

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2010-0059

For

Violations of Cleanup and Abatement Order No. R1-2007-0014
And
Failure to Submit Technical Reports

In the Matter of

Malm Fireplaces, Inc.
Leslie W. Welsh and Phyllis M. Welsh
And
Allan A. Henderson and Kimberly L. Henderson Trust

Sonoma County

The Assistant Executive Officer of the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), hereby gives notice that:

1. This administrative civil liability complaint (Complaint) is issued to Malm Fireplaces, Inc., Leslie W. Welsh (also known as L. Warren Welsh and/or Warren L. Welsh) and Phyllis M. Welsh, and the Allan A. Henderson and Kimberly L. Henderson Trust (hereinafter collectively referred to as Dischargers) pursuant to California Water Code (CWC) Section 13350 for alleged violations of Cleanup and Abatement Order (CAO) No. R1-2007-0014, and pursuant to CWC Section 13268 for alleged violations of Monitoring and Reporting Program (MRP) No. R1-2007-0062 (Referred to collectively as Orders).
2. Unless waived, a hearing shall be conducted on this Complaint by the Regional Water Board on August 26, 2010, at the Regional Water Quality Control Board Office, 5550 Skylane Blvd., Santa Rosa, California. The Dischargers or their representatives will have an opportunity to be heard and contest the allegations in this Complaint and the imposition of civil liability. An agenda for the meeting will be available at http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/ not less than 10 days before the hearing date. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General's Office for recovery of judicial liability.
3. The Dischargers can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form.

ALLEGATIONS

4. 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. The parcels APN 044-072-009 and APN 044-081-024 are hereinafter collectively referred to as the "Site".
5. 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. In March 1982, Malm Fireplaces, Inc., and Charles Duck, Trustee, sold the Site to Leslie W. Welsh and Phyllis M. Welsh. 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." During the period that Leslie W. Welsh and Phyllis M. Welsh owned the Site, industrial solvents were used at Malm Fireplaces, Inc. In August 2000, Leslie W. Welsh and Phyllis M. Welsh sold to the Allan A. Henderson and Kimberly L. Henderson Trust property that includes the Site. The Allan A. Henderson and Kimberly L. Henderson Trust presently own and control the Site.
6. 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. Subsequent well testing in the area revealed TCE contamination in several other water supply wells along Yolanda Avenue, with TCE concentrations of as high as 1,080 parts per billion (ppb). The highest levels of TCE have consistently been found in a well located in the building formerly occupied by Malm Fireplaces Inc. at 368 Yolanda Avenue, on parcel APN 044-072-009.
7. A solvent dipping tank was used in the production processes of Malm Fireplaces Inc. from the mid-1960s until 1994. 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 1960s until 1972. In 1972, the dipping tank was moved to parcel 044-081-024, where the solvent operations continued until 1994.¹
8. Discharges of TCE to soil and groundwater at the Site have created and continue to create a condition of pollution that has adversely impacted the beneficial uses of groundwater. Because the Dischargers has failed to develop and implement a remediation plan for the removal and/or treatment of TCE in soil and groundwater, sources of TCE at the Site remain in the soil and continue to discharge to

¹ *Modified Work Plan for Soil and Groundwater Investigation – Malm Fireplaces, Inc.* Environet Consulting, January 31, 2001

groundwater. TCE in contaminated groundwater flowing from the Site has impacted and continues to impact the beneficial uses of groundwater in areas surrounding the site. The presence of contaminated groundwater beneath the Site and adjacent properties poses a significant continuing threat to human health and the beneficial uses of water by contaminant migration and human exposure pathways through groundwater and soil gas.

9. The investigative and cleanup actions and information required by CAO No. R1-2007-0014 and MRP Order No. R1-2007-0062 are necessary to ensure that the existing and threatened future impacts to the beneficial uses of water and associated pollution created by the discharges described above are properly abated and controlled. The burden, including costs, of the investigation and reports required by the Orders bear a reasonable relationship to the need for the information and the benefits to be obtained therefrom.
10. The Dischargers have delayed and/or disregarded their obligation to complete the site investigation and to define the full extent of the contamination. This investigation work is necessary before cleanup and/or remediation work can be developed or implemented. As of January 31, 2010, the Dischargers have failed to take the following required actions:
 - a. Complete quarterly groundwater monitoring for the fourth quarter 2007, second quarter 2008, fourth quarter 2008, first quarter 2009, second quarter 2009, third quarter of 2009 and fourth quarter of 2009 as required by MRP R1-2007-0062;
 - b. Submit quarterly groundwater monitoring reports for the same quarters as described above, and submit the third quarter 2008 report on time, as required by MRP R1-2007-0062;
 - c. Drill three Phase 2 borings by September 24, 2008, as required by the Regional Water Board Executive Officer's June 26, 2008 Revision to the CAO No. R1-2007-0014. The drilling and sampling of the three Phase 2 borings were subsequently completed on August 20, 2009, approximately nine months after the required installation date.
 - d. Install two Phase 2 monitoring wells that were required to have been installed by September 24, 2008 (June 26, 2008 Revision to the CAO) but was extended to no later than October 10, 2008, as required by the Executive Officer's letter dated August 29, 2008 under the provisions of CAO No. R1-2007-0014;
 - e. Install six monitoring wells and one boring for Phase 3 that were required to have been installed by September 24, 2008, as required by the June 26, 2008 Revision to the CAO No. R1-2007-0014;
 - f. Submit a Well Installation Report for the two Phase 2 monitoring wells, the six Phase 3 monitoring wells and the one Phase 3 boring by December 10, 2008,

