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9 ASTRO PAK CORPORATION

10
11 BEFORE THE CALIFORNIA
12 STATE WATER RESOURCES CONTROL BOARD

13 IN THE MATTER OF THE PETITION OF
14 ASTRO PAK CORPORATION
15 California Regional Water Quality Control
16 Board, Los Angeles Region

No. _____

**PETITION FOR REVIEW AND
REQUEST FOR HEARING**

**REQUEST TO HOLD
PETITION FOR REVIEW IN
ABEYANCE**

(Cal. Water Code § 13320; Cal.
Code Regs., tit. 23 §§ 2050 *et seq.*)

1 **V. MANNER IN WHICH PETITIONER IS AGGRIEVED**

2 Petitioner is an aggrieved person within the meaning of California Water Code
3 section 13320 because the Regional Board's Directive contains arbitrary and capricious
4 findings that are unsupported by the evidence in the record. Moreover, the Directive's
5 requirements are burdensome and expensive, and the cost of complying with the Directive
6 will significantly outweigh any conceivable benefits of such further work. Completion of
7 the work requested by the Regional Board would be time consuming, expensive and
8 would adversely affect Petitioner's business—a small company with very limited
9 resources, all of which available resources are currently being employed on source control
10 and containment at a cost of approximately \$400,000 annually. Moreover, the technical
11 information and mitigation measures that the Regional Board has required have little or no
12 benefit, and are unnecessary in light of the successful Site characterization and
13 remediation work Petitioner has already implemented pursuant to CAO No. R4-2002-086.
14 Notably, Petitioner has spent several million dollars over the course of a decade in
15 effectively remediating both on-site and off-site impacts of the contamination.

16 Petitioner is also aggrieved by the Regional Board's unfair and selective treatment
17 of Petitioner. Petitioner's site is located at 8700-8708 Cleto Street in a largely industrial
18 area of Downey, California (the "Site"), and is surrounded by several industrial sites that
19 have themselves released TCE and PCE that has contaminated the regional groundwater
20 (e.g., the Hutchinson Seal site, located 100 feet Northwest of Petitioner's Site). In
21 particular, the former NASA Industrial Plant, located at 12214 Lakewood Blvd., Downey,
22 CA ("NASA Site"), 1200 feet from Petitioner's Site, has had significant and well-
23 documented releases of TCE, PCE and 1,2-DCE that have impacted the local
24 groundwater, and migrated off-site.¹ Moreover, the questionable remediation method
25 applied by the current operator of the NASA Site, ARCADIS, has caused and exacerbated
26 regional groundwater contamination, particularly by spreading 1,2-DCE contamination

27 _____
28 ¹ See administrative record for the NASA Site on file with the Regional Board.

1 off-site in all directions, including across the NASA Site's northern boundary.
2 Notwithstanding these additional contamination sources, Petitioner has been singled out
3 by the Regional Board to conduct increasingly costly investigative and cleanup work,
4 even though, or possibly because, Petitioner has fully cooperated with the Regional Board
5 in implementing effective remedial measures over the course of these 10 years now. This
6 discriminatory conduct by the Regional Board is unfair and harmful to Petitioner.

7 **VI. SPECIFIC ACTION REQUESTED BY PETITIONER**

8 Petitioner respectfully requests that the State Board:

9 (a) Rescind the Regional Board's March 10, 2011 Directive

10 (b) Hold an evidentiary hearing on the Regional Board's challenged actions.

11 (c) Allow Petitioner to supplement the record with such additional evidence as is or
12 may become available. Petitioner will identify such additional evidence once the record is
13 prepared by Regional Board.

14 (d) Hold this Petition in abeyance pending the outcome of further discussions and
15 communications between Petitioner and the Regional Board regarding the subject matter
16 of the Regional Board's Directive.

17 (e) Petitioner reserves the right to further request any and all actions authorized in
18 California Water Code section 13320.

19 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION**

20 Petitioner is a small company that conducts high-precision industrial components
21 cleaning operations. Initial investigations of the Site beginning in 1991 revealed that
22 historical operations on the Site had resulted in releases of TCE and PCE. Based on this
23 initial Site characterization work, on June 19, 2002 the Regional Board issued Cleanup
24 and Abatement Order ("CAO") No. R4-2002-086, requiring Petitioner to investigate and
25 cleanup both on-Site and off-Site contamination.

