

SG SHLET

TIME	SAMPLING LOCATION (SP...)	SAMPLING DEPTH (FT)	TPH READING (PPM)	IF SOIL SAMPLE, ID# (GPSS...)	IF VAPOR SAMPLE, ID# (GPVS...)	SOIL CONDITIONS	REMARKS
12:30	SP 1	2	0	N/A	N/A	Silty Sands	Background = 0 ppm
12:40	SF 1	2.5	7	N/A	N/A	" "	" "
14:20	SP-2	10	5,400	N/A	N/A	Silty Sands	Background = 3 ppm
14:30	SP-2	15	N/A	N/A			unable to collect bag sample due to low permeability soil conditions
15:15	SF 2	15.5	N/A	3-3	N/A	Silty Sands, signi-	
15:25	SP 3	16.5	2		N/A	ficant soil discoloration, mild odor	
16:30	SF-2	17.5	N/A	3-3	N/A		

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TPH = Total Petroleum Hydrocarbons

(PPM) - Parts per million

AN 100 ml using

with 20 ml

PERFORMED / SAMPLED BY: SKK / PEL

REVIEWED BY: [Signature]

JOB NAME / LOCATION: 11-1100 / Lynwood

JOB DATE: 9/1/92 PAGE 1 OF 1



FIELD REPORT

Client: 16145
 Project: 16145
 Location: 16145

Purpose of Site Visit: 1) Use Geo-Protek (MSU) to screen soil for clean water...
 2) collect one soil sample from location where contamination was found

Met w/ MSU representative (Dennis Leary) and (John...)
 who is located on the NW side of property near corner...
 and... and...
 MSU (SP-1) to screen sub-surface soils @ 15' below grade. Took readings @ 15' & 30'. Both readings...
 showed MSU to be...
 identified to collect one major sample @ 15' below...
 permeability soil, was unable to collect any water samples...
 however, did get a probe/pressure reading of 4.4723 pps.

MSU to collect 3 soil samples starting @ 15.5' below grade
 collected one soil sample @ 15.5', one @ 16.5', and one @ 17.5' below grade respectively.
 observed significant discoloration/odor @ 15' below grade,
 continuing all the way down to 17.5' below grade.

Other Discussions: 1) Backfill red patch, both SP-1 and SP-2 locations
 2) Dennis Leary provided on-site plan to check for...
 3) Dennis Leary would like a copy of site plan provided

Dennis would also like copy of results of SP-1, etc. etc.
 will return to him upon completion of phase 1.

Reviewed By: 17197

Project: <u>LYNWOOD 017</u>		Boring No.: <u>B-1</u>					
Location: <u>11716 LONG BEACH BLVD., LYNWOOD</u>		Elevation: <u>± 75' ASL</u>					
Job No.: <u>313-92</u>	Client: <u>SMART SMR</u>	Date: <u>8/11/92</u>					
Drill Method:		Driving Weight:					
		Logged By: <u>SW</u>					
Depth (Feet)	Lithology	Material Description	Sampler		Laboratory Tests		
			Blot Ped Foot	C B T	Moisture Content (%)	Dry Density (pcf)	Other Lab Tests
		<u>Fill</u>					
		<u>0.0-3.0 Sandy Silt</u> : Brown; sl. moist; med. dense; micaceous; some clay; sand very fine-grained					
		<u>ALLUVIAL</u>					
		<u>3.0-9.0 Sand</u> - Brown; sl. moist; med. dense to dense; micaceous; very fine to fine-grained	good	X			
		<u>9.0-18.0 Silty Clay</u> - dark grayish-brown; very moist to wet; firm to stiff; high plasticity; micaceous; some plant material	NA	X			
		<u>C15</u> - becomes bluish-gray w/ distinct hydrocarbon odor					
		<u>18-21.0 Sandy Silt</u> - dark greenish-gray; very moist to wet; stiff; occ. voids; distinct hydrocarbon odor	6 ft	X			
		<u>21-25.0 Sand</u> - Brown; sl. moist to moist; dense; micaceous; mild hydrocarbon odor					
		<u>25-30.0</u> NO CAVING NO GW: <u>25-30.0 - ALTERNATING SAND/SANDY SILTS AS DESCRIBED ABOVE</u>	5 ft	X			
		<u>GINT</u>					

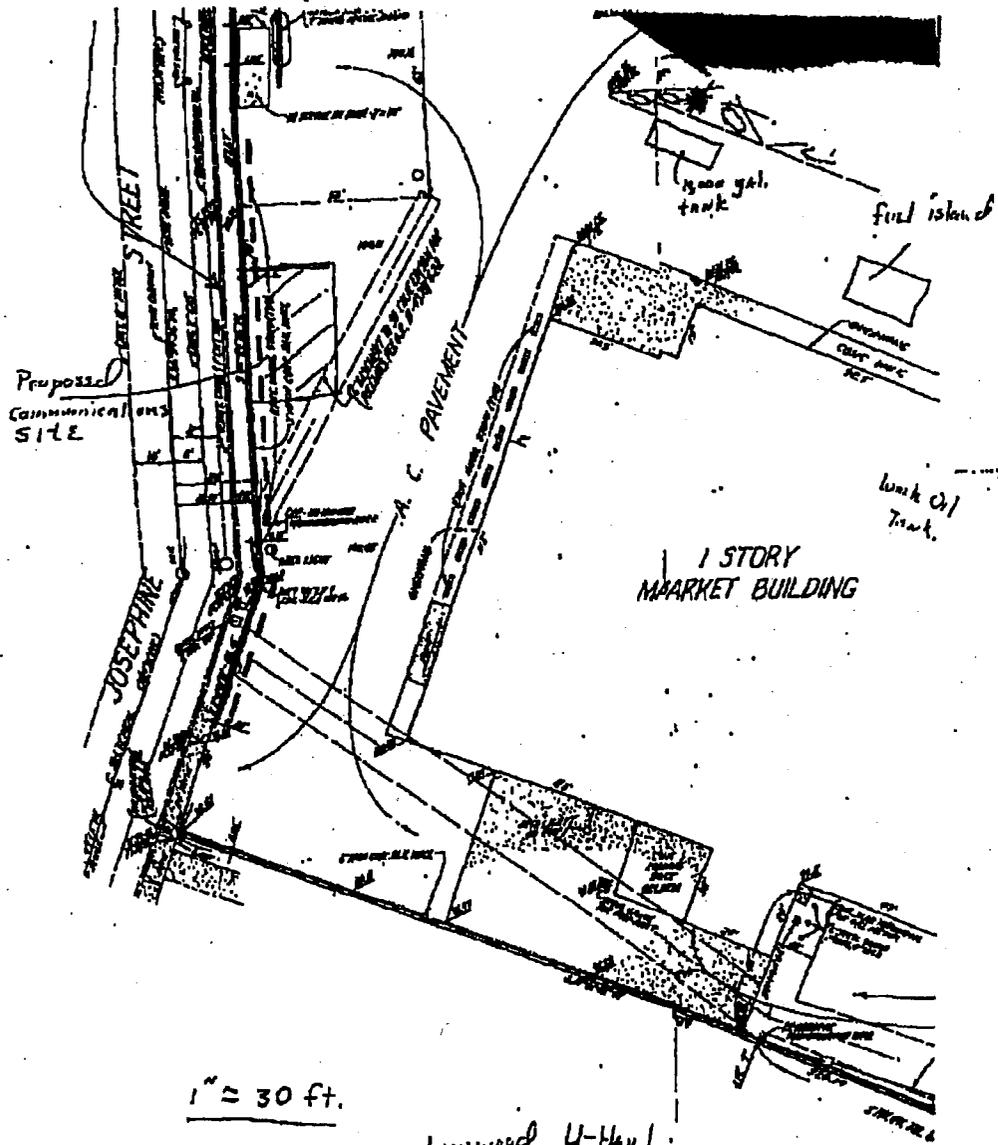
10
15
20
25

PLATE A-

Petra Geotechnical, Inc.

Contamination found in bore
at the proposed communications
site.

→ North.