as required by the Executive Officer's August 29, 2008 NOV letter under the provisions of CAO No. R1-2007-0014. A Report of Findings for three Phase 2 borings was subsequently submitted on September 29, 2009, approximately thirteen months after the required submittal date. The September 29, 2009 Report of Findings only contained information about the three Phase 2 borings, and did not include information about the two Phase 2 and six Phase 3 monitoring wells because these wells were never installed;

- g. Submit a Field Schedule for drilling and installing the two Phase 2 wells, and the six wells and the one boring for Phase 3; and
- h. Submit recommendations for investigating potential TCE release areas, a work plan, and a schedule for implementation (this information was required in CAO No. R1-2007-0014 and was omitted in the Phase I Report of Findings submitted by the Dischargers on June 6, 2007).

In addition, the Dischargers submitted the third quarter 2008 ground water monitoring report late, and delayed the drilling and sampling of three Phase 2 borings that were required by September 24, 2008² until August 20, 2009.

BACKGROUND

11. 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 (326 Yolanda), which has been occupied by Malm Fireplaces since 1972. The Regional Water Board staff obtained Cleanup & Abatement Account Funds (CAA), and spent \$124,020.41, including staff costs, to conduct the soil gas source identification work, and to connect properties with contaminated domestic wells to City of Santa Rosa municipal water supplies. In order to recover these costs, the Attorney General's Office placed a lien on the Site and ultimately entered into a settlement agreement with Allan Henderson and Kimberly Henderson requiring them to reimburse 50% of the costs of the soil gas survey and 100% of staff costs. The reimbursement of \$111,982 to the State Water Resources Control Board CAA is to be made through a series of payments in accordance with a payment schedule starting in March 2010.
12. On October 31, 2000, EnviroNet Consultants submitted a work plan, on behalf of the Dischargers, proposing to advance 21 borings to obtain soil and groundwater samples for analysis.
13. On November 14, 2000, the Regional Water Board Executive Officer issued CAO No. R1-2000-83, requiring current and former property owners and business

² September 24, 2008 due date imposed by the Executive Officer's June 26, 2008 letter revising CAO No. R1-2007-0014.

operators³ to define the horizontal and the vertical extent of soil and groundwater contamination. CAO No. R1-2000-83 also required the named dischargers to clean up and abate the discharges and threatened discharges of volatile organic compounds at the Site.

14. The Dischargers' consultants submitted two work plans^{4, 5} that proposed modifications to the original work plan based on Regional Water Board staff comments, and contained historical information about the site and industrial practices. The second work plan proposed to advance 30 borings to obtain soil and groundwater samples for analysis as the initial phase of investigation; proposed a phased approach for the full investigation including monitoring wells, additional borings and possibly an expanded sensitive receptor survey; and proposed drilling the initial phase borings from May 14 through May 18, 2001.
15. On May 11, 2001, the Regional Water Board Executive Officer issued CAO No. R1-2001-44 (rescinding and replacing CAO R1-2000-83) requiring the Dischargers⁶ to implement the expanded scope of work proposed in the second modified work plan prepared by EnviroNet Consultants. CAO No. R1-2001-44 also required the Dischargers to submit 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.
16. In June 2001, EnviroNet Consultants drilled thirty exploratory borings on the Site for the Dischargers, as well as fourteen more borings off-site on adjacent property to the southeast for a separate client as a requirement for a proposed development project on the adjacent property. Soil and groundwater samples collected from the borings confirmed the presence of significant levels of TCE and other volatile organic compounds (VOCs) 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 present in 27 of the 29 groundwater

³ Order No. R1-2000-83 named the following parties as Dischargers: Glenn Sr. and Joyce Crownover, Malm Fireplaces Inc., Fireform Porcelain, Inc., Warren L. Welsh and Phyllis M. Welsh, and Allan and Kimberly Henderson, based on the current and past property ownership and past operations conducted at the site . "

⁴ *Revised Modified Work Plan for Soil and Groundwater Investigation-Malm Fireplaces, Inc.*, EnviroNet Consulting, January 31, 2001

⁵ *Revised Modified Work Plan for Soil and Groundwater Investigation-Malm Fireplaces, Inc.*, EnviroNet Consulting, May 2, 2001.

