

1 **COX, WOOTTON, GRIFFIN,**
2 **HANSEN & POULOS, LLP**
3 Rupert P. Hansen (SBN 082302)
4 Christopher S. Kieliger (SBN 209121)
5 190 The Embarcadero
6 San Francisco, California 94105
7 Telephone No.: (415) 438-4600
8 Facsimile No.: (415) 438-4601
9 rhansen@cwghp.com
10 ckieliger@cwghp.com

11 Attorneys for Petitioners
12 BOB DAVIS, CHERYL DAVIS

13 **STATE WATER RESOURCES CONTROL BOARD**

14 In re:) No.: _____
15)
16 ORDER TO SUBMIT INFORMATION) **PETITION FOR REVIEW (Request**
17 PURSUANT TO CALIFORNIA WATER) **to be Held in Abeyance)**
18 CODE SECTION 13267, ANTLERS)
19 SHELL/SUBWAY, 20884 ANTLERS)
20 ROAD, LAKEHEAD, SHASTA)
21 COUNTY, CASE NO. 450336,)
22)
23)
24)
25)
26)
27)
28)

19 In accordance with Water Code Section 13320(a) and Title 23, California Code of
20 Regulations (“CCR”) §§ 2050-2068, Petitioners Bob Davis and Cheryl Davis (“Davis”),
21 individually on their own respective behalf and collectively, respectfully submit this
22 Petition for Review of Order to Submit Information Pursuant to California Water Code
23 Section 13267, Antlers Shell/Subway, 20884 Antlers Road, Lakehead, Shasta County
24 (“Order”), attached hereto as **Attachment 1**, issued by certified mail on April 27, 2010, by
25 the California Regional Water Quality Control Board, Central Valley Region (“Regional
26 Board”). Pursuant to 23 CCR § 2050.5(d), Davis requests that this Petition for Review be
27 held in abeyance temporarily so that Davis can seek to resolve their issues with the Order
28 **PETITION FOR REVIEW (REQUEST TO BE HELD IN ABEYANCE)**

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS, LLP

190 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4600
FAX 415-438-4601

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1 through discussions with or proceedings before the Regional Board. This Petition is related
2 to the Petition for Review Order filed with the State Water Quality Control Board filed by
3 TBS Petroleum, LLC ("TBS Petition"). Petitioners Davis respectfully request that this
4 Petition for Review be consolidated with the TBS Petition for all purposes before the State
5 Water Resources Control Board, and Petitioners Davis also respectfully request the right to
6 be heard in opposition to the TBS Petition if and when the same is activated from abeyance.

7
8 Each of the items of information required by 23 CCR §2050(a) is set forth below:

9 **1. Name and Address of Petitioners**

10 Bob Davis
11 Cheryl Davis
12 20291 Lakeview Drive
13 Redding, CA 96002
14 Telephone: (530) 238-2758

15 **2. Specific Action to be Reviewed**

16 Issuance of Order to Petitioner Bob Davis. Issuance of Order to Petitioner Cheryl
17 Davis.

18 **3. Date of Regional Board Action**

19 The Regional Board issued the Order via certified mail on April 27, 2010.

20 **4. Statement of Reasons**

21 The Regional Board improperly designated Cheryl Davis as a co-primary
22 responsible party on the Order, when she should not have been named on the Order at all.
23 Cheryl Davis has never held a legally cognizable ownership interest in the gas station site,
24 located at 20884 Antlers Road, Lakehead, Shasta County ("Property"), to which the Order
25 is directed. Nor did Cheryl Davis operate the gas station or discharge any contaminants
26 there. The fact that Cheryl Davis' husband, Bob Davis, acquired the Property in 1990 while
27 a he was a single man, and the fact that Bob Davis individually owned and operated the gas
28 station on the Property after he and Cheryl Davis were married, provides no legal basis
whatsoever for Cheryl Davis to be named on the Order. Cheryl Davis should be dismissed

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS, LLP

150 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4500
FAX 415-438-4501

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PETITION FOR REVIEW (REQUEST TO BE HELD IN ABEYANCE)

1 from the Order entirely.

2 Additionally, the Regional Board also improperly designated Bob Davis as a co-
3 primary responsible party with TBS Petroleum, LLC (“TBS”). The primary contaminant of
4 concern in the Order is Methyl-tert Butyl Ether (“MTBE”) present in groundwater. TBS is
5 the current owner of the Property, and after it acquired the Property TBS’ negligence and
6 inaction was the *sole operative cause* of the discharge to and presence of detectable MTBE
7 in groundwater. Additionally, for many years prior to TBS’ purchase of the Property, TBS
8 was in the business of distributing gasoline with MTBE and delivered substantial amounts
9 of that product to underground storage tanks (“USTs”) at the Property, even before
10 Petitioner Bob Davis owned the Property. Evidence will also show that TBS made those
11 deliveries of gasoline containing MTBE without spill control or overflow preventative
12 equipment or measures.

13 Moreover, TBS acquired the Property from Petitioner Davis in 2005 pursuant to a
14 contract of sale by which TBS bought the Property “As Is” (“Contract of Sale”). It was
15 judicially determined at the trial court level in TBS Petroleum, LLC v. Bob Davis, Cheryl
16 Davis, and DOES 1-20, inclusive, Shasta County Superior County Superior Court Case No.
17 165285 (the “Action”), that under the Contract of Sale TBS could not sue Bob Davis or
18 Cheryl Davis for TBS’ costs of investigating, characterizing or remediating the
19 contamination on and under the Property, including MTBE. (See Court Order, in
20 **Attachment 2.**) TBS has appealed this Order in TBS Petroleum, LLC v. Bob Davis, et al.,
21 Court of Appeal of the State of California, Third Appellate District, Case No. C062818
22 (“Appeal”). That Appeal is pending, and any Regional Board Order should not wholly
23 disregard the parties’ allocation of environmental responsibility, as interpreted by the
24 Courts, regarding the issue of who should be financially primarily responsible for
25 addressing contamination at a site.

26 Lastly, the Order fails to name as responsible parties Shell Oil Company (“Shell”)
27 and Olan F. Bailey and Beverly A. Bailey (“Baileys”). Shell built the gas station on the

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COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS, LLP

150 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4600
FAX 415-438-4601

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1 Property in 1972, and operated the gas station on the Property until 1983 while MTBE was
2 being used in gasoline in California. Shell also manufactured gasoline with MTBE and sold
3 it to subsequent owners of the Property for sale at the gas station on the Property. The
4 Baileys owned and operated the Property and gas station from 1983 to 1990, while MTBE
5 was being used in gasoline in California. (*See Attachments 3 & 4*).

6 **Manner in Which Petitioners are Aggrieved**

7 *See* paragraph 4 above. Petitioner Cheryl Davis is aggrieved because the Order
8 imposes obligations on her even though she has never held any legally cognizable title to
9 the Property to which the Order is directed, nor has she ever operated the gas station which
10 is alleged to be the source of the MTBE contamination in issue.

11 Petitioners Davis are also aggrieved because the Order imposes obligations on them
12 as a co-primary responsible party with TBS, even though it was TBS' negligence and
13 inaction that was the *sole operative cause of the discharge to and presence of detectible*
14 *MTBE in groundwater*.

15 Petitioners Davis are also aggrieved because the Order imposes greater obligations
16 on them without *all* responsible parties being named on the Order

17 Petitioners reserve the right to supplement this Petition to provide a more detailed
18 statement of the manner in which they are individually and/or collectively aggrieved at the
19 appropriate time.

20 **5. Specific Action Requested**

21 Petitioner Cheryl Davis requests that the State Board remove her entirely from the
22 Order as a responsible party. In the lesser alternative, Petitioner Cheryl Davis requests that
23 she be re-designated as a secondary responsible party with respect to the requirements
24 flowing from the Order, with respect to the MTBE contamination at, on, under or migrating
25 from the Property, or direct the Regional Board to do the same.

26 Petitioner Bob Davis requests that he be re-designated as a secondary responsible
27 party with respect to the requirements flowing from the Order, with respect to the MTBE

1 ///

2 contamination at, on, under or migrating from the Property, or direct the Regional Board to
3 do the same.

4 Petitioners Davis also request that those responsible parties who are not named on
5 the Order be named on the Order. Petitioners Davis reserve the right to amend or
6 supplement the relief requested at the appropriate time.

7 **6. Statement of Points and Authorities**

8 Petitioners have requested that their Petition be held in abeyance and reserve the
9 right to supplement their Petition with a detailed statement of points and authorities at the
10 appropriate time.

11 **7. Regional Board Notification**

12 A copy of this Petition has been sent to the Regional Board and to TBS.

13 **8. Statement Regarding Substantive Issues or Objections**

14 The Order was issued without notice or hearing by the Regional Board. Petitioners
15 Davis had provided to the Regional Board the analysis of its consultant, SHN Consulting,
16 Inc., regarding TBS' responsibility for the migration of MTBE to the groundwater beneath
17 the Property (*see Attachments 5 & 6* dated April 14, 2009 and November 17, 2009,
18 respectively), as well as the undersigned counsel's legal analysis of why TBS should be
19 named the primary responsible party and regarding other related matters (*see Attachment*
20 *7*, dated May 29, 2009).

21 The Order improperly names Petitioner Cheryl Davis as a responsible party, when
22 she has never had a cognizable legal ownership interest in the Property, nor did she ever
23 own or operate the gas station at the Property. The Order also improperly designates
24 Petitioners Davis as a co-primary responsible party with TBS. The Order fails to name or
25 address all responsible or potentially responsible parties. The Memorandum prepared by
26 Regional Board staff appended to the Order and intended to provide a basis for co-primary
27 responsible party status to Petitioners Davis and TBS contains speculation and supposition

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COX, WOOLTON,
GRIFFIN, HANSEN
& POULOS, LLP

199 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4600
FAX 415-438-4601

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1 forcertain conclusions, as well as various statements that are not supported by or are
2 inconsistent with historical documents or evidence. Additionally, and without limitation,
3 the Order improperly disregards that:

- 4 a) Shell Oil Company built, owned and operated the Property from 1972-
5 1983 while MTBE was a constituent in gasoline, and that as a
6 manufacturer Shell provided virtually all of the product of gasoline with
7 MTBE to the Property, but Shell was not named or addressed as a
8 responsible party by the Order;
- 9 b) The Baileys owned and operated the Property from 1983- 1990 while
10 MTBE was a constituent in gasoline sold at the Property, but they were
11 not named or addressed as a responsible party by the Order;
- 12 c) *After* TBS owned the Property its inaction was the sole cause of the
13 *migration of MTBE from soil to groundwater* at the Property by TBS'
14 negligently ignoring a water line break for months, which flooded the
15 Property's UST area, with MTBE being detected in groundwater shortly
16 thereafter;
- 17 d) For many years prior to TBS' purchase of the Property, TBS was in the
18 business of distributing gasoline with MTBE and delivered it to USTs at
19 the Property, even before Petitioner Bob Davis owned the Property;
- 20 e) TBS made those deliveries of gasoline containing MTBE to the Property
21 without utilizing spill control or overflow preventative
22 equipment/measures, and such sub-standard practices are a well-known
23 source of MTBE contamination;
- 24 f) In determining the co-responsible party status of Petitioner Davis and
25 TBS, the Regional Board ignored the parties' contractual allocation of
26 responsibility, as determined by the Action, and as is now under
27 consideration on Appeal; and

25 COX, WOOLTON,
26 GRIFFIN, HANSEN
& POULOS, LLP

27 150 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4500
FAX 415-438-4501

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g) As a policy matter, failure to give any credence whatsoever to parties' allocation of financial responsibility for Brownfield projects, will discourage Brownfield projects from taking place or creating new jobs.

Petitioners Davis seek to have the Regional Board amend or revise its Order to correct the above-mentioned problems. Petitioners Davis reserve the right to amend and/or supplement this Statement Regarding Substantive Issues or Objections at the appropriate time.

9. Record and List of Interested Persons.

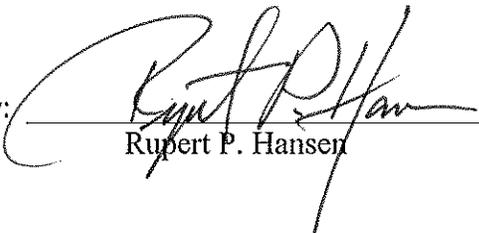
Petitioner has requested that this Petition for Review be held in abeyance and reserves the right to request that the Regional Board prepare the record and a list of persons known to have an interest in the subject matter of this Petition for Review.

WHEREFORE, Petitioner requests that this matter be held in abeyance until further notice, and reserves the right to request a hearing to present evidence and authorities that were not available to, or to be considered by, the Regional Board.

