filed with the Agency is deemed a specific denial of all parts of the Order, but you will not be permitted to raise any objection to the form of the Order unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen days after service of the Order.

If you file a Notice of Defense within the time permitted, a hearing on the allegations made in the Order will be conducted by the Office of Administrative Hearings of the Agency of General Services in accordance with the procedures specified in Health and Safety Code section 25187 and Government Code section 11507 et seq.

#### GENERAL INFORMATION

You may but are not required to be represented by counsel at any or all stages of these proceedings.

The hearing may be postponed for good cause. If you have good cause, you must notify the Agency within ten working days after you discover the good cause. Failure to notify the Agency within ten days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are attached. If you desire the names and addresses of witnesses or an opportunity to inspect and copy items in possession, custody, or control of the Agency, you may contact the person issuing the Order at the address indicated at the end of the Order.

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(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions (or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

**Section 11507.7. Motion to compel discovery**

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

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(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

**NOTICE OF DEFENSE**

[Heading: Name of Agency]

In the Matter of:

7600 Mac Arthur Boulevard)

Docket#OAKKM2007-4/13

)

)

NOTICE OF DEFENSE

)

)

Health and Safety Code

)

Section 25187(d)

)

Respondent.

)

)

- I, the undersigned Respondent, acknowledge receipt of a copy of the Enforcement Order, Statement to Respondent, Government Code sections 11507.5, 11507.6, and 11507.7, and two copies of a Notice of Defense.

I request a hearing to permit me to present my defense to the allegations contained in the Enforcement Order.

Dated: 4/24/2007

*Lionel Sander*

(Signature of Respondent)

Mailing:

Ms Jong Gardner  
632 Rialto Rialto Road  
Oakland, Ca 94619

(510) 776-2304

(Telephone Number)

**PROOF OF SERVICE**

1. I served the
    - a.  Enforcement Order Docket No.
    - Statement to Respondent
    - 2 Blank Notice of Defense Forms
    - Other (specify): Cover Letter
  - b. On Respondent: **Ms. Jong Gardner**
  - c. By serving: Respondent
2. By mailing copies by first-class certified mail, Certified Mail Receipt No. **7005 0390 000 0141 000**, return receipt requested, in a sealed envelope addressed to:
3. My name, business address, and telephone number are:  
**Keith Matthews**  
**Hazardous inspector II**  
**Fire Prevention Bureau**  
**250 Frank H. Ogawa Plaza**  
**Oakland, Ca 94612**

You may inform the Agency at the conference whether you wish to pursue a formal appeal or waive your right to a formal hearing, as explained below.

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YOU MUST FILE A WRITTEN REQUEST FOR A HEARING WITHIN TWENTY DAYS AFTER THE DATE OF THE COVER LETTER YOU RECEIVED WITH YOUR COPY OF THE ORDER IF YOU WISH TO APPEAL.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Agency within twenty days after the date of the cover letter you received with your copy of the Order, you will be deemed to have waived your right to a hearing in this matter. If you do not file a timely hearing request, the Enforcement Order becomes final automatically.

The request for a hearing may be made by delivering or mailing one copy of the enclosed form entitled "Notice of Defense" or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code to the person who issued the Order at the address following his or her signature on the Order or by delivering the Notice of Defense to the person conducting the Informal Conference at the time and place specified above.

The enclosed Notice of Defense, if signed and filed with the Agency is deemed a specific denial of all parts of the Order, but you will not be permitted to raise any objection to the form of the Order unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen days after service of the Order.

If you file a Notice of Defense within the time permitted, a hearing on the allegations made in the Order will be conducted by the Office of Administrative Hearings of the Agency of General Services in accordance with the procedures specified in Health and Safety Code section 25187 and Government Code section 11507 et seq.

#### GENERAL INFORMATION

You may but are not required to be represented by counsel at any or all stages of these proceedings.

The hearing may be postponed for good cause. If you have good cause, you must notify the Agency within ten working days after you discover the good cause. Failure to notify the Agency within ten days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are attached. If you desire the names and addresses of witnesses or an opportunity to inspect and copy items in possession, custody, or control of the Agency, you may contact the person issuing the Order at the address indicated at the end of the Order.

## GOVERNMENT CODE

### **Section 11507.5. Exclusivity of discovery provisions**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

### **Section 11507.6. Request for discovery**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions (or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.