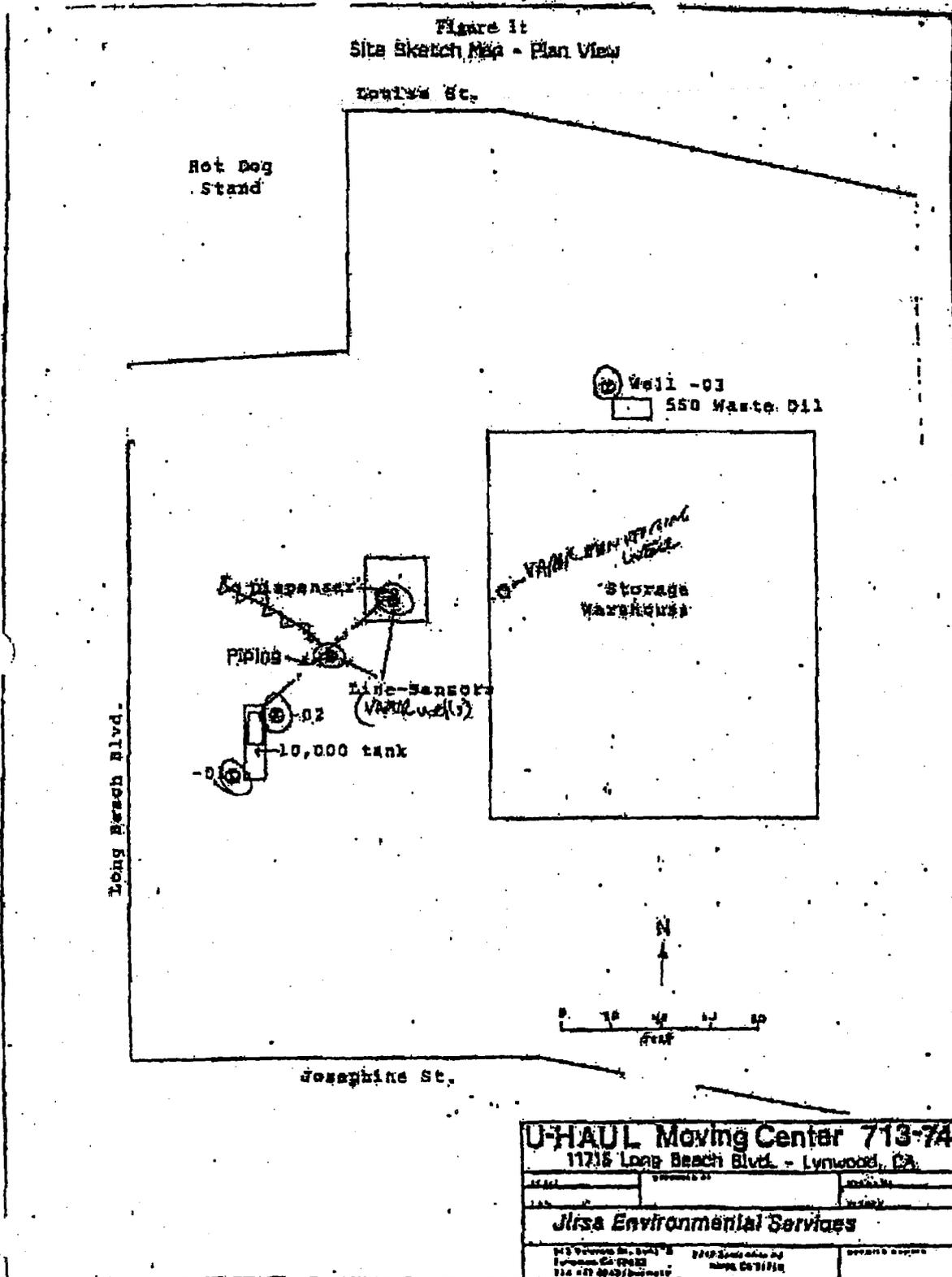
Scope of work
\$ 2000-3500

Lynwood U-Haul
Facility

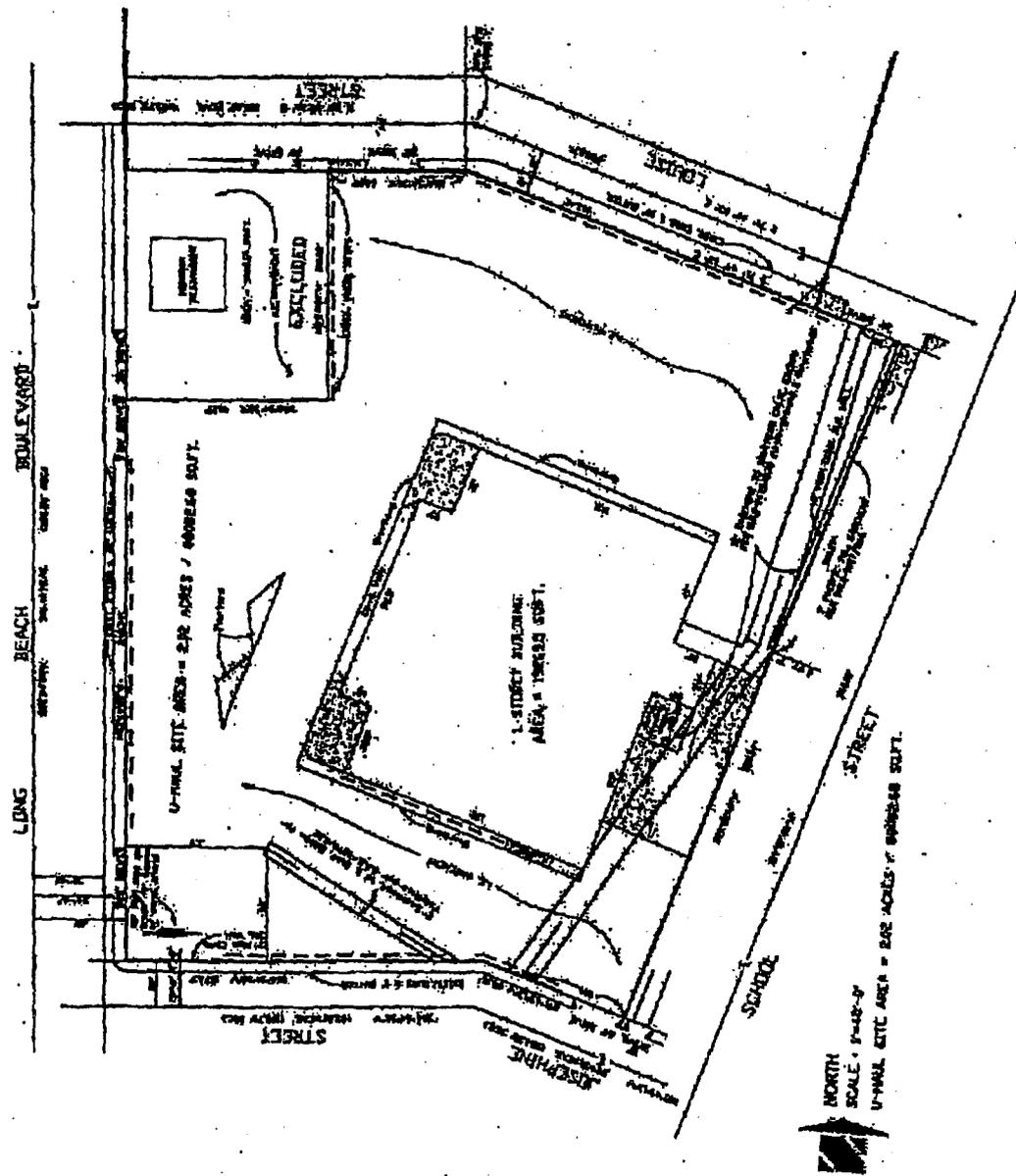
712028

BLAES.

Figure 11
Site Sketch Map - Plan View



U-HAUL Moving Center 713-74		
11215 Long Beach Blvd. - Lynwood, CA		
DATE	PROJECT NO.	SCALE
Alisa Environmental Services		
11215 Long Beach Blvd. - Lynwood, CA 90248 Tel: 408-809-1000	11215 Long Beach Blvd. - Lynwood, CA 90248 Tel: 408-809-1000	PROJECT NO.



NORTH
 SCALE - 1" = 40'-0"
 TOTAL SITE AREA - 2.12 ACRES / 90,000 SQ. FT.

Geosyntec Consultants

ATTACHMENT 4

Zymax Report

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Introduction

Zymax Forensics was commissioned by Brown & Caldwell to characterize free product samples from a site near the intersection of Lynwood Road and Long Beach Boulevard, Lynwood, California. Seven free product samples labeled MW-2, MW-3, MW-7, MW-14, MW-15, MW-16, and MW-23 were received at Zymax on June 30, 2006. An additional two free product samples labeled MW-12 and MW-21 were received on July 28, 2006, and an additional three free product samples from the U-Haul site, labeled UH-1, EX-2 and EX-3, were received on November 9, 2006. The objectives of the investigation were to characterize and compare the petroleum products in the samples, and determine the time of release. The following analyses were performed.

1. C₇-C₁₄ whole oil analysis by high resolution GC/FID
2. Oxygenated blending agents by EPA Method 1625 Modified
3. EDB, MMT, and Organic Lead Speciation by GC/ECD

These analyses were included in the analytical methodology to differentiate petroleum fuel-types, their sources and release times, which was reported by Kaplan et al (1997) in a peer-reviewed journal. Since its introduction almost a decade ago, this methodology has provided the analytical foundation for numerous forensic geochemistry projects managed by Dr. Kaplan, the present author, and other leading forensic geochemists. In cases where the projects have gone into litigation, the methods have undergone legal and scientific scrutiny, and their validity has been sustained.

The C₇-C₁₄ whole oil analysis, and EDB, MMT, and Organic Lead Speciation analysis are the same methods reported by Kaplan et al (1997). The oxygenated blending agent analysis is an improved method that provides lower detection limits. This analysis allows the detection and quantitation of methyl tertiary-butyl ether (MTBE), ethyl tertiary-butyl ether (ETBE), diisopropyl ether (DIPE), tertiary-amyl methyl ether (TAME), tertiary-butyl alcohol (TBA), and ethanol, which are the most common fuel oxygenates blended into unleaded gasoline (Kaplan et al, 1997).

The complete laboratory data report is presented as an Appendix to this report.

Methodology

C₃-C₁₄ whole oil analysis of product samples by high resolution GC/FID

Product samples are directly injected into a GC equipped with a 100 meter Petrolcol column to separate the hydrocarbons, which are detected with a flame ionization detector (FID) interfaced to the GC. Hydrocarbons in the range of C₃ to C₁₄ are identified and the peak areas measured. The relative area percent of hydrocarbons in the range of C₃ to C₁₀ are calculated and presented as a PIANO distribution (normalized amounts of paraffins, isoparaffins, aromatics, naphthenes, olefins).

Fuel oxygenates in product samples by EPA Method 1625 Modified

Product samples are frozen in a vial in liquid nitrogen. Distilled water is added to the vial, and the product allowed to warm to partition the fuel oxygenates into the water. Recovery is monitored by isotopic dilution of deuterated fuel oxygenates. Six fuel oxygenates (MTBE, ETBE, DIPE, TAME, TBA, and ethanol) are identified and quantified in the water by injection into a gas chromatograph (GC) equipped with a 30 meter narrow bore ZB Wax capillary column interfaced to a mass spectrometer (MS) in Selected Ion Monitoring (SIM) mode.

EDB, MMT, and alkyllead speciation in product samples by GC/ECD

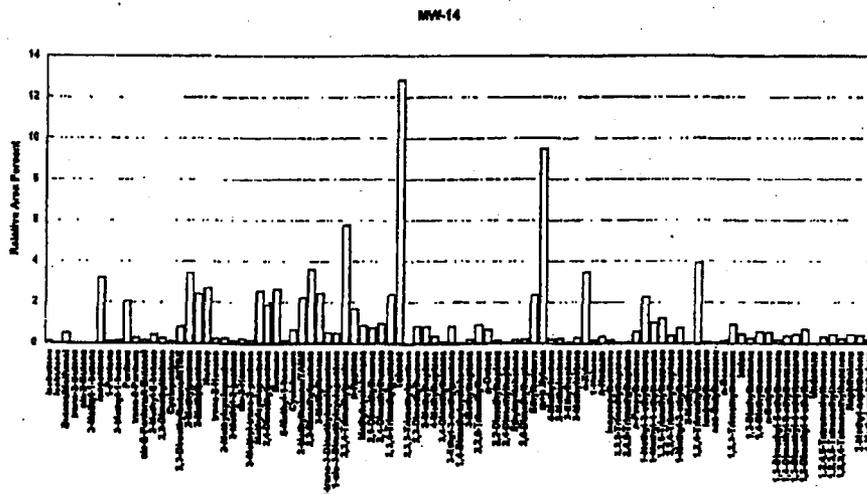
Product samples are directly injected into a GC equipped with a 60 meter DB1 column. Tetramethyllead, trimethylethyllead, dimethyldiethyllead, methyltriethyllead, tetraethyllead, MMT, and ethylene dibromide are detected with an electron capture detector (ECD) interfaced to the GC.

Characterization of Free Product Samples

The C₃-C₁₄ whole oil chromatograms indicate that the samples contain automobile gasoline, as indicated by the predominance of BTEX compounds (benzene, toluene, ethylbenzene, and xylenes) and the presence of trimethylpentanes (2,2,4-trimethylpentane, 2,3,4-trimethylpentane, 2,3,3-trimethylpentane). These trimethylpentanes are the main constituents of the alkylate refinery stream that has been blended into gasoline since 1938 to increase octane levels (Gibb, 1997). The samples also contain MTBE and other fuel oxygenates, which are additives that have been used in unleaded automobile gasoline in California since 1989 (Kaplan et al. 1997). Alkyl lead compounds, which are leaded gasoline additives, were not detected in any of the samples.

North of Louise Street (Former Garfield Express site)

The hydrocarbon distributions in the volatile range are displayed as bar diagrams for clarity. The bar diagrams of samples MW-3 and MW-14, illustrated by MW-14 below, are very similar, and indicate a very mildly weathered gasoline.



Weathering describes a number of natural chemical and biological processes such as evaporation, water washing, and biodegradation (Kaplan, 1997) that change the chemical composition of gasoline and other petroleum products when they are released into the environment. Gasoline, being a low-boiling product, is particularly sensitive to the effects of evaporation, which decreases or removes the most volatile constituents, such as butanes and pentanes. Water

washing describes the loss of the more water soluble components, such as fuel oxygenates and the BTEX compounds, from a free product by dissolution into groundwater. Biodegradation is caused by bacteria, which preferentially metabolize and remove certain compounds, such as n-alkanes, from a petroleum product.

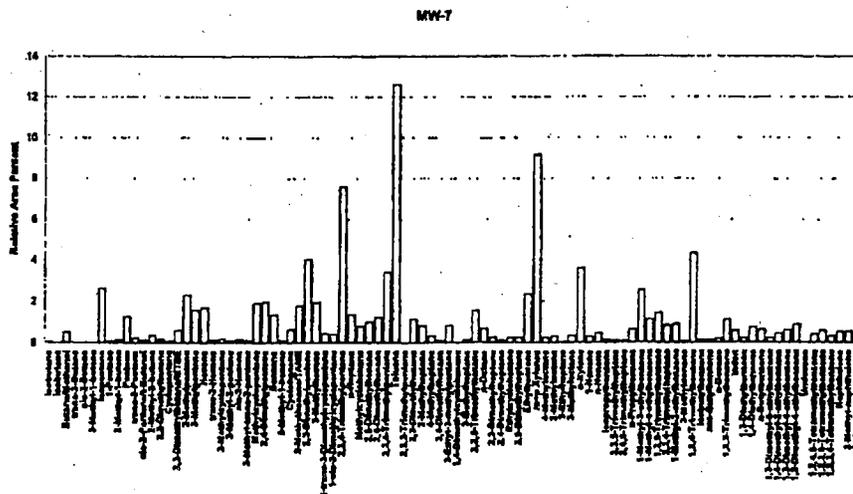
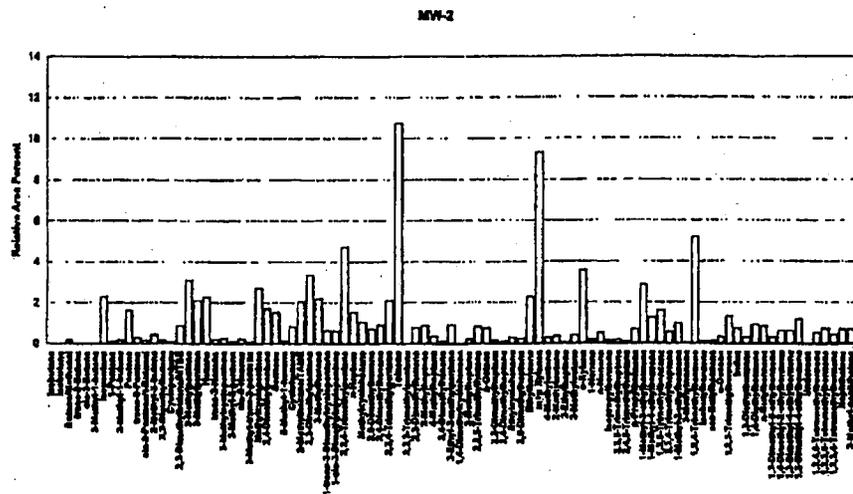
The only significant difference between samples MW-3 and MW-14 is the fuel oxygenate content, which is substantially higher in sample MW-3, as shown in Table 1. This could indicate that the gasoline in the two samples has a different formulation and the samples represent separate releases. However, since fuel oxygenates are readily soluble in water, the lower concentrations in MW-14 could be caused by more aggressive water washing, particularly if the free product plume is thinner at this location.

