

JONES DAY

Under the terms of the Agreement, Sellers agreed to the following indemnification provision:

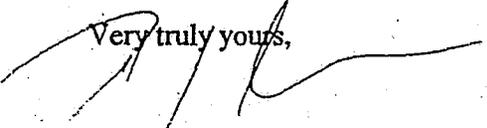
“ . . . the Sellers shall, and hereby do, jointly and severally indemnify, **defend** and hold Buyer and any of its Affiliates, and their respective stockholders, directors, officers, employees and agents (collectively, the “Buyer Group”), harmless from and against and **will pay the amount of any and all Damages actually incurred or suffered** by the Buyer Group based upon, relating to, arising out of, resulting from or otherwise in respect of (a) any inaccuracy of any representation or warranty of Sellers or the Company contained in this Agreement or any certificate delivered by or on behalf of the Sellers and the Company in connection herewith or breach of any covenant or agreement of the Sellers or the Company, or failure to satisfy any obligation that the Sellers assume, are responsible for or are liable for contained in this Agreement that survives the Closing, (b) **the matters set forth on Schedule 9.1 . . .**”

(See Ex. 1, Section 9.1 “Indemnification by Sellers”, (emphasis added).)

Schedule 9.1 “Indemnification” specifically refers to the “Cleanup and Abatement Order issued by the California Regional Quality Water Quality Control Board in October, 1990.” (See Ex. 2, Schedule 9.1 “Indemnification”). Further, Schedule 4.15 “Environmental” to the Agreement states, in pertinent part, “The Company [J. C. Carter Company] is subject to a Cleanup and Abatement Order issued by the California Regional Water Control Board. Quarterly well monitoring is required; remediation may be required.” (See Ex. 3 Schedule 4.15 “Environmental.”). A plain reading of the Agreement, including the Indemnification Provision and the accompanying Schedules, further dictates that Sellers are responsible for any and all Damages flowing from the CAO.

Seventeenth Street does not have a final determination of actual costs to implement the CAP. Thus far, the amount of the costs incurred is approximately \$425,000, and we are unable at this early stage of the remediation process to project future costs associated with the implementation of the CAP. Seventeenth Street hereby makes demand for indemnification pursuant to the Agreement for all such costs incurred to date.

Very truly yours,

  
Richard J. Grabowski



## JONES DAY

3 PARK PLAZA • SUITE 1100 • IRVINE, CALIFORNIA 92614-6505  
 TELEPHONE: 949-851-3939 • FACSIMILE: 949-853-7539

Direct Number: (949) 553-7514  
 rgrabowski@jonesday.com

JP767029:esp  
 631668-605002

March 13, 2009

VIA USPS AND FACSIMILE (714) 755-8290

Paul N. Singarella, Esq.  
 Latham & Watkins LLP  
 650 Town Center Drive, 20th Floor  
 Costa Mesa, California 92626

Re: Seventeenth Street Realty LLC's Indemnity Demand

Dear Mr. Singarella:

This letter is in response to your letter dated November 13, 2008, wherein you assert your clients Robert Veloz, Marlene Veloz, Michael Veloz, Katherine Veloz (formerly Canfield), Harry Derbyshire, Edith Derbyshire and Maureen Partch are unable to accept or reject the indemnification tender of Seventeenth Street Realty LLC (hereinafter, "Seventeenth Street") based on the information provided in my letter of September 30, 2008.

As a threshold matter, your presumption that Seventeenth Street purchased the subject property located at 671 West Seventeenth Street in the City of Costa Mesa (the "Property") in 2007 is incorrect. Seventeenth Street acquired the Property via contribution from its parent, Argo-Tech Corporation Costa Mesa ("ATCM") [formerly J.C. Carter Company, Inc.], a wholly owned subsidiary of Argo-Tech Corporation ("Argo-Tech"). A brief summary of Seventeenth Street's origin is below.

On October 28, 2005, V.G.A.T. Investors, LLC ("VGAT") acquired AT Holdings Corporation ("AT Holdings"), the parent of Argo-Tech. That acquisition occurred via merger of VGAT's subsidiary, VM Sub, Inc., into AT Holdings. Following VGAT's acquisition of AT Holdings, both AT Holdings and Argo-Tech became wholly-owned subsidiaries of VGAT.

Seventeenth Street was formed to hold and operate the Property during and after AT Holdings' reorganization prior to VGAT's March 2007 sale of certain AT Holdings entities to Eaton Corporation ("Eaton"). While the bulk of AT Holdings was sold to Eaton, Argo-Tech's cryogenics division located at the Property, entities and subsidiaries related thereto, and the Property itself, were ultimately retained by VGAT. In the reorganization, ATCM acquired 100% of the investment units of Seventeenth Street in exchange for contribution of the Property. At

LAI-2999096v8

ATLANTA • BEIJING • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • FRANKFURT • HONG KONG • HOUSTON  
 IRVINE • LONDON • LOS ANGELES • MADRID • MILAN • MOSCOW • MUNICH • NEW DELHI • NEW YORK • PARIS • PITTSBURGH  
 SAN DIEGO • SAN FRANCISCO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

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Paul N. Singarella, Esq.  
March 13, 2009  
Page 2

that time, Argo-Tech assigned all of its rights arising out of the Stock Purchase Agreement between Argo-Tech and the J.C. Carter Company, executed on September 26, 1997 (the "1997 Agreement"), to Seventeenth Street. This includes all indemnification rights under the 1997 Agreement.

Thus, the assertion that your clients are not required to indemnify Seventeenth Street because the indemnity does not run with the land to subsequent purchasers of the Property is misguided. Seventeenth Street is an affiliate of Argo-Tech, AT Holdings, and VGAT, and, as a wholly-owned subsidiary of Argo-Tech, a permitted assignee of the 1997 Agreement's indemnification rights. Because Seventeenth Street's right to indemnification arises directly out of the 1997 Agreement, whether the indemnity runs with the land is irrelevant.

A. Seventeenth Street Directly Benefits from the 1997 Agreement's Indemnification Provision as a Wholly-Owned Subsidiary and Affiliate of Argo-Tech, AT Holdings and VGAT.

When VGAT acquired AT Holdings via merger of its subsidiary into AT Holdings, it became an "Affiliate" of Argo-Tech as defined by the 1997 Agreement. Section I of the 1997 Agreement, entitled "Definitions," defines an "Affiliate" as:

"[a]ny Person which directly or indirectly controls, is controlled by or is under common control with such Person. A Person shall be deemed to control another Person if such Person owns 10% or more of any class of stock of the "controlled" person, or possesses, directly or indirectly, the power to direct or cause the direction of the management of policies of the controlled Person, whether through ownership of stock or partnership interests, by contract or otherwise." (emphasis added).

It is clear that VGAT became an "Affiliate" of Argo-Tech after it acquired and attained control of AT Holdings, Argo-Tech's parent. Prior to the Eaton sale, AT Holdings was reorganized, with Argo-Tech's cryogenics division, as well as the Property, contributed to the remaining and newly-formed AT Holdings/Argo-Tech entities retained by VGAT, Carter Cryogenics Company LLC and Seventeenth Street, respectively. Thus, upon their creation, each of these entities, in turn, became affiliates of Argo-Tech and AT Holdings at that time.

As noted in your letter, Section 9.1 of the 1997 Agreement entitled "Indemnification by the Sellers" provides in relevant part:

"[T]he Sellers shall . . . indemnify, defend and hold Buyer and any of its Affiliates, and their respective stockholders, directors, officers, employees, and agents . . . harmless from and against and

JONES DAY

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March 13, 2009  
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will pay the amount of any and all Damages actually incurred or suffered . . . based upon, relating to, arising out of, resulting from or otherwise in respect of . . . (b) the matters set forth in Schedule 9.1." (emphasis added).

The aforementioned provision is clear: affiliates of Argo-Tech, including Seventeenth Street and VGAT, directly benefit from the 1997 Agreement's indemnification provision, and are entitled to indemnification from your clients.

**B. The Anti-Assignment Clause is Inapplicable to Seventeenth Street As A Wholly-Owned Subsidiary of Argo-Tech and AT Holdings.**

You mistakenly presume the 1997 Agreement's anti-assignment provision is applicable to Seventeenth Street. However, Seventeenth Street, a once wholly-owned subsidiary of Argo-Tech, is a permitted assignee under the terms of that agreement, rendering the anti-assignment clause inapplicable. Section 12.3 of the 1997 Agreement, entitled "Assignment; Successors and Assigns" provides:

"[n]o party to the Agreement shall convey, assign or otherwise transfer any of its rights or obligation under this Agreement without the express written consent of the other party to this Agreement; provided, however, that Buyer may assign its rights hereunder to any direct or indirect wholly owned subsidiary without the consent of Veloz . . ." (emphasis added).

As noted above, Seventeenth Street was formed as a wholly-owned subsidiary of Argo-Tech to hold the Property during and after AT Holdings' reorganization prior to the Baton sale. At that time, Seventeenth Street, one of the remaining AT Holdings/Argo-Tech entities ultimately retained by VGAT, was assigned all indemnification rights related to the Property arising under the 1997 Agreement by Argo-Tech. This assignment is valid irrespective of your clients' consent or lack thereof.

**C. The Contamination At Issue Is Covered by The October 1990 California Regional Water Control Board Order, To Which Your Clients Have Not Fully-Complied.**

You incorrectly assert in your letter that the 1990 California Regional Water Control Board Order (the "1990 Order") has been complied with, and further assert that the indemnification Seventeenth Street seeks arises from "newly discovered" contamination unrelated to the 1990 Order. Santa Ana California Regional Water Quality Control Board representatives (the "Board," and "Board Representatives," respectively), as recently as October 21, 2008, have made clear to Tetra Tech that the Board seeks full-compliance with the 1990 Order which has yet to be satisfied to date. Moreover, the Property's contamination is not

JONES DAY

Paul N. Singarella, Esq.  
March 13, 2009  
Page 4

"newly discovered" as you claim, as the proposed-cleanup, while in contemplation of redevelopment of the Property, seeks to satisfy the 1990 Order's remediation requirements.