⁶ The Dischargers identified in CAO No. R1-2001-44 are the same parties identified in CAO R1-2000-83 except that Fireform Porcelain, Inc. was removed 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.

samples; with concentrations as high as 38,000 ppb.⁷

17. In a June 20, 2002 letter, the Regional Water Board Executive Officer notified the Dischargers that the following deliverables, required by CAO R1-2001-44, were overdue:
 - a. Monthly progress reports for ten reporting periods (August 2001, September 2001, November 2001, December 2001, January 2002, February 2002, March 2002, April 2002, May 2002, and June 2002);
 - b. A scope of work and specified deliverables due on September 1, 2001 (overdue deliverables included a health and ecological risk assessment; a treatability study; a feasibility study; and a draft Remedial Action Plan);
 - c. A final remedial investigation report;
 - d. An annual report; and
 - e. Acknowledgement form for oversight costs.

In response to the June 20, 2002 letter, the Dischargers began submitting monthly Progress Reports in August 2002. From November of 2001 through February of 2003 (16 months), the monthly progress reports showed that cleanup measures and/or site activities were not progressing, and the required deliverables were not submitted until March 2003.

18. EnviroNet Consultants submitted a March 7, 2003 work plan (Work Plan) which included a proposal for the Dischargers to complete three phases of site investigation, including the installation of eight pairs of shallow and deep groundwater monitoring wells and advancement of seven additional borings to obtain soil samples. On January 29, 2004 the Discharger's consultant, SCS Engineers (SCS), submitted an addendum to the March 7, 2003 work plan proposing to begin drilling Phase I work within 30 days of Regional Water Board approval. Regional Water Board staff concurred with the Work Plan in an April 6, 2004 letter.
19. The Dischargers submitted a letter dated October 11, 2005 explaining that funding for the investigative work was not available due to remediation work at another site owned by the Dischargers, and that additional investigative work at this Site was contingent on the sale of the other property.
20. As of the beginning of 2007, however, the proposed continuation of site investigation/work plan had not been implemented. Therefore, on March 8, 2007, the Regional Water Board issued CAO No. R1-2007-0014 requiring the Dischargers to implement the proposed work plan, and clean up and abate the

⁷ *Report on Soil and Groundwater Investigation – Malm Fireplaces, Inc.*, EnviroNet Consulting, September 1, 2001.

effects of discharges of TCE and other chemicals in the soil and groundwater at the Site.

21. Since 2007, the Dischargers have responded to enforcement actions by the Regional Water Board with the following actions:

CAO No. R1-2007-0014

- a. Submitted a modified Work Plan on April 5, 2007 which the Regional Water Board concurred with on April 11, 2007;
- b. Installed six wells by May 1, 2007 for Phase 1;
- c. Submitted an Investigation Report (containing a modified work plan) on June 6, 2007;
- d. Submitted modified work plans on July 30, 2007 and October 1, 2007 which the Regional Water Board concurred with on August 10, 2007 and October 12, 2007 respectively;
- e. Installed four wells by November 12, 2007 for partial Phase 2;
- f. Submitted an Investigation Report (containing a modified work plan) on February 1, 2008 which Regional Water Board staff concurred with in a letter dated June 26, 2008;

Regional Water Board letter dated June 26, 2008 modifying the requirements of CAO R1-2007-0014:

- g. Submitted a Field Schedule to drill two wells and three borings for Phase 2, of which completion of the drilling was proposed for the three borings by September 19, 2008 and the two wells by October 10, 2008 (the schedule omitted drilling dates for Phase 3 work)

Regional Water Board Notice of Violation (NOV) letter dated August 29, 2008:

- h. Updated Regional Water Board staff regarding scheduled site work in a letter dated September 12, 2008.

Regional Water Board NOV letter dated November 24, 2008:

- i. Submitted a Field Schedule on August 6, 2009 to drill three borings for partial Phase 2;
- j. Advanced three temporary borings for groundwater grab-samples for partial Phase 2 on August 20, 2009; and
- k. Submitted an Investigation Report (containing a modified work plan, but omitting a schedule) on September 29, 2009.

To date, however, the Dischargers have still not fully implemented the proposed investigative activities, and subsequent modifications to the March 7, 2003 work plan.