For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

#### **Section 11507.7. Motion to compel discovery**

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

# CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA

• OAKLAND, CALIFORNIA 94612

Fire Department  
Fire Prevention Bureau  
Hazardous Materials Management Program

(510) 238-2396  
FAX: (510) 238-6739  
TTY/TDD: (510) 238-3927

November 21, 2006

Ms. Jong Gardner  
632 Rialto Road  
Oakland, CA 94619

Re: 7600 Mac Arthur Boulevard

## Notice of Legal Obligation

Mrs. Jong Gardner:

During a City of Oakland construction project two underground storage tanks were discovered at 7600 Mac Arthur Blvd. As the owner of the property you are required to perform the following:

1. Submit a tank closure plan to this Department as required by California Code of Regulations, Div. 3, Chapter 16, Underground Storage Tank Regulations, Article 7, 2670, and;
2. Provide the Oakland Fire Department with a time line for the removal of the UST(s).

Notify this department within 10 days of your intentions and to obtain necessary instructions and forms.

Please note, that section 25299 of the California Health and Safety Code states that any operator of an underground storage tank is liable for a civil penalty of not less than five hundred dollars or more than five thousand dollars per day for failure to obtain a permit, or failing to properly close an underground tank, as required by section 25298.

If you have any questions regarding this matter, please contact me at (510) 238-2396.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent Madsen". The signature is fluid and cursive, with a large loop at the end.

# CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA

• OAKLAND, CALIFORNIA 94612

Fire Department  
Fire Prevention Bureau  
Hazardous Materials Management Program

(510) 238-2396  
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November 21, 2006

Ms. Hong Gardner  
632 Rialto Road  
Oakland, CA 94619

Re: 7600 Mac Arthur Boulevard

## **Notice of Legal Obligation**

Mrs. Jong Gardner:

During a City of Oakland construction project two underground storage tanks were discovered at 7600 Mac Arthur Blvd. As the owner of the property you are required to perform the following:

1. Submit a tank closure plan to this Department as required by California Code of Regulations, Div. 3, Chapter 16, Underground Storage Tank Regulations, Article 7, 2670, and;
2. Provide the Oakland Fire Department with a time line for the removal of the UST(s).

Notify this department within 10 days of your intentions and to obtain necessary instructions and forms.

Please note, that section 25299 of the California Health and Safety Code states that any operator of an underground storage tank is liable for a civil penalty of not less than five hundred dollars or more than five thousand dollars per day for failure to obtain a permit, or failing to properly close an underground tank, as required by section 25298.

If you have any questions regarding this matter, please contact me at (510) 238-2396.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Matthews", written over a horizontal line.

Keith Matthews

CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA

• OAKLAND, CALIFORNIA 94612

Fire Department  
Fire Prevention Bureau  
Hazardous Materials Management Program

(510) 238-2396  
FAX: (510) 238-6739  
TTY/TDD (510) 238-3927

January 15, 2008

Ms. Jong Gardner  
632 Rialto Road  
Oakland, CA 94619

Certified Mail #: 7005 0390 0000 0140 9844

Re: Administrative Enforcement Order - 7600 Mac Arthur Boulevard

Mrs. Jong Gardner:

The City of Oakland Coordinated Unified Program Agency has filed a final Administrative Enforcement order against you for the following reasons:

1. You removed a 2ea. underground storage tanks (UST(s)) without the approval of the City of Oakland Certified Unified Program Agency (CUPA);
2. You Failed to use an appropriately license contractor to remove the UST(s) (E.g. California Sate Licensing Board licenses A, B, C-33/C-61 or D-40);
3. You have not provided a Final Report of the UST removal project that is stamped by registered geologist

On May 15<sup>th</sup> you met with Leroy Griffin and my self to negotiate a settlement. During that meeting we agreed to waive all penalties if a work plan and time line was submitted to our office within 30-days, which would provide a timeline for the completion of the characterization of the parcel of property at 7600 Mac Arthur Boulevard. Since we did not receive the work plan and time line until 8/03/07, we do not consider that you honored the agreement reached on May, 15, 2007. Therefore you must pay 10% of the assessed penalty or \$3,300.00.