It is undisputed that the Property's groundwater was known to contain elevated concentrations of chlorinated solvents up to and through 2001, many years prior to Tetra Tech's remediation assessment. Furthermore, the remedial measures included in Tetra Tech's corrective action plan ("CAP") are directly responsive to the requests in the 1990 Order. Indeed, your position that "Tetra Tech tied the cleanup plan to the redevelopment process - not the 1990 Regional Board order," is misleading, as Tetra Tech clearly stated in a preceding section of its report that "the Cleanup and Abatement Order (CAO) directed that cleanup of 'contaminated' soil and groundwater be initiated."

There is also no dispute that the source of the VOC-impacted groundwater is from the site itself. Thus, the condition existed on the site well before Tetra Tech's recent assessment and before promulgation of the 1990 Order. Regardless of the Property's projected use as commercial, residential or industrial, Board Representatives have made clear to Tetra Tech that remediation is necessary to address, among other things, the high concentrations of pollutants found in the groundwater, potential vapor-intrusion conditions and negative adjacent-site groundwater impact. All of these issues are related to groundwater contamination at the site which, along with soil contamination issues, were all raised by the 1990 Order.

Indemnification by your clients for the aforementioned liabilities, including liabilities arising out of the 1990 Order, was contemplated and specifically bargained-for in the 1997 Agreement, with such rights and obligations flowing from your clients to Argo-Tech, its affiliates, and any permitted assignees. Seventeenth Street is both an affiliate and permitted assignee under the 1997 Agreement, and, having been assigned the indemnification rights under it, is now entitled to indemnification.

**D. The Indemnity Demand Does Not Exceed the Indemnity Contemplated in the 1997 Agreement.**

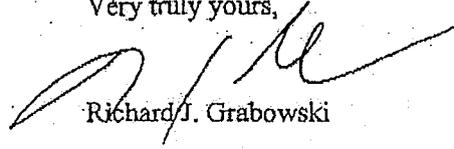
The CAP proposed by Tetra Tech that has been approved by the Board does not increase the "claimed burdens under the indemnity" as your letter asserts. In fact, it decreases those burdens through a variety of approaches which reduces the time and cost of addressing the site contamination. Moreover, although the redevelopment contemplates a mixed-use property, including residential, any corrective action plan to remediate the Property would need to address the contaminants and exposure pathways targeted in the CAP proposed by Tetra Tech. Furthermore, the CAP mainly relies on engineering controls rather than remediation to address the indoor air exposure pathway, which is the pathway of greatest concern for future residential use. The 1990 Order must be complied with, and the CAP proposed by Tetra Tech will reasonably and prudently accomplish this without changing the scope of the indemnity contemplated in the 1997 Agreement.

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Paul N. Singarella, Esq.  
March 13, 2009  
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As mentioned in my letter of September 30, 2008, Seventeenth Street does not have a final determination of actual costs to implement the CAP. Thus far, the amount of the costs incurred exceeds \$425,000, and we are unable at this early stage of the remediation process to project future costs associated with the implementation of the CAP. Seventeenth Street demands indemnification under the 1997 Agreement for all such costs incurred to date. Furthermore, pursuant to Section 9.3(b) of the 1997 Agreement, this letter, in addition to my letter of September 30, 2008, serves as notice to your clients of a "Direct Claim" for indemnification as defined therein.

Very truly yours,



Richard J. Grabowski





# California Regional Water Quality Control Board

## Santa Ana Region



Winston H. Hickox  
Secretary for  
Environmental  
Protection

Internet Address: <http://www.swrcb.ca.gov/rwqcb8>  
3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis  
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at [www.swrcb.ca.gov/rwqcb8](http://www.swrcb.ca.gov/rwqcb8).*

November 19, 2002

To All Interested Parties

RE: DECISION OF THE BOARD IN THE MATTER OF PETITIONS FILED BY  
GOODRICH CORPORATION AND KWIKSET CORPORATION FOR REVIEW OF  
CLEANUP AND ABATEMENT ORDER NO. R8-2002-0051

Attached is the written decision of the Board in the above-referenced matter, as approved by both the Chair of the Regional Board, Carole Beswick, and the Board Counsel in this matter, Ted Cobb.

Any questions concerning this decision should be directed to Ted Cobb at 916-341-5171.

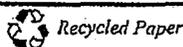
Sincerely,

Gerard J. Thibeault  
Executive Officer  
Santa Ana Regional Water Quality Control Board

Attachment

cc: Regional Board

*California Environmental Protection Agency*



October 25, 2002

**Agenda Item 6: Petitions Filed by Goodrich Corporation and Kwikset Corporation for Review of Cleanup and Abatement Order R8-2002-0051.**

Decision of the Board: This matter came to the Regional Board for further deliberation on a decision made in closed session on September 13, 2002. This was necessary because of a defect in the notice of the September 13, 2002 meeting. The notice did not provide for the closed session so none should have been held. On advice of counsel, the Regional Board Chair decided to bring the matter back at the October 25, 2002 Board meeting to consider all evidence and argument that was received on September 13, 2002. In conformance with the public notice for the October 25, 2002 meeting, no further evidence or testimony was received from any party or interested person prior to deliberation by the Regional Board. Board members Solario and Withers did not take part as neither had fully participated in the September 13, 2002 session.

The Chair summarized the main points that were the subject of consideration during the closed session. Those points were:

- the Board was concerned about the time involved in solving the problem of perchlorate in the groundwater of the Rialto/Colton area and believed that pursuing the enforcement of the cleanup and abatement order, as drafted, would result in unnecessary delay in administrative appeals and litigation;
- the Board foresaw extensive delays while communities were losing access to drinking water and determined that addressing the problem as quickly as possible by cleaning up the contaminated wells or providing alternative water sources was of greatest importance;
- one of the companies named in the cleanup and abatement order disputed whether it was a legal successor in interest to the original responsible party;
- the other company was willing to take responsibility for a portion of the contamination but not for the whole problem;
- a non-adversarial approach was more likely to obtain some cooperation from those two companies;
- the Board did not believe that there had been a good characterization of the plume and wanted further investigation;
- the Board wanted to find incentives to encourage timely participation by all potentially responsible parties; and



### Exhibit Y - Digest of Cleanup and Abatement Orders Rescinded When Required Work is Completed

RWQCB Region	Order No.	Date Adopted	Order Being Rescinded	Discharger/Party Named	Reason for Rescission
Santa Ana	R8-2004-0111	December 20, 2004	Order No. 00-54	Union Car Wash	Cleanup & Abatement Order no longer necessary.
San Diego	98-91	September 9, 1998	Order No. 93-83	GTE California	The discharger has demonstrated that further remediation is not necessary.
San Diego	94-117	August 15, 1994	89-63	San Diego Gas and Electric	All directives in the order have been met.
San Diego	98-61	June 10, 1998	89-109	Brotherton Ranch	Discharger achieved compliance.
San Diego	R9-2000-0126	July 20, 2000	Order No. 98-224	City of Solana Beach	City of Solana Beach complied with the directives of CAO 98-224 and addenda.
San Diego	2001-279	September 20, 2001	Order No. 2000-180	Mr. Jerry Bujakowski	Mr. Bujakowski complied with the directives of the CAO.
San Diego	R9-2003-0169	April 23, 2003	Order No. 89-49	Greyhound Lines, Incorporated	Greyhound has complied with the directives of the CAO and superseding CAO 91-45. CAO 91-45 still applies to other dischargers.

California Regional Water Quality Control Board  
Santa Ana Region

ORDER NO. R8-2004-0111

Rescission of Waste Discharge Requirements and Enforcement Order  
for  
Specific Facilities

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. The Orders listed in Attachment "A" were issued by the Board at various times for the facilities described therein. Attachment "A" is hereby made a part of this Order. Waste discharge requirements and enforcement orders for the facilities listed in Attachment "A" are no longer necessary because the facility is no longer in operation or because the facility is in compliance with the enforcement order.
2. This action is based on the fact that specific discharges are now covered under other waste discharge requirements, or that enforcement orders have been satisfied. As such, this action is exempt from the requirements of the California Environmental Quality Act in accordance with Section 15061 (b) (3), Chapter 3, Title 14 of the California Code of Regulations.
3. The Board has notified the dischargers and interested agencies and persons of its intent to rescind the Orders for the facilities listed in Attachment "A", and has provided them with an opportunity to submit written comments and recommendations.
4. The Board, in a public meeting, heard and considered all comments pertaining to the rescission of waste discharge requirements.

**IT IS HEREBY ORDERED** that the orders listed in Attachment "A" be rescinded.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on December 20, 2004.

  
Gerard J. Thibeault  
Executive Officer

California Regional Water Quality Control Board  
Santa Ana Region

December 20, 2004

**STAFF REPORT**

ITEM: 8

SUBJECT: Rescission of Waste Discharge Requirements and Enforcement Order for Specific Facilities, Order No. R8-2004-0111

DISCUSSION:

Waste discharge requirements and enforcement order for the facilities listed in Attachment "A" of Order No. R8-2004-0111 are no longer necessary because the facility is no longer in operation or because the facility is in compliance with the enforcement order.

RECOMMENDATION:

Adopt Order No. R8-2004-0111, as presented.