REQUIREMENTS CURRENTLY APPLICABLE TO THE DISCHARGERS

22. CAO No. R1-2007-0014 (rescinding and replacing CAO R1-2001-44) requires the named Dischargers⁸ to complete the following tasks (generally described):
- A. Cleanup and abate the effects of unauthorized discharges of TCE and other chemicals in soil and groundwater at the Site;
 - B. Implement the scope of work that was proposed in the Work Plan, including any subsequently proposed phases of investigation, to define the extent of contamination and investigate potential TCE release areas at the site;
 - C. Submit an Interim Remedial Action Plan upon identification of areas impacted with high levels of contaminants that threaten to migrate and impact other groundwater resources;
 - D. Sample and analyze monitoring wells during the first and subsequent phases of work within 30 days of installation and quarterly thereafter;
 - E. Submit a Feasibility Study and Remedial Action Plan;
 - F. Submit an Interested Party List;
 - G. Submit a sensitive receptor survey;
 - H. Complete any additional work deemed reasonably necessary by the Regional Water Board Executive Officer to abate and clean up the discharge, and to protect human health and the environment.
23. CAO No. R1-2007-0014 provides that in addition to completing the Work Plan, “proposed implementation schedules for additional phases of investigation shall be incorporated into in this Order (CAO No. R1-2007-0014) upon written concurrence by the Executive Officer” and that “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.”
24. Monitoring and Reporting Program (MRP) Order No. R1-2007-0062 was issued by the Regional Water Board Executive Officer on August 15, 2007 requiring the Dischargers to:
- A. Submit quarterly monitoring reports according to a specified schedule; and

⁸ Order No. R1-2007-0014 identified the following parties as “the Dischargers” for consistency with the Sonoma County Assessor’s Office records for the grantors and grantees for the property transactions recorded for the Site: Malm Fireplaces, Inc., Warren L. Welsh, Phyllis M. Welsh, and the Allan A. Henderson and Kimberly L. Henderson Trust

- B. Upload the reports and laboratory analytical data electronically to the State Water Resources Control Board's Geographic Environmental Information Management System database (GeoTracker) as required by the California Code of Regulations, Title 23, Division 3, Chapter 30, Article 2, Sections 3890-3895.
25. Letter dated June 26, 2008 from the Regional Water Board Executive Officer modified the requirements of CAO Order No. R1-2007-0014 by:
- A. Incorporating into CAO Order No. R1-2007-0014 the recommendations contained in a February 1, 2008 report submitted on behalf of the Dischargers. The February 1, 2008 report includes:
 - i. Installing six monitoring wells and one boring, previously proposed for Phase 3 of the investigation, at revised locations,
 - ii. Scheduling installation of the Phase 2 and Phase 3 monitoring wells within 60 days of receipt of Regional Water Board approval,
 - iii. Deferring the scheduling to install the two remaining monitoring wells proposed for Phase 2 at the property identified as 325 Yolanda Avenue until an access agreement could be obtained from the property owner.
 - B. Requiring the Dischargers to submit a field schedule for the proposed drilling activities within sixty days, or no later than August 25, 2008;
 - C. Requiring the Dischargers to complete the proposed drilling activities within ninety days, or by September 24, 2008; and
 - D. Requiring the Dischargers submit a report of field findings within 60 days of completing the field work, but no later than 150 days from the date of the letter, or before November 23, 2008.
26. NOV letter issued on August 29, 2008 by the Regional Water Board Executive Officer contained the following:
- A. Notification to the Dischargers of noncompliance with MRP R1-2007-0062; specifically, for failing to submit the second quarter 2008 groundwater monitoring report
 - B. Requirement for the Dischargers to submit by September 12, 2008, a written explanation of the actions the Dischargers are taking to comply with the Orders.
 - C. Concurrence with the proposed drilling schedule submitted on August 22, 2008 by SCS on behalf of the Dischargers, which:

- i. Proposed to drill the three borings approved for Phase 2 of the investigation by September 19, 2008, and
 - ii. Requested an extension for installation of the two Phase 2 monitoring wells on the north to October 10, 2008.
 - D. Granting the Discharger's request to extend the required date for installation of the two monitoring wells for Phase 2 to October 10, 2008, and
 - E. Requirement for the Dischargers to submit a report of field findings for the work by December 10, 2008.
- 27. NOV letter issued on November 24, 2008 by the Regional Water Board Executive Officer containing the following notification to the Dischargers:
 - A. Continuing noncompliance with MRP R1-2007-0062 for failing to submit the second and third quarter 2008 groundwater monitoring reports;
 - B. Violations of CAO No. R1-2007-0014 for:
 - i. Failing to install the 3 Phase 2 borings by the September 19, 2008 deadline; and
 - ii. Failing to install additional monitoring wells by the extended October 10, 2008 deadline.

Although not noted specifically at the time the November 24, 2009 NOV was issued, the Dischargers had also:

 - i. Failed to install two proposed Phase 2 monitoring wells by the October 10, 2009 due date; and
 - ii. Failed to install six monitoring wells and one boring proposed for Phase 3 by the September 24, 2008 due date.
 - C. Additional pending deadlines, including a report of field findings for the well installations, which was required to be submitted by December 10, 2008 and the fourth quarter 2008 groundwater monitoring report, which was due by January 31, 2009.
- 28. On August 20, 2009, SCS drilled and sampled the three Phase 2 temporary borings. On September 29, 2009, SCS submitted the *Results of Additional Subsurface Investigation (ROI)* on behalf of the Dischargers, documenting the drilling and sampling activities and the analytical results for the soil and groundwater samples that were collected for analysis. The ROI contained the results of the 3rd Quarter 2008 Groundwater Monitoring event. The ROI also recommended completing the monitoring wells that were previously proposed for the Phase 2 (two wells) and Phase 3 (six wells) site investigation.

