

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 94-6

APPROVAL OF STATE WATER POLLUTION CLEANUP
AND ABATEMENT ACCOUNT FUNDS TO REIMBURSE
ORANGE COUNTY FOR COSTS INCURRED TO CLEANUP
ASPHALT SEALER MATERIAL AT SEAL BLACK COMPANY

WHEREAS:

1. On July 26, 1990 Orange County Environmental Management Agency (Agency) responded to a release of approximately 10,000 gallons of asphalt sealer material that threatened a tributary of Huntington Harbor and the Bolsa Chica Wildlife Reserve; and
2. The agency expended \$50,000 on direct cost and \$20,121.07 for staff and equipment to cleanup the release; and
3. The release originated from tanks owned by Seal Black Company, Inc., which was billed for the cost incurred by the Agency; and
4. Seal Black Company has not paid the Agency's bill; and
5. Recovery from Seal Black Company for funds expended to cleanup this release is not likely.

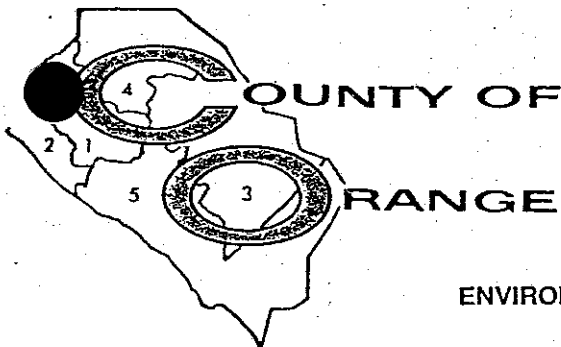
THEREFORE BE IT RESOLVED THAT:

The State Water Board hereby approves the Orange County Environmental Agency request of \$70,121.07 from the State Water Pollution Cleanup and Abatement Account for costs incurred in July/August 1990 to cleanup the release of asphalt sealer material from the Seal Black Company in Garden Grove.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 19, 1994.


Maureen Marché
Administrative Assistant to the Board



ENVIRONMENTAL MANAGEMENT AGENCY
REGULATION

MICHAEL M. RUANE
DIRECTOR, EMA

ROBERT F. WINGARD
DIRECTOR OF REGULATION

LOCATION:
300 N. FLOWER ST.
SECOND FLOOR
SANTA ANA, CALIFORNIA

MAILING ADDRESS:
P.O. BOX 4048
SANTA ANA, CA 92702-4048

TELEPHONE:
(714) 834-2609
FAX # 834-4588

July 26, 1993

Mr. Harry Schueller, Chief
Division of Clean Water Programs
State Water Resources Control Board
P.O. Box 94212
Sacramento, CA 94244

**SUBJECT: REQUEST FOR STATE WATER POLLUTION CLEANUP AND ABATEMENT
ACCOUNT FUNDS**

Dear Mr. Schueller:

On July 26, 1990, staff of Orange County Environmental Management Agency responded to a release of approximately 10,000 gallons of asphalt sealer material at the Seal Black Company at 13812 A Better Way, Garden Grove. An estimated 5,000 gallons entered the adjacent East Garden Grove-Wintersburg Channel, which is tributary to the Bolsa Chica Wetlands, before being contained two miles down stream.

The attached staff report from the Regional Water Quality Control Board, Santa Ana Region provides a detailed account of the spill, the clean-up methodology and the financial arrangements related to the clean-up. The Environmental Management Agency expended \$50,000 on direct costs to Crosby and Overton, the clean-up contractor, and an additional \$20,121.07 on staff and equipment, for a total of \$70,121.07. This amount was billed to Seal Black Co in 1991 (see attached) but was not paid.

It was the understanding of the Environmental Management Agency that the State Resources Control Board, through the Attorney General's Office, would seek restitution of the \$200,000 paid from the State Water Pollution Cleanup and Abatement Account. The Regional Water Quality Control Board, Santa Ana Region, at its July 16, 1993 meeting, however, decided not to pursue such an action. Regional Board staff were quoted as saying that the fund has an ample amount of money generated by industrial fines.