Please note, that section 25299 of the California Health and Safety Code states that any operator of an underground storage tank is liable for a civil penalty of not less than five

hundred dollars or more than five thousand dollars per day for failure to obtain a permit, or failing to properly close an underground tank, as required by section 25298.

If you have any questions regarding this matter, please contact me at (510) 238-2396.

Sincerely,

  
Keith Matthews

# City of Oakland

In the Matter of: ) Docket No. OAKKM2007-4/13  
Ms. Hong Gartner Property) )  
7600 Mac Arthur Ave 94605) )  
ID No. ( \_\_\_\_\_ ) )  
Respondent. ) )  
\_\_\_\_\_ ) )

## INTRODUCTION

- 1.1. Parties. The City of Oakland issues this Enforcement Order to Ms. Jong Gardner.
- 1.2. Site. The respondent was notified November 21, 2006 that she must submit an Underground Storage Tank removal packet to the Oakland Fire Department. On or about January 18, 2007 the respondent removed 3 ea. UST(s) from 7600 Mac Arthur Boulevard without attaining an approved UST removal permit. The respondent failed to use a qualified contractor.
- 1.3. Jurisdiction. Section 25187 of the Health and Safety Code (HSC) authorizes the City of Oakland Fire Department to order action necessary to correct violations and assess a penalty when the Oakland Fire Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.
- 1.4. Exhibits. All exhibits attached to this Order are incorporated herein by this reference.
- 1.5. Applicable Statutes and Regulations. Copies of the statutes and regulations applicable to this Order are attached as Exhibit.

## **DETERMINATION OF VIOLATIONS**

2. The Oakland Fire Department's CUPA staff has determined the following regulations from Title 22 and Title 23 of the California Code were violated:
- 2.1. The Respondent violated Title 23, California Code of Regulations, Chapter 16, §2662(c) by failing to upgrade her motor vehicle fuel tank(s) as required by the December 18, 1998 deadline;
  - 2.2. The Respondent violated Title 23, California Code of Regulations (23CCR), Chapter 16, §2670(c) by failing to permanently close her underground storage tank 12 months after the December 18, 1998 deadline for upgrading underground storage tank(s)(UST(s));
  - 2.3. The Respondent violated California Health and Safety Code, Section 25284.1(a)(5)(D)(ii) by failing to use a UST removal contractor possessing the appropriate license (i.e., A, B, C-33/C-61, D-40) issued by the California State Licensing Board.

## **SCHEDULE FOR COMPLIANCE**

3. Based on the foregoing Determination Of Violations, IT IS HEREBY ORDERED THAT:

3.1.1

The respondent shall provide an approvable removal plan for the underground storage tank located at 7600 Mac Arthur Boulevard in accordance with the California Code of Regulations, Title 23, Chapter 3, Subpart 16, Underground Storage Tank Regulations;

3.1.2

The respondent shall provide a stamped report from a certified geologist describing the UST removal and the subsequent analytical results.

3.1.3

Communications:

All approvals and decisions of the Oakland Fire Department's CUPA staff made regarding submittals and notifications will be communicated to Respondent in writing by the Oakland Fire Department's CUPA staff manager or his designee. No informal advice, guidance, suggestions, or comments by the Oakland Fire Department's CUPA staff regarding reports, plans, specifications, schedules, or any other writings by Respondent shall not be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

- 3.2 All submittals from a Respondent pursuant to this order shall be sent simultaneously to:

SF Bay Region 2

1515 Clay Street, Suite 1400

Oakland, CA 94612

- 3.3. Communications. All approvals and decisions of the Oakland Fire Department made regarding submittals and notifications will be communicated to Respondent in writing by a member of the



Oakland Fire Department's CUPA staff. No informal advice, guidance, suggestions, or comments by the Agency Oakland Fire Department's CUPA staff regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

- 3.4. Agency Review and Approval. If the Oakland Fire Department's CUPA staff determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Oakland Fire Department Oakland Fire Department's CUPA staff may:
- a. Modify the document as deemed necessary and approve the document as modified, or
  - b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Agency a revised document incorporating the recommended changes.
- 3.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.
- 3.6. Endangerment during Implementation: In the event that the Agency Oakland Fire Department's CUPA staff determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Agency may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.
- 3.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent.

Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

- 3.8 Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Oakland Fire Department's CUPA staff, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Oakland Fire Department's CUPA staff and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Agency may

deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

- 3.9. Data and Document Availability. Respondent shall permit the Oakland Fire Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Oakland Fire Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Oakland Fire Department's CUPA staff requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Agency Oakland Fire Department's CUPA staff, or permit the Oakland Fire Department's CUPA staff to copy the documents prior to destruction. Respondent shall notify the Oakland Fire Department's CUPA staff in writing at least six months prior to destroying any documents prepared pursuant to this Order.
- 3.10. Government Liabilities: The Oakland Fire Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the Oakland Fire Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.
- 3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Oakland Fire Department approval and are -submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Oakland Fire Department's CUPA staff.
- 3.12. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.
- 3.13. Extension Approvals: If the Oakland Fire Department's CUPA staff determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

## **OTHER PROVISIONS**

- 4.1. Additional Enforcement Actions: By issuance of this Order, the Oakland Fire Department's CUPA staff does not waive the right to take further enforcement actions.
- 4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Agency

or other government agencies as a result of such failure, as provided by HSC section 25188 and other applicable provisions of law.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4. Time Periods: "Days" for purposes of this Order means calendar days.

## PENALTY

4. Based on the foregoing DETERMINATION OF VIOLATIONS, the Agency sets the amount of Respondent's penalty at  $[(\$5,000.00/\text{Day-Violation})+(60\text{-days})\times(0.2) \times(\$5,000)](3\text{-UST}(s)) = \$33,000.00$ . Consideration hard ship placed on the respondent to pay the aforementioned penalty, the respondent is ordered to pay 10% of the assessed penalty or \$3,300.00. Payment is due within 30 days from the effective date of the Order. Respondent's check shall be made payable to the Oakland Fire Department, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver payment to:

Leroy Griffin, Assistant Fire Marshal

Fire Prevention Bureau, Suite-3341

Oakland, CA 94612

## RIGHT TO A HEARING

6. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

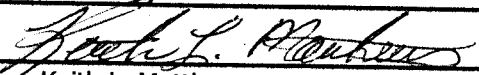
## EFFECTIVE DATE

7. This Order is final and effective fifteen days from the date it is served on Respondent, unless Respondent requests a hearing within the fifteen-day period.

## **HSC§25187(f)] Paragraphs (See paragraphs 3.1 through 3.7)**

Corrective actions from the Schedule of Compliance) of the Order are effective immediately on the date of issuance indicated below. The Agency finds that the violations associated with these paragraphs may pose an imminent and substantial endangerment to the public health or safety or the environment in that 2-Underground Storage Tanks located at 7600 Mac Arthur Boulevard were removed without a removal permit being issued by the Oakland Fire department; and no closure report from a registered geologist as been provided to the CUPA. The remaining paragraphs of the Order are effective fifteen days from the date this Order is served on Respondent, unless Respondent requests a hearing within the fifteen-day period.

Date of Issuance: January 15, 2008



Keith L. Matthews

Hazardous Materials Inspector II

City of Oakland CUPA

**NOTICE OF FINAL ORDER**

City Of Oakland

In the Matter of:

Hong Gartner  
7600 Mac Arthur Ave. 94605

ID No. \_\_\_\_\_

Respondent.

Docket No. OAKKM2007-4-13

NOTICE OF FINAL ORDER

TO Hong Gartner (RESPONDENT):

PLEASE TAKE NOTICE that pursuant to Health and Safety Code section 25404.1.1 and Government Code section 11505(c), the Enforcement Order issued by the City of Oakland on 4/13/07 and served upon you has become final. A true and correct copy of the Enforcement Order is attached to this Notice of Final Order. By the terms of the Order, payment of the penalty of \$3,300 must be mailed or delivered by February 15, 2008.

