CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2006-0719
FOR
SAFEWAY INC.
ULTRAMAR INC.
CITY OF HANFORD, AND
MARQUEZ BROTHERS INTERNATIONAL INC.
CONCERNING
PETROLEUM HYDROCARBON RELEASE – COMMINGLED PLUME
WEST 5TH AND WILLIAMS STREETS, HANFORD
KINGS COUNTY

This Order is issued to Safeway Inc.; Ultramar, Inc.; City of Hanford; and Marquez Brothers International Inc. (hereafter collectively referred to as Dischargers) based on provisions of California Water Code Section 13304, which authorizes the California Regional Water Quality Control Board, Central Valley Region, (hereafter Regional Water Board or Regional Board) to issue a Cleanup and Abatement Order (Order) and on provisions of Water Code section 13267, which authorizes the Regional Water Board to require preparation and submittal of technical and monitoring reports.

The Executive Officer finds, with respect to the Dischargers' acts or failures to act, the following:

PROPERTY OWNERSHIP AND OPERATIONS

1. Safeway Inc. (hereafter Safeway), a Delaware corporation, operated a milk plant on properties it owned to the north and south of the corner of West 5th and Williams Street in Hanford, California, from about 1930 until 1993, which is, and has been, an industrial use area. The Kings County Assessor's Office Map shows the parcels and assessor's parcel numbers for the property in the vicinity of West 5th Street and Williams Street and is identified as Attachment 1 and incorporated as part of this Order. The assessor's parcel numbers (APNs) for the properties formerly owned by Safeway are 012-070-007 and 012-070-010 (see Attachment 1). During this time, Safeway owned and operated six underground storage tanks (USTs) on these properties, three on the southern property, and three on the northern property. Also during this time, total petroleum hydrocarbons as diesel (TPHd) were detected in soil in close proximity to both the southern and northern UST locations. Between 1988 and 1993, Safeway removed all of the southern USTs and one of the northern USTs and it closed in-place the other two northern USTs. Safeway left residual diesel in soil (see Findings 8, 9, and 10) and sold the property. Currently, a plume of diesel both in soil and on and in groundwater exists in close proximity and downgradient to the location of the USTs. Because a plume of diesel both on and in groundwater underlies, and or exists in close proximity to the USTs, and Safeway owned properties on which diesel in soil exists in close proximity to USTs owned and operated by Safeway, and because the diesel discharged to soil may have discharged into the waters of the State to create or threaten to create this condition of pollution or nuisance, Safeway is a primary responsible party subject to this Order.

2. Ultramar Inc. (hereafter Ultramar), a Nevada corporation, currently owns a decommissioned four-inch petroleum product pipeline that runs east-west beneath West 5th Street to the Southern Pacific Railroad and south-north beneath Williams Street from a former refinery, with a connection in the street intersection. According to a 1939 agreement between the City of Hanford and The Caminol Company LTD (Caminol), a section of the pipeline continues north beneath Williams Street and under the former Safeway property to the nearby Southern Pacific Railroad. A 1964 agreement between the same parties indicates that at that time the pipeline continued west from Williams Street to 11th Avenue under West 5th Street. The pipeline was originally constructed and operated by Caminol Oil Company (Caminol). Caminol decommissioned the pipeline in the 1960's. Caminol merged with Beacon Oil in 1967, and changed its name to Beacon Oil Company (Beacon). Beacon owned the pipeline until 1981, at which time Ultramar America Limited purchased all of the stock of Beacon, including the pipeline. Beacon changed its name to Ultramar Inc. in 1989 and was acquired by Ultramar Corporation in 1992. Diesel stained soil was discovered in close proximity to a hole in the Ultramar pipeline near the intersection of West 5th and Williams Street and remains in soil, and it overlies a diesel plume both on and in groundwater (see Findings 12, 13, and 14). Samples of the stained soil were submitted for laboratory analyses and total petroleum hydrocarbons as diesel (TPHd) was detected. Although Ultramar did not own or operate the pipeline at the time the pipeline transported the petroleum products, it is the current owner of the pipeline and the successor corporation to the person that owned and operated the pipeline when the pipeline transported petroleum product. Because a plume of diesel both on and in groundwater underlies, and or exists in close proximity to the Ultramar pipeline, and because diesel present in soil near a hole in the Ultramar pipeline may have discharged into waters of the State to create or threaten to create this condition of pollution or nuisance, Ultramar is a primary responsible party subject to this Order.