Respectfully submitted,

Dated: May 27, 2010

COX, WOOTTON, GRIFFIN,
HANSEN & POULOS, LLP
Attorneys for Petitioners BOB DAVIS and
CHERYL DAVIS

By: 
Rupert P. Hansen

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS, LLP

190 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4660
FAX 415-438-4601

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ATTACHMENT 1



California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Linda S. Adams
Secretary for
Environmental
Protection

415 Knollcrest Drive, Suite 100, Redding, California 96002
(530) 224-4846 • Fax (530) 224-4857
<http://www.waterboards.ca.gov/centralvalley>

Arnold
Schwarzenegger
Governor

27 April 2010

CERTIFIED MAIL

7008 2810 0000 8338 3346

Tony Ackernelch
TBS Petroleum, LLC
4544 Mountain Lakes Blvd.
Redding, CA 96003

CERTIFIED MAIL

7009 2250 0002 9876 6937

Bob Davis and Cheryl Davis
20291 Lakeview Drive
Redding, CA 96002

**ORDER TO SUBMIT INFORMATION PURSUANT TO CALIFORNIA WATER CODE
SECTION 13267, ANTLERS SHELL/SUBWAY, 20884 ANTLERS ROAD, LAKEHEAD,
SHASTA COUNTY**

Central Valley Regional Water Quality Control Board staff has reviewed the subject case file. Based on the file, a polluted on-site domestic well services a restaurant. Well-head treatment may not adequately protect the public from petroleum pollutants, for example Methyl tert Butyl Ether. The well may also act as a vertical pollution conduit between colluvium and underlying fractured bedrock. Pollution could extend off-site and potentially threatens other domestic wells; see the attached technical memorandum. TBS Petroleum (TBS) and Mr. and Mrs. Bob Davis (Davis) have been named as responsible parties because they allowed release of pollutants, have knowledge of the ongoing discharge, and have the ability to control it.

CALIFORNIA WATER CODE SECTION 13267 ORDER

TBS and Davis are jointly required to submit to our office **immediately** a work plan to further mitigate post-treatment pollution from the on-site domestic well, with a time schedule for implementation **no later than 27 May 2010**.

TBS and Davis are also jointly required to submit to our office **by 1 July 2010** a work plan that generally includes the following:

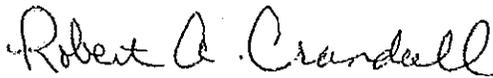
- Further site investigation of pollutant flow paths through colluvium and fractured bedrock sufficient to evaluate the on-site domestic well as pollution conduit, correlate with identified pollution in off-site receptor wells, and define pollution extent.
- A time schedule for implementation with fieldwork completed **no later than 29 October 2010** and appropriate report of findings with recommendations for further work **by 17 December 2010**.

This order to submit technical reports is made pursuant to CWC Section 13267. CWC Section 13267(b) authorizes the Regional Water Board to require any person who has discharged waste to submit technical reports as may be required to investigate discharges of

waste. The report is needed to determine the extent of pollution and to develop corrective actions protective of public health, the environment, and water quality. The document listed above describes the evidence that shows that the persons named in this letter own the site on which waste has been discharged, and/or caused or permitted the discharges of waste at the site, and therefore are responsible for cleanup.

Failure to comply with this order or other Regional Water Board orders may result in enforcement actions, including preparation of a cleanup and abatement order and penalties. Failure or refusal to furnish the technical report required by Section 13267(b) may result in administrative civil liability not to exceed one thousand dollars (\$1,000) for each day it is late pursuant to CWC Section 13268 or additional enforcement pursuant to CWC Section 13308, or both.

Please contact Grant Stein of my staff at 530-224-4788 to discuss any comments or questions you may have regarding this matter.



ROBERT A. CRANDALL
Assistant Executive Officer

GCS: knr

Enclosure: Technical Memo

cc with enclosure:

Pamela Creedon, Regional Water Quality Control Board, Rancho Cordova
Mark Cramer, Shasta County Department of Resource Management, Redding
Chris Watt, LACO Associates, Eureka
John Aveggio, SHN Consultants, Eureka



California Regional Water Quality Control Board Central Valley Region

Katherine Hart, Chair



Linda S. Adams
Secretary for
Environmental
Protection

415 Knollcrest Drive, Suite 100, Redding, California 96002
(530) 224-4845 • Fax (530) 224-4857
<http://www.waterboards.ca.gov/centralvalley>

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Schwarzenegger
Governor

TO: Eric Rapport, C.H.G., C.E.G.
Assistant Executive Officer

FROM: *Eric J. Rapport for:*
Grant Stein, P.G.
Engineering Geologist
Groundwater Unit

DATE: 27 April 2010

SIGNATURE: _____

SUBJECT: CASE FILE REVIEW, ANTLERS SHELL, 20884 ANTLERS ROAD,
LAKEHEAD, SHASTA COUNTY, CASE# 450336

Introduction

Antlers Shell is an active fueling station, food mart, and restaurant in Lakehead. Due to identified Methyl tert-Butyl Ether (MtBE) in an on-site domestic supply well, Shasta County Department of Environmental Health (SCDEH) recently requested the Central Valley Regional Water Quality Control Board (Central Valley Water Board, CVRWQCB) become lead agency for the Underground Storage Tank (UST) case. The impacted receptor well, a potential vertical pollution conduit, likely warrants formal enforcement. Current and former property owners are in contention about timing and source of the MtBE. Prior to formal enforcement and/or drafting a Cleanup and Abatement Order, I have reviewed in detail relevant findings, and analyzed data. My findings are summarized below.

Site History

Shell Oil Company constructed the Antlers Shell Gas Station in 1972. In 1983, Shell transferred ownership to Frank Bailey, who owned the station until 1990. In 1990 Bailey transferred ownership to Bob and Cheryl Davis (Davis). In 1997, Shasta County Environmental Health Department (SCEHD) permitted the replacement of the station's USTs. Davis removed the original single walled tanks and replaced them with new double walled tanks. During removal/replacement operations SCEHD directed soil sample collection following the UST and piping removal. On 16 December 1997, SCEHD issued Davis a no further action required (NFAR) letter to close the UST removal file.

On 14 July 2003, SCEHD inspected the onsite non-community public supply well, which supplies water to the gas station, mini mart, and restaurant. To protect public health, SCEHD required Davis to install a disinfection system and to add volatile organic chemicals (VOCs), including MtBE, to the sampling schedule. Initial testing on 8 January 2004 showed chloroform at 50 micrograms per liter ($\mu\text{g/L}$), bromodichloromethane at 3.2 $\mu\text{g/L}$, and trihalomethanes at 54 $\mu\text{g/L}$. As water at the site is disinfected with ultraviolet light and not chlorination, it is likely those detections were laboratory artifacts. Other analyzed VOCs, including MTBE, were below laboratory reporting limits.

On 20 April 2005, Davis granted site ownership to TBS Petroleum, LLC (TBS). TBS is the current owner and operator of the site.

On 8 August 2007, during routine sampling under the direction of SCDEH, a water sample from the supply well collected by CR Water Treatment contained 14.9 µg/L of MtBE. Shortly thereafter, at the request of SCDEH, TBS installed a granulated carbon filter on the site supply well. On 8 August 2007 SCDEH reopened the UST case.

On 4 March 2008, SCEHD transferred lead agency responsibility for the UST case to the Central Valley Water Board. On 25 July 2008, Central Valley Water Board staff requested TBS and Davis jointly submit a Preliminary Site Assessment Work Plan to determine the pollution extent and a survey of sensitive receptors affected or threatened by the release. On 17 November 2008, Central Valley Water Board staff approved the *Letter Workplan; Boring Installation Antlers Shell-Subway* submitted by LACO Associates on behalf of TBS.

On 4 March 2009, LACO, on behalf of TBS, submitted *Report of Findings: Initial Subsurface Investigation, Antlers Shell Subway*. This report included a limited subsurface investigation and a sensitive receptor survey. The LACO report concluded that the source of MtBE impacts to soil and groundwater at the site was likely the result of a pre-1997 release and subsequent release(s) between 1997 and 2004. On 27 April 2009, LACO submitted *Supplemental Information: Initial Subsurface Investigation, Antlers Shell Subway*. This submittal included summaries of UST system inspections/upgrades at the site and results of additional domestic well sampling of the on-site water system and off-site wells.

On 17 November 2009, SHN Consulting Engineers and Geologists, on behalf of Davis, submitted a letter entitled, *Subsurface Water Leak, Antlers Shell/Subway*. In this letter, SHN alleged that in 2007 a broken water line in the area of the tank pit exacerbated/mobilized residual subsurface pollution from the tank pit into the groundwater at the site.

Pollution Data

On 21 October 1997, SCDEH directed Davis to collect soil samples during removal and replacement of the USTs and piping. Davis collected eight samples from the bottom of the tank cavity and excavated tank cavity soil, and four from the below the dispenser island. The laboratory analyzed soils for TPHg, TPHd, Benzene, Toluene, Ethylbenzene, Total Xylene, and MtBE. Two of the tank cavity samples showed MtBE with a maximum of 0.085 milligrams/kilogram (mg/kg) and one of the tank cavity samples showed total Xylenes at 0.018 mg/kg. One dispenser island sample had MtBE at 0.030 mg/kg and three of the dispenser island samples had Toluene with a maximum of 0.013 mg/kg.

On 8 January 2004, at the request of SCDEH, Davis began testing the onsite domestic well for VOCs, including MtBE. Initial and subsequent quarterly sampling of the domestic well showed no MtBE detections. On 8 August 2007, TBS sampled the domestic well and found 14.9 µg/L MtBE. Confirmation samples contained concentrations as high as 18.4 µg/L. SCDEH requested installation of a well head granular activated carbon filter to treat the well raw water and requested monthly sampling of both the treated and raw water. Subsequent sampling of the well raw water has shown chronic levels of MtBE as high as 36 µg/L. MtBE breakthrough of the granular carbon filters appears to have occurred on more than one occasion, as MtBE has been detected in several post-treatment samples. EPA Method 524.2 was used to analyze all MtBE samples from the on-site well.

In January 2009, LACO, on behalf of TBS, conducted a preliminary site investigation. LACO drilled eight direct-push borings to sample soil and groundwater. Attachment 1 includes analytical data from the LACO report.. LACO identified several petroleum constituents in soil and groundwater including TPHg, Benzene, Toluene, Ethylbenzene, Xylenes, MtBE, TBA, Ethanol, and TAME. Maximum MtBE in soil was about 1900 micrograms per kilogram ($\mu\text{g}/\text{kg}$), in groundwater, about 49,000 $\mu\text{g}/\text{L}$. Ethanol was detected in three samples during the January investigation; a groundwater sample from boring B-7, a domestic water sample from the restaurant, and an equipment rinse blank from boring B-4. In follow-up samples collected from the on-site water system, Ethanol was detected in 3 of 4 samples, but was not detected in the on-site well during either sampling event. I concur with LACO's interpretation that Ethanol detected in groundwater at B-7 is likely anomalous and/or laboratory error. However, the Ethanol detected within the onsite water system warrants further investigation. A shallow pollution source may exist between the onsite well (no detection) and the interior plumbing of the station (four detections).

LACO also performed a sensitive receptor survey, and found twelve domestic wells within 1,000 feet of the site. Subsequent sampling has shown two of these with petroleum pollution. On 22 January 2009, LACO sampled two of the closest identified wells, the Post Office well and a well at APN#83-340-09, located 200 feet south and 400 feet southeast of the site, respectively. LACO had samples analyzed for TPHg, BTEX and fuel oxygenates. The post office sample was non-detect for all analytes, however, the skating rink well sample contained 0.27 $\mu\text{g}/\text{L}$ Benzene. On 1 March 2009 LACO re-sampled the skating rink and post-office wells, along with 5 previously un-sampled domestic wells. All samples were non-detect for constituents of concern with the exception of the domestic well located at APN#83-340-08, approximately 300 feet southeast of the site. The sample obtained from this well contained 0.13 $\mu\text{g}/\text{L}$ MtBE. Insufficient data allows correlation of pollutant detections in off-site domestic wells to the subject waste discharge.

Analysis

According to the LACO report, subsurface geology consists of colluvium overlying relatively shallow, low-grade metamorphic rock. The colluvium is predominantly silty and clayey soils with varying amounts of sand and gravel. Based largely on boring refusal depths, colluvium likely overlies bedrock at approximately 31 feet below ground surface (bgs) on the western portion of the site, about 41 feet bgs on the eastern portion... Based on local outcrops, bedrock is likely the Mississippian Bragdon Formation, metamorphosed, thinly bedded shale, with interstratified siltstone, sandstone and conglomerate.

LACO also deduced subsurface geology from the well driller's report of the on-site domestic well. The well, installed in 1972, is 100 feet deep and perforated from 60 to 100 feet below ground surface (bgs), almost exclusively within reported blue shale (presumed Bragdon Formation). The driller encountered first water at 50 feet bgs, however static level after development was 30 feet bgs, indicating confined hydraulic conditions.

The regional groundwater gradient direction may be easterly to southeasterly based on predominantly east sloping local topography and groundwater elevation data from nearby former UST site, Jack's Market, located about $\frac{1}{2}$ mile southwest of the site.

Data from the preliminary site investigation are limited, however I currently presume local east to northeast gradient direction. LACO drilled six pilot borings and encountered free water at approximately 20 to 26 feet bgs. LACO installed temporary well points into the borings by

setting PVC risers, with the bottom 5 feet of each riser slotted, and allowing groundwater levels to stabilize overnight. Depths to static water levels were measured the following day. Groundwater elevations rose to 12-14' bgs overnight, indicating hydraulic confinement of the water-bearing unit. LACO surveyed temporary well heads relative to an arbitrary elevation datum, measured static water levels, and estimated gradient direction; see Attachment 2, LACO's hydraulic head map. According to the report, the hydraulic gradient appears to be about 0.04, northeast to east, somewhat dissimilar to presumed regional flow. The onsite domestic well, at the northeast property corner, and infiltrating wastewater from an on-site leach field, at the southwest property corner, could locally influence local hydraulic heads. MtBE trends appear to support northeast groundwater flow. LACO plotted MtBE concentration on an iso-concentration map; see Attachment 3, LACO's map of MtBE in groundwater. Note that insufficient data now control contours south and east of the site.

