

## Detterman, Mark, Env. Health

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**From:** Gerald L. Pouncey Jr. <Glp@mmmlaw.com>  
**Sent:** Thursday, November 30, 2017 12:10 PM  
**To:** Roe, Dilan, Env. Health  
**Cc:** 'Kristen Gates'; Detterman, Mark, Env. Health; Wyatt Kendall; Gerald L. Pouncey Jr.  
**Subject:** Former Sisters of Providence Hospital Site - 27th Street and Broadway Avenue - Site Cleanup Program No. RO0003191  
**Attachments:** 11284106 (1) (18058\_104455) (FedEx Letter to Dilan Roe re\_ Site Cleanup ....pdf)

Dilan,

Thank you again for taking the time to meet with us on November 17, 2017 to discuss the Former Sisters of Providence Hospital site. We wanted to provide the County the additional information that we discussed during our meeting. See attached.

Please call me if you have any questions or need any additional information regarding the site.

Thanks,  
Gerald



**Gerald L. Pouncey, Jr.**

**Partner**

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November 30, 2017

**VIA FEDEX AND EMAIL**

Department of Environmental Health  
Local Oversight Program  
Attn: Dilan Roe  
1131 Harbor Bay Parkway  
Alameda, CA 94502

**RE: Former Sisters of Providence Hospital  
27<sup>th</sup> Street and Broadway Avenue  
Oakland, CA (the "Site")  
Site Cleanup Program No. RO0003191  
dilan.roe@acgov.org**

Dear Ms. Roe:

On behalf of CRP/THC Oakland Broadway Uptown Venture LLC (the "Developer"), I would like to thank you for taking time to meet on November 17, 2017 to discuss the foundational feature that Developer encountered during redevelopment of the Site. As we discussed during our meeting, Developer committed to providing the Alameda County Department of Environmental Health (the "County") the additional information we discussed in that meeting which supported a conclusion that the foundational feature was not an underground storage tank and, therefore, should not be regulated as an underground storage tank. The purpose of this letter is to provide the County with this additional information.

Prior correspondence sent from the County requests that Developer submit a work plan pursuant to California Health & Safety Code Section 25296.10 and corresponding regulations 23 California Code of Regulations Sections 2652 and 2654 and 2721 through 2728. The California Health & Safety Code section and corresponding regulations cited in the County's letters relate to "unauthorized releases" from "underground storage tanks." California's Health & Safety Code defines "tank" to mean "a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support." Cal. Health & Safety Code § 25281(u) An "underground storage tank" means "any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and

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that is substantially or totally beneath the surface of the ground.” *Id.* at § 25281(u). In light of the facts set forth below, the foundational element which was encountered by Developer during development does not meet the California Health & Safety Code’s definition of an underground storage tank.

1. **Shallow depth of the Foundational Feature.** As expected and contemplated in the Site Management Plan approved by the County, Developer encountered certain subsurface structural and foundational relics of the former Sisters of Providence Hospital, including near the north boundary of the Site along 27<sup>th</sup> Street. In this northern area of the Site, Developer encountered a concrete foundation feature at approximately 5 feet below the ground surface. Upon encountering the foundational feature, Developer observed the inside of the foundational feature to be shallow. From the top of the feature’s sidewalls to the bottom of the feature’s floor was only approximately 2 feet. The depth of foundational feature itself was, therefore, inconsistent with a storage tank or holding vessel.
2. **Design of the Foundational Feature.** As depicted in the attached photographs, the top of the foundational feature was completely open when Developer encountered it. There was also no indication in the field that a top ever existed on the foundational feature. The fact that the foundational feature was not an enclosed structure and had an open top indicates that it was not “designed to contain an accumulation of hazardous substances.” Further evidence that the foundational feature was not used as an underground storage tank is that a layer of thick concrete was located below and attached to the bottom of the foundational feature. This suggests that foundational feature was designed to serve as a component to a larger foundation system rather than an underground storage tank.
3. **Shape and Size of the Foundational Feature.** The foundational feature’s shape and its size are inconsistent with the shape and size of a typical underground storage tank. The foundational feature was an irregularly shaped structure and measured approximately 10 feet by 20 feet. It did not have any piping or other connections leading from the foundational feature, which are often observed when encountering an underground storage tank. As such, the foundational feature did not bear any resemblance to an underground storage tank.
4. **Contents of the Foundational Feature.** The contents of the foundational feature included dirt, fill material, bottles, trash and a liquid. Testing of the liquid within the feature indicated that it was primarily water with a small concentration of petroleum. Due to heavy rains in the months immediately prior to Developer encountering the foundational feature and the fact that the foundational feature was not sealed on the top, it is likely that liquid discovered within the foundational features resulted from the heavy rain events. As explained in Developer’s prior letters to the County, Developer properly

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removed and disposed of the liquid in accordance with the Site Management Plan. Because the foundational feature included a variety of materials and not just the liquid, it is likely that such materials and liquid were moved to the foundational feature as part of the demolition of the former hospital in the 1940s rather than stored in the foundational feature as part of the former hospital operations.

5. **Absence of subsurface tanks or vaults identified on historical Sanborn maps.** As part of its investigation of the Site, Developer performed an ASTM-compliant Phase I environmental site assessment. This Phase I assessment included an investigation of historical information about the Site, including a review of historical Sanborn maps. The Sanborn map prepared during the period of time when the former hospital operated does not identify any subsurface tanks, including in the area where Developer encountered the foundational feature. The only tanks listed on this historic Sanborn map are two aboveground 5,000-gallon tanks and are identified as being located in the attic. These aboveground tanks would have been removed from the Site during the demolition of the former hospital. No other historical information obtained and reviewed by Developer indicates that underground storage tanks were ever used during the former onsite hospital operations.

In light of the facts listed above, Developer did not consider the foundational element to be “a stationary device designed to contain an accumulation of hazardous substances” but rather considered the foundational feature a component of the former hospital’s overall structural support system.

Developer would also note that the presence of the liquid within the foundational feature does not constitute an “unauthorized release” of a hazardous substance at the Site. The California Health & Safety Code defines “release” as “any spilling, leaking, emitting, discharging escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.” Cal. Health & Safety Code § 25281(p). The liquid within the foundational element was immediately removed from the foundational feature and properly disposed offsite. ENGEO provided full-time observation of all site excavation activities, including the demolition of the foundational feature. It did not observe evidence of the liquid immediately around the area where the foundational feature had been located. Since all of the liquid was contained within the foundational feature, the liquid had not been “released into or on the waters of the state, the land, or the subsurface soils.”

All of the factors discussed above led Developer to conclude in the field that the foundational feature encountered during development was not an underground storage tank. As noted during our meeting, Developer has completed the excavation of the entire Site to a depth of approximately 40 feet. All of the excavated soil was handled and disposed of properly in accordance with the Site Management Plan and applicable California regulations.

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Sincerely,

MORRIS, MANNING & MARTIN, LLP

A handwritten signature in blue ink, appearing to read "Gerald L. Pouncey, Jr.", written in a cursive style.

Gerald L. Pouncey, Jr.

Enclosures

cc: Mark Detterman, ACDEH (via email only [mark.detterman@acgov.org](mailto:mark.detterman@acgov.org))  
Kristen Gates, Developer (via email only [kgates@hanoverco.com](mailto:kgates@hanoverco.com))