In addition to the dischargers listed in Attachment "A", comments were solicited from the following agencies:

U.S. Environmental Protection Agency, Permits Issuance Section (WTR-5) – Doug Eberhardt  
State Water Resources Control Board, Office of the Chief Counsel - Jorge Leon  
State Water Resources Control Board – Jim Maughan  
State Department of Water Resources - Glendale  
California Department of Health Services, San Bernardino - Richard Haberman  
California Department of Health Services, Santa Ana – Cor Shaffer  
Orange County Resources and Development Management Department – Chris Crompton  
Orange County Water District – Nira Yamachika  
San Bernardino County Department of Environmental Health Services – Ray Britain  
San Bernardino County Transportation/Flood Control District - Naresh Varma

**ORDER NO. R8-2004-0111****Attachment "A"**

<b>SAN BERNARDINO COUNTY</b>			
	<b><u>ORDER NO.</u></b>	<b><u>Facility and Location</u></b>	<b><u>Reason for Rescission</u></b>
1	00-11	BASF Corporation (formerly Morton International, Inc.)	Facility no longer in operation
<b>ORANGE COUNTY</b>			
	<b><u>ORDER NO.</u></b>	<b><u>Facility and Location</u></b>	<b><u>Reason for Rescission</u></b>
2	00-54	Union Car Wash (aka Beacon Bay Car Wash)	Cleanup & Abatement Order no longer necessary

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

ORDER NO. 98-91

AN ORDER RESCINDING CLEANUP AND ABATEMENT ORDER NO. 93-83  
CLEANUP AND ABATEMENT OF DIESEL CONTAMINATED SOIL AT  
39110 CONTRERAS ROAD, ANZA  
RIVERSIDE COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter RWQCB) finds that:

1. Cleanup and Abatement Order No. 93-83 was issued on July 30, 1993 to GTE California, Incorporated (hereinafter referred to as the discharger) in response to an unauthorized release of petroleum hydrocarbons from the underground storage tank system located at 39110 Contreras Road, Anza, Riverside County California.
2. The unauthorized release of petroleum hydrocarbons from the leaking underground storage tank (UST) system resulted in elevated levels of Total Petroleum Hydrocarbons (TPH) in the diesel fuel range and low levels of Benzene, Toluene, Ethylbenzene, and Xylenes (BTEX). These contaminants were detected in soil at the site.
3. The discharger removed the leaking UST system in 1988 and conducted a preliminary site assessment, and later a vapor extraction pilot study was completed in 1996. An extraction system was never implemented. The discharger has demonstrated that further remediation is not necessary, and that residual contamination does not pose a significant threat to water quality.
4. Cleanup and Abatement Order (CAO) No. 93-83 issued for the cleanup of diesel contaminated soil is no longer necessary. A no further action letter will also be issued pursuant to Section 2721(e) of Title 23 of the California Code of Regulations.
5. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

Order No. 98-91  
Rescission of CAO 93-83

-2-

IT IS HEREBY ORDERED,

1. Cleanup and Abatement Order No. 93-83 is hereby rescinded.



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JOHN H. ROBERTUS  
Executive Officer

Date: September 9, 1998

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

ORDER NO. 94-117

AN ORDER RESCINDING CLEANUP & ABATEMENT ORDER NO. 89-63

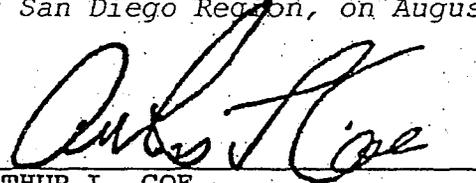
The California Regional Water Quality Control Board, San Diego Region (hereinafter RWQCB) finds that:

1. All directives in the order named above have been met.
2. The RWQCB has notified the responsible party, San Diego Gas and Electric, of its intent to rescind the subject order.

IT IS HEREBY ORDERED, that

1. Cleanup & Abatement Order 89-63 is hereby rescinded including all revisions and/or addenda to it.

I, Arthur L. Coe, Executive Officer, do hereby certify the foregoing is a full, true and correct rescissions adopted by the California Regional Water Quality Control Board, San Diego Region, on August 15, 1994.



ARTHUR L. COE  
Executive Officer

File  
San Diego Gas & Electric  
2141 main st. S.D.  
#15419-001

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

ORDER NO. 98-61

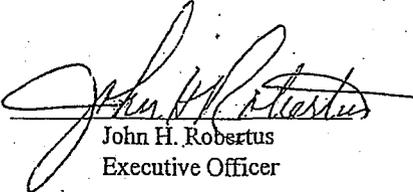
AN ORDER RESCINDING  
CLEANUP AND ABATEMENT ORDER NO. 89-109  
FOR  
BROTHERTON RANCH

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. On December 11, 1989, the Regional Board Executive Officer issued Cleanup and Abatement Order No. 89-109 for Brotherton Ranch, San Diego County. Order No. 89-109 directed the owner of the Brotherton Ranch to cease discharging waste to Los Coches Creek and to remove waste which had been discharged to the creek.
2. On January 29, 1990, the Regional Board affirmed Order No. 89-109 and extended the deadlines for two of the directives.
3. On April 18, 1990, Mr. G. L. Jennings submitted a letter in compliance with the directives of Order No. 89-109.
4. Based on the review of the April 18 letter, the Regional Board has determined that the owner of the Brotherton Ranch has complied with the directives of Cleanup and Abatement Order No. 89-109.
5. The Regional Board has notified the discharger and all known interested parties of its intent to rescind the above cleanup and abatement order.
6. This action involves the rescission of a cleanup and abatement order for a discharger who has achieved compliance. As such, this action is exempt from the requirements of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Title 14, California Code of Regulations, Chapter 3, Section 15270.
7. The Regional Board, in a public meeting, heard and considered all comments pertaining to the proposed action.

**IT IS HEREBY ORDERED**, that Cleanup and Abatement Order No. 89-109 is rescinded.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on June 10, 1998.

  
John H. Robertus  
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

ORDER NO. 2000-126

AN ORDER RESCINDING  
CLEANUP AND ABATEMENT ORDER NO. 98-224 AND ADDENDA 1 AND 2

CITY OF SOLANA BEACH  
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. Pursuant to Section 13304 of Division 7 of the California Water Code, the Regional Board issued Cleanup and Abatement Order No. 98-224, and addenda thereto, to City of Solana Beach for the construction of a new sewage pipeline crossing San Elijo Lagoon to the Olivenhain Pump Station.
2. Order No. 98-224 established requirements for completing the above pipeline by March 15, 1999 and a technical report certifying the adequacy of the pipeline by April 15, 1999. Addendum No. 1 extended those deadlines to October 15, 1999 for the pipeline and November 15, 1999 for the report. (The extension was given because of the Light-Footed Clapper Rail's breeding season interfering with the construction schedule.) Addendum No. 2 extended the deadlines to April 30, 2000 for the pipeline completion and May 31, 2000 for the report. (This extension was granted because of delays in obtaining environmental permits for the project.)
3. The new pipeline was put into service on April 29, 2000, after passing a hydrostatic and interior visual exam, and has been in operation ever since.
4. The technical report certifying satisfactory completion of the pipeline was received May 31, 2000.

**IT IS HEREBY ORDERED,**

1. Cleanup and Abatement Order No. 98-224 and Addenda 1 and 2 to CAO 98-224, *City of Solana Beach, San Diego County*, are hereby rescinded.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a rescission Order adopted by the California Regional Water Quality Control Board, San Diego Region.

Date: June 23, 2000

File: 01-761.02

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JOHN H. ROBERTUS  
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

ORDER NO. 2001-279

AN ORDER RESCINDING

CLEANUP AND ABATEMENT ORDER NO. 2000-180 AND ADDENDUM  
FOR

MR. JERRY BUJAKOWSKI  
14044 FERNBROOK DRIVE  
RAMONA, CALIFORNIA  
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

1. Cleanup and Abatement Order (CAO) No. 2000-180 directed Mr. Jerry Bujakowski to clean up solid waste deposited on his property within an un-named tributary to West Branch Creek at 14044 Fernbrook Drive in Ramona.
2. Addendum No.1 to CAO No. 2000-180 extended the date of compliance to allow the responsible party to investigate other potential responsible parties.
3. Regional Board staff inspected and verified that the solid waste had been removed and erosion controls constructed in accordance with the Cleanup and Abatement Order and addendum.
4. This rescission of an enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15308, Chapter 3, Title 14 of the California Code of Regulations.

**IT IS HEREBY ORDERED** that,

1. Cleanup and Abatement Order No. 2000-180 and Addendum No. 1, for Mr. Jerry Bujakowski, 14044 Fernbrook Drive, Ramona, San Diego County, is rescinded.

*This order issued for the SDRWQCB by the Executive Officer pursuant to Section 13223 of the Water Code and the delegation of authority adopted by the SDRWQCB.*

Date: September 20, 2001

  
JOHN H. ROBERTUS  
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

ORDER NO. R9-2003-0169

AN ORDER RESCINDING

CLEANUP AND ABATEMENT ORDER NO. 89-49 ISSUED TO GREYHOUND LINES, INCORPORATED, AND TRANSPORTATION LEASING COMPANY, GREYHOUND MAINTENANCE CENTER 539 FIRST AVENUE, SAN DIEGO, PARCEL NO. 535-072-03-00BLOCK 92, LOTS C THRU J, SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego (hereinafter Regional Board) finds that:

1. The Regional Board issued Cleanup and Abatement Order (CAO) No. 89-49 to Greyhound Lines, Inc. and Transportation Leasing Company (hereinafter Discharger) for the site located at 539 First Avenue, San Diego.
2. CAO No. 89-49 established requirements for cleanup of pollution caused by gasoline, diesel, motor oil and waste oil.
3. The ground-water remediation directives of CAO No. 89-49, consisting of Directives 2 through 7, were superseded by the ground-water remediation directives of CAO No. 91-45 pursuant to Directive 8 of CAO No. 91-45.
4. The Discharger has complied with Directive 1 of CAO No. 89-49, the only directive not superseded by CAO No. 91-45.
5. The Discharger's compliance with the ground-water remediation directives in CAO No. 91-45 is documented in the staff report titled *Greyhound Lines, Incorporated, and Transportation Leasing Company Compliance with Interim Remedial Action, Corrective Action, and Verification Sampling and Monitoring Directives of Cleanup and Abatement Order No. 91-45*, dated April 23, 2003.
6. Greyhound has completed the corrective action required by CAO No. 91-45 for the property at 539 1<sup>st</sup> Ave. No further action is required at this time. However, CAO No. 91-45 will not be rescinded until the other Dischargers named in the Order complete corrective action at their respective properties.
7. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resource Code, section 21000 et seq.) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.

8. A public notice of this rescission order will be printed in the Notifications section of the May 14, 2003 Regional Board meeting agenda to allow the public an opportunity to comment on this action.
9. The current property owner, Redevelopment Agency of the City of San Diego, has been notified of this action in accordance with section 25299.37.2 of the Health and Safety Code.

