CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. 96-109

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

EAST CHARLESTON, INC.

for the property located at

844 EAST CHARLESTON ROAD
PALO ALTO
SANTA CLARA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Board), finds that:

1. High levels of VOC's have been detected in site soils including TCE up to 7,000 ppb, DCE up to 630 ppb, and Methylene Chloride up to 5,500 ppb. Contaminants found in groundwater include TCE up to 7,600 ppb, DCE up to 3,800 ppb, and DCA up to 330 ppb. Groundwater monitoring also showed that the second aquifer has been affected

2. The Board adopted site cleanup requirements (SCR) for Advalloy, the previous owner, in 1990. Advalloy declared bankruptcy soon after the SCR was adopted and investigative work ceased. After the bankruptcy case was dismissed in 1994, East Charleston, Inc. (ECI) was formed and purchased the property.

3. The Board adopted a revised SCR in 1995 naming ECI as a discharger. The SCR included tasks for soil and groundwater investigations at the site. Task B.1, submittal of a Remedial Investigation Workplan, was due January 15, 1996. ECI did not submit a workplan, alleging financial limitations of the corporation. However, no supporting documentation was ever submitted.

4. On May 14, 1996, the Executive Officer issued a complaint for administrative civil liability to ECI for failing to submit a work plan as required under Site Cleanup Order No. 95-222. The complaint alleges that ECI violated an order issued pursuant to Section 13304 of the California Water Code. On July 17, 1996, the Board imposed administrative civil liability of $184,400 against ECI for this violation.

5. Board staff have identified several parties that may be considered as suspected dischargers:

   a. Pacific American Management Co. (PAMCO) is the property management company that manages the site.

   b. The Law Offices of Hothem and Isele (H&I) is the law firm that was a trustee to Advalloy's holdings during bankruptcy proceedings. H&I also created East Charleston, Inc. so that it could purchase the property.

   c. Ronald E. Hothem is a partner of H&I, may be doing business as PAMCO, and is the president of ECI.

6. On May 17, 1996, the Executive Officer issued a Section 13267 letter to ECI, PAMCO, H&I, and Ronald Hothem. The 13267 letter requested a technical report detailing the names, positions, and legal and financial status of the above parties. The request was made in order to identify all viable dischargers that may be named so that cleanup efforts at the site can resume. The technical report was due May 31, 1996.

7. Board staff received a technical report from PAMCO on June 3, 1996. The report was incomplete because it did not detail the names, positions, and legal and financial status of the above parties as requested in the letter. Board staff still cannot determine who may or may not be named as a discharger.

8. On June 14, 1996, the Executive Officer issued a notice of violation to ECI, PAMCO, H&I, and Ronald Hothem for failure to submit an adequate technical report. An adequate technical report was submitted and the above parties have been in violation 47 days from May 31, 1996 to July 17, 1996.

9. The Board has fully considered the factors set forth for determination of the amount of civil liability set forth in California Water Code Section 13327:

   a. Water Quality and Public Health Effects: Pollutants released at the site are volatile organic compounds (VOCs), including some known or suspected carcinogens. VOCs have impacted both soils and groundwater beneath the site and have migrated off-site and polluted additional groundwater resources.

      The delay in obtaining information on suspected dischargers causes a delay in naming a viable discharger to the SCR. Cleanup efforts at the site are thus hampered and continued significant migration of pollutants in soil and groundwater is still occurring. Off-site migration has impacted the cleanup program at the adjacent former Ford Aerospace site located immediately downgradient of the subject property.

b. Culpability: ECI has knowingly failed to submit an acceptable technical report, as documented in the Executive Officer's June 14, 1996 notice of violation letter. Maximum liability is appropriate in this instance, due to the deliberate nature of the violation.

c. Prior History of Violations: ECI has violated a cleanup and abatement order issued pursuant to Water Code Section 13304, by failing to submit a workplan for site investigation. On July 17, 1996, the Board imposed administrative civil liability of $184,400 against ECI for this violation.

d. Economic Savings: ECI has realized minimal cost savings in its staff time by delaying submittal of the required technical report.

e. Voluntary Cleanup Efforts: This factor does not apply to the violation at hand.

f. Ability to Pay: ECI has provided no evidence of its inability to pay the proposed liability. Indeed, the technical report's inadequacy was in part due to a failure to provide requested information on financial status.

g. Other Matters as Justice May Require: The Board incurred $360 in staff costs in order to prepare the complaint and supporting information. This amount is computed based on an hourly rate of $60 per hour for 6 hours.

10. The maximum civil liability which can be imposed by the Board under Section 13268(b) of the California Water Code is $1,000 per day of violation for the 47 day period from May 31, 1996 through July 17, 1996.

11. This action is an order to enforce the laws and regulations administered by the Board. This action is categorically exempt from the provisions of CEQA pursuant to Section 15321 of the Resources Agency Guidelines.

12. The Board has notified ECI and all interested agencies and persons that it would hold a public meeting on this matter and has provided them with an opportunity to submit written comments.

13. The Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, PURSUANT TO CALIFORNIA WATER CODE SECTION 13268, that ECI is civilly liable for this violation and shall pay administrative civil liability in the amount of $9,400. This amount includes $360 in staff costs. The liability shall be paid to the State Water Pollution Cleanup and Abatement Account within 30 days of the date of this Order.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on July 17,1996.

Loretta K. Barsamian
Executive Officer