To further evaluate pollutant transport direction, I calculated BTEX ratios for each discrete groundwater sample. This ratio is (Benzene + Toluene)/ (Ethylbenzene + Xylenes), and indicates relative weathering (Kaplan et. al. 1996). In general, high ratios, > 1, indicate relatively limited pollutant weathering. While data are limited, relatively highest ratios, least weathered pollutants, appear to extend northeast across the site, similar to presumed MtBE distributions; see Attachment 4, an interpretive contour map of BTEX ratios based on LACO's data.

Because BTEX ratios appear to support MtBE distributions, I ran a dispersion analytical (spreadsheet) model to assess MtBE transport in the colluvium. The model equation (Ogata 1970) predicts linear dispersion, e.g., along a plume centerline, from a continuous source.

$$C=C_o/2[\text{erfc}((L-vt)/2(D_t)^{0.5}) + \exp(vL/D_t)\text{erfc}((L+vt)/2(D_t)^{0.5})]$$

where

C= concentration down-gradient over time,

C_o= initial concentration,

L= down-gradient plume length,

v= average linear groundwater velocity = Ki/n,

K= hydraulic conductivity

i= gradient

n= effective porosity

t= time,

D_l= longitudinal coefficient of dispersion = α_lv + D*,

α_l= dispersivity, often about 0.1L, highly scale dependant

D*=molecular diffusion (neglected, assumed far overshadowed by dispersion).

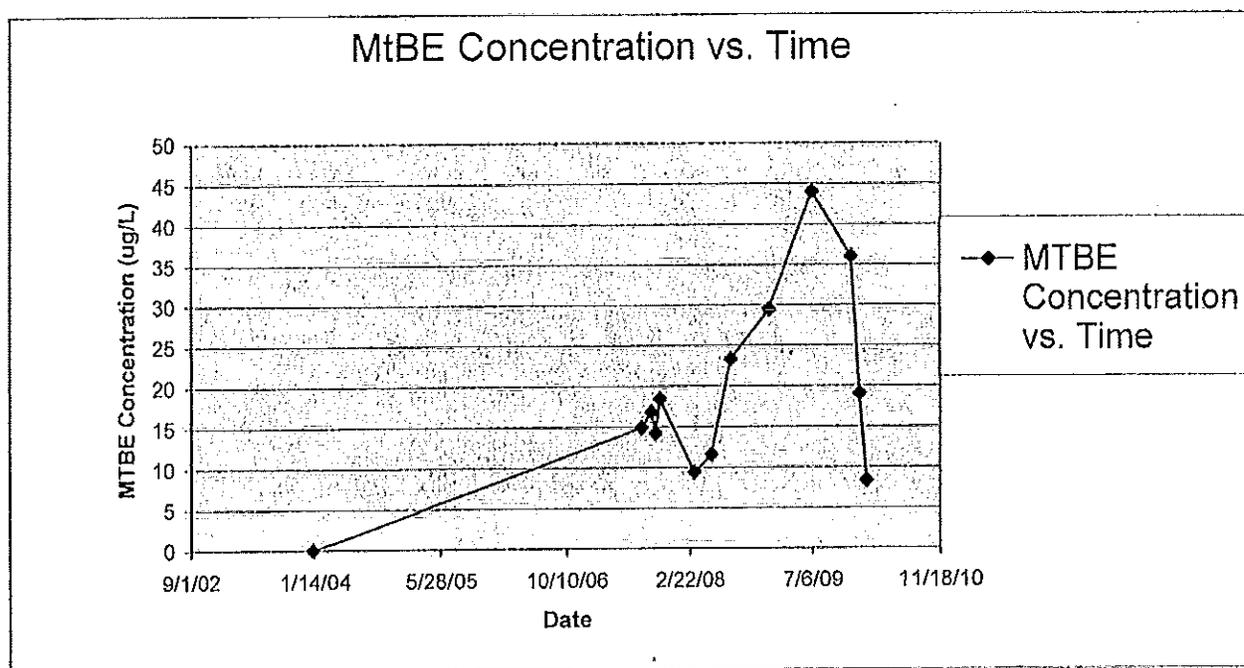
For C_o I selected a value of 49,000 µg/L, the maximum MtBE concentration observed in LACO's subsurface investigation. For L, down-gradient plume length, I used a value of 150 feet, the approximate distance from the tank pit to the onsite well. For K I selected a value of 0.10 ft/day, a typical representative value for silty soils. For i, I selected a value of 0.04, as estimated from LACO's potentiometric map. For n, I used 0.25, typical for silt. I varied time between 8 and 13 years because Davis first identified MtBE in soil in 1997. The following table summarizes results:

C_0 $\mu\text{g/L}$	L (ft)	time (years)	K ft/day	gradient	n_{eff}	predicted C ($\mu\text{g/L}$)
49000	150	8	0.1	0.04	0.25	0.000
49000	150	9	0.1	0.04	0.25	0.000
49000	150	10	0.1	0.04	0.25	2.802
49000	150	11	0.1	0.04	0.25	11.206
49000	150	12	0.1	0.04	0.25	36.420
49000	150	13	0.1	0.04	0.25	86.848

Preliminary dispersion estimates depend strongly on initial MtBE concentration, therefore I also used partitioning coefficients to estimate pore water MtBE from 1997 soil concentrations. Assuming no biodegradation, a conservative fraction of organic carbon of 0.001 for colluvium, and 8.0 liters per kilogram (L/kg) for MtBE soil organic partitioning coefficient (K_{oc}), and maximum MtBE in soil of 85 mg/kg (0.085 $\mu\text{g/kg}$), I estimated pore water concentration of MtBE of 1,130 $\mu\text{g/L}$, about two orders of magnitude lower than maximum MtBE found to date in groundwater. This indicates soil sampling during the tank removal may have under-represented maximum source concentrations. It also shows that 49,000 $\mu\text{g/L}$ for C_0 is conservative based on current data. The above suggests that an MtBE release near the USTs, around 1997, dispersed continuously and began to reach the domestic well beginning about 10 years later.

The model is preliminary, useful strictly to support a site conceptual model, and subject to revision based on further data. However, predicted concentrations in the well are within range of those observed.

I also plotted observed MtBE concentration results from the domestic well vs. time; results suggest time-discrete pollution in fractured bedrock, rather than a continuous source.



The plot shows a relatively abrupt increase of MtBE, followed by a recent decrease. Unlike data from borings and temporary wellpoints, this trend indicates a time-discrete pollution event. I have considered three potential explanations. The first is time-discrete MtBE slug dispersion into the well through bedrock fractures. While continuous source MtBE dispersion may occur in overlying colluvium, varying local hydraulic heads could further direct MtBE flow downward into fractures, for example during varying pumping rates, or source heads due to a broken water pipe. The second is native biodegradation, which could counter the effects of continuous MtBE dispersion through the well. The third is seasonal groundwater flow variations, more complex than a simple analytical model can account for.

Recommendations

The on-site domestic well appears to act as a vertical pollution conduit, from alluvium into underlying fractured bedrock. Also, insufficient data south and east of the site define pollution extent. Dilute pollutant detections in off-site domestic wells southeast may correlate to the site.

Therefore, I recommend further site investigation and expedited site cleanup. Due to the identified pollution from the on-site domestic well post-treatment, and potential threats to off-site receptors, this case is high profile and may warrant formal enforcement action.

Further site investigation should be sufficient to explain MtBE flow paths through colluvium and fractured bedrock, and into the on-site domestic well. Scope should be sufficient to evaluate the on-site well as a pollution conduit, and correlate the site to polluted off-site receptor wells.

References:

- Kaplan, I.R., Y. Galperin, H. Alimi, R.P. Lee, and S.T. Lu 1996. "Patterns of chemical changes during environmental alteration of hydrocarbon fuels." *Groundwater Monitoring and Review* vol. 16 (4), pp 113-124.
- Ogata, A. (1970). "Theory of Dispersion in a Granular Medium." U.S. Geological Survey Professional Paper 411-I.

Attachments:

- Attachment 1, Tables D and E, Report of Findings: Initial Subsurface Investigation, LACO Associates, 2009
- Attachment 2, Figure 4, Hydraulic Head Map, Report of Findings: Initial Subsurface Investigation, LACO Associates, 2009
- Attachment 3, Figure 8, MTBE in Groundwater, Report of Findings: Initial Subsurface Investigation, LACO Associates, 2009
- Attachment 4, BTEX Ratio Contour Map, CVRQCB Staff, 2010

GCS: knr

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Attachment 1

RESULTS OF SUBSURFACE INVESTIGATION

Soil Sampling Results

Laboratory analytical results for soil samples collected during the initial subsurface investigation are presented below in Table D. Historical laboratory analytical results for soil samples collected from the site are summarized in Table 1 and the current laboratory reports are included as Attachment 4.

Sample ID	Depth (feet)	Date	TPHg (µg/g)	Benzene (µg/g)	Toluene (µg/g)	Ethylbenzene (µg/g)	Total Xylenes (µg/g)	MTBE (µg/g)	TBA (µg/g)	TAME (µg/g)	Other Oxygenates (µg/g)
B1	5	1/19/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	9	1/19/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	15	1/19/2009	ND<1.0	ND<0.0050	ND<0.0050	0.011	0.013	0.017	0.012	ND<0.0050	ND<0.0050-0.20
	19	1/19/2009	ND<1.0	ND<0.0050	ND<0.0050	0.011	0.0091	0.14	0.061	ND<0.0050	ND<0.0050-0.20
	24	1/19/2009	ND<1.0	0.015	ND<0.0050	0.013	0.018	1.2	0.351	0.0073	ND<0.0050-0.20
	28	1/19/2009	1.2	0.091	ND<0.0050	0.1	0.12	1.9	0.421	0.011	ND<0.0050-0.25
B2	5	1/20/2008	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.19	ND<0.0050	ND<0.0050-0.25
	10	1/20/2008	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.015	0.11	ND<0.0050	ND<0.0050-0.25
	14	1/20/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.12	0.15	ND<0.0050	ND<0.0050-0.25
	20	1/20/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.33	0.28	ND<0.0050	ND<0.0050-0.25
	26	1/20/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.26	0.20	ND<0.0050	ND<0.0050-0.25
B3	5	1/20/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	10	1/20/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	14	1/20/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	20	1/20/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.0073	ND<0.0050	ND<0.0050-0.20
	26	1/20/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.028	0.054	ND<0.0050	ND<0.0050-0.20
B4	5	1/21/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	10	1/21/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	14	1/21/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	20	1/21/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	25	1/21/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
B5	5	1/21/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	10	1/21/2009	910	ND<0.0050	ND<0.0050	5.6	16	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	14	1/21/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	20	1/21/2009	ND<1.0	ND<0.0050	ND<0.0050	0.029	0.12	0.028	0.011	ND<0.0050	ND<0.0050-0.20
	25	1/21/2009	2.1	0.017	0.0077	0.11	0.26	0.037	0.017	ND<0.0050	ND<0.0050-0.20
B6	5	1/22/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	10	1/22/2009	88	ND<0.0050	ND<0.0050	0.11	0.41	ND<0.0050	ND<0.025	ND<0.0050	ND<0.0050-0.20
	15	1/22/2009	1.6	ND<0.0050	0.043	0.024	0.23	0.027	0.014	ND<0.0050	ND<0.0050-0.20
	20	1/22/2009	1.5	ND<0.0050	0.092	0.033	0.28	0.048	0.020	ND<0.0050	ND<0.0050-0.20
B7	5	1/22/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	10	1/22/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050-0.20
B8	5	1/23/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.040	ND<0.0050	ND<0.0050	ND<0.0050-0.20
	10	1/23/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.25	0.59	ND<0.0050	ND<0.0050-0.20
	14	1/23/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.034	0.088	ND<0.0050	ND<0.0050-0.20
	20	1/23/2009	ND<1.0	ND<0.0050	ND<0.0050	ND<0.0050	ND<0.0050	0.030	ND<0.0050	ND<0.0050	ND<0.0050-0.20

Groundwater Sampling Results

Laboratory analytical results for groundwater samples collected from borings B1 through B8 during the initial subsurface investigation are presented below in Table E. Current and historic

laboratory reports are included as Attachment 4.