**IT IS HEREBY ORDERED** that Cleanup and Abatement Order No. 89-49, issued to Greyhound Lines, Inc. and Transportation Leasing Company, San Diego County, is hereby rescinded.

---

JOHN H. ROBERTUS  
Executive Officer

Date: April 23, 2003



Exhibit Z - Digest of Amended Cleanup and Abatement Orders Following a Change in Ownership of the  
Subject Site

RWOCB Region	Order No.	Date Issued	Respondent(s) (Discharger or Responsible Party)	Date Rescinded or Amended	Reason for Rescission or Amendment
Santa Ana	99-38	May 21, 1999	Alcoa	June 8, 2006	Replaced Order 94-44 after Alcoa acquired all assets and facilities, including subject facility, from Alumax Inc. Required Alcoa to implement appropriate corrective measures and monitoring requirements.
Santa Ana	R8-2006-0035	June 8, 2006	Yellow Roadway Corporation	n/a	Replaced Order No. 99-38. Revised to reflect the change in ownership of the Alumax Fontana property from Alcoa to Yellow Roadway Corporation.
San Diego	98-11, Addendum No. 2	April 21, 2000	Schutte & Koerting, Inc. and Ametek, Inc.	n/a	Original Order No. 98-11 named Ametek, Inc. and Ketema, Inc. Effective October 1, 1998 Ketema Inc. changed its name to Schutte & Koerting, Inc. Order amended to reflect name change.
San Diego	95-66, Addendum No. 2	July 20, 2000	Boulevard Investors, The City of National City, CV Ventures LLC., Rhode Island Acquisition No. 1 LLC., SD Commercial LLC. And National Enterprises, Inc.	n/a	Order No. 95-66 amended to remove San Diego County as a responsible party.

California Regional Water Quality Control Board  
Santa Ana Region

Cleanup & Abatement Order No. R8-2006-0035

for

Yellow Roadway Corporation  
Former Alumax Fontana Facility  
San Bernardino County

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

1. RCM Technologies, Inc. operated an aluminum recovery facility from 1957 to 1977 in the City of Fontana. The 18-acre facility was located on the northeast corner of Beech Boulevard and Santa Ana Boulevard, as shown on **Attachment 1**, which is hereby made a part of this order. In 1976, the Regional Board adopted Waste Discharge Requirements, Order No. 76-238, for aluminum recycling operations conducted at the site by RCM Technologies, Inc. and Mr. Robert Sackett. Mr. Sackett, the Board Chairman and Chief Executive Officer of RCM Technologies, Inc., owned the property and the aluminum recovery facility until July 1977 when Hillyard Aluminum Recovery Corporation (HARC), a wholly-owned subsidiary of Alumax Inc., purchased certain assets, excluding the Fontana property (hereinafter referred to as the Alumax Fontana property).
2. HARC operated the aluminum recovery facility in Fontana from 1977 to 1982, when recovery operations ceased. In August 1985, HARC purchased the Alumax Fontana property from RCM. In July of 1998, Aluminum Company of America (Alcoa) acquired all assets and facilities, including the Fontana property, from Alumax Inc. In January of 2004, USF Reddaway Inc. (USFR) acquired the Alumax Fontana property from Alcoa and began plans for site development. Prior to USFR's final acquisition of the property, Board staff approved their tentative site development plans in September 2003. In May 2005, before final construction plans were developed, Yellow Roadway Corp. (YRC, hereinafter discharger) acquired USFR and became directly involved in the property management, including development, of the Alumax Fontana site.
3. The Alumax Fontana property overlies the Chino North Groundwater Management Zone, the beneficial uses of which include:
  - a. Municipal and domestic supply,
  - b. Agricultural supply,
  - c. Industrial service supply, and
  - d. Industrial process supply.

4. On October 14, 1977, the Regional Board adopted Board Order No. 77-200, which replaced Order No. 76-238, for the storage and handling of aluminum oxide wastes at the Alumax Fontana facility. Aluminum oxide was generated as a manufacturing by-product of the aluminum recovery process. These wastes were stockpiled at the site, partly on a concrete-paved storage pad located at the southwest corner of the site, and partly on native soil. The former waste pile storage and salt-affected areas are shown on **Attachment 2**. The aluminum oxide waste contained high levels of soluble salts consisting almost entirely of sodium and potassium chloride.
5. On January 10, 1986, the Regional Board adopted Cleanup and Abatement Order (CAO) No. 86-17. This Order required Alumax Inc., Robert Sackett, and RCM Technologies, Inc. to perform a subsurface investigation, and to propose remedial measures for mitigating any water quality degradation that may have resulted from the migration of soluble salts contained in the aluminum oxide wastes. In order to facilitate investigation at the site and to eliminate a likely source of groundwater contaminants, all aluminum oxide wastes were removed from the site by March of 1992.
6. To comply with CAO No. 86-17, Alumax Inc. conducted two site investigations between 1986 and 1989 and instituted a groundwater monitoring program in April 1993. Initial groundwater monitoring indicated the presence of soluble salts in the groundwater downgradient of the site.
7. Alumax Inc. prepared to initiate a site closure in July 1993 to prevent further groundwater degradation by soluble salts known to remain in the soils beneath the former waste pile storage areas. On September 2, 1994, CAO No. 86-17 was replaced by CAO No. 94-44 to include time schedules for conducting additional groundwater investigations and for mitigating the impact of soluble salts on groundwater.
8. The additional groundwater investigation and salt load reports submitted by Alumax Inc. indicated that:
  - a. The estimated quantity of salt leached to the vadose and saturated zone was 16,400 tons. This salt load is relatively minor compared to salt loads resulting from both past and present agricultural and other industrial practices existing within the Chino Basin.

- b. The transport modeling results indicated that the Alumax Fontana salt plume travels in a southwesterly direction toward the Jurupa Community Services District (JCSD) production well field located in Sections 4 and 5, R6W, T2S, SBB&M (see **Attachment 1**). Due to the relatively high production rates of the JCSD wells compared to the slow rate at which the plume appeared to be migrating toward the well field, the model predicted that the impact on the quality of pumped water would be negligible. Further, the model indicated that if the salt plume reaches the JCSD well field, it would be completely captured by the JCSD wells, for as long as they remain in service.
9. On April 10, 1997, based on the findings in the salt load reports, the Executive Officer of the Regional Board determined that neither a conventional pump-and-treat system, nor a salt offset program was appropriate as a groundwater remedial alternative.
10. In July of 1998, Aluminum Company of America (Alcoa) acquired all assets and facilities, including the Fontana property, from Alumax Inc.
11. On May 21, 1999, the Regional Board adopted CAO No. 99-38, which replaced CAO No. 94-44, to require Alcoa to implement appropriate corrective measures and monitoring requirements. CAO No. 99-38 specifically required the following:
  - a. Submittal and implementation of a site closure and post-closure maintenance plan for the former waste pile storage areas at the site;
  - b. Installation of an offsite groundwater monitoring program, in addition to the existing on-site groundwater monitoring program, to provide early warning to JCSD regarding changes in the quality of groundwater upgradient of their well field resulting from the Alumax Fontana salt plume.
  - c. Implementation of measures to remediate any adverse impacts the Alumax Fontana plume may have on the JCSD production wells.
12. As required under Item 3 of CAO No. 99-38, Alcoa installed four offsite monitoring wells, AOS #1 through #4, between 1999 and 2000, and began monitoring these wells in addition to the existing two on-site groundwater monitoring wells, MW-1 and MW-2. The locations of these monitoring wells are shown on **Attachment 1**.
13. Item 1 of CAO No. 99-38 required Alcoa to submit a site closure and post-closure maintenance plan (SCPCMP) by August 31, 1999. On August 27, 1999, Alcoa submitted a SCPCMP. After several plan revisions, the Executive Officer of the Regional Board approved the SCPCMP on March 7, 2000, conditioned upon the submittal of a revised plan incorporating three additional post-closure maintenance requirements. On June 19, 2001, Alcoa submitted a revised SCPCMP, dated April 20, 2001, which includes a copy of an unrecorded deed restriction.

14. Item 2 of CAO No. 99-38 required Alcoa to formally close the site by December 31, 1999 or an alternate date approved by the Executive Officer of the Regional Board. On May 2, 2000, Alcoa formally requested a site closure deferral from the December 31, 1999 closure date because the property was for sale, and the cap configuration would be dependent on the buyer's development of the property. On March 1, 2001, the Executive Officer of the Regional Board conditionally approved a time extension for site closure until March 1, 2006, based on the following findings:

- a. No apparent degradation of the groundwater basin due to the Alumax Fontana plume. Existing on-site and offsite water quality monitoring data indicated consistent improvement in water quality beneath and downgradient of the site;
- b. An increasing trend in water quality degradation upstream of the Alumax Fontana site; and
- c. An anticipation of the divestiture of the property for future development, and fulfillment of the capping requirement in concert with future development.

The site closure deferral was granted conditioned upon compliance with the following water quality indices:

- a. Water Quality Index No. 1 – When a divergence, as defined in the May 2000 site closure deferral proposal, is identified in the annual moving average of chloride values between the onsite groundwater monitoring wells, MW-1 (background) and MW-2 (downgradient).
- b. Water Quality Index No. 2 – When the annual moving average of chloride in offsite Well AOS #4 exceeds the annual moving average of chloride in the onsite background well, MW-1.

An immediate site closure could be required if any of the above water quality indices is not met.

15. In early November 2005, Alcoa notified Regional Board staff that YRC had purchased USFR, the owner of the former Alumax Fontana facility property, and had become directly involved with the property management of the Alumax Fontana site since May 2005. Prior to final acquisition by YRC, USFR intended to build a truck terminal on the Alumax Fontana property that would incorporate a closure cap for the site, and YRC supports that use. On November 11, 2005, YRC formally requested a time extension for site closure from March 1, 2006 to December 31, 2007 to allow time for a reassessment of the facility design, which may influence the design of the final closure cap. On February 24, 2006, based on the information provided and the monitoring data presented in the January 2005 Annual Groundwater Monitoring Report, the Board granted YRC the requested time extension for site closure.