TABLE 1

Sample ID	2,2,4-trimethylpentane/ methylcyclohexane	2,3-dimethylpentane/ 3-methylhexane	MTBE	DIPE	TAME	ETBE
mg/kg						
MW-2	4.5	1.5	6,500	2,300	330	74
MW-3	6.4	1.6	41,000	14,000	1,300	400
MW-7	9.4	2.1	4,600	1,300	390	53
MW-12	2.3	1.0	1,500	470	ND	ND
MW-14	6.5	1.5	5,900	1,500	400	69
MW-15	6.0	1.7	17,000	6,100	450	180
MW-16	2.6	0.9	5,800	200	ND	58
MW-21	2.7	0.9	3,500	1,300	750	ND
MW-23	3.3	1.1	53	ND	ND	ND
UH-1	2.3	0.9	1,400	360	ND	ND
EX-2	2.5	0.9	110	30	ND	ND
EX-3	2.3	0.9	690	180	ND	ND

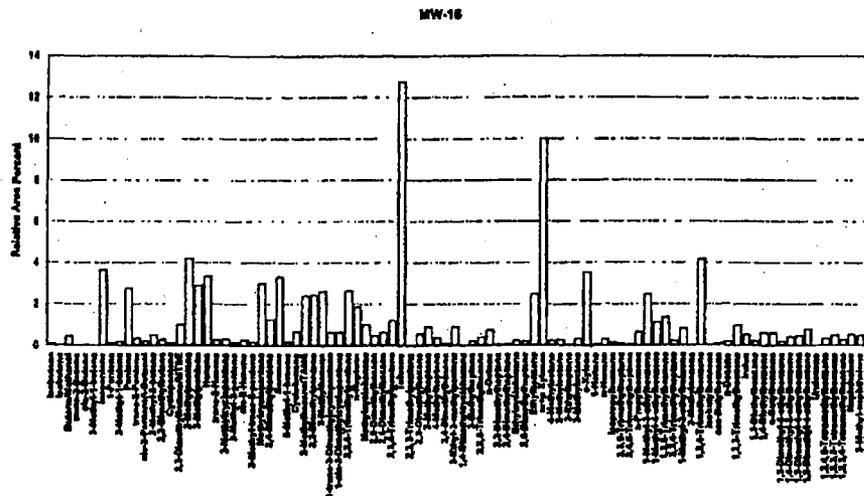
The bar diagrams of samples MW-2 and MW-7, shown on the next page, are similar to MW-3 and MW-14, but show some differences in the ratios of marker compounds: 2,2,4-trimethylpentane, 2,3-dimethylpentane, 3-methylhexane and methylcyclohexane. The relative amounts of these compounds in gasoline are controlled by the refinery processes used to produce gasoline. The relative amounts of trimethylpentanes have been related to the octane level of the gasoline, and the ratio of 2,2,4-trimethylpentane/methylcyclohexane has been used to differentiate gasoline types (Kaplan et al, 1997; Stout et al, 2002).

The most useful source ratios are of compounds that have similar boiling points, water solubility, and biodegradability: 2,2,4-trimethylpentane, 2,3-dimethylpentane, 3-methylhexane and methylcyclohexane satisfy these requirements. This ensures that differences in the marker ratios are related to source rather than weathering. Compared to MW-3 and MW-14, samples MW-7 and MW-2 have higher and lower contents of 2,2,4-trimethylpentane, respectively. Within the plume north of Louise Street, sample MW-7 may represent a higher octane gasoline, MW-2, a lower octane gasoline, and MW-3 and MW-14, a mixture of the two.



South of Louise Street

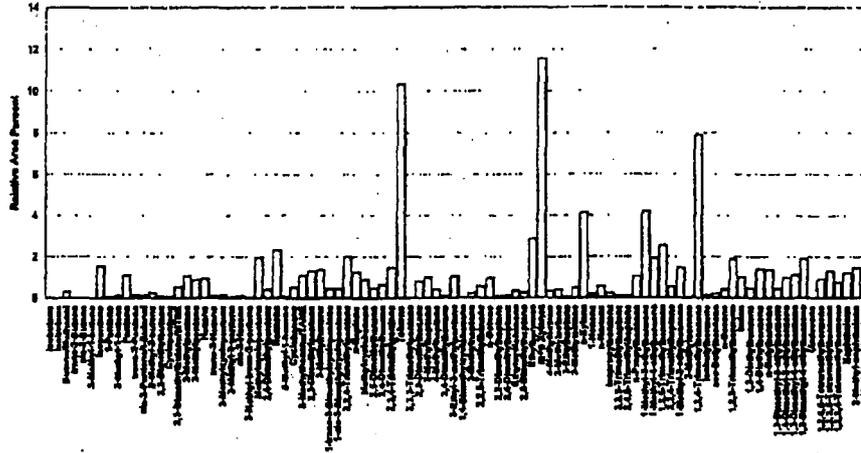
The bar diagrams of samples MW-16, MW-23, EX-2, and EX-3, illustrated by MW-16 below, indicate very mildly weathered gasoline. There are some differences between the samples, as shown by the higher marker compound ratios for MW-23 in Table 1. These ratios also distinguish these samples from the free product on the Former Garfield Express site.



Samples MW-12 and UH-1, illustrated by the bar diagram of MW-12 on the next page, contain lower relative amounts of toluene and the more volatile hydrocarbons, indicating that the samples contain a more weathered gasoline. However, the marker compound ratios are similar to MW-16, EX-2, and EX-3.

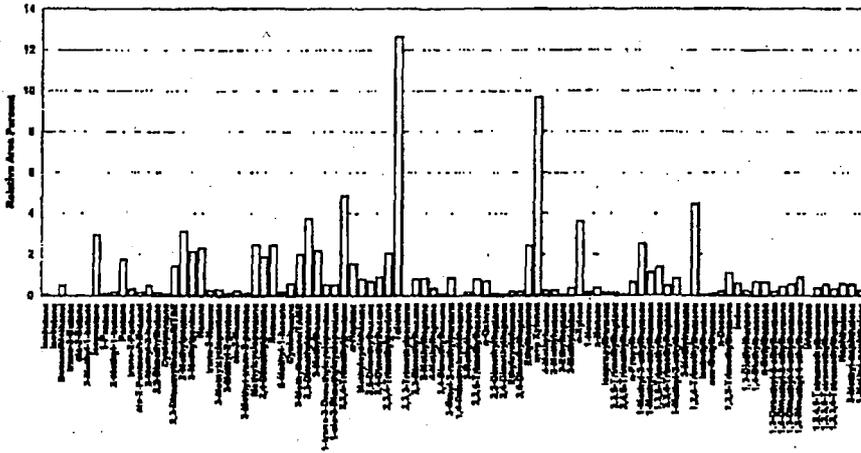
The fuel oxygenate compositions in Table 1 support the differences between these samples and the samples from the Former Garfield Express site. Samples MW-12, MW-16, UH-1, EX-2 and EX-3 contain a similar package of fuel oxygenates as the samples from the former Garfield Express site, with the notable exception of TAME. The concentrations of MTBE, DIPE, and ETBE in MW-16 are similar to MW-14, but TAME is absent in MW-16. TAME is both less volatile and less water soluble than ETBE, so if the oxygenate package in MW-16 had been the same as in MW-14, some TAME should have been detected in MW-16. In MW-23, which appears to have experienced only mild water washing, only a small concentration of MTBE was detected. This suggests that MW-12, MW-16, MW-23, UH-1, EX-2 and EX-3 originally contained fuel oxygenate packages different from the gasoline on the Former Garfield Express site.

MW-12

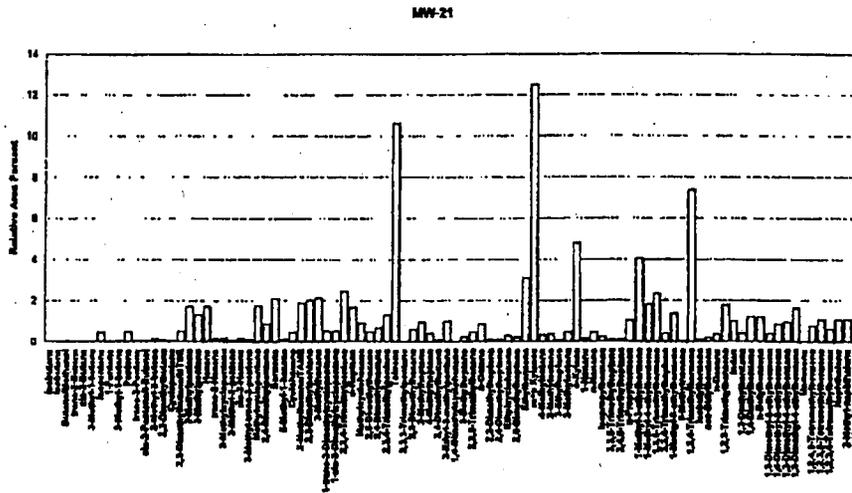


The bar diagram of sample MW-15, shown below, is similar to samples MW-3 and MW-14 on the Former Garfield Express site. MW-15 also contains the same fuel oxygenates (MTBE, DIPE, ETBE, TAME) in the same relative amounts as the former Garfield Express free products. The fuel oxygenate concentrations in MW-15 are intermediate between MW-2 and MW-3.

MW-15

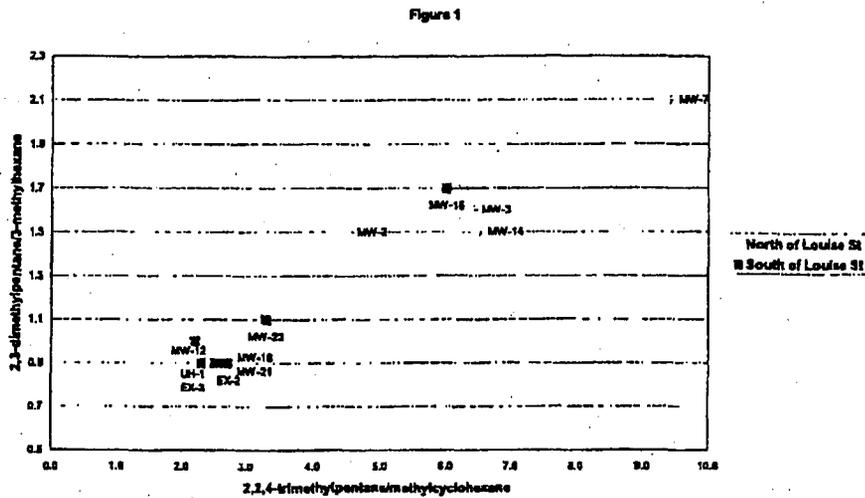


Sample MW-21 has some anomalous features; the bar diagram, shown below, and marker compound ratios are similar to MW-12, MW-16, MW-23, UH-1, EX-2 and EX-3, but the fuel oxygenate package is similar to MW-15 and the Former Garfield Express site samples, particularly, the presence of TAME.



Comparison of Samples North and South of Louise Street

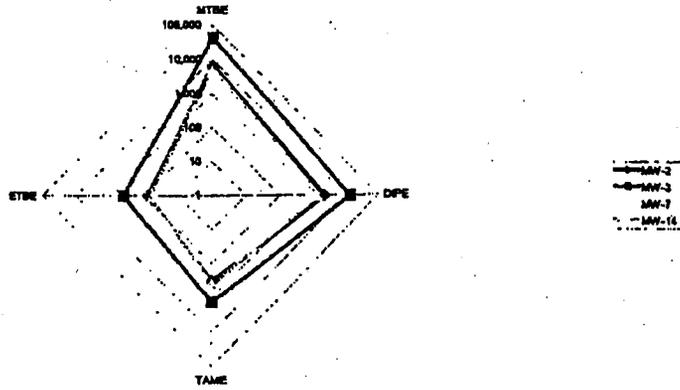
The marker compound ratios of all 12 samples are shown in Figure 1. This figure indicates that, with the exception of MW-15, the samples south of Louise Street constitute a group that is quite distinct from the samples north of Louise Street. The fuel oxygenate compositions are shown in Figures 2 and 3 on the next page. These figures indicate that MW-12, MW-16, MW-23, UH-1, EX-2 and EX-3, south of Louise Street differ from MW-15 and the samples north of Louise Street.



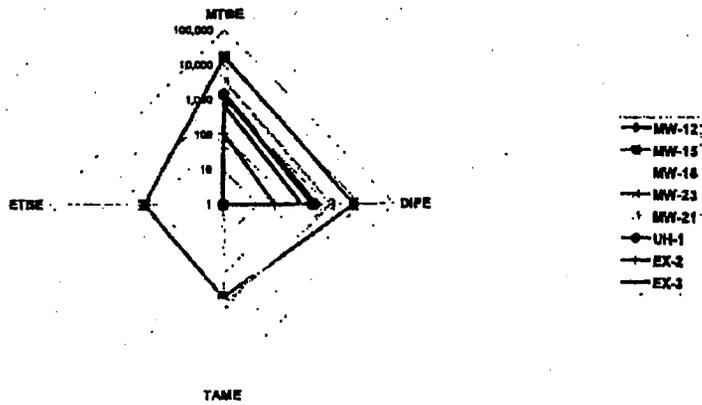
MW-21 has an oxygenate composition that is similar to MW-15 in containing TAME, but it has a hydrocarbon composition that is similar to the other free products south of Louise Street. It is not clear if sample MW-21 represents a mixture of the free product plumes north and south of Louise Street.

The differences between the compositions of samples MW-12, MW-16, MW-23, UH-1, EX-2 and EX-3, and samples MW-2, MW-3, MW-7, and MW-14 on the Former Garfield Express site indicate that the gasoline in U-Haul samples UH-1, EX-2 and EX-3, and MW-12, MW-16, and MW-23 is from a different release than the gasoline on the Former Garfield Express site.

**Figure 2. Oxygenates
North of Louisa St.**



**Figure 3. Oxygenates
South of Louisa St.**



Conclusions

The analysis of free product samples MW-2, MW-3, MW-7, MW-12, MW-14, MW-15, MW-16, MW-21, MW-23, UH-1, EX-2 and EX-3 indicates that they are all mildly weathered unleaded gasoline, and that they can be divided into two major groups, as summarized below:

GROUP 1 - MW-2, MW-3, MW-7, MW-14, MW-15

- These are located either north of Louise Street or in Louise Street (MW-15). They are distinguished from the samples in Group 2 by their hydrocarbon ratios and the presence of the fuel oxygenate, TAME. The hydrocarbon ratios indicate three different types of gasoline within this group, which may reflect mixing of different grades of gasoline that were released.