29. NOV and CWC section 13267 Order for Technical Reports issued on December 2, 2009 by the Regional Water Board which contained the following:
- A. Requirement that the Dischargers complete specified investigative tasks and submit information and technical reports, which were previously required of the Dischargers under MRP R1-2007-0062 and CAO No. R1-2007-014;
 - B. Notification to the Dischargers of their continuing noncompliance with MRP R1-2007-0062 and CAO No. R1-2007-014;
 - C. Notification and information to the Dischargers that they must:
 - i. Resume quarterly monitoring and reporting for all site monitoring wells;
 - ii. Complete the installation of all Phase 2 and Phase 3 monitoring wells;
 - iii. Collect and analyze groundwater samples within 30 days of installation; and
 - iv. Include in the Report of Findings recommendations for any additional needed investigation.

All of which was previously required by MRP R1-2007-0062 and CAO No. R1-2007-014.

REPORTING VIOLATIONS

30. Section 13268(c) of the CWC provides for the imposition of civil liabilities against Dischargers by the Regional Board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 who discharge hazardous waste and fail or refuse to furnish technical or monitoring reports, up to \$5,000 per day for each day in which a violation occurs.
31. The Dischargers failed or refused to furnish technical or monitoring program reports as required by MRP No. R1-2007-0062 and/or CAO Order No. R1-2007-0014. Quarterly groundwater monitoring reports have been late or not submitted to the Regional Water Board as described above in Allegations, paragraphs 10(a) & (b). Additionally, the Dischargers have not submitted a Well Installation Report as described above in Allegations, paragraph 10(f) for Phase 2 (partial) and Phase 3 of the site investigation; and the Dischargers omitted required information in the Phase 1 Report of Findings, including recommendations for investigating potential TCE release areas, a work plan, and a schedule for implementation. The days of violation associated with each document, report, or plan not submitted or submitted late, calculated through January 31, 2010, are shown in Table 1, as follows:

Table 1: Failure to Provide Technical or Monitoring Reports
(Pursuant to CWC Section 13268)

Item	Due Date	Notice of Violation Provided	Extended Due Date	Date Received	Days Overdue	Maximum Penalty
Fourth Quarter 2007 Monitoring Report ⁹	1/31/08	---	---	Not received	701	\$3,505,000
Second Quarter 2008 Monitoring Report	7/31/08	8/29/08 11/24/08	---	Not received	519	\$2,595,000
Third Quarter 2008 Monitoring Report	10/31/08	11/24/08 12/2/09	---	9/29/09	303	\$1,515,000
Fourth Quarter 2008 Monitoring Report	1/31/09	(11/24/08 pending deadline)	---	Not received	335	\$1,675,000
First Quarter 2009 Monitoring Report	4/30/09	---	---	Not received	246	\$1,230,000
Second Quarter 2009 Monitoring Report	7/31/09	---	---	Not received	154	\$770,000
Third Quarter 2009 Monitoring Report	10/31/09	---	---	Not received	62	\$310,000
Fourth Quarter 2009 Monitoring Report	1/31/10	---	---	Not received	0	\$0
Report of Findings for Installation of Three Exploratory Borings for Phase 2 (partial)	11/23/08 ¹⁰	----	12/10/08	9/29/2009	263	\$1,315,000
Report of Findings for Installation of two Monitoring Wells for Phase 2 (partial), and six Monitoring Wells and One Boring for Phase 3	11/23/08 ¹¹	(11/24/08 pending deadline)	12/10/08	Not received	387	\$1,935,000
Missing Information (Phase 1 Report of Findings): 1) Recommendations for investigating potential TCE release areas, 2) work plan, and 3) schedule for implementation	6/6/07 ¹²	12/2/09	---	Not received	940	\$4,700,000
TOTALS					3910	\$19,550,000

⁹ Quarterly monitor report deadlines are pursuant to MRP No. R1-2007-00062 unless otherwise noted.

¹⁰ Original due date of November 23, 2008 as required by CAO Order No. R1-2007-0014 as incorporated by the June 26, 2008 letter from the Regional Water Board's Executive Officer was extended to December 10, 2008 by the August, 29, 2008 Notice of Violation.

¹¹ Original due date of November 23, 2008 was extended to December 10, 2008 and incorporated as a requirement of CAO Order No. R1-2007-0014 by the August, 29, 2008 Notice of Violation letter from the Regional Water Board's Executive Officer.

¹² Due date of June 6, 2007 required by CAO Order No. R1-2007-0014.