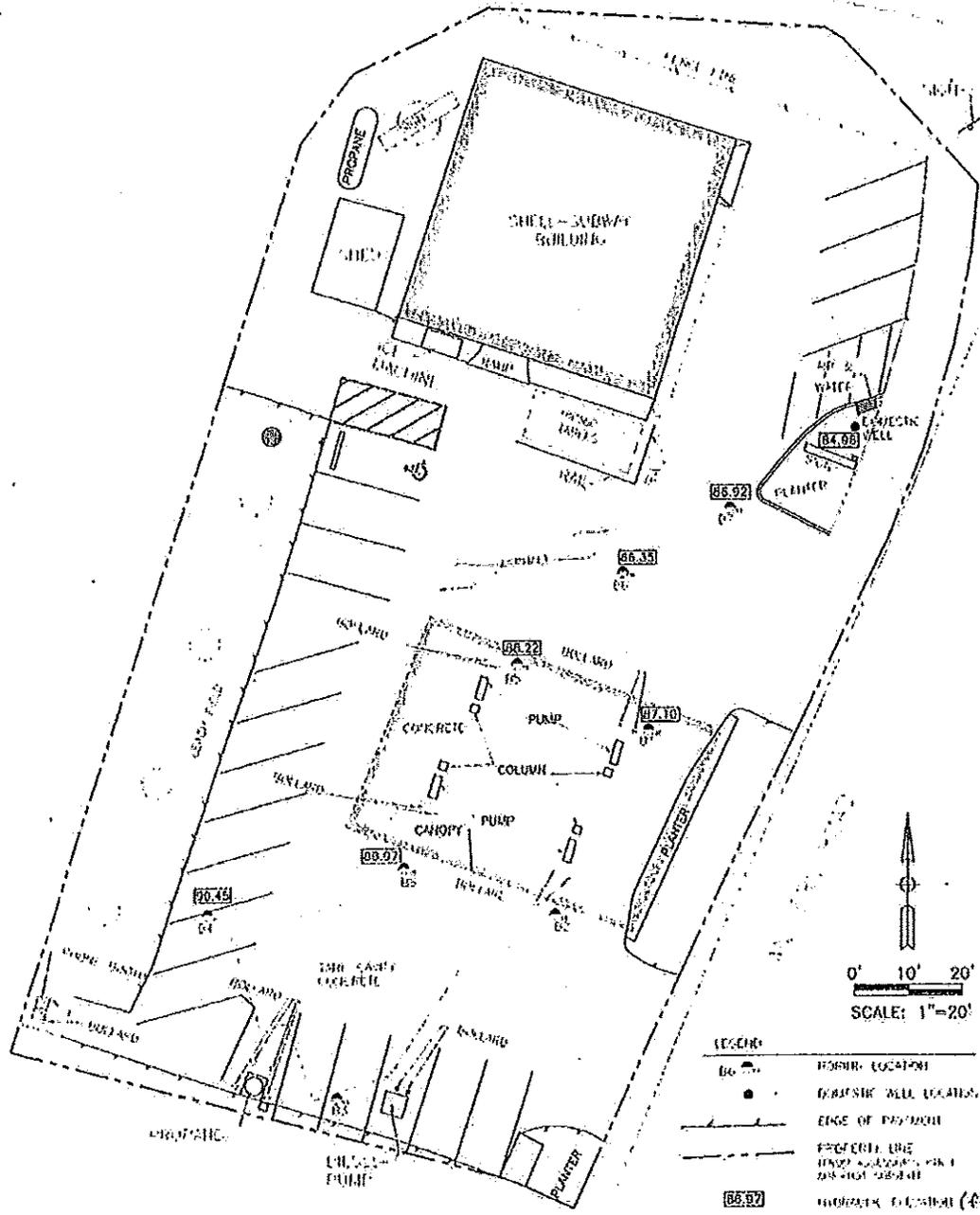
Table E: Laboratory Analytical Results for Groundwater Samples												
Sample ID	Depth (feet bgs)	Date	TPH _g (µg/L)	Benzene (µg/L)	Toluene (µg/L)	Ethylbenzene (µg/L)	Total Xylenes (µg/L)	MTBE (µg/L)	TBA (µg/L)	TAME (µg/L)	Other Fuel Oxygenates (µg/L)	VOCs (µg/L)
B1	28	1/19/2009	10,000	1,700	35	1,100	1,200	14,000	2,100	69	ND<10-10,000	...
	37-41	1/19/2009	1,600	160	ND<5.0	21	30	2,900	400	7.9	ND<5.0-1,500	...
B2	26	1/20/2009	ND<900	14	ND<9.0	ND<9.0	ND<9.0	4,300	1,600	24	ND<9.0-4,000	...
	36-40	1/20/2009	ND<1,000	ND<10	ND<10	ND<10	ND<10	49,000	8,200	290	ND<10-40,000	...
B3	26	1/20/2009	120	16	ND<0.50	ND<0.50	ND<0.50	240	270	1.3	ND<0.5-200	...
	30-34	1/20/2009	ND<1,000	27	ND<10	ND<10	ND<10	26,000	5,000	140	ND<10-18,000	...
B4	25	1/21/2009	ND<50	4.3	ND<0.50	2.5	3.0	6.3	ND<5.0	ND<0.50	ND<0.50-50	...
	29-33	1/21/2009	ND<50	ND<0.50	ND<0.50	ND<0.50	ND<0.50	8.9	6.7	ND<0.50	ND<0.50-50	...
B5	25	1/21/2009	4,800	60	22	140	290	200	69	2.8	ND<0.50-300	Isopropyl benzene = 4.4, n-Propylbenzene = 12, 1,3,5-Trimethylbenzene = 120, n-Butylbenzene = 0.98, Naphthalene = 31, All others ND<0.50-20
	35-38	1/21/2009	13,000	680	270	660	2,300	1,200	160	12	ND<2.5-1,000	Isopropyl benzene = 32, n-Propylbenzene = 87, 1,3,5-Trimethylbenzene = 160, 1,2,4-Trimethylbenzene = 840 sec-Butylbenzene = 5.5 p-Isopropyltoluene = 3.1 n-Butylbenzene = 7.2, Naphthalene = 140, All others ND<2.5-100
B6	25	1/22/2009	37,000	240	5,400	1,400	9,300	800	160	ND<10	ND<10-1,500	...
	36-40	1/22/2009	11,000	260	32	560	950	460	140	6.1	ND<1.5-500	...
B7	25	1/22/2009	330	1.7	1.2	ND<0.50	7.3	40	32	ND<0.50	Ethanol = 9.9 Others ND<0.50-80	...
	36-40	1/22/2009	320	ND<0.50	ND<0.50	6.7	ND<0.50	7.6	42	ND<0.50	ND<0.50-50	...
B8	25	1/23/2009	200	33	ND<1.5	ND<1.5	ND<1.5	740	720	3.8	ND<1.5-800	...
	30-34	1/23/2009	ND<1,000	ND<10	ND<10	ND<10	ND<10	14,000	2,800	79	ND<10-12,000	...

Domestic Well Sampling Results

Laboratory analytical results for the groundwater samples collected from domestic well DW1 and the neighboring domestic wells, DW-Post Office and DW-PC, are presented below in Table F. Historical laboratory analytical results for domestic well sampling are included as Table 2.

Attachment 2

LAKEHEAD DISTRICT



- LEGEND:
- PG ● PUMP LOCATION
 - MOTOR WELL LOCATION
 - EDGE OF PROPERTY
 - PRESENT LINE
 - PROPOSED ELEVATION
 - 86.92 PROPOSED ELEVATION (44)

DATE	BY	CHKD	APP'D
02/11/08	JL		
02/17/08	JL		
02/17/08	JL		

ANTLERS SHELL-SUBWAY
 T&S PETROLEUM
 HYDRAULIC HEAD ELEVATION MAP
ANTLERS
 20884 ANTLERS ROAD, LAKEHEAD, GA

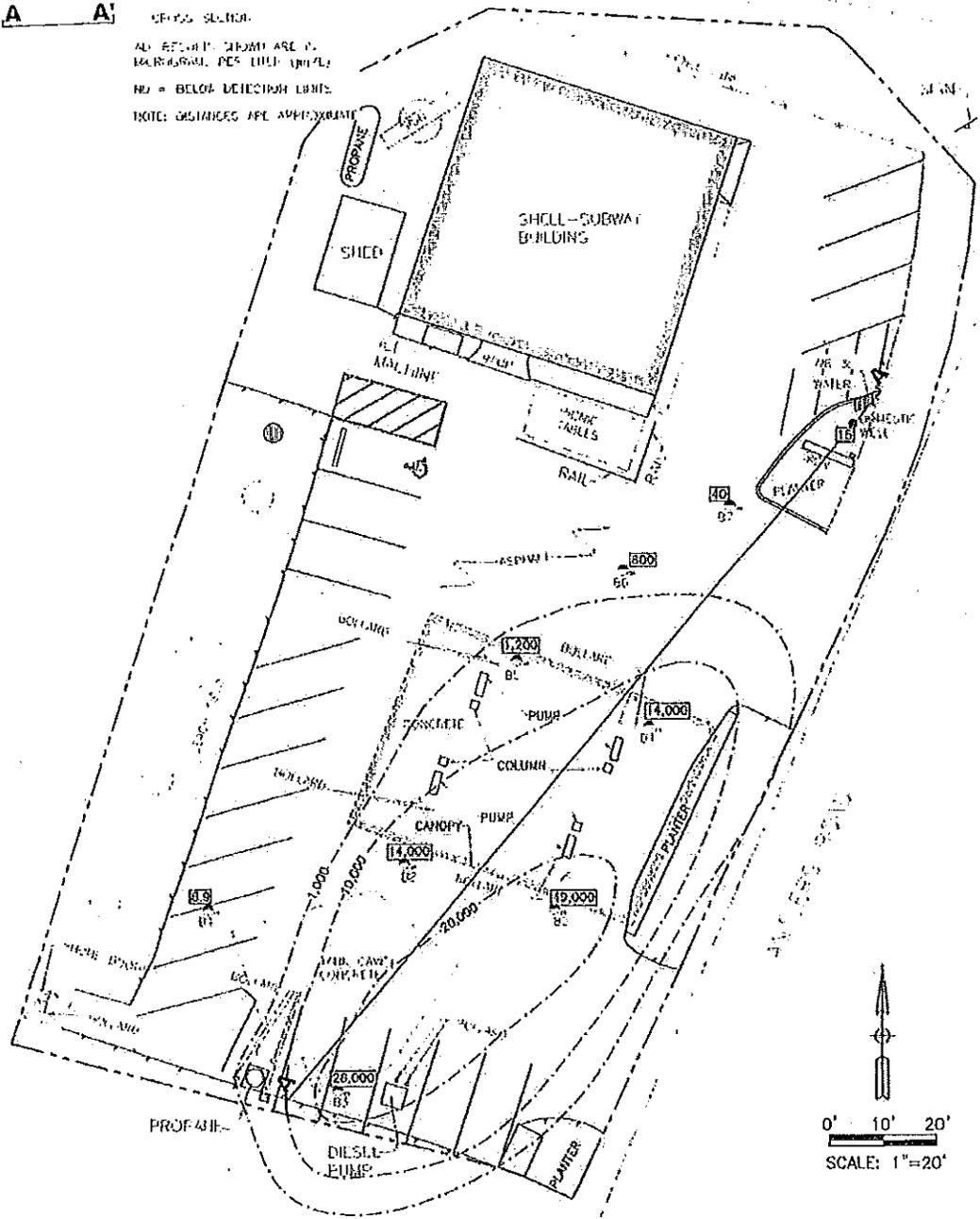
No.	REVISION	BY	DATE

LACO ASSOCIATES
 CONSULTING ENGINEERS
 21 W 4TH ST EUREKA CA 95501 (707)441-5054

Attachment 3

- LEGEND**
- BUILDING LOCATION
 - DOMESTIC WELL LOCATION
 - EDGE OF PAVEMENT
 - PROPERTY LINE (FROM ASSESSOR'S PARCEL MAP - NOT RESURVEYED)
 - 500' MTBE CONCENTRATION LINE
 - 1,000' MTBE CONCENTRATION LINES
 - EACH-WELL IMPRESSION
 - CROSS SECTION

ALL REPORTS SHOULD BE IN ACCORDANCE WITH THE FOLLOWING:
 NO. = BELOW DETECTION LIMITS
 NOTE: DISTANCES ARE APPROXIMATE



<p>DATE: 3/24/04 DRAWN BY: J. S. [unreadable] CHECKED BY: [unreadable] SCALE: AS SHOWN</p>	<p>ANTLERS SHELL-SUBWAY TRS PETROLEUM MTBE IN GROUNDWATER w/CROSS-SECTION LINE</p> <p>ANTLERS 20884 ANTLERS ROAD, LAKEHEAD, CA</p>	<p>LACO ASSOCIATES CONSULTING ENGINEERS</p> <p>2100 N. 4TH ST. SUITE 100, DENVER, CO 80202</p>
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Attachment 4

ATTACHMENT 2

1 COX, WOOTTON, GRIFFIN,
2 HANSEN & POULOS, LLP
3 Rupert P. Hansen (SBN 82302)
4 190 The Embarcadero
5 San Francisco, CA 94105
6 Telephone No.: 415-438-4600
7 Facsimile No.: 415-438-4601

8 Attorneys for Defendants
9 BOB DAVIS and CHERYL DAVIS

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SHASTA

13 TBS PETROLEUM, L.L.C.,
14 Plaintiff,
15 v.
16 BOB DAVIS, CHERYL DAVIS AND
17 DOES 1-20,
18 Defendants.

Case No.: 165285

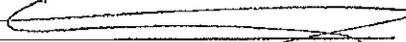
NOTICE OF ENTRY OF
AMENDED ORDER AFTER
HEARING ON DEMURRER
GRANTING DEFENDANT'S
DEMURRER WITH LEAVE TO
AMMEND

19 TO PLAINTIFF AND ITS COUNSEL:

20 PLEASE TAKE NOTICE THAT *AMENDED* ORDER AFTER HEARING ON
21 DEMURRER was entered herein on April 30, 2009. A true and correct copy of which is
22 "Exhibit A" hereto.

23 Dated: May 22, 2009

COX, WOOTTON, GRIFFIN,
HANSEN & POULOS, LLP
Attorneys for Defendants BOB DAVIS and
CHERYL DAVIS

24
25 By: 
26 Courtney M. Crawford

27 COX, WOOTTON,
28 GRIFFIN, HANSEN
& POULOS, LLP
190 THE EMBARCADERO
SAN FRANCISCO,
CA 94105
TEL: 415-438-4600
FAX: 415-438-4601

Davis:TBS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA

HON. BRADLEY L. BOECKMAN

Dept 3
lav

#165285

TBS PETROLEUM, LLC,
Plaintiffs,

vs.