GROUP 2 - MW-12, MW-16, MW-23, and U-Haul samples UH-1, EX-2, and EX-3

- These are located either south of Louise Street or in Louise Street (MW-12, MW-23). They are distinguished from the samples in Group 1 by different hydrocarbon ratios and by the absence of the fuel oxygenate, TAME. Sample MW-23 shows some differences in hydrocarbon and oxygenate composition from the others, and may be a different type of gasoline.

Sample MW-21 has an anomalous composition with features of each of these two major groups. It is not clear if sample MW-21 represents a mixture of the free product plumes north and south of Louise Street.

The presence of fuel oxygenates indicates that the gasoline in all the samples was produced after 1989, when the use of MTBE in California was first documented.

The differences between the compositions of the samples in Groups 1 and 2 indicate that the gasoline in U-Haul samples UH-1, EX-2 and EX-3, and MW-12, MW-16, and MW-23 is from a different release than the gasoline on the Former Garfield Express site.

References

- Gibb, L.M. (1997) How gasoline has changed. Society of Automotive Engineers, Special Publication SP-1272, pp 147-164.
- Kaplan, I.R., Galperin, Y., Lu, S., and Lee, R. (1997) Forensic Environmental Geochemistry: differentiation of fuel-types, their source and release time. *Organic Geochemistry*, 27, 289-317.
- Stout, S.A., Uhler, A.D., McCarthy, K.J., and Emsbo-Mattingly, S. (2002) Chemical fingerprinting of hydrocarbons, in *Introduction to Environmental Forensics*, Murphy, B.L. and Morrison, R.D. eds. Academic Press, San Diego. pp. 137-260.



forensics

Characterization of
Free Product Samples,
Lynwood Springs, Lynwood, CA

Report Prepared for:

Brown & Caldwell
400 Exchange, #100
Irvine, CA 92602

Report Prepared By:

A handwritten signature in black ink, appearing to read "Alan Jeffrey".

Alan Jeffrey, PhD

ZymaX Forensics 71 Zaca Lane San Luis Obispo CA 93401

5 December 2006

Geosyntec Consultants

ATTACHMENT 5
Nancy Bice Curriculum Vitae

NANCY TANNACI BICE

**environmental remediation
litigation support**

EDUCATION

M.S., Civil Engineering, University of California, Berkeley, 1981

B.A., Geology, University of California, Berkeley, 1979

SELECTED CONTINUING EDUCATION COURSES

University of Waterloo, Ontario, Canada: Short Course on Fate and Transport of Dense Non-Aqueous Phase Liquids, 1987

McCoy & Associates: RCRA Hazardous Waste Regulation, 1993

Stanford University: Finance for Non-Financial Managers, 1996

REGISTRATIONS

Certified Engineering Geologist (CEG), California Number 1259, 1985

Professional Geologist (PG), California Number 4038, 1985

REPRESENTATIVE SKILLS AND EXPERIENCE

Ms. Bice has 29 years of experience in the field of engineering geology, more than 26 years of which are in hydrogeology and environmental sciences. Her responsibilities have included project management; supervision of soil and groundwater remedial investigation field efforts; litigation support, aquifer testing; groundwater modeling; data interpretation and design; report preparation; CERCLA and RCRA compliance; regulatory agency interaction (DTSC, EPA, and RWQCBs); and client consultation. She has served as an expert witness and as a neutral expert in the areas of insurance recovery and cost recovery disputes. In all aspects of her projects, Ms. Bice is responsible for ensuring that all work is performed in compliance with state and federal regulations. Representative project experience includes the following assignments.

Environmental Remediation

- *Drycleaner Site Characterization and Remediation, Confidential Client, Cerritos, CA.* Ms. Bice serves as the Principal in Charge for this former drycleaner site. Under her direction, Geosyntec has implemented innovative characterization technologies,

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such as Hydropunch, CPT, and MIP, to define the extent of a PCE plume in soil gas and groundwater. Under the jurisdiction of the LA RWQCB, Geosyntec prepared a Remedial Action Plan for a horizontal soil vapor extraction system beneath the former drycleaner and is currently evaluating innovative groundwater remediation strategies for the site.

- **Bioaugmentation Remediation, Confidential Client, Compton, CA.** Under Ms. Bice's leadership, Geosyntec is conducting a bioaugmentation program to remediate PCE and TCE in groundwater at a former furniture manufacturing plant under the jurisdiction of the California Regional Water Quality Control Board, Los Angeles Region. The system consists of recirculation wells with an above-ground treatment plant that adds nutrients and KB-1, a bacterial consortium that fully dechlorinates PCE and TCE. An Individual NPDES permit was obtained recently from the Regional Water Quality Control Board and system construction is underway.
- **Bioaugmentation Remediation, Confidential Client, Oakland, CA.** As Principal-in-Charge, Ms. Bice is overseeing Geosyntec's implementation of a bioaugmentation program to remediate chlorinated solvents in groundwater at a former manufacturing plant under the jurisdiction of the California Department of Toxic Substances Control. The system consists of recirculation wells with an above-ground treatment plant that adds nutrients and KB-1, a bacterial consortium that fully dechlorinates PCE and TCE. An Individual NPDES permit was obtained recently from the Regional Water Quality Control Board and system construction is underway.
- **Focused Feasibility Study and Technical Impracticability Evaluation, Sares-Regis Group, Mountain View, CA.** Ms. Bice led Geosyntec's effort to prepare a FFS and TI Evaluation as part of the redevelopment process for the former CTS Printex Superfund Site under the jurisdiction of US EPA. The FFS, which evaluated technologies for remediating residual TCE concentrations of less than 20 ppb in groundwater, concluded that no technologies would be effective in reducing TCE without potentially creating deleterious compounds that would increase the risk to future users. Therefore, a TI Evaluation was conducted. The TI Evaluation concluded that the site conditions met the criteria for a TI Waiver.
- **Brownfields Redevelopment, Sares-Regis Group, Palo Alto, CA.** Ms. Bice serves as Principal-in-Charge of a project involving the redevelopment of a former Ford Aerospace manufacturing plant in Palo Alto, California under the jurisdiction of the California Regional Water Quality Control Board, San Francisco Bay Region. The site contains PCE and TCE in soil and groundwater. Geosyntec's role includes investigation of the site, preparation of a risk assessment to evaluate potential health

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risks associated with the development, with a focus on vapor intrusion, preparation of a site cleanup plan to address excavation of highly contaminated areas, and preparation of a risk management plan to address residual concentrations to be left in place. Geosyntec designed a passive sub-slab vapor extraction system for the development and is conducting CQA and monitoring.

- ***Dual-Phase Extraction Remediation and Brownfields Redevelopment, Confidential Client, Huntington Beach, CA.*** Ms. Bice oversees the implementation of a dual-phase extraction system for the remediation of PCE and TCE in soil and groundwater at this site with low-permeability soils. Extracted vapors are treated using a Cat-Ox system and groundwater is treated using activated carbon with UV-Peroxide pretreatment for 1,4-dioxane. Once the system has operated for two years, dual-phase extraction will cease and a 10-year biopolish program with monitoring will continue to remediate site groundwater over the long term. During this remediation program, the site was successfully redeveloped from a manufacturing plant to office and warehouse facilities.
- ***Preliminary Endangerment Assessment, Facility Investigation, and Corrective Measures Study, Confidential Client, Southern CA.*** Ms. Bice served as the Principal-in-Charge for a Preliminary Endangerment Assessment (PEA), Facility Investigation (FI), and Corrective Measures Study (CMS) at a former manufacturing plant in South Gate, California under the jurisdiction of the DTSC. The PEA and FI included soil, groundwater, and soil gas sampling using MIP/CPT technology to assess the potential impacts of plating and waste treatment and storage operations at the facility. The site is located in an area of known regional groundwater contamination, so understanding the impacts of upgradient neighbors through depth-discrete groundwater sampling is an important aspect of the project. Geosyntec, under Ms. Bice's direction, conducted soil gas surveys, soil sampling, groundwater investigation using CPT/MIP, vapor intrusion modeling, and risk assessment. The corrective measures for the site will be limited excavation combined with institutional controls.
- ***Multiple Plume Remediation of Soil and Groundwater, Confidential Client, Santa Fe Springs, CA.*** At a former chemical packaging plant in Santa Fe Springs, California, Ms. Bice directs a remedial program for soil and groundwater containing a variety of solvents from a number of onsite and offsite sources. The site is a California Superfund site under the jurisdiction of the California Department of Toxic Substances Control. While soil and groundwater at this site are being remediated through SVE and groundwater extraction and treatment, additional technologies were evaluated to speed up the remediation to achieve site closure in a more reasonable timeframe.

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Geosyntec has prepared an Amended RAP for the site that describes a thermal treatment program to be implemented for the site.

- **Remediation of Soil and Groundwater, Confidential Client, Ontario, CA.** At a former manufacturing plant, Ms. Bice supervises a remediation program under DTSC lead involving chlorinated solvents detected in soil and in local municipal supply wells. The complex hydrogeologic conditions at the site have required expertise in deep groundwater investigations, pumping effects, and groundwater modeling. A unique depth-discrete groundwater sampling technique was developed for this site to drastically cut investigative costs. The technique allows samples to be collected at depths of up to 600 feet without the installation of costly monitoring wells. Soil vapor extraction is being conducted over 250 feet of vadose zone.
- **Vapor Intrusion Evaluation, Confidential Client, Northern CA.** Ms. Bice served as the Principal-in-Charge for a DTSC-led RCRA Environmental Indicators analysis of the vapor intrusion pathway at a former semi-conductor manufacturing plant. The site has undergone 15 years of groundwater extraction and treatment; however, VOCs in soils beneath an existing building had the potential to cause unacceptable levels of VOCs in indoor air. Geosyntec, under Ms. Bice's direction, conducted soil gas surveys, indoor air sampling, and vapor intrusion modeling to evaluate potential impacts. A sub-slab vapor extraction system was recommended and implemented by Geosyntec.
- **MTBE Investigation and Remediation, Confidential Client, San Jose, CA.** At a former gas station site in San Jose, California, Ms. Bice oversaw the investigation of MTBE in groundwater. The site is located within the jurisdiction of the Santa Clara Valley Water District (SCVWD) and the investigation is being conducted in accordance with SCVWD's guidance. The site is located within the groundwater recharge zone and adjacent to a residential subdivision. The site was involved in litigation; however, the case was recently settled.
- **Multiple Plume Site Characterization, RI/FS, and Cost Allocation, Confidential Client, Cupertino, CA.** Ms. Bice managed this project involving TCE-contaminated soil and groundwater at a semiconductor manufacturing site on the National Priority List. The site was located adjacent to a number of sites with similar use history and similar chemicals present in the soil and groundwater. Ms. Bice's responsibilities included site characterization; preparation and implementation of an interim remedial action plan, including installation of soil vapor and groundwater extraction and treatment systems; preparation of Remedial Investigation and Feasibility Study (RI/FS) reports; and implementation of final remediation. She was responsible for all

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aspects of the project for the client, as well as advising the client and client's counsel regarding cost allocation with adjacent parties. Ms. Bice also provided expert witness services with respect to insurance recovery.

- **Site Characterization and Interim Remedial Action Plan, Southern Pacific Transportation Company, Santa Rosa, CA.** As senior technical reviewer for this project, Ms. Bice was responsible for directing all hydrogeological tasks in an efficient and technically sound manner. This project involved site characterization to define the vertical and lateral extent of solvents emanating from an abandoned metals recycling facility owned by Southern Pacific Transportation Company. Site characterization includes evaluating solvent fate and transport in a multi-aquifer system. Investigative methods include soil-gas surveys, depth-discrete groundwater sampling, and installation of monitoring wells.
- **Site Audits, Confidential Client, Northern CA.** For a major communications firm, Ms. Bice supervised site audits and remedial activities at three remote microwave relay station sites in northern California. At each site, stored chemicals were logged for disposal as either non-hazardous or hazardous waste; underground fuel tanks were examined for contents; wipe samples were collected and analyzed; and the underground fuel tanks were excavated and disposed in accordance with local and state regulatory requirements. The sites were then closed for transfer of each property.
- **Multiple RP Technical Committees.** Ms. Bice has been a member of several technical committees for multiple PRP sites in California, including the Stringfellow site in southern California. She offers advice regarding hydrogeological issues to her clients and other committee members. For example, as a member of the Stringfellow Technical Committee, Ms. Bice has reviewed and commented on the RI/FS conducted by others, commented on other possible remedial options, reviewed ongoing remedial operations, and interacted with regulatory agencies.
- **DTSC Oversight Costs Task Force.** Ms. Bice served as the Chairman of Governor Wilson's task force to evaluate DTSC oversight costs. The task force evaluated the DTSC's policy for pricing its oversight costs in the Site Mitigation Branch and developed recommendations for improvement in a report to the Governor.

Litigation Support

- **Neutral Expert.** Ms. Bice was retained directly by a California Superior Court judge in Oakland to evaluate a case during trial. Ms. Bice's charge was to review documents relevant to site remediation options and costs and to prepare a written report to the

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judge. In this case, Ms. Bice's report recommended a remedial option and cost that was subsequently adopted by both parties during settlement.

- **Neutral Expert.** Ms. Bice served as a neutral expert in litigation mediated by JAMS/Endispute in San Francisco. Ms. Bice was retained by both parties in the case to assist the judge in evaluating technical arguments for cost allocation. Ms. Bice worked with the judge to prepare a written report with recommendations for settlement, which was subsequently achieved by the parties.
- **Gasoline and Oxygenates Remediation, Stockton, CA.** Ms. Bice was a litigation consultant to the defendant of a former gas station site, and oversaw the investigation and remediation of soil and groundwater containing gasoline and tert-butyl alcohol (TBA), an oxygenate used since the early 70's. The site is located in an area of heavy groundwater use and strong vertical gradients. The proposed remedy is monitored natural attenuation.
- **Expert Witness Services.** Ms. Bice has acted as an expert witness and as a litigation support consultant on a number of cases, primarily in the areas of cost allocation between private parties and insurance recovery. She has provided expert testimony, served as a neutral expert in dispute resolutions, and provided confidential consulting services in support of litigation.