INVESTIGATION AND CLEANUP IMPLEMENTATION VIOLATIONS

33. CWC Section 13350(a) provides for the imposition of civil liabilities against any person for violating any cleanup and abatement order issued by a regional board. Additionally, CWC Section 13350(e)(1) provides for the imposition of civil liabilities up to \$5,000 per day or ten dollars (\$10) per gallon of waste discharged.
34. The Dischargers have failed to complete the site investigation. Specifically Dischargers have failed to complete the following: (1) installation of two Phase 2 monitoring wells by an extended October 10, 2008 due date; and (2) installation of six Phase 3 monitoring wells and advancement of one Phase 3 boring by September 24, 2008. The specific violations of CAO No. R1-2007-0014, and the number of days of violation, calculated through January 31, 2010, are detailed below in Table 2.

Table 2: Violations of CAO No. R1-2007-0014
(Pursuant to CWC Section 13350)

CAO Task Violation	Due Date	Extended Due Date	Notice of Violation Provided	Date Completed	Days Overdue	Maximum Penalty
Installation of three borings for Phase 2	9/19/2008 ¹³	---	---	8/20/2009	335	\$1,675,000
Installation of two wells for Phase 2	9/24/2008 ¹⁴	10/10/2008 ¹⁵	11/24/08 12/2/09	Not completed	478	\$2,390,000
Installation of six wells and one boring for Phase 3	9/24/2008 ¹⁶	---	12/2/09	Not completed	494	\$2,470,000
TOTALS					1307	\$6,535,000

CONSIDERATION OF THE FACTORS

35. In determining the amount of the civil liability for violations of CWC Sections 13268

¹³ Due date of September 19, 2008 is required by CAO Order No. R1-2007-0014 as incorporated by August 29, 2008 NOV letter from the Regional Board's Executive Officer.

¹⁴ Due date incorporated into CAO Order No. I R1-2007-0014 requirements by Executive Officer's June 26, 2008 letter revising that CAO.

¹⁵ Due date of October 10, 2008 is required by CAO Order No. R1-2007-0014 as incorporated by August 29, 2008 letter from the Regional Board's Executive Officer.

¹⁶ Due date incorporated into CAO Order No. I R1-2007-0014 requirements by Executive Officer's June 26, 2008 letter revising that CAO.

and 13350, CWC section 13327 requires the Regional Water Board to take into account the nature, circumstance, extent and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharger; and with respect to the violators, the ability to pay, the ability to continue in business, voluntary cleanup efforts, prior history of violations, the degree of culpability, economic benefit or savings resulting from the violation, and other matters as justice may require. The Regional Water Board's consideration of the factors required by CWC section 13376 in determining the amount of the administrative civil liability is below:

a. The Nature, Circumstances, Extent, and Gravity of the Violations

Analysis of soil, soil gas, and groundwater at the Site has revealed the presence of several chemicals associated with industrial solvents, including 1,1-dichloroethene, cis-1,2-dichloroethene, trans-1,2-dichloroethene, tetrachloroethene, trichloroethene, trichloroethane, 1,1,1-trichloroethane, 1,1-dichloroethane and, vinyl chloride. Trichloroethene and other associated VOCs have adversely impacted water supply wells in the area, both at the Site and on nearby off-site properties.

Trichloroethene has been measured in samples from on-site monitoring wells at a concentration of 4,600 micrograms per liter (ug/l) during the most recent sampling, conducted in January 2008. The California Office of Environmental Health Hazard Assessment has established 1.7 µg/l as the California Public Health Goal for trichloroethene in drinking water based on cancer risk.

The full lateral and vertical extent of contamination has not been delineated. The Dischargers' failure to complete the installation of the proposed two Phase 2 and six Phase 3 monitoring wells has prevented delineation of the full extent of groundwater contamination and preparation of an effective remedial action plan for cleaning up the unauthorized chemical discharges at the Site. Additionally, the Dischargers have failed to submit a report of findings with recommendations for additional site investigation, to identify areas of residual contamination in soil and they have failed to prepare and implement an effective interim remedial action plan to mitigate contaminant migration from the source areas.

The Dischargers' failure to conduct routine groundwater monitoring and to submit groundwater monitoring reports has prevented continuing assessment of contaminant migration and water quality trends. This information is needed by regulatory agencies and by interested parties for various purposes, including implementation of an effective remedial strategy, health risk management decisions and property transactions.

Failure to complete the needed site investigation and remediation has allowed ongoing unauthorized discharges of toxic volatile organic compounds (VOC) to groundwater. These discharges have adversely affected, and will continue to

adversely impact the beneficial uses of groundwater.

b. Susceptibility to Cleanup and Toxicity of Discharge

TCE is a persistent VOC contaminant that infiltrates soil and ground water from improper disposal of dry cleaning agents, degreasing solvents, and paint strippers. TCE is labeled as a dense non-aqueous phase liquid meaning it sinks into the soil subsurface by displacing water from soil pores and eventually sinking into the groundwater while leaving behind residual pockets that can contribute to long term contamination. Consequently, TCE and other VOCs must be remediated in both the groundwater and in the subsurface soils. Removal of the VOC source is usually the primary consideration to ensure effective remediation. Soil contamination from a surface spill is a potential long-term source of hazardous vapors in the vadose zone and dissolved VOCs in groundwater. Remediation methods for VOCs such as TCE include air stripping, carbon absorption, soil venting, surface bioreactors, and in situ bioremediation. Air stripping, carbon absorption, and surface bioreactors are used for contaminated water. Soil venting is used for contamination in the vadose zone, while in situ bioremediation can be used in the vadose zone and in the water table. Generally, no single method can accomplish all the objectives of a complete site cleanup. The performance, effectiveness and cost efficiency of the remediation method and/or combination of methods are dependent on the various site conditions including environmental and geological parameters.

