

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order No. R1-2007-0014
[Rescinding and Replacing Order No. R1-2001-44]

MALM FIREPLACES, INC.

LESLIE W. WELSH and PHYLLIS M. WELSH

ALLAN A. HENDERSON and KIMBERLY L. HENDERSON TRUST

For

326 and 368 Yolanda Avenue, Santa Rosa
Sonoma County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Regional Water Board records show that Malm Fireplaces, Inc. operated a metal fireplace fabrication factory from 1963 to 1992 on the parcel APN 044-072-009, which is also identified as 368 Yolanda Avenue in Santa Rosa, California. Malm Fireplaces, Inc. also conducted manufacturing operations from 1972 until the present time on the parcel APN 044-081-024, which is also identified as 326 Yolanda Avenue in Santa Rosa. A Site location and parcel identification map is presented as Exhibit 1 and is incorporated in this Order.
2. In 1992, Malm Fireplaces Inc. ceased operations on parcel APN 044-072-009 and continued to operate on parcel APN 044-081-024. The approximate area of Malm Fireplaces Inc. manufacturing operations from 1963 to 1992 is shown on Exhibit 1 as area "A". The approximate area of manufacturing operations from 1972 until the present time is shown on Exhibit 1 as area "B". The parcels APN 044-072-009 and APN 044-081-024 are hereinafter referred to as the "Site". The Site is located in an area of mixed residential, commercial and industrial uses. The Site is situated in the Colgan Creek watershed, tributary to the Laguna de Santa Rosa, a tributary of the Russian River.
3. In March 1999, the industrial solvent trichloroethylene (TCE) was detected in a domestic water supply well located at 372 Yolanda Avenue, adjacent to the Site on the east. Regional Water Board staff conducted an investigation to determine the source of TCE contamination in the well at 372 Yolanda Avenue. Regional Water Board staff assessed the available hydrogeologic information, data from nearby groundwater investigations, and records of historical land uses in the vicinity of 372 Yolanda Avenue. Subsequent well testing in the area revealed TCE contamination in several other water supply wells along Yolanda Avenue. TCE was detected at levels as high as 1,080 parts per billion (ppb). The highest levels of TCE have been consistently found in a well located in the building formerly occupied by Malm Fireplaces at 368

Yolanda Avenue, on parcel APN 044-072-009. A sample from the 368 Yolanda Avenue well also contained total petroleum hydrocarbons measured as gasoline at 170 ppb.

4. Investigation reports submitted for the Site state that a solvent dipping tank was used in the production processes of Malm Fireplaces Inc. from the mid-1960's until 1994.¹² The reports also state that the most common and readily available solvents used during this time period were TCE and 1,1,1-trichloroethane. The dipping tank was reportedly used on parcel APN 044-072-009 from the mid 1960's until 1972. In 1972, the dipping tank was moved to parcel 044-081-024, where the solvent operations continued until 1994. The Site investigation reports identify Mr. Dennis Cappo, President of Malm Fireplaces Inc., as the source of information about the company's business activities.
5. In 2000, Regional Water Board staff conducted a passive soil gas investigation to help determine the source of TCE contamination in the Yolanda Avenue wells. The results of the investigation showed that the highest levels of TCE vapors in the subsurface were located in an area immediately to the east of the building on parcel 044-081-024, which has been occupied by Malm Fireplaces since 1972.
6. TCE is commonly used as a solvent for degreasing metals. TCE is a human carcinogen and is listed by the State of California, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, as a chemical known to cause cancer. The Water Quality Control Plan for the North Coast Region identifies the Maximum Contaminant Level for TCE in drinking water at 5 ppb, as established by the California State Department of Health Services. The California Office of Environmental Health Hazard Assessment has established the California Public Health Goal for TCE in drinking water at 0.8 ppb.
7. Section 13304 of the Water Code provides:

Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement 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.

Discharges of TCE to soil and groundwater at the Site have created a condition of pollution that has adversely impacted the beneficial uses of groundwater at the Site. Continuing discharges of TCE in contaminated groundwater flowing from the Site have impacted and threaten to further impact the beneficial uses of groundwater in areas surrounding the site. These discharges are in violation of the *Porter-Cologne*

¹ Revised Modified Work Plan for Soil and Groundwater Investigation-Mal Fireplaces, Inc. EnviroNet Consulting. May 2, 2001

² Report on Soil and Groundwater Investigation – Malm Fireplaces, Inc. EnviroNet Consulting, September 1, 2001

Water Quality Control Act and provisions of the *Water Quality Control Plan for the North Coast Region* (Basin Plan).