Dated: January 15, 2008

  
\_\_\_\_\_  
Keith L. Matthews

6500  
Mark  
New York

**VIOLATION/FACT/EVIDENCE ANALYSIS SHEET**

STATUTE, REGULATION, PERMIT OR ISD VIOLATED	ELEMENTS OF REQUIREMENT/ VIOLATION	FACTS ESTABLISHING VIOLATION	EVIDENCE (Proof of the Facts)	VIOLATION CLASSIFICATION
23 COR 266(c)	Failure to Remove TK by Date, 1998 Failure to use a certified contractor Failure to Submit closure Report w/ 30 days of closure	Nov 21 - 2003 Sent letter Requesting Removal Plan Provided assistance explaining Requirements for Tank Removal Nov 21 - Jan 16 Tank Tank met TR on site TRS had begun removal		UST $5,000 + 102(5000) \times 60$ For TRK $6,000$ $11,000$ Report by Certified Engineers

Stamped by Registered Geologist

[AEO13 Form for internal use only. Do not distribute]

3 x 2 = 6 vio

66K

3927

Jamie

201101

Clairemont Resort + Spa

JLEUNG@Clairemont  
Resort.com

# City of Oakland

In the Matter of: ) Docket No. OAKKM2007-4/13  
Ms. Jong Gartner Property) )  
7600 Mac Arthur Ave 94605) )  
ID No. ( \_\_\_\_\_ ) Health and Safety Code  
 ) Section 25187  
Respondent. )  
\_\_\_\_\_ )

## INTRODUCTION

- 1.1. Parties. The City of Oakland issues this Enforcement Order to Ms. Jong Gardner.
- 1.2. Site. The respondent was notified November 21, 2006 that she must submit an Underground Storage Tank removal packet to the Oakland Fire Department. On or about January 18, 2007 the respondent removed 3 ea. UST(s) from 7600 Mac Arthur Boulevard without attaining an approved UST removal permit. The respondent failed to use a qualified contractor.
- 1.3. Jurisdiction. Section 25187 of the Health and Safety Code (HSC) authorizes the City of Oakland Fire Department to order action necessary to correct violations and assess a penalty when the Oakland Fire Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.
- 1.4. Exhibits. All exhibits attached to this Order are incorporated herein by this reference.
- 1.5. Applicable Statutes and Regulations. Copies of the statutes and regulations applicable to this Order are attached as Exhibit.



## DETERMINATION OF VIOLATIONS

2. The Oakland Fire Department's CUPA staff has determined the following regulations from Title 22 and Title 23 of the California Code were violated:

- 2.1. The Respondent violated Title Title 23, California Code of Regulations, Chapter 16, §2662(c) by failing to upgrade her motor vehicle fuel tank(s) as required by the December 18, 1998 deadline;
- 2.2. The Respondent violated Title 23, California Code of Regulations (23CCR), Chapter 16, §2670(c) by failing to permanently close her underground storage tank 12 months after the December 18, 1998 deadline for upgrading underground storage tank(s)(UST(s));
- 2.3. The Respondent violated California Health and Safety Code, Section 25284.1(a)(5)(D)(ii) by failing to use a UST removal contractor possessing the appropriate license (i.e., A, B, C-33/C-61, D-40) issued by the California State Licensing Board.

## SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination Of Violations, IT IS HEREBY ORDERED THAT:

3.1.1

The respondent shall provide an approvable removal plan for the underground storage tank located at 7600 Mac Arthur Boulevard in accordance with the California Code of Regulations, Title 23, Chapter 3, Subpart 16, Underground Storage Tank Regulations;

3.1.2

The respondent shall provide a stamped report from a certified geologist describing the UST removal and the subsequent analytical results.

3.1.3

Communications:

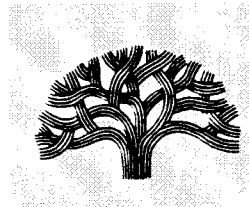
All approvals and decisions of the Oakland Fire Department's CUPA staff made regarding submittals and notifications will be communicated to Respondent in writing by the Oakland Fire Department's CUPA staff manager or his designee. No informal advice, guidance, suggestions, or comments by the Oakland Fire Department's CUPA staff regarding reports, plans, specifications, schedules, or any other writings by Respondent shall not be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.2 All submittals from a Respondent pursuant to this order shall be sent simultaneously to:

SF Bay Region 2  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

3.3. Communications. All approvals and decisions of the Oakland Fire Department made regarding submittals and notifications will be communicated to Respondent in writing by a member of the

# CITY OF OAKLAND



250 FRANK H. OGAWA PLAZA

• OAKLAND, CALIFORNIA 94612

Fire Department  
Fire Prevention Bureau  
Hazardous Materials Management Program