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. In soil and groundwater, TCE may break down over a long period of time, but it can produce intermediate chemicals like vinyl chloride which are more toxic than TCE. The California State Department of Health Services has established the Maximum Contaminant Level for TCE in drinking water at 5 ppb. The California Office of Environmental Health Hazard Assessment has established the California Public Health Goal for TCE in drinking water at 1.7 ppb. The Agency for Toxic Substances and Disease Registry states that breathing small amounts of TCE may cause headaches, lung irritation, dizziness, poor coordination, and difficulty concentrating. Breathing large amounts of TCE may cause impaired heart function, unconsciousness, and death. Breathing it for long periods may cause nerve, kidney and liver damage. Drinking large amounts of TCE may cause nausea, liver damage, unconsciousness, impaired heart function, or death. Drinking small amounts of TCE for long periods may cause liver and kidney damage, impaired immune system function, and impaired fetal development in pregnant women, although the extent of some of these effects is not yet clear.¹⁷

¹⁷ Department of Health and Human Services, Agency for Toxic Substances & Disease Registry, FoxFAQs for Trichloroethylene (TCE), July 2003 (updated on 2/18/2010)

c. Ability to Pay and Effect on Ability to Continue Business

Regional Board staff researched properties owned by the Dischargers within Sonoma County and the value assessed for each parcel by the Sonoma County Assessors Office. According to these records, the Dischargers own eleven parcels totaling an assessed value of \$6,899,950. The Site consists of two of these parcels with a net assessed value of \$1,834,649. Accordingly, the Dischargers collectively have the ability to pay a significant liability amount and stay in business. Exactly how liability will be apportioned between the Dischargers is not known. Accordingly, the specific impact that the proposed liability will have on each individual discharger cannot be determined.

Regional Board staff also considered the future need for additional Site investigation, interim remediation, and ultimately Site clean up work. While the extent of the costs associated with these additional actions are not known, it is likely that the Dischargers will incur significant costs in conducting these activities. The fact that the Dischargers will be required to incur these additional substantial costs was taken into consideration in determining the recommended liability amount.

d. Voluntary Cleanup Efforts:

On October 31, 2000, prior to the Regional Water Board's issuance of the first clean up and abatement order concerning the Site, EnviroNet Consultants submitted a work plan, on behalf of the Dischargers, proposing to advance 21 borings to obtain soil and groundwater samples for analysis. Subsequent to this initial work, however, there is a long history of delay and lack of co-operation from the Dischargers that is detail throughout this Complaint and discussed in more detail below under the Degree of Culpability analysis.

e. Prior History of Violations

Prior to the discovery of contaminants at and around the Site, the Regional Water Board has no documentation of violations for the Dischargers at this Site.

f. Degree of Culpability

The Dischargers are culpable as the former and/or current owner(s) of the Site and operator(s) of the manufacturing facilities at the time of the waste discharges. On numerous occasions, through formal and informal enforcement actions, by telephone, and in person, for over nine years, Regional Water Board staff has notified the Dischargers of the Regional Water Board's concerns about the impacts to the beneficial uses of groundwater at the site and the need to submit and implement work plans to prevent or minimize the migration of contaminants from soil to groundwater and the migration of these contaminants in groundwater to off-site areas.

The Background section of this Complaint details a long history of Regional Board effort to compel the Dischargers to meet their obligation to characterize and ultimately clean up the Site and an equally long history of resistance and non-action from the Dischargers. Most recently, on August 29, 2008, November 24, 2008, and again on December 2, 2009, Regional Water Board Executive Officer sent Notice of Violation letters informing the Dischargers of past and continuing noncompliance with CAO No. R1-2007-0014 and MRP R1-2007-0062. These letters are described above in Requirements Currently Applicable to Dischargers, paragraphs 26, 27, and 29 of this Complaint.

In short, unless required by the Regional Water Board and staff enforcement actions, the Dischargers have delayed or taken few steps to identify the source areas and extent of pollution and implement cleanup measures, resulting in the potential to increase rather than decrease the discharges. Regional Water Board staff have notified the Dischargers of their obligations and provided them with ample opportunity to come into compliance without incurring civil liabilities. The Dischargers' actions demonstrate a willful disregard of the law and a high level of culpability.

g. Economic Benefit or Savings

The Dischargers have benefitted economically from the violations, and from postponing and/or failing to implement needed measures required for cleanup and abatement. The suspension of quarterly groundwater monitoring and reporting, the delay in completing site investigative work, including installing additional monitoring wells and borings, and the delay in implementing appropriate corrective action most likely have resulted in significant economic savings for the Dischargers.