3. The City of Hanford owns West 5th and Williams Streets and the property beneath them, including the intersection, and it granted the easement for and controls access to property and the above-described Ultramar pipeline. The streets are paved with asphalt. Because the City owns and controls property where diesel in soil may have discharged into waters of the State to create or threaten to create a condition of pollution or nuisance, the City is considered a responsible party subject to this Order. Because it appears that the City did not cause or permit the activity that resulted in the discharge of diesel on its property, and because Ultramar and Safeway are capable of performing investigation and cleanup, at this time the City is placed in a position of secondary responsibility.

4. Marquez Brothers International Inc. (hereafter Marquez), a California corporation, currently owns property on the north and south sides of West 5th Street that it acquired from Safeway (APNs 012-070-007 and 012-070-010) where diesel remains in soil and in proximity to a diesel plume both in and on groundwater (see Findings 10 and 11). Because Marquez owns properties where diesel was discharged to soil and may have been discharged into the waters of the State, and because it creates or threatens to create a condition of pollution or nuisance, Marquez is considered a responsible party subject to this Order. Because Marquez did not cause or permit the activity that resulted

in the discharge on its property, and because Ultramar and Safeway are capable of performing investigation and cleanup, at this time Marquez is placed in a position of secondary responsibility. Marquez also is purchasing a parcel of property on the south side of West 5th Street (APN 012-070-017), and recently purchased a second parcel on the south side of West 5th Street (APN 012-070-016) from Silvas Oil Company (hereafter Silvas), under which the diesel plume is likely present.

BACKGROUND

5. The diesel plume on and in groundwater exists under the aforementioned properties in and near the intersection of West 5th Street and Williams Street in Hanford, Kings County. The pipeline passes near the former Safeway USTs. The east-west pipeline and north-south pipeline transported petroleum product including diesel and connect at the street intersection.

6. The groundwater surface fluctuates between 45 and 57 feet below ground surface, with an easterly to southeasterly direction of flow in the site vicinity. Soils extending to the groundwater surface consist of interbedded silts, sands, and clays.

7. The City of Hanford municipal water supply is groundwater. The closest municipal well is about 2,000 feet east of the diesel plume, is screened starting at a depth of 950 feet, is not known to have been impacted by diesel, and does not appear to be threatened by the plume. The shallowest groundwater in the general area typically is of poor quality, but groundwater as shallow as identified in Finding 6 in the upper aquifer may be of good to fair quality. The City's wells tap deeper aquifers due to the presence of arsenic in the upper aquifers that recent criteria made unsuitable for a municipal supply. The City previously used shallower aquifers, and private domestic wells may continue to use the shallower aquifers. Documentation of localized usage and quality of the upper aquifer in the vicinity of the site has not been submitted by the Dischargers and is not readily available, and individual well users if near the commingled plume may be adversely affected.

8. Safeway installed and began operating the three USTs on the northern side of West 5th Street (northern USTs) in about 1930 and installed and began operating the three USTs on the southern side of West 5th Street (southern USTs) in about 1972. Investigation by Safeway in March 1988 found total petroleum hydrocarbons as TPHd in soil in close proximity to the northern USTs at concentrations as high as 2,811 mg/kg. The northern USTs consisted of one 12,750-gallon diesel UST and one 3,270-gallon diesel UST (both these tanks listed on permits as former Southern Pacific Railroad, carbon steel, tanker cars), and one 550-gallon gasoline UST. In 1988, Safeway removed the gasoline UST and, due to proximity of building foundations, closed the two diesel USTs in-place by backfilling with a sand slurry. Safeway installed four ground water monitoring wells in 1989 and reported concentrations of TPHd as high as 630,000 µg/L in the fourth well

(MW-4, adjacent to the northern USTs).[1] The Kings County Environmental Health Department filed an Underground Storage Tank Unauthorized Release (Leak) / Contaminated Site Report for the northern USTs on 4 May 1988.

9. Safeway removed all three 10,000-gallon diesel USTs comprising the southern USTs during October 1992 and reported diesel (TPHd) in a soil sample from the northeast corner of the UST excavation at 3,900 mg/kg. A groundwater monitoring well (MW-5) placed south of the southern USTs contained TPHd at 200 µg/L. The Kings County Environmental Health Department filed an Underground Storage Tank Unauthorized Release (Leak) / Contaminated Site Report for the southern USTs on 6 October 1992.