(510) 238-2396  
FAX: (510) 238-6739  
TTY/TDD: (510) 238-3927

April 13, 2007

Ms. Jong Gardner  
632 Rialto Road  
Oakland, CA 94619

Certified Mail #: 7005 0390 0000 0141 0000

Re: Administrative Enforcement Order - 7600 Mac Arthur Boulevard

Mrs. Jong Gardner:

The City of Oakland Coordinated Unified Program Agency has filed an Administrative Enforcement order against you for the following reasons:

1. You removed a 2ea. underground storage tanks (UST(s)) without the approval of the City of Oakland Certified Unified Program Agency (CUPA);
2. You Failed to use an appropriately license contractor to remove the UST(s) (E.g. California Sate Licensing Board licenses A, B, C-33/C-61 or D-40);
3. You have not provided a Final Report of the UST removal project that is stamped by registered geologist

Enclosed you will find the following:

- Administrative Enforcement order
- 2-copies of : Notice Of Defense
- Proof Of Service
- Formal Appeal Rights
- Government Code, Sections 11507.5 and 1107.6

Notify this department within 10 days to arrange a meeting to start settlement discussions.

Please note, that section 25299 of the California Health and Safety Code states that any operator of an underground storage tank is liable for a civil penalty of not less than five hundred dollars or more than five thousand dollars per day for failure to obtain a permit, or failing to properly close an underground tank, as required by section 25298.

If you have any questions regarding this matter, please contact me at (510) 238-2396.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Matthews", with a long horizontal flourish extending to the right.

Keith Matthews

Oakland Fire Department's CUPA staff. No informal advice, guidance, suggestions, or comments by the Agency Oakland Fire Department's CUPA staff regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

3.4. Agency Review and Approval. If the Oakland Fire Department's CUPA staff determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Oakland Fire Department Oakland Fire Department's CUPA staff may:

- a. Modify the document as deemed necessary and approve the document as modified, or
- b. Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Agency a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation: In the event that the Agency Oakland Fire Department's CUPA staff determines that any circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Agency may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.7. Liability: Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent.

Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8 Site Access: Access to the site shall be provided at all reasonable times to employees, contractors, and consultants of the Oakland Fire Department's CUPA staff, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Oakland Fire Department's CUPA staff and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Agency may

deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

- 3.9. Data and Document Availability. Respondent shall permit the Oakland Fire Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Oakland Fire Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Oakland Fire Department's CUPA staff requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Agency Oakland Fire Department's CUPA staff, or permit the Oakland Fire Department's CUPA staff to copy the documents prior to destruction. Respondent shall notify the Oakland Fire Department's CUPA staff in writing at least six months prior to destroying any documents prepared pursuant to this Order.
- 3.10. Government Liabilities: The Oakland Fire Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the Oakland Fire Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.
- 3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Oakland Fire Department approval and are -submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Oakland Fire Department's CUPA staff.
- 3.12. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.
- 3.13. Extension Approvals: If the Oakland Fire Department's CUPA staff determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

## **OTHER PROVISIONS**

- 4.1. Additional Enforcement Actions: By issuance of this Order, the Oakland Fire Department's CUPA staff does not waive the right to take further enforcement actions.
- 4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Agency

or other government agencies as a result of such failure, as provided by HSC section 25188 and other applicable provisions of law.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4. Time Periods. "Days" for purposes of this Order means calendar days.

## PENALTY

4. Based on the foregoing DETERMINATION OF VIOLATIONS, the Agency sets the amount of Respondent's penalty at [(\$5,000.00/Day-Violation) (90-days) (3-UST(s)) = \$900,000.00. Payment is due within 30 days from the effective date of the Order. Respondent's check shall be made payable to the Oakland Fire Department, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver payment to:

Leroy Griffin, Assistant Fire Marshal

Fire Prevention Bureau, Suite-3341

Oakland, CA 94612

## RIGHT TO A HEARING

6. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

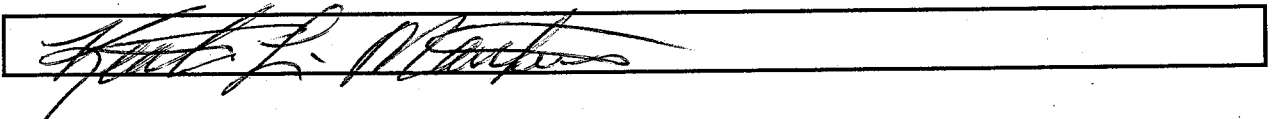
## EFFECTIVE DATE

7. This Order is final and effective fifteen days from the date it is served on Respondent, unless Respondent requests a hearing within the fifteen-day period.