26 Petitioner has diligently complied with this CAO, delineating the extent of both on-
27 Site and off-Site contamination, and remediating both soil and groundwater impacts, all at
28

1 a cost of many millions of dollars. This work, now spanning a decade, has involved
2 extensive source control and groundwater remediation, including soil excavation by
3 excavator (approximately 300 tons), soil excavation by bucket auger (approximately 520
4 tons), soil vapor extraction (in operation from 2004 to present), on-Site and off-Site
5 potassium permanganate injection, sodium permanganate injection, and ozone injection.²
6 Petitioner has also installed an extensive network of groundwater monitoring wells, both
7 on-Site and off-Site, from which data are collected, analyzed and submitted to the
8 Regional Board on a quarterly basis.³

9 Petitioner's remediation work has been successful in greatly reducing the
10 concentrations of VOC contaminants in groundwater impacted by the Site. Indeed, the
11 most recent data demonstrate that total chlorinated VOC concentrations (PCE, TCE cis-
12 1,2-DCE, trans-1,2-DCE, etc.) in groundwater impacted by the Site have been reduced by
13 99 percent.⁴ Given these results, with the concurrence of Regional Board staff, Petitioner
14 has recently stopped its program of oxidation via ozone injection.⁵ In addition, Petitioner
15 has demonstrated that no significant rebound in VOC concentrations has occurred as a
16 result of deactivating this ozone injection system.⁶

17 Despite the success of Petitioner's remediation program, the Regional Board's
18 Executive Officer Samuel Unger issued the Directive to Petitioner on March 10, 2011,
19 requiring Petitioner to submit a technical report amending Petitioner's approved Remedial
20 Action Plan ("RAP") to address further remediation requirements outlined in the
21 Directive. The Directive asserts that Petitioner's Fourth Quarter Monitoring Report
22

23 ² See, e.g., Fourth Quarter 2010 Groundwater Monitoring and Remediation Progress
24 Report, dated January 2011 by Murex Environmental ("Fourth Quarter Monitoring Report"), on
file at the Regional Board as part of the administrative record in this case.

25 ³ See *id.*

26 ⁴ See *id.* at 13-14.

27 ⁵ See letter dated July 27, 2010 from Jeffrey Hu, Regional Board to Ken Verheyen, Astro
Pak, attached hereto as **Exhibit 2**.

28 ⁶ See Fourth Quarter Monitoring Report at 14

1 (along with other unspecified and unexplained “groundwater activities” and “case
2 records”) show that VOC contamination emanating from the Site has impacted
3 groundwater even further down-gradient, including groundwater present in monitoring
4 wells MW-13, MW-21 and MW-22. To the extent the Regional Board’s statement
5 regarding these down-gradient impacts constitutes a formal finding , Petitioner objects to
6 this finding as arbitrary and capricious as it is unsupported by the evidence and
7 inconsistent with the data in the record. In fact, the only specific data referenced in the
8 Directive (the aforementioned Fourth Quarter Monitoring Report) demonstrates and
9 concludes the opposite—in particular, the VOC impacts in the vicinity of monitoring well
10 MW-22 are attributable to the VOC plume emanating from the NASA Site or from some
11 other source up-gradient or lateral to the area under investigation.⁷

12 The Directive’s requirements are also burdensome and expensive, and the cost of
13 complying with the Directive will significantly outweigh any conceivable benefits of such
14 further work. In fact, the technical information and mitigation measures that the Regional
15 Board has required have little or no benefit, and are unnecessary in light of the successful
16 remediation work Petitioner has already implemented pursuant to CAO No. R4-2002-086.

17 Notwithstanding Petitioner’s objections to the Regional Board’s Directive
18 contained herein, Petitioner intends to submit the technical report requested by the
19 Regional Board. Therefore, Petitioner requests that the State Board hold this Petition in
20 abeyance pending further discussions with the Regional Board regarding the subject
21 matter of the Directive. Petitioner reserves its right to submit a detailed and more
22 inclusive statement of points and authorities if these discussions fail to resolve the issues
23 presented in this Petition. Petitioner will submit an additional statement of points and
24 authorities once the State Board converts this Petition to active status and the record in
25 this matter has been prepared.

26
27 ⁷ See *id.* at 15.

1 **VIII. LIST OF INTERESTED PARTIES**

2 Petitioner has identified and has served this Petition on the Regional Board and the
3 following additional interested parties as follows:

4 Samuel Unger
5 Executive Officer
6 California Regional Water Quality
7 Control Board, Los Angeles Region
8 320 W. 4th Street, Suite 200
9 Los Angeles, CA 90013

10 Jeffrey Hu
11 California Regional Water Quality
12 Control Board, Los Angeles Region
13 320 W. 4th Street, Suite 200
14 Los Angeles, CA 90013

15 Don Indermill
16 California Regional Water Quality
17 Control Board, Los Angeles Region
18 320 W. 4th Street, Suite 200
19 Los Angeles, CA 90013

20 **IX. STATEMENT THAT COPIES OF PETITION HAVE BEEN SENT TO THE
21 REGIONAL BOARD**

22 Copies of this Petition have been served on the Los Angeles Regional Water
23 Quality Control Board.

24 **X. STATEMENT THAT ISSUES RAISED IN THE PETITION WERE PRESENTED TO
25 THE REGIONAL BOARD**

26 All substantive issues and objections raised in this Petition have been raised before
27 the Regional Board, or Petitioner was not required to raise them, or was unable to raise
28 them below because Petitioner was unaware of them and could not have reasonably been
aware of them in time to raise them before the Regional Board, or because the Regional
Board unreasonably curtailed the amount of time Petitioner was given to raise issues
before the Regional Board.