BOB DAVIS, et. al.,
Defendants

NATURE OF PROCEEDINGS:

AMENDED ORDER AFTER HEARING
ON DEMURRER

This matter was taken under submission by the Court to consider oral argument. Upon consideration of the oral argument presented at the hearing on the demurrer, the Court determines that the tentative shall become the ruling of this Court as is set forth more particularly below:

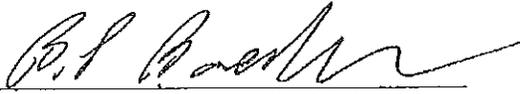
Defendants contend that the complaint, and all of the causes of action asserted therein, are barred by the "As-Is" clause of the underlying purchase agreement contained in paragraph 6 of the addendum. Defendants contend that this "as is" clause precludes any claim against them for damages as a result of conditions that existed on the property at the time of the sale, citing Shapiro v. Hu (1986) 188 Cal.App.3d 324. That case holds that "any sale of property 'as is' is a sale of the property in its 'present or existing condition'; the use of the phrase 'as is' relieves a seller of real property from liability for defects in that condition. The only exception to this principle is when a seller, through fraud or misrepresentation, intentionally conceals material defects not otherwise visible or observable to the buyer. (Lingsch v. Savage, supra, 213 Cal.App.2d at pp. 740-742.) Appellants have cited no cases, nor have we found any, in which a person selling real property "as is" was liable for defects in the quality or condition of the real property, where the property was not new construction, and the sale was made in good faith and without some form of fraudulent misrepresentation or concealment." Id. at 333-334.

Plaintiff contends that the causes of action contained in the complaint are not barred by the "as is" provision of the agreement, arguing that, since there are no allegations of misrepresentation or nondisclosure, the "as is" clause has no applicability. In support of its position, plaintiff cites to a case from New York. The Court finds that this case has no precedential value, because its determination is based on a violation of a New York statute, and is expressly contradicted by the above statement of California law. Plaintiff has failed to establish that the "as is" clause is inapplicable.

Plaintiff contends that the indemnity clause of the purchase agreement (paragraph 11 of the addendum) permits the action against defendants. Defendants correctly point out that, in relying on this provision, plaintiff has omitted the first clause of the paragraph, which states "except as otherwise expressly provided in this contract." Any interpretation of the contract must look at the agreement as a whole, and attempt to harmonize these provisions. Accepting plaintiff's interpretation of the contract, which would allow plaintiff to assert claims against defendants to reimburse plaintiff for expenses associated with correcting conditions that existed on the property at the time of the sale, would eviscerate the "as is" clause. Based on the allegations of the complaint, the contamination existed at the time the property was sold. There are no allegations in the complaint that the plaintiffs were not aware of the contamination or that defendants failed to disclose or misrepresented any facts regarding the existence of contamination on the property. The "as is" clause functions to transfer certain liabilities to the new owner. The claims raised in the present complaint are precisely the type of liabilities that were sold along with the property. A finding that the "as is" clause does not apply would render such clauses meaningless. All of the causes of action (breach of contract, nuisance, trespass, breach of the implied covenant of good faith and fair dealing, declaratory relief and indemnity, and contribution) are based on and arise out of the condition of the property. As such, they are all barred by the "as-is" provision of the contract. The demurrer is sustained.

To the extent that plaintiff can possibly plead facts demonstrating lack of knowledge on the part of plaintiff or fraud, misrepresentation or failure to disclose on the part of defendants with respect to the condition of the property, then plaintiff's claims may not be precluded by the "as is" clause. Leave to amend is granted. The June 1, 2009 case management conference is advanced and continued to Monday, June 22, 2009 at 10:30 a.m. in Department 3.

April 30, 2009

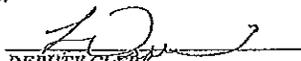

BRADLEY L. BOECKMAN
Judge of the Superior Court

CERTIFICATE OF MAILING

STATE OF CALIFORNIA, COUNTY OF SHASTA

I, THE UNDERSIGNED, CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT I AM A DEPUTY COURT CLERK OF THE ABOVE-ENTITLED COURT AND NOT A PARTY TO THE WITHIN ACTION; THAT I MAILED A TRUE AND CORRECT COPY OF THE ABOVE TO EACH PERSON LISTED BELOW BY DEPOSITING SAME IN THE UNITED STATES POST OFFICE IN REDDING, CALIFORNIA, ENCLOSED SEALED ENVELOPES WITH POSTAGE PREPAID.

DATED: April 30, 2009


DEPUTY CLERK

cc:

Joshua Bloom, Esq.
350 California Street, 22nd Floor
San Francisco, CA 94104

Robert Hansen, Esq.
190 The Embarcadero
San Francisco, CA 94105

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PROOF OF SERVICE
(California Code of Civil Procedure §1013)

Case: *TBS Petroleum LLC v. Bob Davis, Cheryl Davis and Does 1-20*
Case No.: Shasta County Superior Court, Case No. 165285

I am employed in the City and County of San Francisco by the law firm of Cox, Wootton, Griffin, Hansen & Poulos, LLP, 190 The Embarcadero, San Francisco, California 94105. I am over the age of 18 years and not a party to the within action.

On May 22, 2009, I served the attached document:
NOTICE OF ENTRY OF AMENDED ORDER AFTER HEARING ON DEMURRER GRANTING DEFENDANT'S DEMURRER WITH LEAVE TO AMEND
on the parties, through their attorneys of record, by placing copies thereof in sealed envelopes (except for facsimile transmission), addressed as shown below, for service as designated below:

(A) By First Class Mail: I am readily familiar with the practice of Cox, Wootton, Griffin, Hansen & Poulos, LLP, for the collection and processing of correspondence for mailing with the U.S. Postal Service, and that correspondence would be deposited with the U.S. Postal Service the same day in the ordinary course of business. I caused each such envelope, with first-class postage thereon fully prepaid, to be sealed and placed in a recognized place of deposit of the U.S. mail in San Francisco, California, for collection and mailing to the addressee(s) on the date indicated.

(B) By Personal Service: I caused each such envelope to be personally delivered to the addressee(s) by a member of the staff of this law firm on the date indicated.

(C) By Messenger Service: I am readily familiar with the practice of Cox, Wootton, Griffin, Hansen & Poulos, LLP, for messenger delivery, and I caused each such envelope indicated below, to be delivered to a courier employed by Worldwide Attorney Services, with both of whom we have a direct billing account, who personally delivered each such envelope to the addressee(s) on the date indicated.

(D) By Federal Express: I am readily familiar with the practice of Cox, Wootton, Griffin, Hansen & Poulos, LLP, for the collection of overnight courier deliveries, and such overnight courier deliveries would be deposited with the courier the same day in the

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS, LLP
190 THE EMBARCADERO
SAN FRANCISCO, CA
94103
TEL 415-438-4500
FAX 415-438-4501

BTB.Fletcher

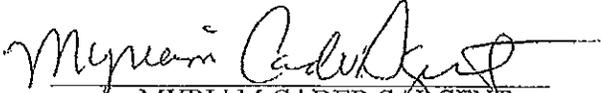
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ordinary course of business. I caused each such envelope/package to be delivered to Federal Express Corporation, with whom we have a direct billing account, at San Francisco, California, to be delivered to the addressee(s) on the next business day.

(E) By Facsimile: I caused each such document(s) to be served via facsimile electronic equipment transmission (fax) on the party(ies) indicated below by transmitting a true copy to the following fax number(s):

<i>SERVICE</i>	<i>ADDRESSEE</i>	<i>PARTY</i>
C	Joshua A. Bloom, Esq. BARG COFFIN LEWIS & TRAPP LLP 350 California Street, 22 nd floor San Francisco, CA 94104 Tel: 415-228-5400 Fax: 415-228-5450	Attorney for Plaintiff

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 22, 2009, at San Francisco, California.


MYRIAM CADER SARGENT

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS, LLP
150 THE EMBARCADERO
SAN FRANCISCO, CA
94103
TEL 415-435-4500
FAX 415-435-4501

BTB.Fletcher

ATTACHMENT 3

WNR-156 (9/71)

24737
NOTICE OF COMPLETION

NOC:
I-5 & Antler Road Interchange
Lakehead, California
204-0261-0107

The Shell Oil Company, acting pursuant to Title 15 of the Civil Code of the State of California, hereby gives NOTICE OF COMPLETION as follows:

On December 5, 1972, a work of construction and improvement, consisting of installation of a two-bay service station

and other work applicable thereto, WAS COMPLETED upon PREMISES which are LOCATED AT the Southeast quadrant of I-5 and Antler Rd, Interchange and upon which is situated a Shell service station, and which is more particularly described in Exhibit "A" which is attached hereto and made a part hereof.

The Shell Oil Company, whose address is 100 Bush Street, San Francisco, California, 94106, OWNS an interest in the aforementioned premises as owner in Fee of said premises.

The aforesaid work of construction and improvement was performed upon said premises pursuant to an agreement between the Shell Oil Company and Brunner Home Construction, as ORIGINAL CONTRACTOR, whose address is

P.O. Box 428, Mt. Vernon, Washington.

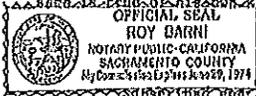
RECORDED AT REQUEST OF SHELL OIL CO OFFICIAL RECORDS at 32 min. cost 2 P M SHASTA COUNTY, CALIF. Date DEC 15 1972 Fee \$ 4.00 Volume 1149 Page 204

SHELL OIL COMPANY

By David L. Kaefor

STATE OF CALIFORNIA)
COUNTY OF Sacramento) ss, 204-0261-0107

C & M Supervisor, David L. Kaefor, being duly sworn, deposes and says: that he is the C & M Supervisor of Shell Oil Company, the corporation named in and owning an interest in the property described in the foregoing notice; that he has read the foregoing Notice and knows the contents thereof and the contents are true of his own knowledge.



David L. Kaefor

Subscribed and sworn to before me this 13th day of December, 1972. On this 13th day of December, 1972, before me, Roy Barni, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared David L. Kaefor, known to me to be the C & M Supervisor of Shell Oil Company, the corporation that executed the within instrument, and also known to me to be the person who executed the within instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

RETURN TO: Shell Oil Company
2645 Fair Oaks Blvd,
Sacramento, California
a/o D. L. Kaefor

Roy Barni, Notary Public
State of California

BOOK 1149 PAGE 204

EXHIBIT "A"

Continued
64119

11.

DESCRIPTION OF PROPERTY: All that certain real property situate in the County of Shasta, State of California:

All that portion of the West one-half of the Northeast one-quarter of Section 23, Township 33 North, Range 5 West, N.D.B.M., according to the official plat thereof, described as follows:

COMMENCED at a standard U.S.G.L.C. monument set at the North one-quarter corner of said Section 19, Township 33 North, Range 5 West, N.D.B.M.; thence, along the North line of the Northeast one-quarter of said Section 23, North $89^{\circ}30'29''$ East, 280.24 feet to a point on the East right of way line of California State Highway U.S. 99 as described in the deed to the State of California recorded July 5, 1944 in Book 221 of Official Records at page 13; thence, along said East right of way line, South $02^{\circ}30'30''$ West, 1229.34 feet to a $4'' \times 4''$ concrete monument with a brass cap marked R.B. 5438; thence, leaving said East right of way line, South $87^{\circ}09'30''$ East, 28.03 feet to a three-quarter inch iron pipe tagged R.C.R. 13781; thence, continuing South $87^{\circ}09'30''$ East, 9.15 feet to a five-eighth inch iron pin with a brass top stamped R.B. 5438; thence, along a 70.00 foot radius curve to the left through a central angle of $16^{\circ}29'51''$, a distance of 80.07 feet to a three-quarter inch iron pipe tagged R.C.R. 13781 and a point on the Easterly line of that certain property conveyed to the Western Union Telegraph Company, a New York corporation, by deed recorded March 7, 1930 in Book 323 of Official Records at page 343; thence, leaving said 70.00 foot radius curve South $02^{\circ}50'30''$ West, on and along the said Easterly line of the Western Union Telegraph Company property 72.65 feet to a three-quarter inch iron pipe tagged R.C.R. 13781 and the intersection of the said Easterly line of the Western Union Telegraph Company property and the Southwesterly prolongation of that certain course described in the deed to Robert H. Chatfield, et al., recorded September 16, 1960 in Book 643 of Official Records at page 330, as ("thence, North $24^{\circ}30'$ East, 250.36 feet"), thence North $24^{\circ}30'00''$ East, 122.63 feet to a five-eighth inch iron pin marked R.B. 5438; thence North $24^{\circ}30'00''$ East, 250.36 feet to an iron pin marked R.B. 5438; thence North $24^{\circ}43'19''$ East, 83.82 feet to the point of beginning of this description; thence, continuing North $24^{\circ}43'19''$ East 50.35 feet; thence North $24^{\circ}44'46''$ East, 82.42 feet; thence North $15^{\circ}06'39''$ East, 67.60 feet; thence North $39^{\circ}34'14''$ West, 32.03 feet; thence North $86^{\circ}54'44''$ West, 77.01 feet; thence South $38^{\circ}20'29''$ West, 30.82 feet; thence South $18^{\circ}03'05''$ West 169.60 feet; thence South $71^{\circ}56'59''$ East 100.30 feet to the point of beginning.

EXHIBIT A

Continued
4119

11.