10. Safeway sold the milk plant to Marquez on 11 June 1993. Marquez never operated any of the former Safeway USTs. Marquez entered into agreement with Safeway to allow access for investigation, but has at least once denied access to Ultramar for investigation. Marquez has represented that it has purchased or intends to purchase the Silvas property, which currently has USTs.

11. Safeway conducted multiple investigation phases that included installation of 17 groundwater monitoring wells, and it has regularly measured floating product in the majority of these wells. Floating product is at least 265 feet along 5th Street (MW-7 to MW-15) by 200 feet along Williams Street (MW-7 to MW-12), and has been measured from less than one foot up to about 11 feet thick. The lateral and vertical extent and the chemical characteristics of the floating product plume have not been fully defined.

12. A Safeway investigation performed in April 2004 near the Ultramar pipeline with Geoprobe drilling technology found TPHd in soil at a concentration of 14,000 mg/kg at a depth of four feet.[2] The sample was taken from within approximately 10 feet of the Ultramar pipeline beneath West 5th Street. Safeway measured TPHd in soil at 77,000 mg/kg at a depth of 30 feet about 20 feet from the intersection of the pipelines, and about 70 feet from the hole in the pipeline and the southern USTs.

13. On 1 December 2004, Regional Water Board staff observed excavation of a portion of the Ultramar pipeline along West 5th Street, including observation of pipeline corrosion, exterior pitting, and a hole that was about ¼-inch diameter hole in the exposed portion of the pipeline. Samples of soil collected near the hole that day by Regional Water Board staff yielded TPHd of 59,000 mg/kg.

14. In February 2005, excavation by Ultramar exposed another section of the pipeline and three valves at the intersection of West 5th Street and Williams Street. Regional Water

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[1] Although a 1995 summary report of past data and the initial letter report that submitted the result cited 630,000 µg/L in 1989, the laboratory analysis sheet could not be located. Correspondence from the same Safeway consultant in 1990 indicates the concentration was three orders of magnitude less. Laboratory analysis sheets document concentrations of 25,000 and 16,000 µg/L in MW-4 in the same period.

[2] BSK Analytical Laboratories, Certificate of Analysis, Sample ID # 443155

Board staff documented soil both discolored by and smelling strongly of diesel in the immediate vicinity of the valves. A document dated 9 April 1964 submitted by Safeway in a report dated 17 July 2003 indicates that a pipeline extended from the Ultramar pipeline to the former Safeway northern USTs.

15. During a meeting held at the Regional Water Board's Fresno office on 10 May 2006, attended by Regional Water Board staff, Safeway, Ultramar, Marquez, Silvas, and Del Monte Corporation, Ultramar proposed and parties discussed a cooperative phased approach with a comprehensive site assessment and investigation. The following preliminary determinations have been made based on discussions at the meeting, technical data, and reports:

    a. According to Safeway, the south USTs were used primarily to store diesel as a standby source of fuel. Documentation of use history of diesel from the southern USTs has not been submitted. The southern USTs passed integrity tests on 29 February 1988 and 23 March 1990. During the southern UST removals, impacted soil was present in the northeast corner of the excavation. The northern USTs failed a tank integrity test prior to being closed in place. TPHd was detected at 960 mg/kg in soil at a depth of 15 feet in soil boring GWMW-4 within 10 feet of the northern USTs. Diesel was not detected at depths of 25 and 30 feet in this boring, but was detected at depths of 35 feet and below as high as 800 mg/kg and was detected in groundwater as high as 630,000 µg/L.[1] Currently the plume of diesel both on and in groundwater underlies and/or exists in close proximity to the locations of the Safeway USTs.

    b. The Ultramar pipeline transported petroleum products including diesel from the refinery to the nearby railroad. Soil sampling in a boring between the valves and the hole in the pipeline in close proximity to the pipeline found TPHd at 14,000 mg/kg at a depth of 4 feet. This same boring had TPHd at 5,100 mg/kg, 18,000 mg/kg, and 1,200 mg/kg, at depths of 10, 17, and 34 feet. Currently the plume of diesel both on and in groundwater underlies and/or exists in close proximity to the pipeline near the intersection of 5th and Williams.