XI. REQUEST FOR PREPARATION OF THE ADMINISTRATIVE RECORD.

By copy of this Petition to the Executive Officer of the Regional Board, Petitioner
hereby requests the preparation of the administrative record herein.

1 **XII. REQUEST FOR HEARING**

2 Petitioner requests that the State Board hold a hearing in this matter.

3 **XIII. STATEMENT OF ADDITIONAL EVIDENCE**

4 Petitioner requests that it be permitted to supplement the record before the State
5 Board. Petitioner will advise the State Board more specifically in this regard once the
6 record has been prepared by the Regional Board, and it knows what matters have not been
7 included by the Regional Board.

8 **XIV. REQUEST TO HOLD PETITION IN ABEYANCE**

9 Pursuant to Title 23, California Code of Regulations section 2050.5(d), Petitioner requests
10 that the State Board hold this petition in abeyance for a brief period to allow the Regional Board
11 and Petitioner to attempt to resolve the issues raised in this Petition. Petitioner will notify the
12 State Board when it is ready to have its Petition considered.

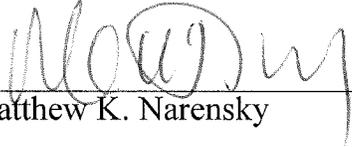
13
14 Respectfully Submitted,

15 Dated: April 8, 2011

WINSTON & STRAWN LLP

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By: 

Matthew K. Narensky

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Attorneys for Petitioner
ASTRO PAK CORPORATION

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EXHIBIT 1



California Regional Water Quality Control Board Los Angeles Region



Linda S. Adams
Acting Secretary for
Environmental Protection

320 West Fourth Street, Suite 200, Los Angeles, California 90013
(213) 576-6600 • Fax (213) 576-6640
<http://www.waterboards.ca.gov/losangeles>

Edmund G. Brown Jr.
Governor

March 10, 2011

Mr. Ken Verheyen
Astro Pak Corporation
12201 Pangborn Avenue
Downey, CA 90241

SUBJECT: REQUIREMENTS FOR GROUNDWATER CLEANUP PURSUANT TO CLEANUP AND ABATEMENT ORDER NO. R4-2002-086

SITE: FORMER ASTRO PAK FACILITY, 8700 – 8708 CLETA STREET, DOWNEY, CALIFORNIA (SCP NO. 0302E, SITE ID NO. 2044E00, FILE NO. 97-78)

Dear Mr. Verheyen:

You are subject to Cleanup and Abatement Order (CAO) No. R4-2002-086 issued to Astro Pak Corporation (Astro Pak) on June 19, 2002, pursuant to California Water Code section 13304. CAO No. R4-2002-086 directed Astro Pak, as the responsible party, to investigate, cleanup and abate soil contamination and groundwater pollution at, and groundwater pollution emanating from, the subject facility (Site) at 8700-8708 Cleta Street, in Downey, California.

Under Regional Water Quality Control Board oversight, you have been performing groundwater cleanup of volatile organic compounds (VOCs) using oxidation via permanganate and ozone injection into the groundwater beneath, and downgradient from the site. Concentrations of perchloroethylene (PCE) in groundwater have been reduced from 15,000 micrograms per liter ($\mu\text{g/L}$; Well MW-3 in July 1998) to 25 $\mu\text{g/L}$ (Well MW-1 in November 2010). Concentrations of trichloroethylene (TCE) in groundwater have been reduced from 167,000 $\mu\text{g/L}$ (Well MW-5 in January 1999) to 67 $\mu\text{g/L}$ (Well MW-2 in November 2010).

Your recent groundwater monitoring report (*Groundwater Monitoring Report / WDR Discharge Report / Remediation progress Update, Fourth Quarter 2010*, dated January 15, 2011), recent off-site groundwater activities, and other case records show that VOC contamination in groundwater (mainly cis-1,2-dichloroethylene, a breakdown product of PCE and TCE) emanating from the referenced site, extends down-gradient toward the south, and has impacted groundwater quality in that direction. The impacted off-site monitoring wells include (but are not limited to) MW-13, MW-21, and MW-22. Currently, you have paused the onsite groundwater remediation process using oxidation via permanganate and ozone injection, to assess the cleanup progress and evaluate for potential alternative remedial options. You shall continue your efforts to remediate the VOC impact remaining beneath the Site, and the VOC impact in groundwater emanating from the Site. Therefore, you shall amend your existing Remedial Action Plan (RAP; approved by the Regional Board on March 24, 2008), based on the existing site conditions, and available remedial technologies, to address the above-mentioned remediation requirements pursuant to CAO No. R4-2002-086.