PROFESSIONAL HISTORY

Geosyntec Consultants, Principal, 1998-Present
Geomatrix Consultants, Principal, 1986-1998
Converse Environmental Consultants, Project Geologist, 1982-1986
U.S. Geological Survey, Physical Science Technician, 1979-1982

PUBLICATIONS

Mitigation of the Vapor Intrusion Pathway at Four Chlorinated Solvent Sites. K. Berry-Spark, T. McAlary, N. Bice and P. Zeeb, in *Subsurface Vapor Intrusion to Indoor Air: An Update*. The 14th Symposium in GRA's Series on Groundwater Contaminants. May 25, 2005.

Risk Management Approaches at Vapor Intrusion Sites: Chlorinated Solvents Case Studies. K. Berry-Spark, T. McAlary, and N.T. Bice, Battelle Fourth International Conference on the Remediation of Chlorinated and Recalcitrant Compounds, Proceedings, 2004.

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TCE and Flow Monitoring Methods Using an Existing Water Supply Well. N.T. Bice, G.R. Foote, L.D. Rowles, and J.D. Gallinatti, Journal of Environmental Engineering, June 1998.

Task Report on the Department of Toxic Substances Control: Site Mitigation Oversight Costs. N.T. Bice, J. Chapman, R. Sandler, P.A. Griffin, D. Hoenig, D.W. Layton, R.H. Lucacher, and B.L. Rockwell, 1996.

Case and Bail, a Cost Effective Technique for Deep Plume Characterization. L.D. Rowles, N.T. Bice, J.D. Gallinatti, J.S. Tessman, and T.A. McAlary, Outdoor Action Conference and Exhibition, Proceedings, 1995.

Characterization of TCE and Flow Distribution in a Deep Aquifer Using an Existing Water Supply Well. G.R. Foote, N.T. Bice, L.D. Rowles, J.D. Gallinatti, T.A. McAlary, and J.S. Tessman, Proceedings of the ninth National Outdoor Action Conference and Exposition, NGWA, May 1995.

Case History: Large Landslide in Franciscan Bedrock, Cupertino, California. N.T. Bice, R.E. Tully, and D. Thomas, Association of Engineering Geologists Annual Meeting, Abstracts with Program, October 6-9, 1986.

Bibliography on Landslides, Soil Liquefaction, and Related Ground Failures in Selected Historic Earthquakes. D.K. Keefer and N.E. Tannaci, U.S. Geological Survey Open-File Report 81-572, p. 38.

Reconnaissance Report on Ground Failure and Ground Cracks Resulting from the Coyote Lake, California, Earthquake of August 6, 1979. D.K. Keefer, R.C. Wilson, and N.E. Tannaci, U.S. Geological Survey Open-File Report 80-139, p. 14.

Geosyntec Consultants

ATTACHMENT 6

References

References

- American Petroleum Institute (API), 1996, A Guide to the Assessment and Remediation of Underground Petroleum Releases. API Publication No. 1628, third edition.
- Blaes Environmental Management, Inc., 2007, Semi-Annual Groundwater Monitoring Report, Second Quarter 2007, U-Haul Facility #712028, 11716 South Long Beach Boulevard, Lynwood, California, August 2.
- Blaes Environmental Management, Inc., 2002, Soil Gas Survey Report, U-Haul Facility #712028, 11716 South Long Beach Boulevard, Lynwood, California, July 15.
- Blaes Environmental Management, Inc., 2001, Site Characterization Report, U-Haul Facility #712028, 11716 South Long Beach Boulevard, Lynwood, California, June 27.
- Blaes Environmental Management, Inc., 1997, Underground Storage Tank Removal and Closure Report, U-Haul Facility #712028, 11716 South Long Beach Boulevard, Lynwood, California, August 2.
- Brown and Caldwell, 2007, Site Conceptual Model Update, Garfield Express Property, Lynwood, California, June 15, 2007.
- Geosyntec Consultants, 2008, 2008 Semi-Annual Groundwater Monitoring Report, Garfield Express Property, Lynwood, California, November 10, 2008.
- California Department of Water Resources (DWR), 1961, California Department of Water Resources, 1961. Bulletin 104- Planned Utilization of the Groundwater Basins of the Coastal Plain of Los Angeles County. Appendix A , Groundwater Geology.
- Remediation Technology Development Forum (RTDF), 2005, Understanding the Behavior of Light Non-Aqueous Phase Liquids (LNAPLs) in the Subsurface, February.

Geosyntec Consultants

**United States Geological Survey (USGS), 2003, Water Resource Investigation Report
03-4065. Geohydrology, Geochemistry, and Ground-water Simulation –
Optimization of the Central and West Coast Basins, Los Angeles County,
California.**

**USGS, 1963, 7.5 Minute Topographic Map- Southgate, California Quadrangle. (Photo-
revised 1981).**

EXHIBIT H

24 November 2008

Jonathan B. Sokol, Esq.
Greenberg Glusker
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067

**Subject: Rebuttal to Expert Report - Evaluation of Gasoline
Contamination Sources, U-Haul Facility #712-28,
11716 South Long Beach Boulevard
Lynwood, CA**

Dear Mr. Sokol:

At your request I have reviewed the subject report and provide the following rebuttals.

Rebuttal of Richter Opinion 2 - The Site data indicates that the U-Haul Site was not a source of gasoline free product contamination

On page 14 of the Richter expert report, he states that "All of the data related to the U-Haul Site indicates that its gasoline UST and associated piping were not a significant source of gasoline contamination of either soils or water, including free product."

This statement is incorrect for a number of reasons. As presented in my expert report, there are multiple lines of evidence that demonstrate that the U-Haul gasoline UST was a significant source of gasoline contamination. These multiple lines of evidence are as follows:

1. A single-walled, 10,000-gallon gasoline UST operated at the U-Haul Site for 20 years;
2. Three monitoring wells were installed in 1986; however, no monitoring records have been produced;
3. No certified tank test records have been provided;
4. Evidence of a petroleum release at the U-Haul Site was discovered in 1992; however, there is no evidence that this release was reported;
5. Evidence of a release was found when the gasoline UST was removed in 1996, which caused the Water Board to require further investigation;

Jonathan B. Sokol, Esq.
24 November 2008
Page 2

6. Additional investigation in 2001 found 2,000 parts per million (ppm) gasoline in soil at a depth 2 feet below the bottom of the gasoline UST and floating gasoline in monitoring wells; and
7. Shallow soil gas investigation in 2002 indicates a "hot spot" near the gasoline UST with abrupt attenuation in all directions except to the northeast.

The report goes on to state "during the excavation and removal of the UST system there were no visual or olfactory evidence indicating a leak of gasoline." This statement is incorrect. A copy of a document obtained from U-Haul that appears to be a record of field activities conducted during the tank removal (Attachment A) shows that readings were collected using a photo-ionization detector (PID) to screen the soil samples collected from the bottom of the excavation (T1-S and T1-N). It is clear from this document that a reading of 15 ppm was observed on the PID for the sample at T1-S, which is a clear visual indication of contamination beneath the southern end of the tank. This is the same location where a sample containing 2000 ppm of gasoline was detected in a boring drilled in 2001. Therefore, it is clear that evidence of contamination was present beneath the south end of the tank at the time of removal.

The report goes on to state "the concentrations of gasoline found in the soils indicate that free product did not move through the soil column and reach the groundwater table." As stated in my expert report, there are multiple lines of evidence that demonstrate that free product was released from use of the gasoline UST and this free product left a trail of residual contamination behind. An important difference between the releases at the U-Haul Site and the Garfield Express Site is the point of release of the product. Based on the presence of significant gasoline concentrations in shallow soil at the Garfield Site, it is clear that releases occurred from the distribution piping at that site. However, at the U-Haul Site, the release was either from the bottom of the tank or from an unintentional placement of gasoline in a monitoring well. Under either of these scenarios, little to no gasoline would be detected in shallow soil, only deep soil would be affected. In other words, the distribution of gasoline at the U-Haul Site is entirely consistent with a release from the use of the gasoline UST.

The report goes on to state "the soil gas data indicate that the free product beneath the Site is the source of gasoline vapors, not the soils." Again, a release of product from the bottom of the tank or an unintentional placement of gasoline in a monitoring well would be entirely consistent with

Jonathan B. Sokol, Esq.
24 November 2008
Page 3

the distribution of gasoline observed in the soil gas. These two types of releases would cause a widespread lateral free product plume with little evidence of a release in shallow soil gas.

The report goes on to state "the location of free product under the Site does not indicate that it came from the Site." The report states "If there had been a major release of gasoline from the UST system one would expect a different pattern of free product, similar to that at the Garfield Express Site where free product has been found hundreds of feet down gradient of the source area. At the U-Haul Site, the southern edge of the free product plume is within about 25 feet of the down-gradient side of the UST system, but the northern edge is hundreds of feet to the north, which is up gradient. This indicates that the free product is coming from north of the U-Haul Site." This statement might be true if the gradient were to the south as the author assumed. However, as shown in my expert report, the groundwater gradient at the U-Haul Site is to the northeast. Therefore, the gasoline released either from the UST or a monitoring well adjacent to the UST, would move downward to the water table and then would flow to the northeast and commingle with the gasoline migrating from the Garfield Express Site, most likely beneath Louise Street.

The report goes on to state "the regulatory agency overseeing the Site has never indicated that the U-Haul Site is a source of free product." This statement is not consistent with the initial findings of the Water Board's review of data from the U-Haul tank removal. In its letter dated 12 December 2000, the Water Board stated that the soil beneath the U-Haul Site is impacted by gasoline. In later letters, the Water Board has indicated that it considers U-Haul to be responsible for dissolved phase gasoline in the groundwater at the U-Haul Site. Based on these statements, it is clear that the Water Board believes that a release of gasoline occurred at the U-Haul Site. Therefore, free phase gasoline must have been released from the U-Haul Site to create the gasoline in soil and the dissolved phase gasoline in groundwater.

Rebuttal of Richter Opinion 3 - The releases from the Garfield Express Site are responsible for the gasoline free product impacting groundwater in the Area, including that beneath the Garfield Express Site and the U-Haul Site

Page 16 of the Richter expert report states that "the Garfield Express Site is up gradient of most of the free product plume." This statement is misleading and does not reflect the fact that the U-Haul Site is also upgradient of much of the free product plume due to the localized low groundwater elevation on Louise Street, as demonstrated in my expert report. U-Haul's own

Jonathan B. Sokol, Esq.
24 November 2008
Page 4

consultant, Blaes Environmental, has produced groundwater gradient maps that show that the groundwater flow direction at the location of the former U-Haul gasoline UST is toward the northeast. This gradient direction explains why the product plume ends abruptly south of the former U-Haul gasoline UST. A release of gasoline from this UST would flow to the northeast and merge with the release from the Garfield Express Site beneath Louise Street.

The report goes on to state "the free product data from the groundwater water monitoring wells indicate that there is one large, continuous plume." This statement is incorrect. The distribution of free product is bi-lobal, consistent with free product releases from both sites. In addition, fuel fingerprinting analyses suggest two distinct types of product, one beneath the U-Haul Site and one beneath the Garfield Express Site.

Rebuttal of Richter Opinion 4 - The dry cleaner located adjacent to Garfield Express is the source of chlorinated solvents that have impacted soils and groundwater in the Area.

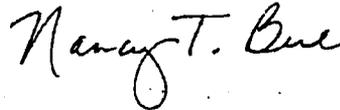
Page 18 of the Richter expert report states that "While petroleum contamination is the major issue due to the presence of the free product plume, soils and groundwater in the Area have also been impacted by chlorinated solvents, mostly trichloroethylene (TCE) and tetrachloroethylene (PCE). Based on my review of the data, the dry cleaner southeast of the Garfield Express Site is the source of this contamination." This statement is not supported by the chlorinated solvent data collected at the two sites. The highest PCE concentrations in groundwater have been detected in a groundwater monitoring well at the southwest corner of the U-Haul Site (MW-24). Therefore, Richter's statement that "the soil, groundwater, and soil gas data all indicate that the highest levels are near the dry cleaner" is incorrect.

In my opinion, there are insufficient data to determine whether the dry cleaner southeast of the Garfield Express Site is the source of this chlorinated solvent contamination. The distribution of PCE in groundwater suggests other sources of the contaminants in the vicinity of these two sites. In its 2007 Conceptual Model Update Report, Brown & Caldwell identified a number of potential sources of these contaminants in the area, including the U-Haul Site itself, where chlorinated solvents may have been used as part of auto service operations at the site.

Jonathan B. Sokol, Esq.
24 November 2008
Page 5

If you have any questions or would like to discuss this further, please contact the undersigned at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Nancy T. Bice".

Nancy T. Bice, P.G., C.E.G.
Principal Engineering Geologist

EXHIBIT I

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

U-HAUL CO. OF CALIFORNIA, and) Case No. CV 06-06574 VBF (VBKx)
AMERCO REAL ESTATE COMPANY,)

Plaintiffs,) **AMENDED JUDGMENT**

v.)