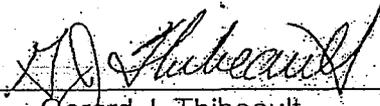
16. This order is being revised to reflect the change in ownership of the Alumax Fontana property, and to require YRC to:
  - a. Continue the existing on-site and offsite water quality monitoring programs;
  - b. Propose and implement a site closure and post-closure maintenance plan to minimize the infiltration of water through soil, which causes mobilization of salts remaining in the vadose zone beneath the former Alumax Fontana facility;
  - c. Initiate site closure without further delay if new groundwater monitoring data indicate that any of water quality indices (see Finding 13) have not been met; and
  - d. Implement other necessary remedial measures to minimize the impact of the Alumax salt plume on nearby water supply wells.
17. Water Code Section 13304 allows the Regional Board to recover reasonable expenses from the responsible parties for overseeing cleanup of illegal discharges, contaminated properties, and other unregulated releases adversely affecting the state's waters. It is the Regional Board's intent to recover such costs for regulatory oversight work conducted in accordance with this order.
18. This action is being taken by a regulatory agency for the protection of the California Environmental Quality Act (Public Resources Codes, Section 21000 et seq.) in accordance with Section 15321, Division 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED THAT, pursuant to Section 13304, Division 7 of the California Water Code, YRC (hereinafter discharger) shall implement the following monitoring and corrective measures:

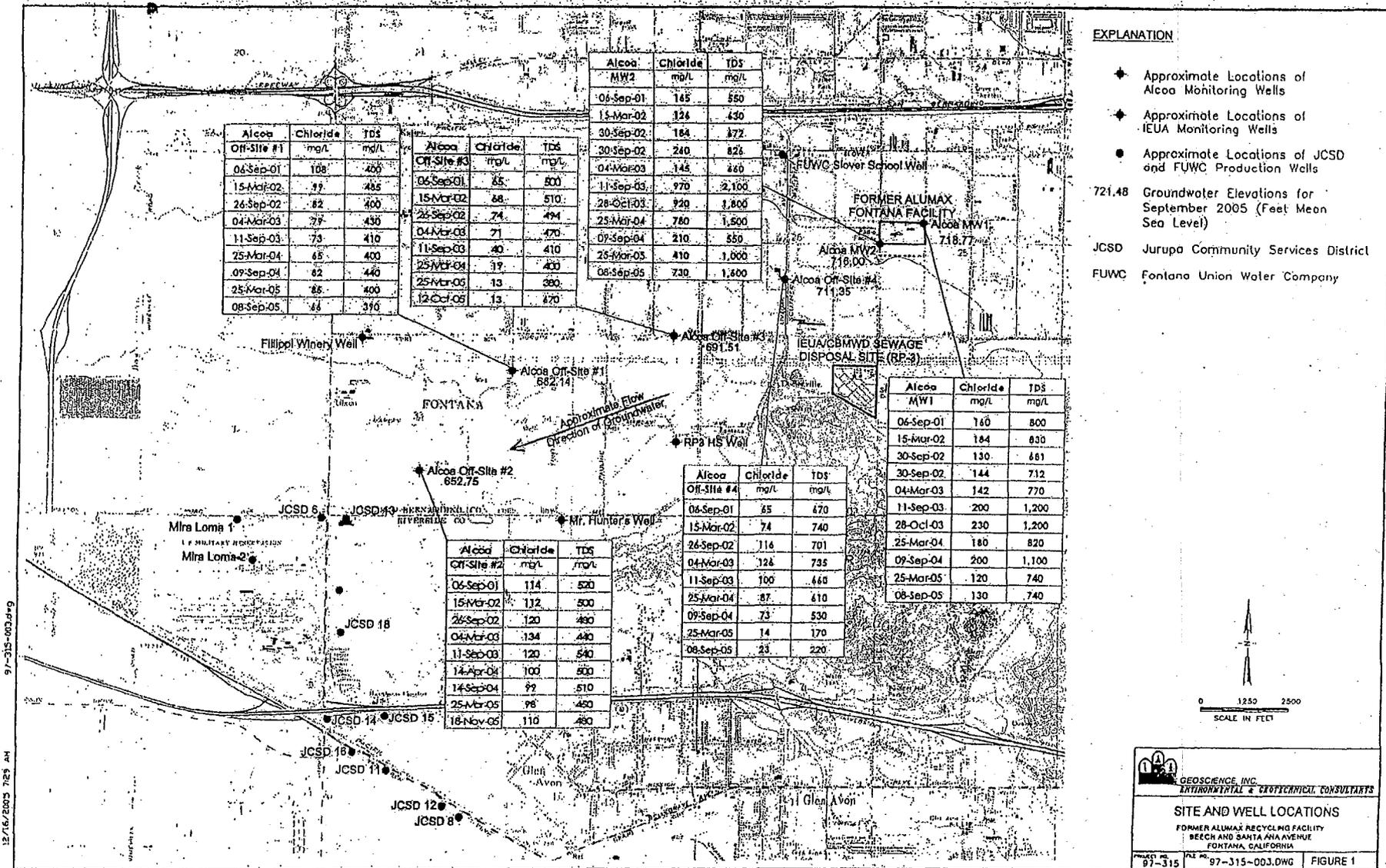
1. Submit a proposed closure and postclosure maintenance plan for the former waste pile storage and salt-affected areas as indicated on Attachment 2, by December 1, 2006, for approval by the Executive Officer of the Regional Board. This plan shall include measures to minimize infiltration of water, which causes mobilization of waste constituents remaining in the vadose zone beneath the site. At a minimum, the closure and postclosure maintenance plan shall include the following:
  - a. A description, including any construction drawings, of the site redevelopment plan;
  - b. Preparation of the former waste pile storage area for closure;
  - c. The design of the closure cover, including the permeability data of each component of the cover, and any drainage control structures to divert water away from the cap;

- d. A construction quality assurance/quality control plan for cover installation;
  - e. A proposed time schedule for site closure activities and final closure report submittal;
  - f. A discussion of any planned postclosure land use of the capped area;
  - g. A postclosure cover maintenance program consisting of cap inspection and maintenance, including repair of cracks or other damage, record keeping, and submittal of annual maintenance reports; and
  - h. A proposed deed restriction for the capped area to declare the responsibility of the property owner and its successor(s) to maintain the capped area and to notify the Regional Board of any proposed changes to the existing cap. A notarized copy of the deed restriction with any attachments for the capped area shall be submitted to the Regional Board within thirty days after it has been recorded with the County of San Bernardino.
2. Complete implementation of the approved site closure plan submitted pursuant to Item 1 no later than **December 31, 2007**.
  3. This order hereby rescinds Order No. 99-38.

If, in the opinion of the Executive Officer, this order is not complied with in a reasonable and timely manner, this matter will be referred to the Regional Board for the imposition of administrative civil liability or referral to the Attorney General for imposition of judicial liability, as provided by law.

  
Gerard J. Thibeault  
Executive Officer

June 8, 2006



97-315-003-003.DWG 12/16/2005 7:29 AM



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

ADDENDUM NO. 2

TO

CLEANUP AND ABATEMENT ORDER NO. 98-11  
SCHÜTTE & KOERTING INC.  
AND AMETEK, INC.

790 Greenfield Drive, El Cajon  
San Diego County

The California Regional Water Quality Control Board, San Diego Region (hereinafter RWQCB) finds that:

1. Ametek, Inc. and Ketema, Inc. are required by Cleanup and Abatement Order (CAO) No. 98-11 to cleanup waste and abate pollution of ground water associated with discharges of chlorinated solvents at 790 Greenfield Drive, El Cajon in San Diego County (the Site).
2. Effective October 1, 1998 Ketema, Inc. changed its name to Schutte & Koerting, Inc.
3. The following chlorinated solvents exist in ground water beneath the Site at concentrations above water quality objectives.

<u>Pollutant</u>	<u>Concentration</u>	<u>Maximum Contaminant Limit (MCL)</u>
Trichloroethylene (TCE)	21,000 ppb	5.0 ppb
1,1 Dichloroethylene (DCE)	23,000 ppb	6.0 ppb
1,1,1 Trichloroethane (TCA)	56,000 ppb	200 ppb

4. The continued presence of chlorinated solvents at concentrations as described in Finding 3 above are a source of ground water pollution. Allowing high concentrations of chlorinated solvents to remain in situ is likely to contribute to a prolonged discharge of waste in excess of water quality objectives, causing a prolonged condition of pollution.
5. The discharger has not taken interim actions, per Directive No. 5 of CAO 98-11, to abate the condition of ground water pollution on Site nor abated the threat of future conditions of ground water pollution.

Cleanup and Abatement Order No. 98-11

6. This amendment to an enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, §21000 et seq.) in accordance with §15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that the following amendments be made to CAO 98-11:

1. The title of Cleanup and Abatement Order No. 98-11 shall be Schutte and Koerting, Inc., and Ametek Inc. Schutte and Koerting, Inc and Ametek, Inc. shall be responsible for compliance with CAO No. 98-11 and any amendment thereto. Any reference to "discharger" shall be interpreted to be a reference to Schutte & Koerting, Inc. and Ametek, Inc.
2. The discharger shall remove chlorinated solvents (e.g. TCE, 1,1,1 TCA, 1,1 DCE) from ground water to the maximum extent practicable. The discharger shall submit a work plan to the SDRWQCB by May 19, 2000 describing the method(s) by which chlorinated solvent waste will be removed from ground water beneath the Site.