    c. The City of Hanford was not present at the meeting, but as previously indicated has been implicated due to being owner of property containing the Ultramar pipeline. Ultramar suggested at the meeting from its interpretation of analyses that heavier hydrocarbons present in some shallow soil samples, if not from USTs, may be attributable to past City use of road oil rather than from the pipeline. As the floating product has been characterized as diesel, not road oil, such an interpretation thus far would not implicate the City as a direct contributor to the commingled plume. The City has not unreasonably denied access for investigation concerning the pipeline, and at this time is considered a secondary responsible party.

    d. Marquez orally committed to allow reasonable access to primary responsible parties for purposes of investigation and cleanup, including reasonable access to APN 012-070-016. Marquez has indicated that to allow access, the issues of indemnification,

restoration of property, reasonable notice before commencing work, agreement to keep property free and clear of any liens or claims, and agreement to be completely responsible for all expenses related to the work, must be reasonably addressed in an access agreement. Currently there is no evidence to suggest that Marquez is directly responsible for a release of diesel or similar petroleum hydrocarbon at the site. Consequently, Marquez is currently considered a secondary responsible party in this Order. As current owner of APN 012-070-016, Marquez will become a responsible party secondary to Silvas Oil Company if the UST that contained diesel when removed from APN 012-070-016 is found to have had a release of diesel. Further, Marquez may become a primary responsible party in event of default by responsible parties it is currently secondary to or if it is determined in the future by the Regional Water Board to have denied or delayed access unreasonably.

e. Silvas owned APN 012-070-016 at the southeast corner of the 5th and Williams streets where it has owned and operated a Cardlock fueling facility since 1994. The Cardlock facility includes three 20,000-gallon USTs, one of which contains diesel. Floating product extends beneath the property. Though deficiencies in operation have been noted in the past, including standing fuel product in sumps, no release of diesel has been reported. Silvas and Marquez reported at the meeting that the property was being sold to Marquez, and that Marquez will be removing the USTs and converting the property into a parking lot for employees. Present facts do not warrant naming Silvas a responsible party subject to this Order. Should it be determined that Silvas or the diesel UST have released diesel, this Order will be amended to name Silvas a responsible party.

f. Del Monte Corporation owned and operated a canning facility complex on APNs 012-070-017 and 012-070-012, property that it owned from the 1920's until 1956. The complex relied upon boiler fuel from a 40,000-gallon concrete UST, and a 500-gallon steel UST. Subsequent owners, one of which was Beacon, never operated the USTs. The concrete UST, partially on APN 012-070-017, was closed in place and the steel tank was removed in 1987 while the property was under the control of Beacon. Standing water was present in the concrete UST when closed in place, suggesting that the bottom of the UST retained some integrity. Nonetheless, concrete tanks are known to leak. As no evidence is available that indicates such a leak and the diesel plume has not been established as extending under APN 012-070-017 and the concrete UST, the facts presently known about the former Del Monte USTs do not warrant naming Del Monte Corporation as a responsible party at this time subject to evaluation of the diesel plume and other investigative results.

g. Stor Max currently owns property on which part of the Del Monte Corporation 40,000-gallon concrete UST is located (APN 012-070-012). Stor Max never operated any UST on this property. The diesel plume extends under the property, but is not known to extend under the concrete UST. For the reasons in "f," above, it is not appropriate at this time to name Stor Max, as the current owner of APN 012-070-012, as a responsible party in this Order.

AUTHORITY – LEGAL REQUIREMENTS

16. Section 13304(a) of the California Water Code provides that:

> *Any person who has discharged or discharges waste into waters of the state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to, overseeing cleanup and abatement efforts. A cleanup or abatement order issued by the State Board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the regional board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.*

17. Section 13267(b)(1) of the California Water Code provides that:

> *In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.*

18. Section 13304(c)(1) of the California Water Code provides that:

> *If waste is cleaned up or the effects of the waste are abated, or in the case of threatened pollution or nuisance, other necessary remedial action is taken by any government agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions…*

19. The State Water Resources Control Board (hereafter State Water Board) has adopted Resolution No. 92-49, the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*. This Policy sets forth policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the *Statement of Policy With Respect to Maintaining High Quality of Waters in California*. Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires waste to be cleaned up to background, or if that is not feasible,

the best water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible; in approving any alternate cleanup levels less stringent than background, apply Section 2550.4 of Chapter 15 (California Code of Regulations (CCR), Title 23, Division 3), or, for cleanup and abatement associated with underground storage tanks, apply Section 2725 of Chapter 16 (CCR, Title 23, Division 3), provided that the Regional Water Board considers the conditions set forth in Section 2550.4 of Chapter 15 (CCR, Title 23, Division 3) in setting alternative cleanup levels pursuant to Section 2725 of Chapter 16 (CCR, Title 23, Division 3). Any alternative cleanup level to background must (a) be consistent with the maximum benefit to the people of the state; (b) not unreasonably affect present and anticipated beneficial use of such water; and (c) not result in water quality less than that prescribed in the Basin Plan and applicable water quality control plans and policies of the State Water Board.