DESCRIPTION OF PROPERTY: All that certain real property situate in the County of Shasta, State of California:

All that portion of the West one-half of the Northeast one-quarter of Section 23, Township 35 North, Range 5 West, N.D.B.M., according to the official plat thereof, described as follows:

CHIEFLY of a standard U.S.G.L.O. monument set at the North one-quarter corner of said Section 13, Township 35 North, Range 5 West, N.D.B.M.; thence, along the North line of the Northeast one-quarter of said Section 13, North 69°58'09" East, 280.24 feet to a point on the East right of way line of California State Highway U.S. 99 as described in the deed to the State of California recorded July 5, 1944 in Book 281 of Official Records at Page 21 thence, along said East right of way line, South 02°50'30" East, 1559.38 feet to a 4" x 4" concrete monument with a brass cap marked N.B. 5423; thence, leaving said East right of way line, South 87°09'30" East, 23.65 feet to a three-quarter inch iron pipe tagged N.C.E. 13781; thence, continuing South 87°09'30" East, 9.15 feet to a five-eighths inch iron pin with a brass top stamped N.B. 5436; thence, along a 70.00 foot radius curve to the left through a central angle of 16°25'51", a distance of 80.07 feet to a three-quarter inch iron pipe tagged N.C.E. 13782 and a point on the Easlerly line of that certain property conveyed to the Western Union Telegraph Company, a New York corporation, by deed recorded March 7, 1950 in Book 323 of Official Records at page 342; thence, leaving said 70.00 foot radius curve South 02°50'30" East, on and along the said Easlerly line of the Western Union Telegraph Company property 72.65 feet to a three-quarter inch iron pipe tagged N.C.E. 13781 and the intersection of the said Easlerly line of the Western Union Telegraph Company property and the Southwesterly prolongation of that certain course described in the deed to Robert H. Chaffield, et al., recorded September 16, 1960 in Book 643 of Official Records at page 530, as ("thence, North 24°30' East, 559.30 feet"), thence North 24°30'00" East, 122.63 feet to a five-eighths inch iron pin marked N.B. 5434; thence North 24°30'00" East, 250.35 feet to an iron pin marked N.B. 5435; thence North 24°43'19" East, 83.82 feet to the point of beginning of this description; thence, continuing North 24°43'19" East 59.35 feet; thence North 24°44'46" East, 82.42 feet; thence North 24°05'33" East, 67.60 feet; thence North 35°34'14" East, 33.69 feet; thence North 06°34'44" East, 77.61 feet; thence South 38°30'29" East, 39.88 feet; thence South 10°03'03" West 169.60 feet; thence South 71°56'53" East 100.30 feet to the point of beginning.

ATTACHMENT 4

WHEN RECORDED RETURN TO:
Olan Bailey
Beverly Bailey
Interstate 5 & Antlers Rd.
Lakehead, CA 96051

ADDITIONAL TRANSFER TAX \$ 187.00
NOT RECORDED OR FULL VALUE OF PROPERTY CONVEYED, OR
CALCULATED ON FULL VALUE LESS 1% & ENCUM-
BRANCES REMAINING THEREON AS PART OF SALE.
TITLE INSURANCE ~~XXXXXXXXXXXXXXXXXXXX~~
BY: *[Signature]*
Signature of declarer or agent determining its filing date

10444 TICRO
GRANT DEED

083-340-37

THIS IS A DEED dated December 28, 1983 by SHELL OIL COMPANY, a Delaware Corporation with offices at 100 Howe Avenue, Suite 160N in Sacramento, CA 95825 (herein called "Grantor"), to OLAN F. BAILEY and BEVERLY A. BAILEY, husband and wife, as Community Property, residing at 195 Pine Street, Lakehead, California 96051. (herein called "Grantee")

GRANTOR, for valuable consideration received, hereby grants to Grantee the following described premises located at 1/5 and Antlers in Lakehead, CA. 96051, County of Shasta, State of California.

DESCRIPTION OF PROPERTY: All that certain real property situate in Uninc. Area County of Shasta, State of California:

All that portion of the West one-half of the Northeast one-quarter of Section 13, Township 35 North, Range 5 West, M.D.B.M., according to the official plat thereof, described as follows:

COMMENCING at a standard U.S.G.L.O., monument set at the North one-quarter corner of said Section 13, Township 35 North, Range 5 West, M.D.B.M.; thence, along the North line of the Northeast one-quarter of said Section 13, North 89°58'29" East, 280.24 feet to a point on the East right of way line of California State Highway U.S. 99 as described in the deed to the State of California recorded July 5, 1944 in Book 221 of Official Records at page 1; thence, along said East right of way line, South 02°50'30" West, 1529.34 feet to a 4" x 4" concrete monument with a brass cap marked R.E. 5438; thence, leaving said East right of way line, South 07°09'30" East, 11.05 feet to a three-quarter inch iron pipe tagged R.C.E. 13781; thence, continuing South 87°09'30" East, 9.15 feet to a five-eighth inch iron pin with a brass top stamped R.E. 5438; thence, along a 70.00 foot radius curve to the left through a central angle of 16°25'51", a distance of 20.07 feet to a three-quarter inch iron pipe tagged R.C.E. 13781 and a point on the Easterly line of that certain property conveyed to the Western Union Telegraph Company, a New York corporation, by deed recorded March 7, 1950 in Book 325 of Official Records at page 343; thence, leaving said 70.00 foot radius curve South 02°50'30" West, on and along the said Easterly line of the Western Union Telegraph Company property 72.65 feet to a three-quarter inch iron pipe tagged R.C.E. 13781 and the intersection of the said Easterly line of the Western Union Telegraph Company property and the Southwesterly prolongation of that certain course described in the deed to Robert R. Chatfield, et ux., recorded September 16, 1960 in Book 645 of Official Records at page 530, as ("thence, North 24°30' East, 250.36 feet"), thence North 24°30'00" East, 122.63 feet to a five-eighth inch iron pin marked R.E. 5438; thence North 24°43'19" East, 83.82 feet to the point of beginning of this description; thence, continuing North 24°43'19" East 50.35 feet; thence North 24°44'46" East, 82.42 feet; thence, North 14°06'35" East, 67.60

RECORDED AT REQUEST OF

RECORDED AT REQUEST OF
TITLE INSURANCE & TRUST CO.
AT 5:00 MIN. PAST 11:00 A.M.
OFFICIAL RECORDS SHASTA COUNTY, CALIF.

APR 5 1984

Marjorie R. [Signature]
RECORDED AT

PAGE ONE OF TWO

BOOK 2051 PAGE 34

feet; thence North 35°34'14" West, 32.03 feet;
thence North 86°54'44" West, 77.01 feet; thence
South 38°50'29" West, 30.82 feet; thence South
18°03'05" West 169.60 feet; thence South 71°56'55"
East 100.30 feet to the point of beginning;

together with all rights and privileges appurtenant thereto and all
buildings and land improvements thereon, but subject to the liens of all
taxes and assessments for the year 1983 and subsequent years, to all
easements, rights-of way, reservations, restrictions and encumbrances of
record, to any existing tenancies, to all zoning laws and ordinances, and
to any state of facts an accurate survey or inspection of the premises
would show.

EXECUTED By Grantor as of the date first herein specified.

ATTEST:

SHELL OIL COMPANY

Kim Jensen Clifford
ASSISTANT SECRETARY
KIM JENSEN CLIFFORD

E. D. Ellis
ERLE D. ELLIS
MANAGER, LAND INVESTMENTS
ADMINISTRATIVE SERVICES

STATE OF TEXAS }
COUNTY OF HARRIS } SS:

On this 28th day of December, 1983 before me
L. C. JONES, a Notary Public in and for said State, duly
commissioned and sworn, personally appeared ERLE D. ELLIS
MANAGER, LAND INVESTMENTS, known to me to be the ADMINISTRATIVE SERVICES
Shell Oil Company,
the corporation that executed the foregoing instrument, and acknowledged
to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my official seal on the date and year in this certificate first above
written.



L. C. Jones
Notary Public
L. C. JONES
Notary Public in and for the State of Texas
My Commission Expires November 30, 1984

SHASTA COUNTY

ADMINISTRATION
MANAGERS - LAND INVESTMENTS
PURCHASING AND ADMINISTRATIVE SERVICES

Certificate of Authority

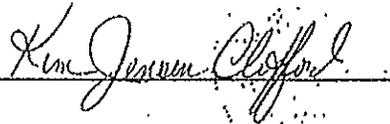
Kim Jensen Clifford certifies that she is an Assistant Secretary of Shell Oil Company, a Delaware corporation; and that the following completely and correctly sets forth the authority of each of the following, now or thereafter appointed:

Manager Land Investments
Regional Manager Land Investments

In the Company's name and on its behalf, to execute, deliver, accept, assign, amend, extend, terminate or release any instruments or documents, including (without limitation) conveyances of properties (real or personal), agreements of any nature including non-recourse promissory notes and deeds of trust and mortgages related to such non-recourse notes, but excluding grants of security interests other than releases and quitclaim deeds for the purpose of clearing public records of satisfied security interests; and to execute and deliver certificates, returns and reports of any nature, which he may deem advisable or appropriate in the normal course of the Land Investments business of the Purchasing and Administrative Services Organization of the Company.

It is further certified that E. D. Ellis is Manager Land Investments in the Purchasing and Administrative Services Organization of the Company.

IN WITNESS WHEREOF, this certificate is signed and sealed with the Company's corporate seal on December 27, 1983.



ADM-32R1

10444

BOOK 2051 PAGE 36

SHELL OIL COMPANY

ATTACHMENT 5



Reference: 508093

April 14, 2009

Mr. Ron Falkowski, Engineering Geologist
California Regional Water Quality Control Board, Central Valley Region
415 Knollcrest Drive, Suite 100
Redding, CA 96002

**Subject: Additional Site Information, Antlers Shell/Subway, 20884 Antlers Road,
Lakehead, California; Case #450336**

Dear Mr. Falkowski:

On behalf of Mr. Bob Davis, SHN Consulting Engineers & Geologists, Inc. (SHN) has prepared this letter to provide you with additional information regarding the subject site. It is our understanding that the California Regional Water Quality Control Board, Central Valley Region, (RWQCB) is in the process of preparing a Cleanup and Abatement Order (CAO) for the site. We request that the RWQCB name the current owner of the site (TBS Petroleum, LLC [TBS]) in the CAO. We believe that at this time, it is inappropriate and unwarranted for the RWQCB to attempt to assign proportionate liability to the former owners, based on the current depth of information. There is simply not enough defensible data to develop a fair and equitable allocation of responsibility, and any attempt to do so at this stage would necessarily involve speculation.

Mr. Davis has provided the RWQCB with documentation regarding the ownership history of the site. At least four parties are known to have owned the site while the underground storage tanks have been present. These parties are Shell Oil, the Bailey's, Bob Davis, and TBS Petroleum. Based on the level of site investigation performed to date (LACO Associates [LACO] report dated March 2, 2009), it is impossible at this point to definitively state which parties may have contributed to the levels of petroleum hydrocarbon constituents detected in the soil and groundwater samples collected by LACO. As you know, well points are a useful preliminary site investigation tool that provides a snapshot of site conditions and often portrays concentrations that are several orders of magnitude greater than what are found in properly constructed monitoring wells. The supply well at the site is reportedly screened at a depth of least 20-60 feet below the deepest well points at the site. The LACO report does not present a viable pathway for the migration of petroleum hydrocarbons to the depth of the supply well screen—they note that bedrock is present between 31 to 41 feet below ground surface. The LACO report states that an accurate groundwater flow direction could not be ascertained due to the linear orientation of the well points, but they speculate a north to northeast flow direction. At the nearby Jacks Market site (approximately 1,500 feet to the south), the flow direction in October 2007 (as calculated from water levels in monitoring wells) was to the south and southwest. The point is that without further investigation, it is impossible to determine the exact source of the chemicals detected in the supply well.

The type of petroleum-related products that were detected during the preliminary site investigation indicates the potential for multiple releases that have occurred over the life of the site. Lead scavengers were detected, which implies a pre-1985 release; MTBE was detected, which implies a 1980-2004 release; and ethanol was detected, which implies a post-2004 release. Additional site investigation is required to better understand site conditions and the extent of these potentially distinct releases.

Mr. Ron Falkowski

Additional Site Information, Antlers Shell/Subway, 20884 Antlers Road, Lakehead, CA; Case #450336

April 14, 2009

Page 2

The current site owner, TBS, is a sophisticated buyer of fuel stations and a supplier of fuel. TBS has delivered approximately 700,000 gallons of fuel per year to the site since 1996, including fuel with MTBE. According to the United States Environmental Protection Agency, many releases at fuel stations are a result of spills during delivery. Until TBS' fuel delivery protocol, practices, and history is fully documented and examined, it should not be ruled out as a potential source of the hydrocarbon and MTBE contamination present at the site today.

TBS is well aware of the potential environmental risks associated with the purchase of a fuel station, and included the right to do a Phase I investigation and soil studies in its Offer to Purchase the site. TBS also made a conscious decision to purchase the site "As-Is" from Bob Davis, and TBS agreed in the Offer to Purchase that it would assume all Risk of Loss after the close of escrow. (See previously provided Offer to Purchase and Addendum.) TBS should not be able to avail itself of the "innocent landowner defense" where (1) it has 10 years of involvement in delivering fuel to the site's USTs and its role in spillage or release during this period is unknown, (2) it is sophisticated in gas station contamination issues, (3) it had both the right and knowledge to perform pre-purchase environmental investigations, (4) it purchased the site "As-Is," (5) it assumed all risk of loss regarding the property as of the close of escrow, and (6) it chose not to perform the typical level of environmental due diligence associated with a land transfer of a fuel station. Therefore TBS waived any defense regarding the innocent landowner provision and knowingly assumed the future risks of owning the property and operating the facility. For these reasons, TBS should be held to be the lead responsible party for any future investigation and remediation of the property. TBS and Bob Davis are currently litigating the issue of the effect of TBS "As-Is" purchase and assumption of the Risk of Loss in the California Superior Court for the County of Shasta, Case No. 165285. A hearing in the case scheduled for April 27, 2009, may shed light on how the Court interprets the parties' contract for sale of the property, and any decision making by the RWQCB should, at a minimum, await further information from that Court.