  
\_\_\_\_\_  
JOHN H. ROBERTUS  
Executive Officer

Date issued: April.21, 2000

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

ADDENDUM NO. 2 TO  
CLEANUP AND ABATEMENT ORDER NO 95-66  
AS AMENDED BY STATE BOARD RESOLUTION WQ 96-02

BOULEVARD INVESTORS, THE CITY OF NATIONAL CITY, THE COMMUNITY  
DEVELOPMENT COMMISSION OF THE CITY OF NATIONAL CITY, CV VENTURES  
LLC., RHODE ISLAND ACQUISITION No. 1 LLC., SD COMMERCIAL LLC. AND  
NATIONAL ENTERPRISES, INC.  
DUCK POND LANDFILL  
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. On May 5, 1995, Boulevard Investors, the City of National City, Community Development Commission of the City of National City, and the County of San Diego were determined to be "dischargers" responsible for cleanup and abatement of pollution and threatened pollution associated with discharges of solid waste at the Duck Pond Landfill in the City of National City. (Cleanup and Abatement Order (CAO) No. 95-66 of the Regional Board, as amended by Order No. WQ 96-02 of the State Water Resources Control Board).
2. On October 15, 1999, CV Ventures LLC, Rhode Island Acquisition No. 1 LLC, SD Commercial LLC and National Enterprises, Inc became the new owners of the property encompassing the Duck Pond Landfill and was identified as a discharger subject to CAO No. 95-66 (Addendum No. 1 to Order No. 95-66).
3. On March 10, 2000, the Court of Appeals, Fourth Appellate District, Division One, State of California, reversed the Superior Court decision, granting the County of San Diego's petition for a writ of mandamus to remove the County as a responsible party for the Duck Pond Landfill. The court ruled that the County is not liable for and cannot be held responsible for current releases of pollutants resulting from its pre-1981 conduct in operating the landfill.
4. This enforcement action is being taken for the protection of the environment and, as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Code of Regulations.

IT IS **HEREBY ORDERED**, That Cleanup and Abatement Order 95-66 shall be modified as follows:

1. Compliance with the directives of Cleanup and Abatement Order 95-66, as amended by Order No. WQ 96-02 of the State Water Resources Control Board, shall remain in effect and be applicable to CV Ventures LLC, Rhode Island Acquisition No. 1 LLC, SD Commercial LLC, National Enterprises Inc., Boulevard Investors, the City of National City, and the Community Development Commission of the City of National City.

Issued by:

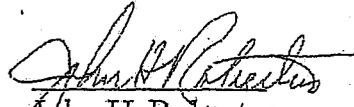
  
John H. Robertus  
Executive Officer  
July 20, 2000

EXHIBIT AA

\$350  
\$550

ORIGINAL

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5 Attorneys for Plaintiff  
McCRA Y DALE WAY PARTNERSHIP, L.P., a California  
6 limited partnership

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

MAR 23 2009

ALAN CARLSON, Clerk of the Court  
BY: R. VAVRA DEPUTY

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

9 McCRA Y DALE WAY PARTNERSHIP,  
L.P., a California limited partnership,

10 Plaintiff,

11 vs.

12 INTERNATIONAL TELEPHONE AND  
13 TELEGRAPH CORPORATION, a  
corporation; ITT JABSCO, a corporation;  
14 ITT CORPORATION, a corporation;  
ITT INDUSTRIES, INC., a corporation (aka  
15 ITT CORPORATION); ITT FLUID  
TECHNOLOGY CORPORATION, a  
16 corporation; ITT REMEDIATION  
MANAGEMENT, INC., a corporation; and  
17 DOES 1 through 50,

18 Defendants.

Case No.

00180106

- COMPLAINT FOR DAMAGES AND  
EQUITABLE RELIEF ARISING FROM  
CONTAMINATION OF SOIL AND  
GROUNDWATER AND PROPERTY  
CONDITIONS:
1. BREACH OF 1996 LEASE CONCERNING ENVIRONMENTAL CONDITIONS
  2. BREACH OF 1996 LEASE CONCERNING PROPERTY CONDITION
  3. BREACH OF 1996 LEASE INDEMNITY AND OTHER COVENANTS
  4. BREACH OF 1958 LEASE
  5. BREACH OF IMPLIED COVENANTS OF GOOD FAITH AND FAIR DEALING
  6. INTENTIONAL MISREPRESENTATION
  7. NEGLIGENT MISREPRESENTATION
  8. FRAUDULENT CONCEALMENT/PARTIAL SUPPRESSION OF FACTS
  9. NEGLIGENCE
  10. CONTINUING PRIVATE NUISANCE
  11. PERMANENT PRIVATE NUISANCE
  12. CONTINUING PUBLIC NUISANCE
  13. PERMANENT PUBLIC NUISANCE
  14. CONTINUING TRESPASS
  15. PERMANENT TRESPASS
  16. WASTE [C.C. P. § 732]
  17. RECOVERY OF DAMAGES [HEALTH & SAFETY CODE § 25359.7(b)]
  18. RECOVERY OF CLEANUP COSTS [HEALTH & SAFETY CODE § 25300 et seq.]
  19. INDEMNITY AND CONTRIBUTION [WATER CODE § 13000 et seq.]
  20. UNFAIR COMPETITION [BUS. & PROF. CODE § 17200] et seq.]
  21. NEGLIGENCE PER SE
  22. DECLARATORY RELIEF

23 THIS CASE IS SUBJECT TO  
MANDATORY ELECTRONIC FILING  
24 PURSUANT TO RULE 308 OF THE LOCAL RULES  
OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Date Action Filed:  
Trial Date:

JUDGE RONALD L. BAUER  
DEPT. CX103

Rutan & Tucker, LLP  
attorneys at law

093025667-0001  
072816.07 #03/20/09

COMPLAINT

1 Plaintiff McCray Dale Way Partnership, L.P., a family-owned limited partnership alleges  
2 the following:

3 **I. SUMMARY**

4 1. This action arises out of the unlawful conduct of a multi-billion dollar industrial  
5 conglomerate commonly known as "ITT," which over the course of 42 years used the subject  
6 improved real property located at 1485 Dale Way in Costa Mesa, California (the "Property") for  
7 industrial manufacturing operations.

8 2. On information and belief, ITT breached its contractual and legal obligations to  
9 Plaintiff and the public by, among other things, failing to implement appropriate measures to  
10 safeguard against the release and spread of hazardous substances at the Property; contaminating  
11 the Property with solvents and other hazardous substances; not taking prompt, appropriate or  
12 adequate steps to investigate and remediate the contamination, thus allowing it to spread into the  
13 groundwater; concealing or partially suppressing the contamination from McCray and  
14 governmental agencies; planning environmental investigations of the contamination in a manner  
15 that left data gaps and avoided a thorough investigation of the contamination; forcing McCray to  
16 hire its own environmental consultant and lawyer to investigate ITT's conduct, which revealed  
17 serious problems in ITT's approach to the investigation; failing to promptly and properly  
18 reimburse McCray for expenses McCray was forced to incur in hiring experts, which expenses are  
19 to be paid by ITT under the parties' lease; vacating the Property without having undertaken or  
20 completed appropriate investigation and remediation of the environmental contamination; leaving  
21 the Property in a dilapidated and unsafe condition; and improperly delaying ITT's investigation  
22 and remediation of the environmental contamination, thereby causing McCray to lose numerous  
23 opportunities to sell or redevelop the Property for high density residential use.

24 3. Instead of redeveloping and selling the Property for high density residential use, as  
25 planned, McCray must now remediate, refurbish and repair the Property.

26 4. ITT's conduct forced McCray to file this lawsuit to obtain all available remedies,  
27 including recovery of (a) all damages, costs, losses and/or expenses to investigate, characterize,  
28 monitor, remove, remediate, and/or abate the environmental condition of the Property and to

1 restore improvements at the Property; (b) any and all damages and liability McCray is forced to  
2 bear as a result of off-site contamination associated with the Property; (c) all damages for lost rent  
3 because of the Property's condition; (d) unpaid late fees, CPI increases and other amounts due  
4 pursuant to ITT's lease; (e) all damages for the lost opportunity to redevelop and sell the Property  
5 for high density residential use; (f) the diminution in value of the Property; and (g) interest, costs  
6 of suit, reasonable attorneys' fees, and punitive damages. McCray's damages may exceed \$10  
7 million.

8 **II. THE PARTIES**

9       5. McCray Dale Way Partnership, L.P. is a California limited partnership organized  
10 and existing pursuant to the laws of California and qualified to perform business therein. McCray  
11 is the owner of the improved real property located at 1485 Dale Way, Costa Mesa, California (the  
12 "Property"). McCray is the successor to the prior Property owners, including Trustees Alan A.  
13 McCray, John W. McCray and Richard D. Esbenshade, and the successor to McCray Investment  
14 Company (formerly Jabsco Pump Company), with respect to all rights and remedies they hold  
15 concerning the Property, and claims arising from the facts alleged in this Complaint. McCray and  
16 these prior Property owners are collectively referred to in this complaint as "McCray."

17       6. Beginning on or about April 1, 1958, Jabsco Pump leased the Property.

18       7. Sometime between November 1965 and March 1966, defendant International  
19 Telephone and Telegraph Corporation ("ITT Corp.") acquired all property, assets, liabilities and  
20 business of Jabsco Pump Company and transferred them to a newly formed corporation named  
21 ITT Jabsco, which was wholly owned by ITT Corp.

22       8. Pursuant to ITT Corp.'s acquisition of Jabsco Pump, ITT Jabsco became the lessee  
23 of the Property by assignment, and ITT Jabsco agreed to pay, perform and discharge all of the  
24 obligations and liabilities of Jabsco Pump, except certain liabilities and expenses not relevant here.

25       9. On information and belief, at all relevant times, defendant ITT Jabsco was a  
26 corporation doing business in California.

27       10. On information and belief, at all relevant times, defendant ITT Corp. was a  
28 corporation doing business in California.

1 H. On information and belief, at all relevant times, defendant ITT Industries, Inc. ("ITT  
2 Industries") was a corporation doing business in California. ITT Industries changed its name to  
3 ITT Corporation in or about 1983.

4 12. On information and belief, at all relevant times, defendant ITT Corporation was a  
5 corporation doing business in California.

6 13. On information and belief, in or around 1995, defendant ITT Corporation was  
7 divided into three separate companies known as ITT Corporation, ITT Hartford and ITT  
8 Industries, Inc.

9 14. On information and belief, sometime between 1995 and 2005, defendant ITT  
10 Corporation was acquired by another company which McCray identifies here as one of the Doe  
11 defendants.

12 15. On information and belief, in 2006, ITT Industries, Inc. changed its name back to  
13 ITT Corporation and was a corporation doing business in California.

14 16. On information and belief, at all relevant times, defendant ITT Fluid Technology  
15 Corporation was a corporation doing business in California.