8. Beneficial uses of areal groundwater include domestic, agricultural, and industrial supply. Beneficial uses of Colgan Creek, a tributary to the Laguna de Santa Rosa and the Russian River are:
 - a. municipal and domestic supply
 - b. agricultural supply
 - c. industrial process supply
 - d. groundwater recharge
 - e. navigation
 - f. hydropower generation
 - g. water contact recreation
 - h. non-contact water recreation
 - i. commercial and sport fishing
 - j. warm freshwater habitat
 - k. cold freshwater habitat
 - l. wildlife habitat
 - m. migration of aquatic organisms
 - n. spawning, reproduction, and/or early development.
9. Malm Fireplaces Inc. is an active corporation registered with the California Secretary of State Business Programs Division since October 1, 1965. The Agent for Service of Process is Glen Crownover Sr.
10. In March 1982, Malm Fireplaces, Inc., and Charles Duck, Trustee, sold to Leslie W. Welsh and Phyllis M. Welsh property including the parcels identified as APN 44-072-009 and APN 44-081-24, located in Santa Rosa, California. The Grant Deed, executed in Sonoma County on March 30, 1982, identifies Charles Duck as "Trustee pursuant to Order of Court dated December 17, 1981, entered in Case No. 1-81-00400 in Proceedings Under Chapter 11, in United States Bankruptcy Court for the Northern District of California."
11. Warren L. Welsh and Phyllis M. Welsh owned the Site during a time that industrial solvents were used at Malm Fireplaces, Inc. In August 2000, Leslie W. Welsh, aka L. Warren Welsh, and Phyllis M. Welsh sold to the Allan A. Henderson and Kimberly L. Henderson Trust property including the parcels APN 044-072-009 and APN 044-081-024. The Allan A. Henderson and Kimberly L. Henderson Trust presently owns and controls the Site.
12. Malm Fireplaces, Inc., Warren L. Welsh, Phyllis M. Welsh, and the Allan A. Henderson and Kimberly L. Henderson Trust are hereinafter referred to as the "Dischargers".³
13. On November 14, 2000, the Regional Water Board Executive Officer issued Cleanup and Abatement Order No. R1-2000-83 requiring current and former property owners to define the horizontal and the vertical extent of soil and groundwater contamination.⁴

³ The names of the parties identified as Dischargers in this Order are consistent with the names identified as grantors and grantees for the property transactions recorded at the Sonoma County Assessor's Office.

⁴ Order No. R1-2000-83 named Glen Sr. and Joyce Crownover, Malm Fireplaces, Inc., Fireform Porcelain, Warren L. and Phyllis M. Welsh, and Allan and Kimberly Henderson as "dischargers" based on the history of property transactions and business operations that was presented in the site investigation report referenced in footnote # 1.

Order No. R1-2000-83 also required the named dischargers to cleanup and abate the discharges and threatened discharges of volatile organic compounds at the Site.

14. On May 11, 2001, the Regional Water Board Executive Officer issued another Cleanup and Abatement Order No. R1-2001-44, requiring current and former property owners to implement the scope of work proposed in a work plan dated May 2, 2001, submitted by EnviroNet Consulting.⁵ Order R1-2001-44 also required the submittal of a schedule for additional deliverables, including but not limited to, additional work plans to complete the remedial investigation, a health and ecological risk assessment, a feasibility study, a draft Remedial Action Plan for the final cleanup and abatement of discharges at and from the Site, and monthly progress reports.
15. In June 2001, EnviroNet Consulting drilled thirty exploratory borings on parcels APN 044-072-009 and APN 044-081-024, and on adjacent properties. Soil and groundwater samples collected from the borings confirmed the presence of significant levels of TCE and other HVOCs in soil and groundwater beneath the Site. TCE and related chemical compounds were detected in soil samples collected at approximately five feet below ground surface, indicating probable surface releases of solvents at the Site. TCE was also detected in 27 of the 29 groundwater samples analyzed, at levels as high as 38,000 ppb.
16. EnviroNet Consulting submitted a work plan, dated March 7, 2003. The work plan proposed to install eight pairs of shallow and deep groundwater monitoring wells and to advance seven additional borings to obtain soil samples. Regional Water Board staff concurred with the work plan in a letter dated April 6, 2004. However, the proposed investigation has not been implemented.