BARRY ROSS, TRUSTEE OF THE)
LOUIS ROSS & ALICE ROSS FAMILY)
TRUST, et al.,)

Defendant,)

AND RELATED COUNTERCLAIMS

1 This action came on for a trial before a jury on January 6, 2009, on the claims
2 of Plaintiffs, U-Haul Co. of California and Amerco Real Estate Company (collectively
3 "Plaintiffs" or "U-Haul"), and counterclaims of Defendant, Barry Ross, Trustee of the
4 Louis Ross & Alice Ross Family Trust ("Defendant" or "Ross").

5 On January 21, 2009, the jury returned its verdict in accordance with the
6 Court's instructions as follows:

7 **VERDICT FORM 1**
8 **TRESPASS**

9 We answer the questions submitted to us as follows:

10 1. Did U-Haul own, lease, occupy, or control the property?

11 Yes No

12 If your answer to question 1 is yes, then answer question 2.

13 If you answered no, stop here, answer no further questions on this form, and have the
14 presiding juror sign and date this form.

15 2. Did Ross negligently cause or allow a hazardous substance, hazardous waste,
16 pollutant, or contaminant to enter U-Haul's property?

17 Yes No

18 If your answer to question 2 is yes, then answer question 3.

19 If you answered no, stop here, answer no further questions on this form, and have the
20 presiding juror sign and date this form.

21 3. Did the hazardous substance, hazardous waste, pollutant, or contaminant enter
22 the property without U-Haul's permission?

23 Yes No

24 If your answer to question 3 is yes, then answer question 4.

25 If you answered no, stop here, answer no further questions on this form, and have the
26 presiding juror sign and date this form.

27 4. Did U-Haul suffer harm?

28

1 If your answer to question 4 is yes, then answer question 5.
2 If you answered no, stop here, answer no further questions on this form, and have the
3 presiding juror sign and date this form.

4 5. Was Ross's conduct a substantial factor in causing harm to U-Haul?
5 Yes No

6 If your answer to question 5 is yes, then answer question 6.
7 If you answered no, stop here, answer no further questions on this form, and have the
8 presiding juror sign and date this form.

9 6. Is the condition reasonably abatable?
10 Yes No

11 Whether your answer to question 6 is yes or no, answer question 7.

12 7. What are U-Haul's damages?
13 Costs incurred in addressing and repairing the condition after October 16, 2003:
14 \$ _____

15
16 **VERDICT FORM 2**
17 **PRIVATE NUISANCE**

18 We answer the questions submitted to us as follows:

19 1. Did U-Haul, own, lease, occupy, or control the property?
20 Yes No

21 If your answer to question 1 is yes, then answer question 2.
22 If you answered no, stop here, answer no further questions on this form, and have the
23 presiding juror sign and date this form.

24 2. Did Ross, by acting or failing to act, create a condition that was harmful to
25 health, indecent or offensive to the senses, or an obstruction to the free use of
26 property, or did Ross act negligently after learning of such a condition?
27 Yes No

28

1 If your answer to question 2 is yes, then answer question 3.

2 If you answered no, stop here, answer no further questions on this form, and have the
3 presiding juror sign and date this form.

4 3. Did this condition interfere with U-Haul's use or enjoyment of its land?

5 Yes No

6 If your answer to question 3 is yes, then answer question 4.

7 If you answered no, stop here, answer no further questions on this form, and have the
8 presiding juror sign and date this form.

9 4. Did U-Haul consent to Ross's conduct?

10 Yes No

11 If your answer to question 4 is no, then answer question 5.

12 If you answered yes, stop here, answer no further questions on this form, and have the
13 presiding juror sign and date this form.

14 5. Would an ordinary person have been reasonably annoyed or disturbed by
15 Ross's conduct?

16 Yes No

17 If your answer to question 5 is yes, then answer question 6.

18 If you answered no, stop here, answer no further questions on this form, and have the
19 presiding juror sign and date this form.

20 6. Did U-Haul suffer harm? **YES**

21 If your answer to question 6 is yes, then answer question 7.

22 If you answered no, stop here, answer no further questions on this form, and have the
23 presiding juror sign and date this form.

24 7. Was Ross's conduct a substantial factor in causing harm to U-Haul?

25 Yes No

26 If your answer to question 7 is yes, then answer question 8.

27 If you answered no, stop here, answer no further questions on this form, and have the

28

1 presiding juror sign and date this form.

2 8. Did the seriousness of the harm outweigh the public benefit of Ross's conduct?

3 Yes No

4 If your answer to question 8 is yes, then answer question 9.

5 If you answered no, stop here, answer no further questions on this form, and have the
6 presiding juror sign and date this form.

7 9. Is the condition reasonably abatable?

8 Yes No

9 Whether your answer to question 9 is yes or no, answer question 10.

10 10. What are U-Haul's damages?

11 Costs incurred in addressing and repairing the condition after October 16, 2003:

12 \$487,386.71

13

14

VERDICT FORM 3

15

PUBLIC NUISANCE

16

We answer the questions submitted to us as follows:

17

1. Did Ross create or help create and maintain a condition resulting in polluted
18 groundwater, or did Ross act negligently after learning of such a condition?

19 Yes No

20 If your answer to question 1 is yes, then answer question 2.

21 If you answered no, stop here, answer no further questions on this form, and have the
22 presiding juror sign and date this form.

23 2. Did U-Haul consent to Ross's conduct?

24 Yes No

25 If your answer to question 2 is no, then answer question 3.

26 If you answered yes, stop here, answer no further questions on this form, and have the
27 presiding juror sign and date this form.

28

1 3. Did U-Haul suffer harm that was different from the type of harm suffered by
2 the general public?

3 Yes No

4 If your answer to question 3 is yes, then answer question 4.

5 If you answered no, stop here, answer no further questions on this form, and have the
6 presiding juror sign and date this form.

7 4. Was Ross's conduct a substantial factor in causing U-Haul's harm?

8 Yes No

9 If your answer to question 4 is yes, then answer question 5.

10 If you answered no, stop here, answer no further questions on this form, and have the
11 presiding juror sign and date this form.

12 5. Is the condition reasonably abatable?

13 Yes No

14 Whether your answer to question 5 is yes or no, answer question 6.

15 6. What are U-Haul's damages?

16 Costs incurred in addressing and repairing the condition after October 16, 2003:

17 \$ _____

18

19 **VERDICT FORM 4**

20 **NEGLIGENCE/EQUITABLE INDEMNITY**

21 We answer the questions submitted to us as follows:

22 1. Was Ross negligent?

23 Yes No

24 If you answered yes to question 1, then answer question 2. If you answered no to
25 question 1, stop here, answer no further questions on this form, and have the presiding
26 juror sign and date this form.

27 2. Did U-Haul suffer harm?

28

1 If your answer to question 2 is yes, then answer question 3.
2 If you answered no, stop here, answer no further questions on this form, and have the
3 presiding juror sign and date this form.

4 3. Was Ross's negligence a substantial factor in causing harm to U-Haul?
5 Yes No

6 If you answered yes to question 3, then answer question 4. If you answered no, stop
7 here, answer no further questions on this form, and have the presiding juror sign and
8 date this form.

9 4. What are U-Haul's total damages? Do not reduce
10 the damages based on the fault, if any, of U-Haul or others.

11 Costs incurred in addressing and repairing the condition since October 16,
12 2003: \$ _____

13 Future costs of repairing or restoring the property: \$ _____

14 If U-Haul has proved any damages, then answer question 5. If U-Haul has not proved
15 any damages, then stop here, answer no further questions on this form, and have the
16 presiding juror sign and date this form.

17 5. Was U-Haul negligent?
18 Yes No

19 If your answer to question 5 is yes, then answer question 6. If you answered no,
20 answer question 7.

21 6. Was U-Haul's negligence a substantial factor in causing its harm?
22 Yes No

23 If your answer to question 6 is yes, then answer question 7. If your answer is no, stop
24 here, answer no further questions on this form, and have the presiding juror sign and
25 date this form.

26 7. What percentage of responsibility for U-Haul's harm do you assign to the
27 following? Insert a percentage for only those who received "yes" answers in

28

1 questions 1 or 5:

2 Ross: _____%

3 U-Haul _____%

4 TOTAL: 100 %

5

6

VERDICT FORM 5

7

EQUITABLE INDEMNITY

8

We answer the questions submitted to us as follows:

9

1. Did U-Haul negligently cause or allow hazardous substances, pollutants, or
10 contaminants to be released at the U-Haul site?

11

Yes No

12

If you answered yes to question 1, then answer question 2. If you answered no to
13 question 1, stop here, answer no further questions on this form, and have the presiding
14 juror sign and date this form.

15

2. Did Ross suffer harm? **YES**

16

If your answer to question 2 is yes, then answer question 3.

17

If you answered no, stop here, answer no further questions on this form, and have the
18 presiding juror sign and date this form.

19

3. Did U-Haul's conduct cause Ross to suffer damages for which U-Haul should
20 be responsible?

21

Yes No

22

If you answered yes to question 3, then answer question 4. If you answered no to
23 question 3, stop here, answer no further questions on this form, and have the presiding
24 juror sign and date this form.

25

4. What are Ross's total damages? Do not reduce the damages based on the fault,
26 if any, of Ross or others.

27

Costs incurred by Ross in addressing and repairing the condition caused by U-

28

1 Haul after October 16, 2003: \$ _____

2 If Ross has proved any damages, then answer question 4. If Ross has not proved any
3 damages, then stop here, answer no further questions on this form, and have the
4 presiding juror sign and date this form.

5 5. Was Ross negligent?

6 Yes No

7 If your answer to question 5 is yes, then answer question 6. If you answered no,
8 answer question 7.

9 6. Was Ross' negligence a substantial factor in causing his harm?

10 Yes No

11 If your answer to question 6 is yes, then answer question 7. If your answer is no, stop
12 here, answer no further questions on this form, and have the presiding juror sign and
13 date this form.

14 7. What percentage of responsibility for Ross's harm do you assign to the
15 following?

16 Ross: _____ %

17 U-Haul _____ %

18 TOTAL: 100 %

19 8. Could Ross have avoided any of his damages with reasonable efforts or
20 expenditures?

21 Yes No

22 If your answer to question 8 is yes, then answer question 9.

23 If you answered no, stop here, answer no further questions on this form, and have the
24 presiding juror sign and date this form.

25 9. What amount of its damages could Ross have avoided with reasonable efforts
26 or expenditures?

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Prior to the return of the jury's verdict, the parties by stipulation dismissed their respective claims for unjust enrichment (Count V of Plaintiffs' Second Amended Complaint [Docket No. 46] and the Sixth Claim of Defendant's First Amended Counterclaim [Docket No. 34]), and the Court dismissed Plaintiffs' negligence *per se* claim (Count X of Plaintiffs' Second Amended Complaint [Docket No. 46]) pursuant to Fed. R. Civ. P. 50 [Docket No. 217].

Subsequently, the Court requested and received further briefing from the parties concerning the claims and requests for relief to be determined by the Court. On February 12, 2009, this Court entered its Memorandum of Decision and Findings of Fact and Conclusions of Law After Bench Trial on Equitable Claims and Defenses [Docket No. 236], which is incorporated as if fully restated herein.

In response to Defendant's Motion for Judgment as a Matter of Law or, Alternatively, for Remittitur or New Trial on Damages or, Alternatively, to Alter or Amend the Judgment, the Court conditionally granted a new trial on damages unless the Plaintiffs agreed to a remittitur reducing the damages to \$61,546.83. On April 13, 2009 Plaintiffs filed their Notice of Election of Remittitur [Docket No. 252], subject to and without waiver of or prejudice to any rights of appeal.

As used herein, the term "U-Haul Site" means the property located at 11716 Long Beach Boulevard, Lynwood, California, and the term "Garfield Express Site" means the property located at 11600-11620 Long Beach Boulevard, Lynwood, California. The Plaintiffs and Counterclaim Defendants in this action are Amerco Real Estate Company and U-Haul Co. of California (herein "Plaintiffs" or "U-Haul"). The Defendant and Counterclaimant is Barry Ross, Trustee of the Louis Ross & Alice Ross Family Trust (hereinafter "Defendant" or "Ross").

Accordingly, based on the jury's verdict and the evidence presented, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

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1. On the Plaintiffs' Second Amended Complaint, judgment is entered in favor of the Defendant and against the Plaintiffs on the following Counts: Count I (cost recovery under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 *et seq.*); Count II (declaratory relief under CERCLA); Count III (indemnity under the Carpenter-Presley-Tanner Hazardous Substance Account Act ("HSSA"), Cal. Health & Safety Code §25300 *et seq.*); County IV (common law/equitable indemnity); Count VII (continuing public nuisance); Count VIII (continuing trespass); Count IX (negligence); and Count XII (injunctive relief under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k).

2. With respect to Count VI of Plaintiffs' Second Amended Complaint (continuing private nuisance), judgment is entered in Plaintiffs' favor and against Defendant in accordance with Verdict Form 2 and Plaintiffs' Notice of Election of Remittitur, and Plaintiffs are awarded damages in the amount of \$61,546.83 against the Defendant. Plaintiffs' request for injunctive relief is denied.

3. On the Defendant's First Amended Counterclaim, judgment is entered in favor of the Plaintiffs and against Defendant on the following Claims: First Claim (contribution under CERCLA), Second Claim (declaratory relief under CERCLA), Third Claim (contribution/indemnity under HSAA), Fourth Claim (declaratory relief under HSAA), and Fifth Claim (equitable indemnity).