## **HSC§25187(f)] Paragraphs (See paragraphs 3.1 through 3.7)**

Corrective actions from the Schedule of Compliance) of the Order are effective immediately on the date of issuance indicated below. The Agency finds that the violations associated with these paragraphs may pose an imminent and substantial endangerment to the public health or safety or the environment in that 2-Underground Storage Tanks located at 7600 Mac Arthur Boulevard were removed without a removal permit being issued by the Oakland Fire department; and no closure report from a registered geologist as been provided to the CUPA. The remaining paragraphs of the Order are effective fifteen days from the date this Order is served on Respondent, unless Respondent requests a hearing within the fifteen-day period.

Date of Issuance: April 13, 2007



Keith L. Matthews  
Hazardous Materials Inspector II  
City of Oakland CUPA

## STATEMENT TO RESPONDENT

In the Matter of: 7600 Mac Arthur Boulevard  
Docket#: OAKKM2007-4/13

Respondent: Ms. Jong Gartner

An Enforcement Order (Order) is attached to this statement and is hereby served upon you. The Order has been filed by the City of Oakland CUPA

You may choose:

- . to comply with the Order immediately,
- . to discuss the matter with the Agency at the Informal Conference scheduled below, or
- . to pursue a formal appeal.

### COMPLIANCE

If you wish to comply with the Order, correct the violations and send to the person who issued the Order:

- . A signed Certification of Compliance, and
- . A check for the amount of the penalty made out to Agency as specified in the Order.

### INFORMAL CONFERENCE

If you wish to discuss this matter with the Agency, an Informal Conference has been scheduled for:

Date: Friday, April 27<sup>th</sup>  
Time: 9:00 AM  
Location: Fire Prevention Bureau  
250 Frank H. Ogawa  
Oakland , CA 94612



**NOTICE OF DEFENSE**

[Heading: Name of Agency]

In the Matter of:

7600 Mac Arthur Boulevard)

Docket#OAKKM2007-4/13

)

)

NOTICE OF DEFENSE

)

)

Health and Safety Code

)

Section 25187(d)

)

Respondent.

)

)

I, the undersigned Respondent, acknowledge receipt of a copy of the Enforcement Order, Statement to Respondent, Government Code sections 11507.5, 11507.6, and 11507.7, and two copies of a Notice of Defense.

I request a hearing to permit me to present my defense to the allegations contained in the Enforcement Order.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Respondent)

Mailing:

Ms Jong Gardner  
632 Rialto Rialto Road  
Oakland, Ca 94619

\_\_\_\_\_  
(Telephone Number)

**NOTICE OF DEFENSE**

[Heading: Name of Agency]

In the Matter of:

7600 Mac Arthur Boulevard)

Docket#OAKKM2007-4/13

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NOTICE OF DEFENSE

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Health and Safety Code

)

Section 25187(d)

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Respondent.

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I request a hearing to permit me to present my defense to the allegations contained in the Enforcement Order.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Respondent)

Mailing:

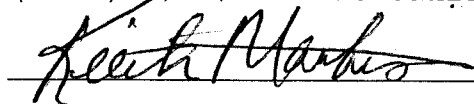
Ms Jong Gardner  
632 Rialto Rialto Road  
Oakland, Ca 94619

\_\_\_\_\_  
(Telephone Number)

**PROOF OF SERVICE**

1. I served the
    - a.  Enforcement Order Docket No. OAKKM2007-4/13
    - Statement to Respondent
    - 2 Blank Notice of Defense Forms
    - Other (specify): Cover Letter
  - b. On Respondent: **Ms. Jong Gardner**
  - c. By serving: Respondent
2. By mailing copies by first-class certified mail, Certified Mail Receipt No. **7005 0390 000 0141 000**, return receipt requested, in a sealed envelope addressed to:
3. My name, business address, and telephone number are:  
**Keith Matthews**  
**Hazardous inspector II**  
**Fire Prevention Bureau**  
**250 Frank H. Ogawa Plaza**  
**Oakland, Ca 94612**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (date) 4/13/2007 at Oakland, California.



\_\_\_\_\_  
(Signature)