Timely completion of the proposed scope of work is needed for the following reasons:

- The extent of TCE contamination in groundwater has not yet been determined;
 - No monitoring wells have been installed at the site to assess groundwater flow direction and gradient;
 - Domestic water supply wells in the area have been contaminated by TCE discharges and other nearby water supply wells are at risk;
 - Potential TCE release areas at the site have not been investigated and may present a continuing source of groundwater contamination; and
 - Characterization of contaminant distribution and subsurface geology, including potential source areas, is needed to develop an effective remedial action plan to cleanup and abate the unauthorized discharges at the Site.
17. The Water Code, and regulations and policies developed there under, require cleanup and abatement of discharges and threatened discharges of waste to the extent feasible. Cleanup and abatement activities are to provide attainment of background levels of water quality, or the highest water quality that is reasonable if background levels of water quality cannot be restored. Alternative cleanup levels greater than background concentration shall be permitted only if the discharger demonstrates that: it is not feasible to attain background levels; the alternative cleanup levels are

⁵ Order No. R1-2001-44 named the same parties identified in Order R1-2000-83 as the "Dischargers," except that Fireform Porcelain was removed from Order No. R1-2001-44 because a review of the historical business practices of the company indicated that it did not contribute to the discharges of TCE at the Site.

consistent with the maximum benefit to the people of the State; alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and they will not result in water quality less than prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board.

18. Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. The most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions must evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Narrative water quality objectives are interpreted through application of available scientific information and numerical limits are thence derived from such information. A table of water quality objectives for groundwater is presented as Exhibit 2 and is incorporated in this Order.
19. Discharge prohibitions contained in the Basin Plan apply to this Site. State Water Resources Control Board Resolution 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) applies to this Site. State Water Resources Control Board Resolution 92-49 applies to this Site and sets out the *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Section 13304 of the California Water Code*.
20. The Regional Water Board will ensure adequate public participation at key steps in the remedial action process, and shall ensure that concurrence with a remedy for cleanup and abatement of the discharges at the Site shall comply with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA").
21. The issuance of this Cleanup and Abatement Order is an enforcement action being taken for the protection of the environment and, therefore, is exempt from the provisions of CEQA in accordance with title 14, California Code of Regulations, sections 15308 and 15321.
22. Pursuant to Water Code section 13304, the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order.
23. Any person affected by this action of the Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If the Dischargers choose to appeal the Order, the Dischargers are advised that they must comply with the Order while the appeal is

being considered.

24. This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the facility consistent with the Water Code. This Order may be revised by the Regional Water Board Executive Officer as additional information becomes available.
25. Failure to comply with the terms of this Order may result in enforcement under the Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.

THEREFORE, IT IS HEREBY ORDERED that, Order No. R1-2001-44 is hereby rescinded and, pursuant to Water Code sections 13267(b) and 13304, the Dischargers shall cleanup and abate the discharge and threatened discharges and shall comply with the following provisions of this Order:

- A. The Dischargers shall cleanup and abate the effects of unauthorized discharges of TCE and other chemicals in soil and groundwater at the Site.
- B. The Dischargers shall implement the scope of work presented in the March 7, 2003 *Work Plan for Additional Investigation – Malm Fireplaces, Inc*, prepared by EnviroNet Consulting and incorporated herein by reference, within 45 days of the date of this Order.
 - i. The March 7, 2003 work plan specifies three phases of investigative work, including the installation of eight pairs of groundwater monitoring wells in two water-bearing zones. The first phase of proposed work is the installation of three shallow and three deeper-zone groundwater monitoring wells. The Dischargers shall complete the first phase of work and submit a report of findings within 90 days of the date of this Order.
 - ii. The report of findings for the first phase of work shall include the following :
 - a. A proposal for investigation of potential TCE release areas, such as the solvent dipping tank areas; and
 - b. A work plan and implementation schedule for any additional investigation needed to completely define the horizontal and the vertical extent of contamination in soil and groundwater at the Site.
 - iii. The reports of findings for all subsequent phases of work shall include a work plan and implementation schedule for implementing the additional phases of needed investigation. The proposed implementation schedules for additional phases of investigation shall be incorporated in this Order upon written concurrence by the Executive Officer.

- C. Dischargers shall submit an Interim Remedial Action Plan to the Executive Officer upon identification of areas impacted with high levels of contaminants that threaten to migrate and impact other groundwater resources.
- D. The monitoring wells installed during the first and subsequent phases of work shall be sampled and analyzed within 30 days of installation and quarterly thereafter. All sample analyses shall be conducted by a laboratory certified by the California Department of Health for those analyses. Groundwater samples from each monitoring well shall be analyzed for all the volatile organic compounds commonly quantified by EPA Method 8260. The samples shall also be analyzed for petroleum hydrocarbons measured as gasoline. Groundwater monitoring reports shall be submitted to the Regional Water Board quarterly according to the following schedule:

<u>Calendar Quarter</u>	<u>Reporting Period</u>	<u>Required Submittal Date</u>
First Quarter	January, February, March	April 30th
Second Quarter	April, May, June	July 31st
Third Quarter	July, August, September	October 31st
Fourth Quarter	October, November, December	January 31st

- E. The Dischargers shall submit an acceptable Feasibility Study and Remedial Action Plan (FS/RAP) within ninety days of submitting a report documenting the complete delineation of the extent of contamination in soil and groundwater.