4. With respect to Count XI of Plaintiffs' Second Amended Complaint and the Seventh Claim of Defendant's First Amended Counterclaim, both being

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claims for general declaratory relief, the Court orders declaratory relief as follows:

- (1) Defendant Ross is responsible for fully and promptly remediating all contamination on the Garfield Express Site and is responsible for paying for the costs of such remediation.
- (2) Defendant Ross is responsible for fully and promptly remediating all contamination on the U-Haul Site to the extent ordered by the State of California Regional Water Quality Control Board – Los Angeles Region (the “Water Board”) and is responsible for paying for the costs of such remediation.
- (3) U-Haul is responsible for fully remediating all contamination on the U-Haul Site, and is responsible for paying the costs of such remediation, except as otherwise ordered by the Water Board (*i.e.*, if the Water Board ordered the remediation of the U-Haul Site by Ross).
- (4) “Contamination” in this declaratory relief order refers to contamination in the soil and groundwater due to releases of petroleum hydrocarbons and chlorinated solvents, including PCE and TCE.
- (5) To the extent not incompatible with the findings and orders of the Water Board, “remediation” includes, but is not limited to all steps needed to fully remediate, such as: (a) the development and implementation of work plans to fully define the horizontal and

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vertical extent of contamination, including both free phase (free product) and dissolved phase contamination; (b) the preparation of a site assessment report defining the horizontal and vertical extent of contamination present; (c) the development and implementation of a corrective action plan to address the full extent of contamination present, including both free phase (free product) and dissolved phase contamination; (d) the operation and maintenance of all equipment and remedial systems associated with the corrective action plan; (e) the prompt removal and disposal of debris and waste generated in the course of performing required activities; and (f) the performance and reporting of monitoring until completion of the corrective action plan.

- (6) U-Haul is not responsible for damages, losses, attorneys fees or other costs on the Garfield Express Site due to contamination.
- (7) The multi-phase extraction remediation method set forth by Ms. Bice in her testimony is acceptable, unless otherwise ordered by the Water Board.

DATED: April 24, 2009


Valerie Baker Fairbank
U.S. District Judge

EXHIBIT J

SEND

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. CV 06-6574-VBF(VBKx)

Dated: February 12, 2009

Title: U-Haul International, Inc., et al -v- Barry Ross

PRESENT: HONORABLE VALERIE BAKER FAIRBANK, U.S. DISTRICT JUDGE

Rita Sanchez
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

None Present

PROCEEDINGS (IN CHAMBERS):

MEMORANDUM OF DECISION
AND FINDINGS OF FACT AND
CONCLUSIONS OF LAW AFTER
BENCH TRIAL ON EQUITABLE
CLAIMS AND DEFENSES

After a jury trial on legal issues and a bench trial on equitable issues, this Court renders the following Memorandum of Decision on the equitable issues. This Memorandum contains the Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a).

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I. Background

The plaintiffs and Counterclaim defendants in this action are Amerco Real Estate Company and U-Haul Co. of California (collectively, "U-Haul" or "Plaintiff"). The defendant is Barry Ross, Trustee of the Louis Ross & Alice Ross Family Trust ("Ross" or "Defendant"). Since 1977, U-Haul has owned real property located at 11716 South Long Beach Boulevard in Lynwood, California (the "U-Haul Site"), and has operated a vehicle and equipment rental and storage facility on said Site. From approximately 1988 until June 30, 2008, Ross was the owner of real property located at 11600-11620 Long Beach Boulevard, Lynwood, California (the "Garfield Express Site"). The Garfield Express Site contains a retail gasoline station and was formerly the location of a dry cleaning facility. (See Joint Statement of Case, docket no. 180; Final Pretrial Conference Order § 6 entitled "Uncontested Facts," docket no. 181.)

U-Haul has contended that gasoline and dry cleaning chemicals were released into the soil and groundwater at the Garfield Express Site and that those substances migrated into the soil and groundwater beneath the U-Haul Site. U-Haul has contended that Ross is responsible for the contamination. Ross, on the other hand, has denied responsibility for the contamination and has contended that any substances released at the Garfield Express Site are not the primary source of contamination at the U-Haul Site. Ross has asserted that the primary source of the contamination at the U-Haul Site is the release of gasoline from the use of a 10,000 gallon underground storage tank ("UST") and a smaller 550 gallon underground oil tank at the U-Haul Site. (Joint Statement of the Case, docket no. 180.)

II. Jury Verdict, Court's Rulings on Equitable Claims and Court's Judgment

After a trial in January 2009, the jury returned a verdict for Plaintiff U-Haul against Defendant Ross on its damages claim for continuing private nuisance in the amount of \$487,386.71 (Count VI). The jury returned verdicts for Defendant on the

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other claims prosecuted by Plaintiff in its Second Amended Complaint, including continuing trespass (Count VIII), continuing public nuisance (Count VII), and negligence/equitable indemnity (Counts IV & IX).¹ The jury found that Defendant was not negligent. The Court granted Defendant's Rule 50 Motion as to Plaintiff's Negligence Per Se Claim (Count X). On Ross' counterclaim for equitable indemnity (Fifth Claim for Relief in the First Amended Counterclaim), the jury found that U-Haul negligently did cause or allow hazardous substances, pollutants, or contaminants to be released at the U-Haul Site. The jury, however, found that U-Haul's conduct did not cause Ross to suffer damages for which U-Haul should be responsible and, therefore, the jury did not award damages. The Court incorporates the verdicts as part of the Court's findings of fact. The jury's verdicts are set forth in the Judgment.

After considering the evidence presented at the jury trial, the jury's verdict, counsel's oral arguments, and counsel's written memoranda, including post-trial briefs (docket nos. 226, 229, 230 & 231), the Court denies all of U-Haul's and Ross' equitable claims, with the following one exception: the Court enters a modified declaration of rights, as set forth below in Section VI.E.

Accordingly, on Plaintiff's Second Amended Complaint, Judgment shall be in favor of Plaintiff U-Haul and against Defendant Ross on U-Haul's Sixth Count for Continuing Private Nuisance in the amount of \$487,386.07. The Court issues declaratory relief on the Eleventh Count for Declaratory Relief on the terms set forth below in Section VI.E. On the other Counts presented in Plaintiff's Second Amended Complaint, Judgment shall be in favor of Defendant Ross and against Plaintiff U-

¹During the Final Pre-trial Conference held on January 5, 2009, the parties advised the Court that they had each withdrawn their respective claims for unjust enrichment. (See Count V of Plaintiff's Second Amended Complaint & Sixth Claim in Defendant's First Amended Counterclaim.)

Haul. On the First Amended Counterclaim of Ross against U-Haul, Judgment shall be entered on all of the Counts in favor of U-Haul and against Ross, except the Court issues declaratory relief on Defendant's Seventh Claim on the terms set forth below in Section VI.E. A separate Judgment shall be prepared and entered by the Court.

III. Court's Rulings on Plaintiff's Equitable Claims

As to the equitable claims set forth in Plaintiff's Second Amended Complaint, the Court rules as follows:

- (1) On Count I (Cost Recovery Pursuant to the Comprehensive Environmental, Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675), this Court finds in favor of Defendant Ross and against Plaintiff U-Haul on the ground that Plaintiff did not prove the amount of damages - the costs incurred due to release or threatened release of the hazardous substances, TCE and PCE. Additionally, Plaintiff has not demonstrated entitlement to any additional costs beyond those already awarded by the jury.
- (2) On Count II (Declaratory Relief Pursuant to CERCLA), this Court finds in favor of Defendant Ross and against Plaintiff U-Haul on the grounds that the declaration sought is not supported by the evidence.
- (3) On Count III (Statutory Indemnity Pursuant to the Hazardous Substance Account Act ("HSAA"), Cal. Health & Safety Code §§ 25300-25395), this Court finds in favor of Defendant Ross and against Plaintiff U-Haul on the same grounds set forth above with respect to Count I.
- (4) On Count VI (Abatement for Continuing Private Nuisance), this Court denies Plaintiff's request for injunctive relief, finding that the injunction sought contravenes the jury's findings, is not adequately supported by the evidence, is overbroad, and violates Rule 65 of the Federal Rules of Civil Procedure.

- (5) On Count XI (Declaratory Relief), this Court modifies the declaratory relief sought by the parties and enters declaratory relief as set forth below in Section VI.E.
- (6) On Count XII (Injunctive Relief Pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k), the Court finds in favor of Defendant and against Plaintiff on the grounds that Plaintiff has not shown that the conditions beneath the Garfield Express Site may present an imminent and substantial endangerment to health or the environment. There was a lack of evidence presented on this issue.

IV. Court's Rulings on Defendant's Counterclaims

As to the equitable claims set forth in Ross' First Amended Counterclaim against U-Haul, the Court rules as follows:

- (1) On the First Claim (Contribution under CERCLA), this Court finds in favor of U-Haul and against Ross, on the ground that Ross did not meet his burden as to the elements of this claim, particularly as to the releases of hazardous substances from the U-Haul Site and the costs incurred as a result of releases.
- (2) On the Second Claim (Declaratory Relief under CERCLA), this Court finds in favor of U-Haul and against Ross on the ground that Ross has not shown that the declaratory relief sought is appropriate in this case. The relief sought is not supported by the evidence.
- (3) On the Third Claim (Contribution/Indemnity under the HSAA), the Court finds in favor of U-Haul and against Ross on the ground that Ross did not meet his burden as to this claim, particularly as to the releases of hazardous substances from the U-Haul Site and the costs incurred as a result of releases.

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- (4) On the Fourth Claim for Relief (Declaratory Judgment under the HSAA), the Court finds in favor of U-Haul and against Ross on the ground that Ross has not shown that the declaratory relief sought is appropriate in this case, particularly in light of the evidence.
- (5) On the Seventh Claim for Relief (Declaratory Relief), this Court modifies the declaratory relief sought and enters declaratory relief as set forth below in Section VI.E.
- (6) The doctrine of unclean hands asserted by Ross does not apply to preclude any of the relief requested by the Plaintiff. *See Dollar Systems, Inc. v. Avcar Leasing Systems, Inc.*, 890 F.2d 165, 173 (9th Cir. 1989) (affirming district court conclusion that negligent conduct does not rise to the level of "unclean hands"). As to Ross' contention that documents were suppressed, the Court notes that the jury was instructed on this issue. Further, the evidence presented on suppression was not adequate to support an "unclean hands" defense. None of the other equitable affirmative defenses set forth in Ross' Answer were established by the evidence.

V. Findings of Fact

In addition to the findings of fact set forth in other sections of this Memorandum, as U-Haul asserts in its Initial Post-Trial Brief at pages 22 - 23, the weight of the evidence, and/or the jury's verdict, establish the following facts, which are particularly pertinent to the declaratory relief issued by the Court:

- (1) There were one or more releases of petroleum hydrocarbons into the soil and groundwater at the Garfield Express Site during Ross' ownership of the Garfield Express Site;
- (2) There were one or more releases of chlorinated solvents, including PCE (Perchloroethylene) and TCE (Trichloroethylene) into the soil and groundwater at the Garfield Express Site during Ross' ownership of the Garfield Express Site;
- (3) The U-Haul Site is hydraulically downgradient from the Garfield Express Site;
- (4) The groundwater flow direction across the Garfield Express Site and U-Haul Site is predominantly south-southwest;
- (5) Petroleum hydrocarbon and chlorinated solvent contamination has migrated from the Garfield Express Site to the U-Haul Site;
- (6) The Garfield Express Site is a major source of the petroleum hydrocarbon contamination present on the U-Haul Site and present between the U-Haul Site and the Garfield Express Site;
- (7) The Garfield Express Site is a significant source of chlorinated solvent contamination present on the U-Haul Site and present between the U-Haul Site and the Garfield Express Site; and

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- (8) U-Haul caused or allowed some petroleum hydrocarbon pollutants or contamination to be released at the U-Haul Site (*see* Jury Verdict 5 - Equitable Indemnity).

VI. Legal Analysis and Conclusions of Law

A. **Requests for Relief Under CERCLA**

1. *Plaintiff's CERCLA Requests*

Plaintiff's request for cost recovery and declaratory relief pursuant to CERCLA fail because the evidence does not adequately support the relief requested. Regarding the cost recovery sought in Count I of the Second Amended Complaint, Plaintiff did not prove the amount of damages - the response costs incurred, or likely to be incurred, due to release or threatened release of the hazardous substances, TCE and PCE, on the Garfield Express Site. As Defendant correctly asserts, petroleum is not a hazardous substance under CERCLA or the HSAA. (*See* Def. Post-Trial Brief at 15:22 -16:17, docket no. 226; Def. Supp. Post-Trial Brief at 10:14 - 11:19, docket no. 230); *see also* 42 U.S.C. § 9601(14); Cal. Health & Safety Code § 25317(a). Neither Plaintiff nor Defendant presented evidence from which the Court could deduce the cost of hazardous substance clean-up. Both sides presented total figures for clean up of the U-Haul Site and the Garfield Express Site. Most of the remediation pertained to contamination from petroleum substances. There was no indication as to the cost of remediation of hazardous substances.

Further, Plaintiff states in its Supplemental Post-Trial Brief that costs related to PCE and TCE contamination are included in the damages awarded by the jury. (*See* Pl. Supp. Post-Trial Brief at 12 n.10.) Plaintiff has not demonstrated entitlement to any additional response costs.

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Plaintiff also requests declaratory relief pursuant to 42 U.S.C. § 9613(g)(2) of CERCLA. That provision provides that in actions under 42 U.S.C. § 9607, "the court shall enter a declaratory judgment on liability for response costs or damages that will be binding in any subsequent action or actions to recover further response costs or damages." Plaintiff requests a declaration stating:

Defendant is liable under 42 U.S.C. § 9607(a) for all future necessary costs of response incurred by Plaintiffs consistent with the national contingency plan in monitoring, assessing, evaluating, addressing, or remediating Perchloroethylene ("PCE") and Trichloroethylene ("TCE") present at the U-Haul Site or migrating from the Garfield Express Site.