16 17. On information and belief, at all relevant times, defendant ITT Remediation  
17 Management, Inc. was a corporation doing business in California.

18 18. McCray does not know the true names or capacities of the defendants sued in this  
19 Complaint as Does 1 through 50, inclusive, whether individual, corporate or otherwise, and  
20 reserves the right to amend this Complaint to allege their true names, capacities and  
21 responsibilities for the conduct alleged in this Complaint. Defendants ITT Corp, ITT Jabsco, ITT  
22 Corporation, ITT Industries, Inc., ITT Fluid Technology Corporation, ITT Remediation  
23 Management, Inc., and Does 1 through 50 inclusive are collectively referred to as "ITT" or  
24 "Defendants"

25 19. On information and belief, at all relevant times, Defendants, and each of them, were  
26 acting as the agents, servants, employees and/or representatives of one or more of the other  
27 Defendants and were acting within the full course and scope of said agency, employment, service  
28 or representation with the full knowledge, consent and authorization, either express or implied, of

1 the principal, employer or master, and are liable for the conduct, liabilities, damages and relief  
2 alleged in this Complaint, including liability for punitive damages.

3 20. On information and belief, at all times relevant times, Defendants, and each of them,  
4 and their respective directors, officers, managing agents, employees and representatives,  
5 committed, controlled, authorized, directed, ratified, acquiesced in, consented to and approved the  
6 conduct of the other Defendants, or those persons acting on behalf of the Defendants, or failed to  
7 adequately investigate or supervise or control such conduct, and therefore such conduct and its  
8 consequences are imputable to each of the Defendants.

9 21. When a reference in this Complaint is made to an individual's conduct on behalf of  
10 one or more of the Defendants, it means that the defendants' officers, directors, agents, employees  
11 or representatives committed or authorized such conduct or failed to adequately supervise or  
12 properly control or direct the individual, and that the individual was engaged in the management,  
13 direction, operation or control of the affairs of one or more of the Defendants, and did so within  
14 the scope of their employment, agency and/or authority.

15 22. On information and belief, the relationships between and among the Defendants  
16 identified above is currently unclear. At all relevant times in connection with the conduct alleged  
17 in this Complaint, one or more of the Defendants (a) were the primary actor; or (b) were acting as  
18 an aider and abettor, joint venturer, instrumentality, alter-ego, co-conspirator, principal,  
19 predecessor, successor-in-interest, surviving corporation, controller, licenser, and/or indemnitor of  
20 one or more of the other Defendants; and (c) are responsible for wrongful conduct alleged in this  
21 Complaint. As a result, the Defendants, and each of them, are equally subject to all liability  
22 arising out of each and every act or omission alleged in this Complaint.

23 **III. THE CONTAMINATION**

24 23. In conducting industrial operations on the Property, ITT utilized, stored and released  
25 a variety of solvents, degreasers and other hazardous substances, including metals. Several of  
26 these hazardous substances contained volatile organic compounds ("VOCs"), such as  
27 trichloroethylene, tetrachloroethylene, and 1,1,1 trichloroethane. (The solvents, degreasers, VOCs  
28 and other hazardous materials stored, used, and or released at the Property are collectively referred

1 to in this Complaint as "hazardous substances.") The State of California has determined that  
2 VOCs are "hazardous wastes" within the California Superfund Act due in part to their toxicity,  
3 water solubility and ability to quickly spread through soil and groundwater plumes unless properly  
4 contained, controlled and remediated.

5 **IV. AGREEMENTS BETWEEN THE PARTIES REGARDING THE PROPERTY**

6 **The 1958 Lease**

7 24. On or about April 1, 1958, Jabsco Pump leased the Property pursuant to a written  
8 lease with a term of ten years (the "1958 Lease"). A copy of the 1958 Lease is attached hereto as  
9 Exhibit "1" and incorporated by reference into this Complaint.

10 25. On or about October 5, 1965, the 1958 Lease was amended to extend the term until  
11 December 31, 1990.

12 26. In or around February 1966, Jabsco Pump assigned all of its rights and duties under  
13 the 1958 Lease and 1965 Amendment to ITT Jabsco. A copy of the February 1966 Assignment  
14 (the "1966 Assignment") is attached hereto as Exhibit "2" and incorporated by reference into this  
15 Complaint. ITT Jabsco assumed all responsibilities pursuant to the 1958 Lease as amended.

16 27. On or about October 17, 1972, the 1958 Lease, as amended by the 1965 Amendment  
17 and assigned by the 1966 Assignment, was again amended to extend the term of the 1958 Lease to  
18 October 1996.

19 28. On or about October 15, 1975, the 1958 Lease, as amended and assigned, was  
20 further amended to change the legal description of the Property.

21 29. On or about January 1, 1995, ITT Corporation, parent company of ITT Jabsco,  
22 assigned all of its rights, title and interest under the 1958 Lease and amendments thereto to ITT  
23 Fluid Technology Corporation, a wholly owned subsidiary.

24 **The 1996 Lease**

25 30. The 1958 Lease, as amended and assigned, was due to expire in 1996. In 1995,  
26 McCray's predecessors, J. McCray and R. Esbenschade negotiated with ITT's on-site general  
27 manager, Larry Dart, and ITT's real estate broker, Gordon Henry of Cushman and Wakefield,  
28 regarding a new lease of the Property.

1 31. On or about July 18, 1996, McCray's predecessors, J. McCray and R. Esbenshade,  
2 in reliance on representations by ITT alleged below, including representations that an investigation  
3 had given the Property a clean bill of health, and without knowing of concealed facts concerning  
4 contamination of the Property that were only discovered much later, entered into a new written  
5 lease with ITT Industries concerning the Property (the "1996 Lease"). A true and correct copy of  
6 the 1996 Lease is attached hereto as Exhibit "3" and incorporated by reference into this  
7 Complaint. The 1996 Lease had a term of ten years commencing August 1, 1996 and ending July  
8 31, 2006.

9 32. The 1996 Lease contains numerous covenants concerning the environmental and  
10 physical condition of the Property, including without limitation:

11 a. Prohibiting the Lessee from using the Property in a manner that creates  
12 waste or nuisance, or disturbs or damages nearby properties. (Exhibit "3," Section 5.1.)

13 b. Allowing the Lessee to use hazardous substances at the Property only so  
14 long as such use did not expose the Lessor to any liability therefore or expose neighboring  
15 properties to hazardous substances. (Exhibit "3," Section 5.2(a).)

16 c. Requiring the Lessee to immediately inform the Lessor of any release of  
17 hazardous substances at the Property and to immediately provide any documents concerning the  
18 presence of hazardous substances at the Property to the Lessor. (Exhibit "3," Section 5.2(b).)

19 d. Requiring the Lessee to indemnify, protect and hold harmless the Lessor  
20 from any and all loss of rents, and/or damages, liabilities, judgments, costs, claims, liens,  
21 expenses, penalties, payments, permits, and attorneys' and consultants' fees arising out of the use  
22 of hazardous substances at the Property, including the effects of contamination and the cost of  
23 investigation, removal, remediation, restoration and/or abatement thereof. (Exhibit "3,"  
24 Sections 5.2(c) & (d).) Under the express terms of the 1996 Lease, this indemnification  
25 requirement "extend[ed] to the previous Lease terms, inclusive of the entire time Lessee has  
26 occupied the Property."

27 e. Requiring the Lessee to promptly undertake all reasonable remedial and  
28 investigatory actions at its sole cost and expense for the cleanup of any contamination at the

1 Property caused or contributed to by Lessee. (Exhibit "3," Section 6.1.)

2 f. Requiring the Lessee to keep the Property, all equipment and facilities  
3 serving the Property, and all improvements to the Property in "good order, condition and repair" at  
4 Lessee's sole cost and expense. (Exhibit "3," Section 6.1.)

5 g. Requiring the Lessee to surrender the Property by the end of the last day of  
6 the 1996 Lease term "with all of the improvements, parts and surfaces free of debris and in good  
7 operating order, condition and state of repair." (Exhibit "3," Section 6.4(c).)

8 h. Allowing recovery of reasonable attorneys' fees, costs and expenses by the  
9 prevailing party in any lawsuit to enforce the 1996 Lease and allowing recovery of all attorneys'  
10 fees, costs and expenses incurred in preparing a notice of default regardless of any associated  
11 litigation. (Exhibit "3," Section 29.)

12 33. The 1996 Lease does not permit Defendants to leave any contamination in the  
13 environment.

14 Extension of the 1996 Lease Term

15 34. Prior to the expiration of the term of the 1996 Lease, McCray informed ITT of  
16 McCray's intention to redevelop and sell the Property for high density residential use and that  
17 McCray had received indications of interest from several developer-purchasers. ITT repeatedly  
18 acknowledged McCray's intent to redevelop the Property after the expiration of the 1996 Lease  
19 term.

20 35. McCray expected that ITT would comply with its lease obligations and return the  
21 Property to McCray at the end of the 1996 Lease term in a non-contaminated condition, such that  
22 it could be redeveloped for high density residential use.

23 36. On or about September 21, 2004, J. McCray received an email from ITT's in-house  
24 environmental legal counsel, Fern Daves ("F. Daves"), representing that ITT takes its  
25 environmental responsibilities seriously, that ITT would enter into an oversight agreement with  
26 the Santa Ana Regional Water Quality Control Board ("Regional Board") and that ITT would  
27 obtain a "No Further Action" letter from the Regional Board. On information and belief, McCray  
28 alleges that at the time ITT made these representations, ITT's representations were false in that

1 ITT secretly intended to leave contamination in the soil and groundwater.

2 37. In or around October 2005, Teresa Olmsted ("T. Olmstead"), Vice President of  
3 Defendant ITT Remediation, represented to Annie McCray and John McCray that ITT intended to  
4 conduct an off-site groundwater investigation of VOCs related to ITT's operations at the Property  
5 and that ITT had engaged consultants and contacted off-site Property owners in order to begin the  
6 off-site groundwater investigation.

7 38. However, as the end of the 1996 Lease term approached, ITT had not completed  
8 investigation or remediation of contamination at the Property, had not completed an off-site  
9 groundwater investigation and had not obtained a No Further Action letter from the Regional  
10 Board. ITT thus informed McCray that it needed possession of the Property after July 2006 in  
11 order to perform on its promises and representations.