The FS/RAP must include: 1) an assessment of impacts to soil, groundwater and surface water; 2) applicable cleanup levels; 3) a health & safety plan; 4) identification of the most appropriate and effective cleanup alternative for elimination of pollutant sources, and for the protection and restoration of groundwater; and 5) a proposed schedule for remediation system design, installation, operation, maintenance, monitoring and reporting.
- F. The Dischargers shall submit within sixty days of the date of this Order a list identifying known and potentially interested persons for this investigation and cleanup. The list shall include, at a minimum, all landowners, residents and business occupants of properties within 500 feet of the site. An assessor's parcel map must also be submitted and the list must identify the parcels associated with the interested parties where applicable.
- G. The Dischargers shall submit within sixty days of the date of this Order the results of a sensitive receptor survey. The survey shall identify potential receptors such as water supply wells and surface water bodies within 1000 feet of the site. The survey shall also identify preferential pathways for contaminant migration, such as underground utility trenches and vaults, within 500 feet of the site.
- H. The Dischargers shall complete any additional work deemed reasonably necessary by the Regional Water Board Executive Officer to abate and cleanup the discharge of waste or threatened discharge of waste, and to protect human health and the environment.

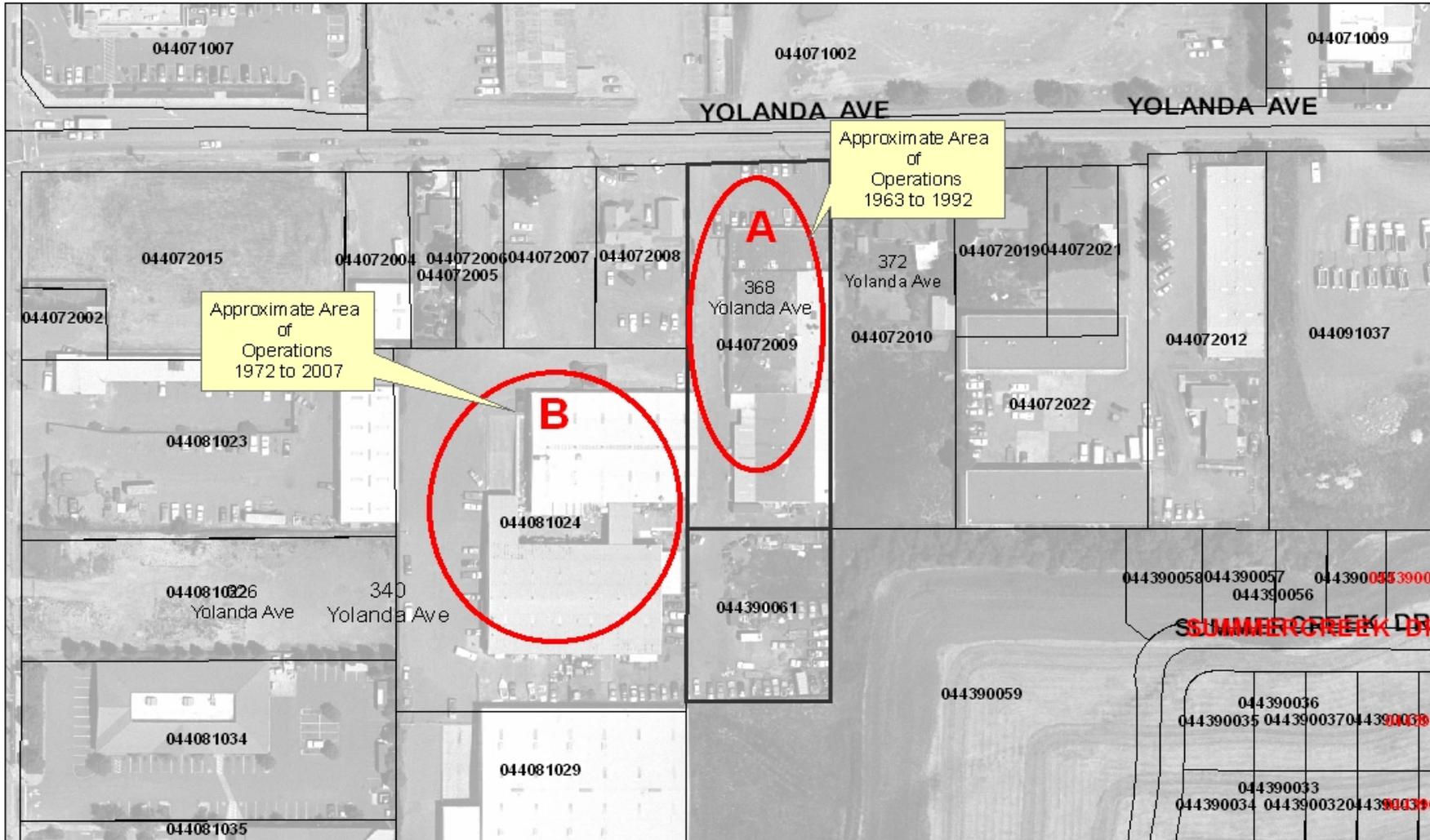
- I. All work shall be conducted in accordance with all applicable local ordinances and under the direction of a California Professional Geologist or licensed Civil Engineer experienced in soil and groundwater pollution investigation and remediation system design. All necessary permits shall be obtained prior to conducting the work.
- J. The Dischargers shall be liable, pursuant to Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. Failure to make timely reimbursements will be considered a violation of this Order.
- K. If, for any reason, the Dischargers are unable to perform any activity or submit any documentation in compliance with the work schedule contained in this Order or submitted pursuant to this Order and approved by the Executive Officer, the Dischargers may request in writing, an extension of time as specified. The extension request must be submitted a minimum of 5 business days in advance of the due date sought to be extended and shall include justification for the delay, including the good faith effort performed to achieve compliance with the due date. The extension request shall also include a proposed time schedule with new performance dates for the due date in question and all subsequent dates dependent on the extension. An extension may be granted for good cause by written concurrence from the Executive Officer.
- L. Violations of any of the terms and conditions of this Order will subject Dischargers to possible enforcement action, including civil liability under applicable provisions of the Water Code.