It is our understanding that the tanks were removed and upgraded in 1997 and that Shasta County issued a "no further action" letter for the site because only residual levels of petroleum hydrocarbons were detected in the compliance samples collected during the tank removal. These residual levels of petroleum hydrocarbons were relatively immobile (they were below an asphalt and concrete cap) and it is believed that typical groundwater levels do not reach the tank pit. It was reported by CR Water Treatment, the operator of record for the water system at the site, that in 2007, under TBS ownership, a subsurface water line that traversed the tank pit was broken and leaking into the tank pit for several months. Apparently, the tank pit was allowed by TBS to become saturated and water was observed to overflow onto the street. It is likely that several thousand gallons of water per day was released into the subsurface during this period. It is probable that this extended leak created a driving force to mobilize the residual material that remained in the tank pit and then contributed to the detections observed in the recent site investigation. The high water level conditions that the water leak created may have caused preferential flow of water across the site through the utility trenches. The apparent lack of a response by TBS to repair the leak may have created or exacerbated the soil and groundwater contamination observed at the site. This may be the reason that petroleum hydrocarbon constituents were not detected in the supply well prior to the water leak, but were detected after the water leak. None of these possibilities can effectively be ruled out on the present information record before the RWQCB.

In summary, we believe that Mr. Davis has acted in good faith during the sale of the property to TBS, who accepted the property "As-Is" and who assumed all Risk of Loss for the property as of the close of escrow. Moreover, the evidence points to TBS' inaction in stopping the flooding of the tank area as a

Mr. Ron Falkowski

Additional Site Information, Antlers Shell/Subway, 20884 Antlers Road, Lakehead, CA; Case #450336

April 14, 2009

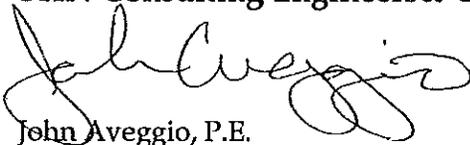
Page 3

predominant cause of the mobilization of contaminants present at the site that were recently observed in the soil and groundwater samples collected from the site. The sparse amount of data collected to date regarding the site is insufficient to attempt to assign liability to a potential responsible party. However, it is plain from the sale documents between TBS and Mr. Davis that TBS has agreed to purchase the property "As-Is" and to assume the Risk of Loss after close of escrow for environmental matters. Therefore, we believe that it is appropriate for the RWQCB to name Shell Oil Company and the Bailey's to any CAO, and to require TBS to further investigate their property and remediate soil and groundwater if necessary. We would request an opportunity to review the Draft CAO when you complete it so that we may provide specific comments or additional factual information for you to consider prior to issuing the version of the CAO you intend to issue. We would also appreciate the opportunity to meet with you and Karen Clementsen to further discuss the issues raised in this letter. I will contact you next week to schedule a meeting for the week of April 27 or the week of May 4, 2009.

Thank you for your consideration of this information. Please call me at 707-441-8855 if you have any further questions or if I can help you in any way.

Sincerely,

SHN Consulting Engineers & Geologists, Inc.



John Aveggio, P.E.
Chief Technical Officer

JJA:lms

- c. Ms. Karen Clementsen, P.G.
- Mr. Bob Davis
- Mr. Rupert Hansen

ATTACHMENT 6



Reference: 508093

November 17, 2009

Mr. Grant Stein
California Regional Water Quality Control Board, Central Valley Region
415 Knollcrest Drive, Suite 100
Redding, CA 96002

Subject: Subsurface Water Leak, Antlers Shell/Subway, 20884 Antlers Road, Lakehead, California; Case #450336

Dear Mr. Stein:

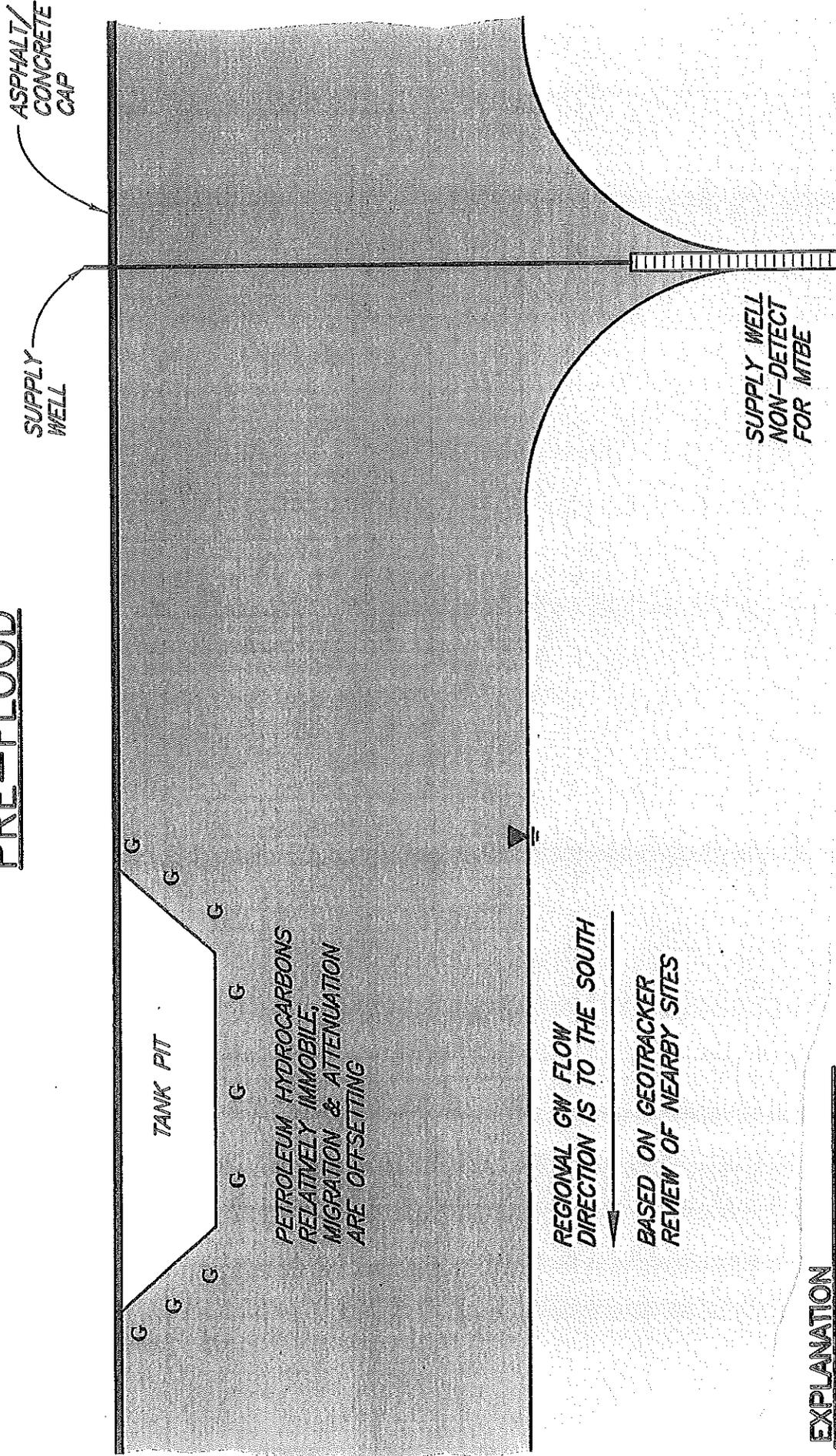
On behalf of Mr. Bob Davis, SHN Consulting Engineers & Geologists, Inc. (SHN) has prepared this letter to provide you with additional information regarding the relevant impact of a multi-month subsurface water pipe leak that occurred near the Antlers Shell/Subway (site) tank pit. After reviewing the information, it is our opinion that this water leak was the event that caused groundwater contamination to be detected in the site's supply well. This water leak occurred after the site had been acquired from Bob Davis by TBS Petroleum, LLC (TBS). The leak was substantial, continuous, and TBS allowed this leak to flood through the tank pit unabated for several months.

In order to remain in compliance with the underground storage tank regulations, Mr. Davis upgraded his station in 1997 and Shasta County issued a "no further action" letter for the site. The rationale for the no further action letter was that only residual levels of petroleum hydrocarbons were detected in the tank removal compliance samples. These residual levels of petroleum hydrocarbons were essentially immobile (they were in the unsaturated zone and below a new and substantial asphalt and concrete cap). It is believed that typical groundwater levels do not reach the tank pit. Mr. Davis thereafter sold the site in April 2005 to TBS who was well aware of the facility upgrade and the residual contamination.¹ Figure 1 depicts site conditions prior to the water leak.

It was reported by CR Water Treatment, the operator of record for the water system at the site, that in 2007, under TBS ownership, a subsurface water line that traversed the tank pit was broken and was leaking into the tank pit for several months. Apparently, TBS allowed the tank pit to become saturated, and water was observed on the ground surface. The flooding was so severe that the water that was observed percolating to the ground surface from the area around the tank pit was enough to create a sheet flow discharge that traveled to the street. It is likely that several thousand gallons of water per day were released into the subsurface and ground surface during this period of several months, which means potentially over 200,000 gallons of water were discharged from the broken water line. Mr. Davis personally observed water percolating from the northeast corner of the tank pit during his daily walk in

¹ Mr. Davis' legal counsel, Rupert P. Hansen, Esq., of Cox, Wootton, Griffin, Hansen & Poulos, LLP, advises us that in the legal action of *TBS Petroleum, LLC v Bob Davis and Cheryl Davis*, Shasta County Superior Court Case No. 165285 (the "Action"), TBS declined the Court's offer to allow TBS to amend its complaint to allege that TBS was unaware of one or more of the contaminants (including MTBE) that TBS complained that the Davis' were responsible for as a consequence of the Sale Contract by which TBS acquired the site. As a result of the declination, (1) the Court entered judgment against TBS since the site had been sold to TBS "As-Is" (per *Shapiro v. Tieh Ming hu* (1986) 188 Cal.App.3d 324, 333), and (2) TBS is legally conclusively deemed to have had prior knowledge of all of the contamination it complained of in the Action. See *Reynolds v. Bement* (2005) 35 Cal.4th 1075, 1091.

PRE-FLOOD



CROSS SECTION VIEW LOOKING FROM EAST TO WEST

NOT TO SCALE



Pre-Flood Conditions

Bob Davis
Antlers Shell
Lakehead, California

SJN 508093

November 2009 508093-SCHEM

Figure 1

Mr. Grant Stein

Subsurface Water Leak, Antlers Shell/Subway, Lakehead, CA; Case #450336

November 17, 2009

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the area. Mr. Davis notified TBS many times over the next few months about the leak and that the water line in the area was likely broken. After months of allowing the leak to continue, TBS asked Mr. Davis where the shut off valve for the water line was located. Mr. Davis showed TBS the location, the valve was shut, and the water stopped percolating from the tank farm in a few hours. The next time the supply well was sampled it was found to be contaminated.

It is probable that this extended leak created a driving aqueous hydraulic force to mobilize the in situ residual material that remained in the tank pit and then contributed to the detections observed in the recent site investigation and the supply well (see Figure 2). The high water level conditions would have created and caused preferential flow of contaminated water across the site through the utility trenches and other pathways. The water leaking from the broken pipe originates from the supply well. The supply well draws water from beneath the site. The water bearing zone beneath the site was modified by TBS's lack of action and allowing the pipe to continue to leak for such an extended amount of time. This unabated leak, combined with the hydraulic cone of influence caused by the supply well's operation, created a recirculating system of water that distorted the long standing equilibrium conditions that kept the residual tank pit contamination from mobilizing or impacting any sensitive receptors. We believe that the leaked water contained petroleum hydrocarbons once the flooding had mobilized the previously stable residual contamination. This then caused the sub-surface contamination to become more wide-spread and may have allowed contamination to leave the site through the surface water discharge.

The lack of a prompt response by TBS to repair the leak has created or exacerbated the soil and groundwater contamination observed at the site. We believe this is the reason that petroleum hydrocarbon constituents were never detected in the supply well prior to the water leak, but were detected approximately two months after the water leak was repaired and have been detected in every sampling event since then. The lack of action by TBS may also have created an off-site discharge of contaminated surface water. None of these possibilities can effectively be ruled out based on the present information record before the California Regional Water Quality Control Board, Central Valley Region.

Thank you for the opportunity to present this information. We are available to meet with you at your convenience to discuss this matter in further detail. Please call me at 707-441-8855 if you have any questions.

Sincerely,

SHN Consulting Engineers & Geologists, Inc.