California Environmental Protection Agency

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Mr. Ken Verheyen
Astro Pak Corporation
Downey, California

- 2 -

March 10, 2011

Pursuant to section 13304 of the CWC, you are required to submit the Amended RAP by **May 6, 2011**. The new due date is an amendment of the existing CAO R4-2002-086, dated June 19, 2002. Pursuant to section 13308 of the CWC, failure to submit the required technical report by the specified due date may result in civil liability administratively imposed by the Regional Board in an amount up to one thousand dollars (\$5,000) for each day the technical report is not received.

The Regional Board requires you to include a perjury statement in all reports submitted under a CAO. The perjury statement shall be signed by a senior authorized representative at Astro Pak (and not by consultant). The statement shall be in the following format:

"I, [NAME], do hereby declare, under penalty of perjury under the laws of State of California, that I am [JOB TITLE] for Astro Pak Corporation that I am authorized to attest to the veracity of the information contained in [NAME AND DATE OF REPORT] is true and correct, and that this declaration was executed at [PLACE], [STATE], on DATE."

The State Water Resources Control Board (State Water Board) adopted regulations requiring the electronic submittals of information over the internet using the State Water Board GeoTracker data management system. You are required not only to submit hard copy reports required in this Order, but also to comply by uploading all reports and correspondence prepared to date on to the GeoTracker data management system. The text of the regulations can be found at:

http://www.swrcb.ca.gov/rwqcb4/water_issues/programs/remediation/el_submittal.pdf

As presented in State Water Resources Control Board Resolution 92-49, professionals should be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. Moreover, the final report submitted to this Regional Board must be reviewed, signed and stamped by a California registered geologist, or a California registered civil engineer with at least five years hydrogeologic experience. Furthermore, the California Business and Professions Code Sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. Therefore, all future work must be performed by or under the direction of a registered geologist or registered civil engineer. A statement is required in the final report that the registered professional in responsible charge actually supervised or personally conducted all the work associated with the work plan and final report.

Mr. Ken Verheyen
Astro Pak Corporation
Downey, California

- 3 -

March 10, 2011

If you have any questions, please contact the case manager, Mr. Don Indermill at (213) 576-6811 or dindermill@waterboards.ca.gov.

Sincerely,


for Samuel Unger, P.E.
Executive Officer

cc: Mr. Jeremy Squire, Murex Environmental, Inc.

California Environmental Protection Agency



Recycled Paper

EXHIBIT 2



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Cal/EPA Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

July 27, 2010

Mr. Ken Verheyen
Astro Pak Corporation
12201 Pangborn Avenue
Downey, CA 90241

APPROVAL OF OZONE SYSTEM SHUT DOWN – FORMER ASTRO PAK FACILITY, 8700 CLETA STREET, DOWNEY, CALIFORNIA (SCP NO. 0302E, SITE ID NO. 2044E00)

Dear Mr. Verheyen:

We have received and reviewed the letter *Proposed Ozone System Shut Down*, dated July 12, 2010 submitted by Murex Environmental, Inc (Murex). for the above referenced site. This document proposes to cease ozone injection and operate the existing soil vapor extraction (SVE) unit with emphasis on the wells screened in the vadose zone.

The purpose of the ozone injection has been to remediate volatile organic compound (VOC) impacts to groundwater beneath the site. Maximum VOC concentrations have decreased significantly as a result. For example, TCE decreased from 16,000 micrograms per liter (μ/L) to 490 μ/L . Falling water levels have reduced the amount of water column available for treatment with ozone and increased the amount of vadose zone that can be treated with SVE.

Based on our review of the submittal, information in our files, and conversations with you, we hereby approve the shut down of the ozone injection. Astro Pak shall continue to comply with the monitoring and reporting program (CI-8808). Meanwhile, you shall prepare and submit an evaluation of groundwater remediation alternatives to accomplish cleanup goals per our phone conversation with your consultant on July 16, 2010.

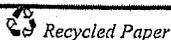
If you have any questions, please contact the case manager, Mr. Don Indermill at (213) 576-6811 or dindermill@waterboards.ca.gov.

Sincerely,

Jeffrey Hu, P.E.
Chief, Site Cleanup Program Unit II

cc: Mr. Jeremy Squire, Murex Environmental, Inc.

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.