Ordered by: _____

Catherine Kuhlman
Executive Officer

March 8, 2007

Malm Fireplaces, Inc. Manufacturing Operations
Yolanda Avenue, Santa Rosa, California
Sonoma County



Order No. R1-2007-0014
EXHIBIT 1

Table of Water Quality Objectives

Halogenated Volatile Organic Compounds

CHEMICAL	Common Minimum Detection Level	WATER QUALITY OBJECTIVE ¹	WATER QUALITY OBJECTIVE CITATION
1,1-Dichloroethane	<0.5 µg/l	3 µg/l	California Public Health Goal (Cal/EPA, OEHHA)
1,2-Dichloroethane	<0.5 µg/l	0.4 µg/l	California Public Health Goal (Cal/EPA, OEHHA)
1,1-Dichloroethene	<0.5 µg/l	0.06 µg/l	USEPA Health Advisory
cis-1,2-Dichloroethene	<0.5 µg/l	6 µg/l	Primary MCL California Dept of Health Services
trans-1,2-Dichloroethene	<0.5 µg/l	10 µg/l	Primary MCL California Dept of Health Services
1,1,1-Trichloroethane	<0.5 µg/l	17 µg/l	National Academy of Sciences Health Advisory
1,1,2-Trichloroethane	<0.5 µg/l	0.5 µg/l	Cal/EPA Cancer Potency Factor
Trichloroethene	<0.5 µg/l	0.8 µg/l	California Public Health Goal (Cal/EPA, OEHHA)
Tetrachloroethene	<0.5 µg/l	0.06 µg/l	California Public Health Goal (Cal/EPA, OEHHA)
Vinyl Chloride	<0.5 µg/l	0.05 µg/l	California Public Health Goal (Cal/EPA, OEHHA)

¹ The California Water Code, and regulations and policies developed thereunder require cleanup and abatement of discharges and threatened discharges of waste to the extent feasible. Cleanup and abatement activities are to provide attainment of background levels of water quality or the highest water quality that is reasonable if background levels of water quality cannot be restored. **Alternative cleanup levels less stringent than background concentration shall be permitted only if the discharger demonstrates that: it is not feasible to attain background levels;** the alternative cleanup levels are consistent with the maximum benefit to the people of the State; alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and they will not result in water quality lower than prescribed in the Basin Plan and Policies adopted by the State and Regional Water Boards.