20. The Basin Plan contains a section entitled *Ground Water Cleanups* that describes procedures for managing contaminated sites based on California Water Code Sections 13000 and 13304, Title 27, and Resolution No. 92-49. The procedures include site investigation, source removal or containment, information required to be submitted for consideration in establishing cleanup levels, and the bases for establishment of soil and groundwater cleanup levels.

21. The *Water Quality Control Plan for the Tulare Lake Basin, Second Edition*, (hereafter Basin Plan) designates beneficial uses of the waters of the State and establishes water quality objectives to protect those uses. The Site overlies groundwater within the Kings Basin Hydrologic Unit, Detailed Analyses Unit No. 238. Present and potential future beneficial uses of the groundwater, as designated by the Basin Plan for Unit No. 238, include municipal and domestic supply (MUN).

22. Water Quality Objectives (WQOs) in the Basin Plan include numeric WQOs, e.g. state drinking water maximum contaminant levels (MCLs), and narrative WQOs, including the narrative toxicity objective and the narrative tastes and odors objective for surface and groundwater. The Basin Plan contains a section entitled "Application of Water Quality Objectives" that establishes procedures for application of water quality objectives, which it identifies as the least stringent groundwater concentrations allowable. It directs that narrative water quality objectives be based upon, among other things, relevant and appropriate numerical criteria and guidelines developed or published by other agencies and organizations. It provides that the Regional Water Board will, on a case-by-case basis, adopt numerical limitations in orders that implement the narrative water quality objectives. The numerical limits for diesel in the following table implement the Basin Plan WQOs. The policies and procedures for establishing cleanup levels are summarized in Finding 19.

Constituent	Limit (µg/L)	WQO	Reference
Diesel	100	Toxicity and Taste and Odor	1980 U.S. EPA Suggested-No-Adverse-Response Level

The Regional Water Board will consider information with respect to impacts to waters of the State and all material and relevant information submitted by the Dischargers under this Order, then will set numerical cleanup levels for petroleum hydrocarbon contamination at the appropriate time consistent with State Water Board Resolution 92-49.

25. The diesel product in soil and groundwater at the site is not naturally occurring and is a waste as defined in California Water Code Section 13050(d). The groundwater exceeds the WQOs for the diesel. The exceeding of applicable WQOs in the Basin Plan constitutes pollution as defined in California Water Code Section 13050(l)(1).

26. Diesel within soil threatens to continue to discharge to groundwater, diesel on groundwater as free product threatens to dissolve into groundwater, and diesel dissolved in groundwater continues to disperse and migrate to unaffected and less affected waters. Diesel will continue to alter the quality of waters to a degree that unreasonably affects the waters for designated beneficial uses, creating a condition of pollution and threatened pollution.

27. The State Water Board's *Water Quality Enforcement Policy* states, in part, that spills that result in adverse impact to beneficial uses of groundwater or violate water quality objectives are priority violations. The policy states that, if any violation continues, the enforcement response should be quickly escalated to increasingly more formal and serious actions until compliance is achieved.

DISCHARGER LIABILITY

28. As described above, the Dischargers are subject to an order pursuant to California Water Code section 13304 because the Dischargers have caused or permitted waste to be discharged or deposited where it has discharged to waters of the State and has created, and continues to threaten to create, a condition of pollution or nuisance. The condition of pollution is a priority violation and issuance or adoption of a cleanup or abatement order pursuant to California Water Code Section 13304 is appropriate and consistent with policies of the Regional Water Board. Though Safeway and Ultramar have primary liability and the City of Hanford and Marquez have secondary liability under this Order, investigation required as part of this Order may result in additional information that will change this determination and in the identification of other responsible parties. If this is the case, the Regional Water Board will amend this Order.

29. This Order requires investigation and cleanup of the site in compliance with the California Water Code, the applicable Basin Plan, Resolution 92-49, and other applicable plans, policies, and regulations.