John Aveggio, P.E.
Project Manager

JJA:lms

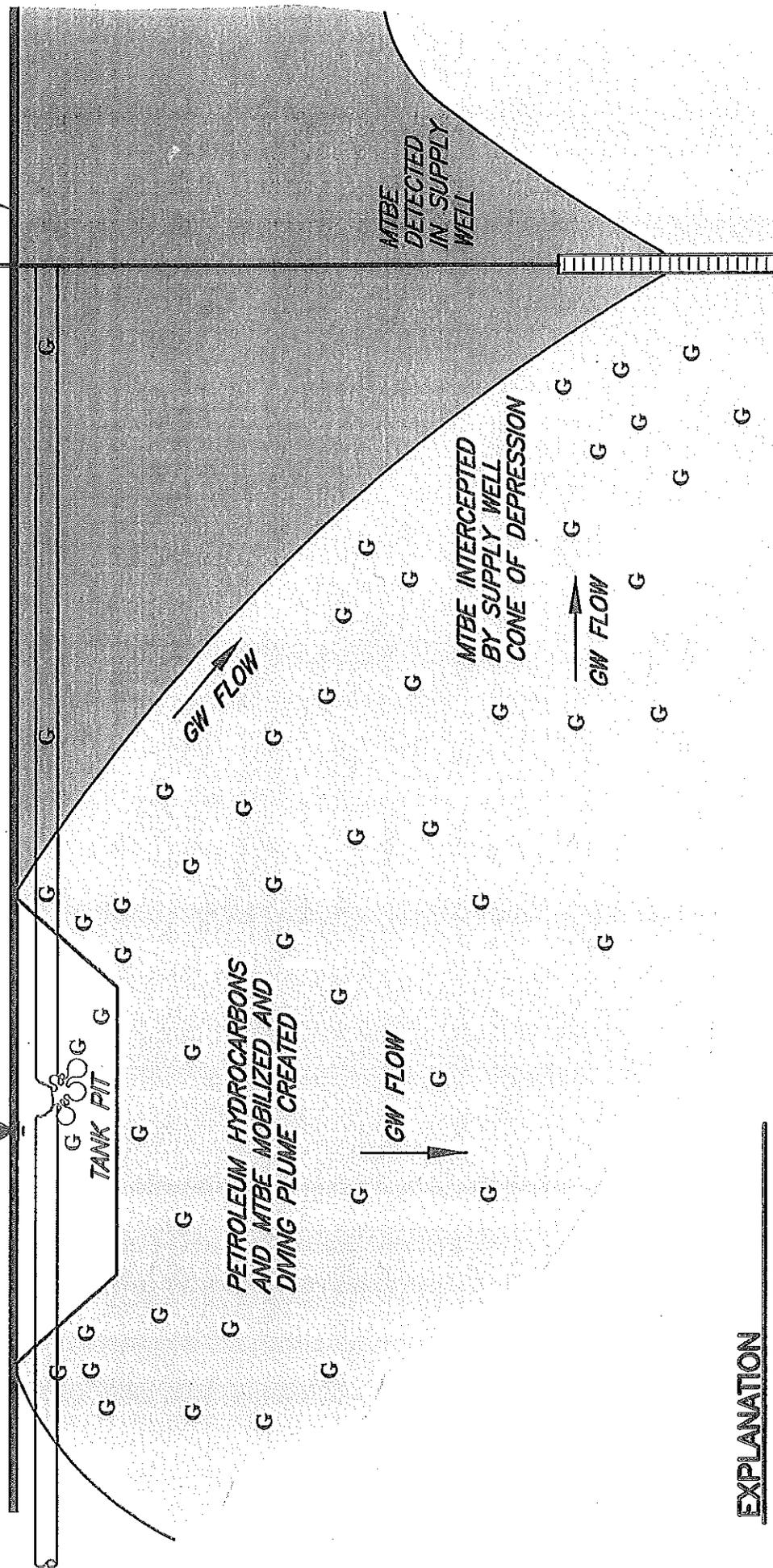
c. Bob Davis
Rupert Hansen

POST-FLOOD

TANK PIT FILLED AND OVERFLOWS FROM BROKEN WATER LINE WHICH CREATES A GROUNDWATER MOUND THAT THEN CHANGES THE GROUNDWATER FLOW DIRECTION

ASPHALT, CONCRETE CAP

SUPPLY WELL



PETROLEUM HYDROCARBONS AND MTBE MOBILIZED AND DIVING PLUME CREATED

MTBE INTERCEPTED BY SUPPLY WELL CONE OF DEPRESSION

MTBE DETECTED IN SUPPLY WELL

EXPLANATION

- ▽ GROUNDWATER LEVEL
- G GASOLINE CONSTITUENTS

CROSS SECTION VIEW LOOKING FROM EAST TO WEST



Bob Davis
Antlers Shell
Lakehead, California

November 2009 508098-SCHEM

NOT TO SCALE

Fate and Transport of MTBE
Post-Flood Conditions
SFN 508098

Figure 2

ATTACHMENT 7

COX, WOOTTON, GRIFFIN, HANSEN & POULOS, LLP

TERENCE S. COX
RICHARD C. WOOTTON*
MITCHELL S. GRIFFIN
RUPERT P. HANSEN
GREGORY W. POULOS
FREDERICK J. CARR

ATTORNEYS AT LAW
190 THE EMBARCADERO
SAN FRANCISCO, CALIFORNIA 94105
TELEPHONE (415) 438-4600 • FACSIMILE (415) 438-4601
www.cwghp.com
May 29, 2009

MARC T. CEPALU
MIA C. PERACHIOTTI-GERMACK
LYNN L. KRUEGER
LAURA A. SCALES
MAX L. KELLEY
GALIN G. LUK

*ALSO ADMITTED IN HAWAII

Mr. Ron Falkowski
Engineering Geologist
California Regional Water Quality Control Board,
Central Valley Region
415 Knollcrest Drive, Suite 100
Redding, CA 96002

Re: **Antlers Shell/Subway, 20884 Antlers Road, Lakehead, California
RWQCB Case No. 450336**

Dear Mr. Falkowski:

By way of introduction, we represent Bob and Cheryl Davis (the "Davises"), the former owners of the Antler Shell Station and Subway (the "Site"), in both in the referenced regulatory matter ("Regulatory Matter") and in the lawsuit brought against the Davises brought by TBS Petroleum, LLC ("TBS"), entitled *TBS Petroleum, LLC v. Bob Davis, Cheryl Davis and DOES 1-20, inclusive*, Shasta County Superior Court Case No. 165285 (the "Action").

We understand that the California Regional Water Quality Control Board, Central Valley Region, (RWQCB) is in the process of drafting a Cleanup and Abatement Order (CAO) for the site. We also understand that SHN Consulting Engineers & Geologists, Inc. (SHN) has previously prepared a technical letter to provide you with additional information regarding the Site.

The purpose of this letter is three-fold. First, we wanted to advise that we serve as legal counsel for the Davises with regard to the Site, the Regulatory Matter and the Action, and to provide you with contact information. Please ensure that we are copied with all relevant correspondence and notices in the Regulatory Matter.

Second, we wanted to provide you with a copy of the Court's recent decision in the Action, which upheld the Davises' demurrer to TBS's complaint on the basis that the Davises and TBS contractually agreed that TBS purchased the Site from the Davises "as is", and that the Davises do not owe any indemnity to TBS for environmental conditions on the Site which TBS was aware of prior to closing escrow. The Court's Order in this regard, dated April 30, 2009, allowed TBS an opportunity to amend its complaint in the Action for TBS to allege (if it could) any contamination of the Site that it complains of *that TBS was not aware of before it closed escrow*. Tellingly, TBS's legal counsel has advised us that TBS will not attempt to amend its

Mr. Ron Falkowski
California Regional Water Quality Control Board,
Central Valley Region
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complaint in the Action. Instead, he said TBS will let the Court's April 30, 2009 Order become final. TBS' decision not to amend its complaint speaks volumes that it knew prior to the close of escrow about the Site's prior contamination history, for which TBS agreed to be contractually responsible. A final judgment on the Action will follow in due course, if TBS holds to its decision not to attempt to amend its complaint. The last day for TBS to file any amendment of its Complaint in the Action is June 21, 2009. We will keep you closely advised of developments in this regard.

Third, we request an opportunity to review and comment on the Draft CAO before it is issued as a CAO. In this regard, we have worked cooperatively in the past with other Regional Water Quality Control Boards in providing comments on draft CAOs involving other sites, and in so doing we have been able to successfully provide additional factual information for the Board Staff to consider, provide additional background as to other potential responsible parties, as well as successfully addressing some issues informally that would have otherwise have had to be formally raised in the CAO approval process. We are prepared to quickly provide you with our comments in that regard.

In advance of a review of a draft CAO, we would submit that on the record of the presently existing evidence it would be both premature and speculative for the RWQCB to attempt to assign any proportional responsibility for any of the contaminants of concern. What can be said at the moment is that TBS, as the current owner of the Site, is unquestionably a responsible party. Additionally, the Court in the Action has contractually foreclosed TBS from looking to the Davises as to any of the prior contamination. Moverover, TBS was not a stranger to handling contaminants of concern on the Site prior to its purchase of the Site. TBS spent many years as a supplier delivering petroleum products to tanks at on Site, including products containing MTBE. As the RWQCB is undoubtedly aware, experience shows that a high incidence of spills and overflows on gas station sites occur from those delivering product to the site. Certainly such potential sources of contamination by TBS' actions cannot and should not be ruled out preemptively, and TBS should be called on to show what practices it employed to prevent spillage and overflow. TBS' own records will also likely shed light on this subject. Moreover, the evidence also is expected to show that after TBS acquired ownership of the Site it failed to maintain the water system, resulting in water leakage, and failed to stop months water flooding through the tank farm on the Site from active leaks in the water system. This failure caused the migration of contaminants of concern from their *in situ* position in soil into the groundwater. Thus, the Davises contend that TBS was actively involved in causing the migration of contaminants involved in this case.

For all of these reasons, we request that the RWQCB name TBS, the current owner of the Site, as the primarily responsible party in the CAO. We believe that at this time, it is inappropriate and unwarranted for the RWQCB to attempt to assign proportionate liability to the

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former owners because there is not enough reliable data to develop a legally reasonable and non-speculative allocation of responsibility.

Mr. Davis has previously provided the RWQCB with documentation regarding the ownership history of the Site. Four parties are known to have owned the site while the underground storage tanks have been present. These parties are Shell Oil, Mr. and Mrs. Bailey, the Davises, and TBS. Given the limited Site investigation and characterization performed to date, it is presently not possible to state which parties may have contributed to the levels of petroleum hydrocarbon constituents detected in the soil and groundwater samples collected to date.

As SHN has advised, the LACO report and investigations to date are limited, and do not present a viable pathway for the migration of petroleum hydrocarbons to the depth of the supply well screen. Moreover, LACO could not ascertain accurate groundwater flow direction with their prior studies, with contradictory findings in the flow direction, making impossible on the current data to determine the exact source of the chemicals detected in the supply well. SHN also provided compelling analysis to support that indicate the potential for multiple releases that have occurred over time at the Site. In this regard, SHN opined that the lead scavengers which were detected, implied a pre-1985 release; the MTBE detected, implied a 1980-2004 release [or, we might add, recent negligence by TBS in flooding the tank farm's soil to create a migration of MTBE into groundwater]; and the ethanol detected, implied a post-2004 release.

It is our understanding from SHN's investigation that the tanks at the Site were removed and upgraded in 1997 and that Shasta County issued a "no further action" letter for the site because only residual levels of petroleum hydrocarbons were detected in the compliance samples collected during the tank removal. SHN concluded that these residual levels of petroleum hydrocarbons were relatively immobile (*i.e.*, they were below an asphalt and concrete cap) and SHN believes that typical groundwater levels do not reach the tank pit. It was reported that in 2007, under TBS ownership, a subsurface water line that traversed the tank pit was broken and leaking into the tank pit for several months. TBS appears to have allowed the tank pit to become saturated and water was observed by various witnesses to have overflowed onto the street. SHN believes that it is probable that this extended leak created a driving force to mobilize the residual material that remained in the tank pit and then contributed to the detections recently observed. SHN believes that the high water level conditions that the water leak created may have caused preferential flow of water across the site through the utility trenches, and that TBS' lack of response to the active leak may have created or exacerbated the soil and groundwater contamination observed at the site. Consistent therewith, SHN believes that this may be the reason that petroleum hydrocarbon constituents were not detected in the supply well prior to the water leak, but were detected after the water leak.

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Clearly, additional information, data and scientific Site analysis is required before one can draw any accurate and non-speculative conclusions as to the potential relative culpability of former owners/operators of the Site.

The Davises, while owners of the Site, acted thoroughly and to the satisfaction of involved regulators in taking all steps required to obtain a "no-further action" letter regarding the Site, and also acted in good faith during the sale of the property to TBS, who accepted the property "As-Is" and who assumed all Risk of Loss for the property as of the close of escrow. Moreover, as SHN has opined, the evidence points to TBS' inaction (*while the current owner of the Site*) in stopping the flooding of the tank area as a predominant cause of the mobilization into groundwater of contaminants. Additionally, the conflicting evidence of groundwater flow directions raises legitimate questions about contaminant sources. However, the Court has spoken in the Action, that from the sale documents between TBS and Mr. Davis, TBS agreed to purchase the property "As-Is" and to assume the Risk of Loss after close of escrow for environmental matters.

Therefore, we and SHN believe that it is appropriate for the RWQCB to name Shell Oil Company and the Bailey's to any CAO, and to require TBS to further investigate their property and remediate soil and groundwater if necessary. For your records on this matter we also include certified copies of the Notice of completion of the improvements on the Site of Shell Oil Company, dated December 5, 1972, and the Grant Deed conveying the Site from Shell Oil Company to Olan and Beverly Bailey, dated December 28, 1983.

Thank you for your attention to this matter. For your convenience I have included my direct dial number below, if you have any questions that I can assist you in answering regarding the Site, the Regulatory Matter or the Action.

Very truly yours,



Rupert P. Hansen
OF COX, WOOTTON, GRIFFIN,
HANSEN & POULOS, LLP

Enclosure

cc: Mr. Bob Davis
John Aveggio, P.E. (SHN Consulting Engineers & Geologists, Inc.)