Quantifying the full extent of the Dischargers' economic benefit is difficult because the Dischargers' failure to comply with the Order has prevented the Regional Board from obtaining the information necessary to specify additional investigative work and corrective actions that the Dischargers are required to perform. It is anticipated that the costs associated with additional investigative work and necessary corrective actions will be significant and that the Dischargers have avoided incurring those costs by delaying the progress of the initial site characterization as required by the Orders.

Nevertheless, an attempt was made to quantify the economic benefit received by the Dischargers failing to comply with the initial investigative tasks identified in the Orders. This limited economic benefit analysis was conducted by State Water Resources Control Board staff utilizing USEPA's BEN Model, which is recommended by the Enforcement Policy, to calculate the present value of the economic benefit to the Discharger for noncompliance with the Orders. The Regional Water Board staff determined that the Dischargers could have complied with the Orders by:

- Installing three borings by September 19, 2008,
- Installing two monitoring wells by October 10, 2008,

- Installing six monitoring wells and one boring by September 24, 2008
- Submitting the required Report of Findings for partial Phase 2 (three borings) by December 10, 2008 rather than September 29, 2009,
- Submitting the required Report of Findings for partial Phase 2 (two wells) and Phase III by December 10, 2008,
- Submitting the missing information in the Phase 1 Report of Findings by June 6, 2007, and
- Submitting quarterly monitoring reports beginning in the 4th Quarter 2007 on January 31, 2008.

The delayed cost of installing the wells was estimated at \$10,880 (\$2001)¹⁸. The delayed costs of conducting the borings and installation reports were estimated at \$3,753 (\$2001). The avoided cost of quarterly monitoring reports was estimated at \$8,018 (\$2001). The total cost of avoided or delayed actions by not complying with the MRP and CAO is estimated at \$22,652 (\$2001). The economic benefit of the Dischargers' failure to timely comply with the above requirements of the Orders is estimated at \$12,330. This estimate assumes that the Dischargers will be in compliance and the ACL payments will be made by July 1, 2010. The estimated \$12,330 in economic benefit is a minimum estimate and does not include the delayed/avoided cost associated with additional investigative work, nor clean up and remediation actions that the Dischargers will likely be required to conduct after the initial site investigation required by the Orders is complete.

h. Other Matters as Justice May Require

Significant Regional Water Board staff hours have been dedicated to this site in an effort to gain compliance, including the preparation of enforcement Orders to protect ground and surface water quality. Staff costs that have not been refunded (excluding work and associated staff costs related to the CAA litigation discussed above in Paragraph 11 of the Background section of this Complaint) through April 30, 2010 are \$85,050.

RECOMMENDED CIVIL LIABILITY

36. The Water Quality Enforcement Policy (Enforcement Policy) adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability that addresses the factors in CWC section 13327 discussed in detail above in paragraph 35. The policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

¹⁸ Indicates the year of dollar estimate. To convert the estimate to the present time period, use an inflation index such as the Consumer Price Index available on the internet (<http://www.measuringworth.com/uscompare/>). Cost estimates are from: Underground Storage Tank Clean-up Fund Cost Guidelines, State Water Resources Control Board, 10/1/2001.

Attachments A and B present the administrative civil liability derived from the use of the penalty methodology in the Enforcement Policy. In calculating the days of violations for purposes of the penalty methodology, the alternative approach for calculation liability for multiday violations was used.

a. Use of the Alternative Approach to Liability Calculations for Multiple Day Violations

The alternative approach for calculating liability for multiday violations in the Enforcement Policy is applicable because: (1) the violations in the Complaint are not causing daily detrimental impacts to the regulatory program; and (2) the violations do not result in an economic benefit that can be measured on a daily basis. The monitoring and/or reporting requirements that are the basis for the violations detailed in Attachment A are not daily requirements. The Dischargers' failure to complete the installation of monitoring wells and borings has allowed ongoing unauthorized discharge of toxic VOC to groundwater, however, these violations do not result in a daily detriment to the regulatory program. Generally, it is the extended time period of non-compliance that causes the detrimental impact to both the environment and the regulatory program. Furthermore, the Dischargers only receive an economic benefit for the delayed costs on days which the monitoring or reporting should have been completed, or the one time actions of installing monitoring wells and borings were required to be completed, and not for the entire period of violation.

The total maximum potential penalty is \$26,085,000. After applying the penalty methodology, the Assistant Executive Officer of the Regional Water Board is issuing this Complaint for **\$774,511** to the Dischargers for violations of CAO No. R1-2007-0014 and MRP No. R1-2007-0062.

Luis G. Rivera
Assistant Executive Officer

June 23, 2010

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