12 39. On or about June 28, 2006, in reliance on ITT's representations and promises,  
13 including those by R. Daves, T. Olmstead, and those in sections 5.1, 5.2, 6.1, and 6.4 of the 1996  
14 Lease, and ITT's representation that it needed possession of the Property to perform its contractual  
15 and legal environmental obligations and its representations, and while not being aware of ITT's  
16 plan to leave contamination at the Property and in the environment, McCray agreed to extend the  
17 term of the 1996 Lease to January 31, 2008 by execution of a First Amendment to Lease with ITT  
18 Industries, Inc. A copy of the June 28, 2006 Amendment (the "2006 Amendment") is attached  
19 hereto as Exhibit "4" and incorporated into this Complaint by reference.

#### 20 Tolling Agreements

21 40. The existence of contamination concerned McCray, but ITT's repeated  
22 representations that it would comply with its lease obligations, remediate the contamination and  
23 obtain a "no further action letter," induced McCray to enter into a tolling agreement.

24 41. On or about November 18, 2004, McCray's predecessors, J. McCray and R.  
25 Esbenshade, as trustees, and ITT Industries, Inc., entered into a Tolling Agreement to toll the  
26 statutes of limitation applicable to all claims regarding the Property that existed and were not time-  
27 barred at the time of the agreement until December 31, 2007. On or about December 14, 2007,  
28 McCray and ITT Industries, Inc. entered into a First Amendment to Tolling Agreement to extend

1 its term to December 31, 2010.

2 42. On or about August 13, 2008, because of ITT's failure to remediate the  
3 contamination and obtain a "no further action letter," McCray notified Defendants by letter that  
4 McCray was terminating the Tolling Agreement.

5 **V. DEFENDANTS' MISUSE OF THE PROPERTY, CONCEALMENT OF**  
6 **CONTAMINATION, AND KNOWING AVOIDANCE OF A PROPER**  
7 **ENVIRONMENTAL INVESTIGATION AND REMEDIATION**

8 43. As a result of the 1966 transaction, ITT possessed and controlled the Property and  
9 used it for manufacturing or other purposes for more than 40 years.

10 44. On information and belief, ITT used the Property for metal drilling and machining,  
11 soldering, brazing, welding, abrasive blasting, grinding, polishing, buffing, degreasing and solvent  
12 cleaning, adhesive bonding, spray painting, rubber formulation and vulcanizing, assembly, product  
13 testing and packaging.

14 45. On information and belief, ITT used hazardous substances at the Property, including  
15 without limitation halogenated solvent degreasers, including 1,1,1 TCA, oxygenated solvents,  
16 specifically methyl ethyl ketone (MEK) and possibly other non-halogenated solvents, water-  
17 soluble machine coolant, Stoddard solvent and possibly other aromatic solvents, paints, enamels,  
18 catalysts, reducers and thinners, and adhesives; and hydraulic, lube, and compressor oils and  
19 greases. The adhesives used by ITT contained organic compounds including 1,1,1-TCA,  
20 perchloroethylene ("PCE"), toluene and carbon tetrachloride.

21 46. On information and belief, ITT's operations generated a variety of hazardous  
22 wastes, including spent degreasing solvents, spent TCA (with xylenes, toluene and MEK), spent  
23 water soluble coolant, waste oil, waste hydraulic oil, paint and thinner wastes, paint gun cleaning  
24 wastes, paint booth filter wastes, absorbent oil, rubber waste containing lead, and bead blasting  
25 waste with metals.

26 47. On information and belief, in approximately 1983, ITT began filling out hazardous  
27 waste manifests for chemical wastes, including chlorinated solvents, generated at the Property.

28 48. On information and belief, in 1985, ITT obtained a permit from the City of Costa

1 Mesa to install above ground storage tanks at the Property, including one 275 gallon tank  
2 containing chlorinated solvents, including 1,1,1-TCA.

3 49. On information and belief, in 1986, ITT spilled chlorinated solvents of unknown  
4 types and unknown amounts onto unprotected dirt at the Property in an area 10' by 20'.

5 50. On information and belief, in response to the solvent spill, ITT removed several  
6 inches of dirt from the 10' by 20' area. However, there is no indication the spill was reported to  
7 any governmental agency, or that an environmental consultant was retained to assist in responding  
8 to the solvent spill, or that any testing occurred to confirm the true extent and impact of the  
9 solvents on the Property, or that all solvents had been removed from the soil at the Property in  
10 1986.

11 51. McCray was unaware of the 1986 solvent spill at the time it occurred. The solvent  
12 spill was concealed by ITT from McCray until 2003. On information and belief, as a result of  
13 ITT's concealment of the spill in 1986, McCray was prevented from insisting that ITT fully  
14 investigate and remediate the spill in 1986 to prevent solvents from spreading in the soil to the  
15 groundwater.

16 52. On information and belief, in 1986, ITT installed a 275 gallon above ground storage  
17 tank to hold 1,1,1-TCA in a secondary containment area inside the hazardous materials storage  
18 previously constructed by ITT at the Property.

19 53. On information and belief, between 1990 and 1993, ITT initiated a limited  
20 investigation into the condition of the soil at the Property by consultants Harding Lawson  
21 Associates ("HLA") and McLaren Hart ("McLaren Hart"). ITT hired HLA to conduct a  
22 quantitative environmental survey of ITT's operations and activities at the Property.

23 54. On information and belief, on or about November 14, 1990, HLA issued its  
24 Qualitative Environmental Survey, Site Questionnaire ("QES Questionnaire"). In part, the QES  
25 Questionnaire confirms the following concerning ITT's use of the Property:

- 26 a. As of 1985, ITT stored and used 1,1,1-TCA at the Property.  
27 b. In 1986 solvents and "unknown materials" were released to dirt in a back  
28 yard area approximately 10' by 20', approximately 4" of soil was removed, and no formal report

1 was prepared. The QES Questionnaire did not indicate whether a qualified environmental  
2 consultant was retained, or whether the details of the release were reported to the applicable  
3 governmental agencies, or whether appropriate soil and/or groundwater sampling was performed  
4 to determine whether the solvents had in fact been removed and no longer posed a threat to human  
5 health and safety and the environment or to the Property.

6 c. ITT generated and disposed of petroleum distillates mixed with chlorinated  
7 hydrocarbons, Waste Oil, 1,1,1-TCA waste (including TCA with its constituent parts including  
8 79% Trichlor, 9% Rylene, 5% MEK and 2% Toluene), UN-1993 Oil Petroleum Distillate, UN-  
9 2831 1,1,1-TCA, paint thinner, solvent and oil.

10 d. ITT used two degreasers and a spray booth, through which several gallons  
11 of solvent were lost per day.

12 e. ITT's operations used floor drains, and approximately 75 gallons of water  
13 used to flush test laboratory equipment was discharged to the sewer every other day.

14 55. McCray was not notified of the QES Questionnaire until 13 years later in  
15 approximately 2003.

16 56. On information and belief, in April 1992, HLA conducted a site visit and identified  
17 six areas of potential concern (APCs). Although HLA previously observed areas at which one or  
18 more degreasers were used, areas that included floor drains, and drain connections between these  
19 areas, HLA did not identify any of these areas as areas of potential concern. HLA also did not  
20 identify the 10' by 20' area involved in the 1968 solvent spill.

21 57. On information and belief, on April 15, 1992, HLA, by Matthew Gordon, Senior  
22 Hydrogeologist, issued its Report for ITT World Headquarters, as Privileged and Confidential.

23 58. On information and belief, in June 1992, the environmental consulting firm  
24 McLaren Hart implemented the HLA sampling plan, including a soil vapor survey and soil  
25 sampling, all outside the building, and the determination of groundwater flow. The purported  
26 objective of the investigation was to identify the presence or absence of targeted contaminants at  
27 the Property. No data was collected from locations inside the building where solvents were used  
28 or where the degreasers and floor drains were located.

1           59. On information and belief, McLaren Hart determined the ground water flow  
2 direction and hydraulic gradient beneath the site, but did not take water samples or determine  
3 whether hazardous substances released by ITT at the Property had impacted groundwater.

4           60. On information and belief, in January 1993, McLaren Hart issued a Quantitative  
5 Environmental Survey Report. McLaren Hart confirmed ITT's use of hazardous materials,  
6 including, 1,1,1-TCA, that 1,1,1-TCA was stored in the area on asphalt or in an unpaved area, that  
7 at the time of its report the virgin solvent was stored in a 275 gallon above-ground tank in the  
8 hazardous waste storage area, that approximately 1000 gallons per year of TCA was used for  
9 degreasing, and that adhesives used in production operations contain the solvents PCE, 1,1,1-  
10 TCA, toluene, and carbon tetrachloride.

11           61. On information and belief, in its January 1993 Report, McLaren Hart concluded that  
12 concentrations of contaminants in the limited locations it sampled at the time were below  
13 background or below state guidance levels for contaminants in soil. McLaren Hart concluded that  
14 none of the six APCs were adversely affected by site operations.

15           62. On information and belief, McLaren Hart's conclusions were of very limited value  
16 in assessing the overall environmental condition of the Property. McLaren Hart did not conduct  
17 an extensive examination of the soil at the Property, did not conduct an investigation of soils  
18 within the footprint of the building, and did not conduct any investigation of the groundwater at  
19 the Property.

20           63. Apparently, in reliance on the report by its consultant McLaren Hart, ITT took no  
21 further steps to investigate the environmental condition of, or potential for contamination at, the  
22 Property until approximately 2002

23           64. By 1993, and in anticipation of the end of the 1958 Lease in 1996, McCray was  
24 evaluating its use of the Property, including conversion from an industrial use to high density  
25 residential apartments, construction of multi-tenant industrial units, selling the Property, and re-  
26 letting the Property for industrial use. At the time, ITT had not revealed to McCray any of the  
27 prior environmental events or investigations. The 1990 QES Questionnaire, the 1992 Report for  
28 ITT World Headquarters, and 1993 McLaren Hart report were not disclosed to McCray in 1993,