30. As described above, the Dischargers are subject to an order pursuant to California Water Code section 13267 to submit technical reports because existing data and information about the site indicate that waste has been discharged, is discharging, or is suspected of discharging, at the subject properties, which is or was owned and/or operated by the

Dischargers named in this Order. The technical reports required by this Order are necessary to assure compliance with Section 13304 of the California Water Code, including to adequately investigate and cleanup the site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.

31. Section 13268 of the California Water Code provides that civil liability may be administratively imposed by the Regional Water Board against any person for failing or refusing to furnish technical or monitoring reports or falsifying information therein.

32. Section 13350 of the California Water Code provides that any person who violates a cleanup or abatement order or causes or permits any oil or residuary product of petroleum to be deposited in or on any waters of the State is liable civilly and subject to administrative or judicial monetary remedies as set forth in subsections thereof.

33. Violation of terms of this Order shall result in increasingly more formal and serious enforcement actions in accordance with laws and policies until compliance is achieved.

GENERAL

34. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), pursuant to Title 14 CCR Section 15321(a)(2). The implementation of this Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), in accordance with Title 14 CCR, Sections 15308 and 15330.

35. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Title 23 CCR Sections 2050-2068. The regulations may be provided upon request and are available at www.swrcb.ca.gov. The State Water Board must receive the petition within 30 days of the date of this Order.

36. In accordance with Section 13304(c)(1), the Regional Water Board shall recover the cost of regulatory oversight of this case from Dischargers.

REQUIRED ACTIONS

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13304 and Section 13267, Dischargers shall:

1. Forthwith investigate, clean up, and abate the effects from release of diesel at the above-described site in conformance with State Water Board Resolution No. 92-49 and the Basin Plan. “Forthwith” means as soon as is reasonably possible. Compliance with this requirement shall include, but not be limited to, completing the tasks listed below by the specified deadlines.

WATER SUPPLY WELL SURVEY

2. By **15 October 2006,** submit the results of a survey for water supply wells within one-half mile of the site. If the survey identifies any water supply wells, submit with the results of the survey a sampling plan to sample all identified water supply well(s) threatened to be polluted by waste originating from the diesel plume. The sampling plan shall include specific actions and commitments by the Dischargers to implement the sampling plan, including obtaining any necessary agreements.

3. Within **30 days** of Regional Water Board staff concurrence with the water supply well sampling plan, but **no later than 60 days from submittal of the plan**, implement the sampling plan and submit the sampling results in accordance with the time schedule, which as approved by the Executive Officer shall become part of this Order.

4. Within **30 days** of Regional Water Board staff notifying the Dischargers that an alternate water supply is necessary, submit a work plan and schedule to provide an in-kind replacement for the specified water supply. The Dischargers shall implement the work plan in accordance with a time schedule established by the Executive Officer, which shall become part of this Order.

SITE ASSESSMENT

5. **By 15 November 2006**, submit a *Site Assessment Work Plan* with the intent to collect a sufficient number of soil and groundwater samples to define the lateral and vertical extent of waste constituents in soil and groundwater and to better define their origin. The Site Assessment Work Plan is to include a time schedule for implementing the work. All work plans and reports submitted as part of the investigation and cleanup of this site shall contain the information required in Attachment 2 *Appendix A-Reports Tri-Regional Board Staff Recommendations for Preliminary Evaluation and Investigation of Underground Storage Tank Sites*, which is incorporated as part of this Order.

6. Within **30 days** of staff concurrence with the *Site Assessment Work Plan*, but **no later than 60 days from submittal of the plan**, implement the work plan in accordance with the time schedule, which as approved by the Executive Officer shall become part of this Order.

7. Submit a *Site Assessment Report* for soil and groundwater in the accordance with the approved time schedule. The *Site Assessment Report* shall contain the information in Attachment 2, and include recommendations and a work plan for additional investigation, if needed. The work plan for additional investigation shall contain information in Attachment 2, including a sufficient number of sampling points and wells to determine the vertical and lateral extent of pollutants. If no additional investigation is needed, this shall be the *Final Site Assessment Report*.

8 Within **30 days** of concurrence with the work plan for additional site assessment, implement the work plan and submit a *Site Assessment Report* that contains the information required in Attachment 2, in accordance with the time schedule, which as approved by the Executive Officer shall become part of this Order.