The evidence presented does not adequately support Plaintiff's requested declaration pursuant to CERCLA. Based on evidence presented at trial, the Court cannot conclude that it would be appropriate to issue a blanket declaration that Defendant should be liable for "all future necessary costs of response incurred by Plaintiffs" stemming from PCE and TCE contamination present at the U-Haul Site.² The evidence at trial did not show that the sole source of PCE and TCE on the U-Haul Site was the Garfield Express Site. Nor can the Court determine, based on the evidence before it at this time, that all prospective PCE and TCE contamination found on the U-Haul Site will come solely from the Garfield Express Site. Accordingly, Plaintiff's requested declaratory relief under CERCLA is denied.

Although there is evidence to support the assertion that hazardous substances were released from the dry cleaners on the Garfield Express Site, there is some, albeit limited, evidence to suggest that the Lynwood Dry Cleaners could have been a source of solvents on the properties. (*See* Testimony of Bice & Richter.)

²In reaching this conclusion, the Court is cognizant of the applicable burdens in CERCLA actions. *See* Jones, *et al.*, CAL. PRAC. GUIDE: FED. CIV. TRIALS & EVID., § 8:4984 (The Rutter Group 2008).

2. *Defendant's CERCLA Requests*

Defendant's claims for contribution and declaratory relief under CERCLA fail for similar reasons. They are not supported by any analysis in Ross' briefs. Further, there is a failure of proof on these claims. Evidence of release of TCE or PCE solvents at the U-Haul Site was limited and speculative. This limited and speculative evidence was also refuted by credible testimony by Dr. Richter that these solvents were not found in any detectable amount under the U-Haul waste oil tank. In sum, the evidence was insufficient to show a release or threatened release of a hazardous substance at the U-Haul Site.

Moreover, there is no evidence of damages - costs incurred or likely to be incurred by Ross due to release or threatened release at the U-Haul Site. Ross, like U-Haul, presented evidence regarding remediation costs for all contamination, including contamination from petroleum products, and failed to include any analysis of the remediation costs for hazardous substances like PCE and TCE. (*See* Testimony of Bice, Richter & Blaes.) Finally, there is no evidence of a release or threatened release that caused or would cause Ross to incur response costs that would be necessary and consistent with the national contingency plan.

B. Requests for Relief Under the HSAA

1. *Plaintiff's Request*

Like CERCLA, petroleum is not a hazardous substance under the HSAA. *See* Cal. Health & Safety Code § 25317(a). Plaintiff has not shown Ross' liability under the HSAA for indemnity and/or contribution for the same reasons that Plaintiff failed to establish Ross' liability under CERCLA. (*See* Def. Post-Trial Brief at 18: 10-27.)

2. *Defendant's Request*

Defendant's claims for contribution/indemnity and declaratory relief under the HSAA fail for the same reasons that his claim under CERCLA fails. Neither the evidence presented nor the jury's verdict provide support for Ross' claim that U-Haul be found liable under the HSAA or CERCLA for "any costs or expenditures Ross may incur or be found liable for . . ."

C. Plaintiff's Claim for Relief Under the RCRA

Plaintiff seeks injunctive relief under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B). That provision provides, in pertinent part, that "any person may commence a civil action on his own behalf . . . against any person . . . including any . . . past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which present an imminent and substantial endangerment to health or the environment."

Defendant contends, *inter alia*, that Plaintiff has not established that the conditions beneath the Garfield Express Site may present an imminent and substantial endangerment to health or the environment. The Court agrees. The language of the RCRA "implies that there must be a threat which is present now, although the impact of the threat may not be felt until later." *Meghrig v. KFC Western, Inc.*, 516 U.S. 479, 480 (1996). "An 'imminent hazard' may be declared at any point in a chain of events which may ultimately result in harm to the public." *Price v. U.S. Navy*, 39 F.3d 1011, 1019 (9th Cir. 1994) (internal citations omitted). Plaintiff's claim under the RCRA fails because Plaintiff did not present sufficient evidence to establish that the conditions beneath the Garfield Express Site may present an imminent and substantial endangerment to health or the environment.

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D. Plaintiff's Request for Abatement of Continuing Nuisance Claim

While U-Haul's continuing private nuisance claim was tried to the jury, an award of equitable relief in the form of an order to abate the nuisance is within the province of the court. As U-Haul asserts, in addition to an award of past damages, a judgment in a private nuisance action may also include the injunction or abatement of such nuisance. (See Pl. Initial Post-Trial Brief at 4, docket no. 229); *see also* Cal. Code Civ. Proc. § 731. To recover damages for a continuing nuisance, a plaintiff must bring successive actions for damages to recover any "actual injury suffered prior to commencement of each action" because "[p]rospective damages are unavailable." *Baker v. Burbank-Glendale-Pasadena Airport Auth.*, 39 Cal. 3d 862, 869 (1985).

Although injunctive relief is available, this Court finds that Plaintiff's request should be denied for several reasons. First, to the extent the injunction sought seeks an order requiring Ross to remediate "*the full extent* of petroleum hydrocarbon and chlorinated solvent contamination present at the U-Haul Site," it is contrary to the jury's verdict and is not adequately supported by the evidence. (See Pl. Initial Post-Trial Brief at 7 (emphasis added).) Although the jury found that Ross created a continuing nuisance on the U-Haul Site, it did not find that Ross was responsible for the full extent of contamination on the U-Haul Site. Indeed, the jury found that U-Haul negligently caused or allowed hazardous substances, pollutants, or contaminants to be released at the U-Haul Site. (Jury Verdict Form 5 - Equitable Indemnity, Question 1.)

Second, although the weight of the evidence establishes that Ross is responsible for a substantial portion of the petroleum and hazardous substance contamination on the U-Haul Site, the evidence does not establish that Ross is responsible for the full extent of the contamination. To the contrary, there is evidence that U-Haul was responsible for some of the petroleum contamination. U-Haul also failed to show that Ross was the sole or even the primary source of

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contamination from hazardous substances, TCE and PCE.

The evidence showed that there has been an active retail gas station at the Garfield Express Site. The evidence further showed that Ross made rental income from the gas station; there are three USTs at the Site; the USTs on the Site were owned by Ross; in 1995, there was an unauthorized release of gas reported at the Site; there was substantial free product at and around the Site; and contamination from the petroleum releases migrated southward onto the U-Haul Site. (*See* Testimony of Richter & Blaes; Exhs. 11, 99 & 100.)

However, as stated, there was also evidence presented to dispute U-Haul's contention that Ross is the primary source of all petroleum contamination on the U-Haul Site. The single wall 10,000 gallon UST was used at the U-Haul Site for 20 years, from 1977 - 1996. According to Ms. Bice's testimony, single-walled tanks are notorious for leaking and a 1996 investigation on tank removal revealed the odor of gas. Additionally, the waste oil tank at the U-Haul Site was found to have holes when it was removed. There is also evidence, albeit limited, of some northward or pancake-like migration of contaminants. (*See* Testimony of Bice.)

The weight of the evidence showed that hazardous substances, TCE and PCE, flowed to the U-Haul Site from the Garfield Express Site, where a dry cleaner was operative for years. The evidence, however, did not establish that Ross is responsible for all of the hazardous substance contamination. There was, for example, evidence that some PCE originated elsewhere (*i.e.*, from the Lynwood Dry Cleaners), and seeped through the sewer lines onto the U-Haul Site. (*See* Testimony of Bice.)

Third, the injunction sought is inappropriate because it violates Rule 65(d) of the Federal Rules of Civil Procedure. Initially, the acts required by the proposed injunction are described with reference to "the Guidelines for Report Submittals (Revised June 1993) issued by the County of Los Angeles Department of Public Works Waste Management Division Underground Storage Tank Local Oversight

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Program." (See Pl. Initial Post-Trial Brief at 7: 1-9 ("The workplan and all other reports required hereunder shall generally comply with the Guidelines for Report Submittals (Revised June 1993) issued by the County of Los Angeles Department of Public Works Waste Management Division Underground Storage Tank Local Oversight Program, as may be amended or revised, or such other guidelines as may be adopted or promulgated by the State of California Regional Water Quality Control Board - Los Angeles Region (the "Water Board"), with respect to content and presentation to the fullest extent practical".) The reference to, and reliance on, another document is inappropriate. See Fed. R. Civ. Proc. 65(d)(1)(C). Nor did Plaintiff submit the outside document(s) to the Court for approval.

Further, portions of the proposed injunction are overbroad or indefinite - contrary to the requirement in Rule 65(d) that every injunction order must "state its terms specifically." Fed. R. Civ. Proc. 65(d)(1)(B). For example, Plaintiff's proposed injunction requests an order that Defendant "[f]ully comply with all orders and directives of the Water Board, or any other governmental agency with jurisdiction over the Garfield Express Site or U-Haul Site, pertaining to contamination present on or migrating to the U-Haul Site that are not inconsistent with the requirements set forth above." (Pl. Initial Post-Trial Brief at 9: 18-22.)

E. Declaratory Relief Under Fed. R. Civ. Proc. 57 and 28 U.S.C. § 2201

The Court finds that declaratory relief is appropriate, as modified by the Court herein to comport with the jury's verdict and the evidence. The Court denies Plaintiff's request that the Court declare "that *all* contamination present on the U-Haul Site is attributable to the releases at the Garfield Express Site and that none of the contamination is the result of a release at the U-Haul Site." (Pl. Initial Post-Trial Brief at 22: 6-9) (emphasis added).) This contravenes the jury's finding that U-Haul did "negligently cause or allow hazardous substances, pollutants, or contaminants to be released at the U-Haul site." (Jury Verdict Form 5 - Equitable Indemnity, Question 1.) Instead, the Court finds that a substantial amount of the contamination

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present at the U-Haul Site is attributable to the releases at the Garfield Express Site. This determination is consistent with the jury's finding that Ross did "by acting or failing to act, create a condition that was harmful to health, indecent or offensive to the senses, or an obstruction to the free use of property." (See Jury Verdict Form 2 - Private Nuisance, Questions 2 & 3.)

Based on the jury's verdict and the facts as established by the evidence, the Court finds that the following declaratory relief is appropriate:

- (1) Ross is responsible for fully and promptly remediating all contamination on the Garfield Express Site and is responsible for paying for the costs of such remediation.
- (2) Ross is responsible for fully and promptly remediating all contamination on the U-Haul Site to the extent ordered by the Water Board and is responsible for paying the costs of such remediation.
- (3) U-Haul is responsible for fully remediating all contamination on the U-Haul Site, and is responsible for paying the costs of such remediation, except as otherwise ordered by the Water Board (*i.e.*, if the Water Board orders remediation of the U-Haul Site by Ross).
- (4) "Contamination" in this declaratory relief order refers to contamination in the soil and groundwater due to releases of petroleum hydrocarbons and chlorinated solvents, including PCE and TCE.
- (5) To the extent not incompatible with the findings and orders of the Water Board, "remediation" includes, but is not limited to, all steps needed to fully remediate, such as: (a) the development and implementation of work plans to fully define the horizontal and vertical extent of contamination, including both free phase (free product) and dissolved phase contamination; (b) the

preparation of a site assessment report defining the horizontal and vertical extent of contamination present; (c) the development and implementation of a corrective action plan to address the full extent of contamination present, including both free phase (free product) and dissolved phase contamination; (d) the operation and maintenance of all equipment and remedial systems associated with the corrective action plan; (e) the prompt removal and disposal of debris and waste generated in the course of performing required activities; and (f) the performance and reporting of monitoring until completion of the corrective action plan.

- (6) U-Haul is not responsible for damages, losses, attorneys fees or other costs on the Garfield Express Site due to contamination.
- (7) The multi-phase extraction remediation method set forth by Ms. Bice is acceptable, unless otherwise ordered by the Water Board.

VII. Additional Oral Argument and Hearing is Not Necessary and Would Not Be Helpful

The Court finds that further oral argument and a hearing are not necessary and would not be helpful. As the record reflects, the Court heard the evidence presented to the jury and lengthy oral arguments regarding the evidence and legal issues throughout the jury trial. The Court also invited and received post-trial briefing on equitable issues, has read and considered the parties' briefs on the issues, and has considered all the evidence presented at trial.

Additionally, the briefs submitted by both sides do not indicate that another opportunity for argument would be productive. Citations to the evidence in the briefs were vague, general and inexact. Further, the legal arguments were often too general and not instructive. Plaintiff, for example, cites to portions of the trial testimony, without providing a copy of the transcript and without indicating that, in

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fact, no official transcript was ever prepared. (*See, e.g.*, Pl. Supp. Post-Trial Brief at 12: 3-6, docket no. 231.)

In other areas, both sides merely cite to a witness (*e.g.*, "Ross," "Bice," etc.) without referring to a specific portion, or summarizing pertinent parts, of the testimony. Counsel also repeatedly cite to voluminous exhibits without reference to specific pages or portions of the exhibits. (*See, e.g.*, Pl. Supp. Post-Trial Brief at 10: 2-3 (referencing without specificity Exhibits 11, 30, 51, 80, 86, 99, 100, 104, 107 & 143); Pl. Supp. Post-Trial Brief at 12:7 (referencing without specificity Exhibits 30, 72, 80 & 86).) In sum, the papers submitted by both sides were inadequate and there is no indication oral argument would be of assistance.

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