FEASIBILITY STUDY AND CLEANUP

9. Within **120 days** of Executive Officer concurrence with the *Final Site Assessment Report*, submit a *Feasibility Study/Remedial Options Evaluation Report* for soil and groundwater remediation. The report shall contain the information required in Attachment 2. The proposed preferred alternative for groundwater must meet the range of cleanup levels as described in the Basin Plan and Resolution No. 92-49. The Dischargers shall attempt to clean up each constituent to background concentrations, or to the lowest level that is technically and economically achievable and that complies with all applicable WQOs of the Basin Plan and promulgated water quality criteria. Status reports for the cleanup activities are to be submitted on a quarterly basis.

10. Within **60 days** of staff concurrence with the *Feasibility Study/Remedial Options Evaluation Report* for soil and groundwater cleanup, submit a *Cleanup Plan*, which describes the preferred alternative(s) for cleanup and includes a time schedule to conduct the cleanup activities. The approved time schedule to implement the cleanup shall become a part of this Order.

11. Within **60 days** of Executive Officer approval of the *Cleanup Plan* for soil and groundwater**,** commence cleanup or installation of the cleanup system. The Discharger shall notify staff a minimum of 72 hours prior to beginning fieldwork.

12. Within **120 days** of Executive Officer approval of the *Cleanup Plan*, submit a report describing the status and results of the cleanup work (*Cleanup Implementation Report*). The report shall clearly show whether the installation of any cleanup system is complete and, if not, give a schedule and proposed work plan for installation of the remaining cleanup activities, including a proposed monitoring plan.

GROUNDWATER MONITORING

13. Conduct monitoring of the existing wells and any additional wells in accordance with Attachment 3, *Monitoring and Reporting Program (MRP) No.R5-2006-0808* or any revised MRP issued by the Executive Officer.

GENERAL REQUIREMENTS

14. Reimburse the Regional Water Board for reasonable costs, as provided in Water Code section 13304(c)(1), associated with oversight of the cleanup project. **By 15 August 2006**, provide the name and address where the invoices shall be sent. Failure to provide

a name and address for invoices and/or failure to reimburse the Regional Water Board's reasonable oversight costs shall be considered a violation of this Order.

15. Conduct work only after Regional Water Board Executive Officer concurs with work plans. Should any of the property owners deny the Dischargers access to Site, the Dischargers shall notify the Regional Water Board forthwith to allow the Regional Water Board to take any action that it deems appropriate.

16. Submit all reports with a cover letter with appropriate signatures by the Dischargers submitting the report.

17. Fourteen days prior to conducting any fieldwork, submit a Health and Safety Plan that is adequate to ensure worker and public safety during the field activities in accordance with CCR Title 8, Section 5192.

18. As required by the California Business and Professions Code Sections 6735, 7835, and 7835.1, have appropriate reports prepared by, or under the supervision of, a registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by the Discharger shall include a statement signed by the authorized representative certifying under penalty of law that the representative has examined and is familiar with the report and that to his knowledge, the report is true, complete, and accurate.

19. Upon startup of any remediation system(s), operate the remediation system(s) continuously, except for periodic and required maintenance or unpreventable equipment failure. The Discharger shall notify the Regional Water Board staff within 24 hours of any unscheduled shutdown of the remediation system(s) that lasts longer than 48 hours. This notification shall include the cause of the shutdown and the corrective action taken (or proposed to be taken) to restart the system. Any interruptions in the operation of the remediation system(s), other than for maintenance, emergencies, or equipment failure, without prior approval from Regional Water Board staff or without notifying the Regional Water Board within the specified time is a violation of this Order.

20. Optimize remedial systems as needed to improve system efficiency, operating time, and/or pollutant removal rates, and report on the effectiveness of the optimization in the quarterly reports.

21. Notify Regional Water Board staff at least three working days prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection.

22. Obtain all local and state permits and access agreements necessary to fulfill the requirements of this Order prior to beginning the work.

23. Continue any remediation and monitoring activities until such time as the Executive Officer determines that sufficient cleanup has been accomplished to fully comply with this Order and this Order has been rescinded in writing.

24. If, for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. An extension may be granted by revision of this Order or by a letter from the Executive Officer.

25. If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer this matter to the Attorney General for judicial enforcement or may issue a complaint for administrative civil liability.

This Order is effective upon the date of signature.

_____
PAMELA C. CREEDON, Executive Officer

18 August 2006
(Date)

Attachments: 1 Kings County Assessor's Office Map
2 *Appendix A-Reports…*
3 MRP No. R5-2006-0808

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