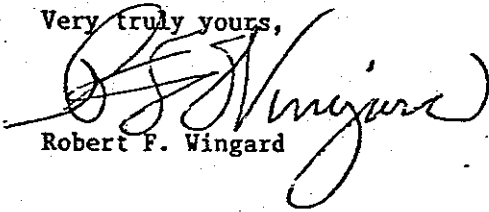
Given the fact that the State is on record as having agreed that the use of Cleanup and Abatement Account funds in this situation was appropriate. This letter and its attachments serve as an application by the Orange County

Harry Schueller
Page 2

Environmental Management Agency for \$70,121.07 from the Cleanup and Abatement Account. Such a request is authorized by Water Code Section 13442.

If you have any questions regarding the above please contact Chris Crompton at (714)567-6360.

Very truly yours,


Robert F. Wingard

CC:rps
3072610530104

Attachments: 1. RWQCB Santa Ana Region Report
2. Invoice to Seal Black

cc: Michael M. Ruane, Director, EMA

California Regional Water Quality Control Board
Santa Ana Region

September 14, 1990

ITEM: 24

SUBJECT: Status of cleanup activities related to the Seal Black Co., Inc., spill.

DISCUSSION:

Early during the morning of Thursday, July 26th, a worker at Seal Black Company in Garden Grove discovered that approximately 8,000 - 10,000 gallons of asphalt sealer material had been released from a number of tanks at the site. An estimated 4,000 to 5,000 gallons left the facility and entered the East Garden Grove - Wintersburg Channel which is tributary to Huntington Harbour and the Bolsa Chica Wildlife Reserve. The discharge is suspected to be the result of vandalism (hoses were draped over secondary containment walls and valves were turned on).

Although the spill was discovered early in the morning, appropriate officials were not notified until several hours later. Orange County Environmental Management Agency (OCEMA) staff were among the first responders. By the time they arrived, the material had traveled approximately two miles downstream from the site. They set up dikes in the channel at McFadden Avenue to prevent the material from reaching the wetlands. When Regional Board staff arrived at the site, they directed that more than 500,000 gallons per day of upstream "nuisance" water in the stream be diverted away from the channel where the spill entered so that cleanup would not be further complicated by the introduction of uncontaminated water. The nuisance water was directed both into a percolation basin and into the sewer system of the County Sanitation Districts of Orange County (CSDOC).

A cleanup contractor, Crosby and Overton (C&O), was called out to the site by the County. As the day of the spill progressed, Seal Black's insurance company would not agree that Seal Black was insured for the spill. Late in the day, however, the corporate officers of Seal Black Co., Inc., signed a contract with C&O to begin cleanup efforts. Unfortunately, their authorization was for only up to \$25,000 because of the insurance question. As cleanup activities proceeded, it became increasingly clear that the spill would not be easily cleaned up, and the company's \$25,000 commitment was exhausted quickly. OCEMA provided a contingency of up to \$25,000 until other cleanup funds could be located.

It was clear that it was going to be necessary to request emergency funds from the State Board's Cleanup and Abatement Account (CAA) to ensure that the spill would be prevented from entering the Bolsa Chica Wetlands. A request for \$50,000 was made to Bill Attwater,

the Chief Counsel, the afternoon of the 26th, and the funds were immediately granted. However, late on Friday afternoon it became clear that the original \$50,000 would not cover the cleanup over the weekend and a request to the State Board for an additional \$50,000 was also granted.

The cleanup continued over the weekend with Board staff (Bruce Paine) closely monitoring the operation. On Monday morning, the Executive Officer met with representatives of C&O, OCEMA, and CSDOC to discuss and analyze cleanup expenditures. During that meeting it was learned that the cleanup funds would probably be exhausted during the day. Also, it was estimated that at least another 4 or 5 days of cleanup were left.

When it was determined that an additional \$100,000 would probably be necessary, the Executive Officer immediately initiated contact with the State Board for the additional CAA funds. OCEMA staff contacted their upper management to arrange for any additional emergency funds which might be available. County management subsequently agreed to redirect an additional \$25,000 from another department to enable the cleanup to proceed until additional state funds might be made available.

Administrative procedures require that the State Board to convene an emergency meeting to approve any requests for funds beyond the amount that had already been administratively granted. A State Board Water Rights hearing was underway when the Executive Officer made the request for an additional \$100,000. The State Board recognized that an emergency situation existed and approved the request.

A breakdown of the cleanup funding for this spill is as follows:

1.	Seal Black	\$ 25,000
2.	Orange County	50,000
3.	Regional Board	200,000

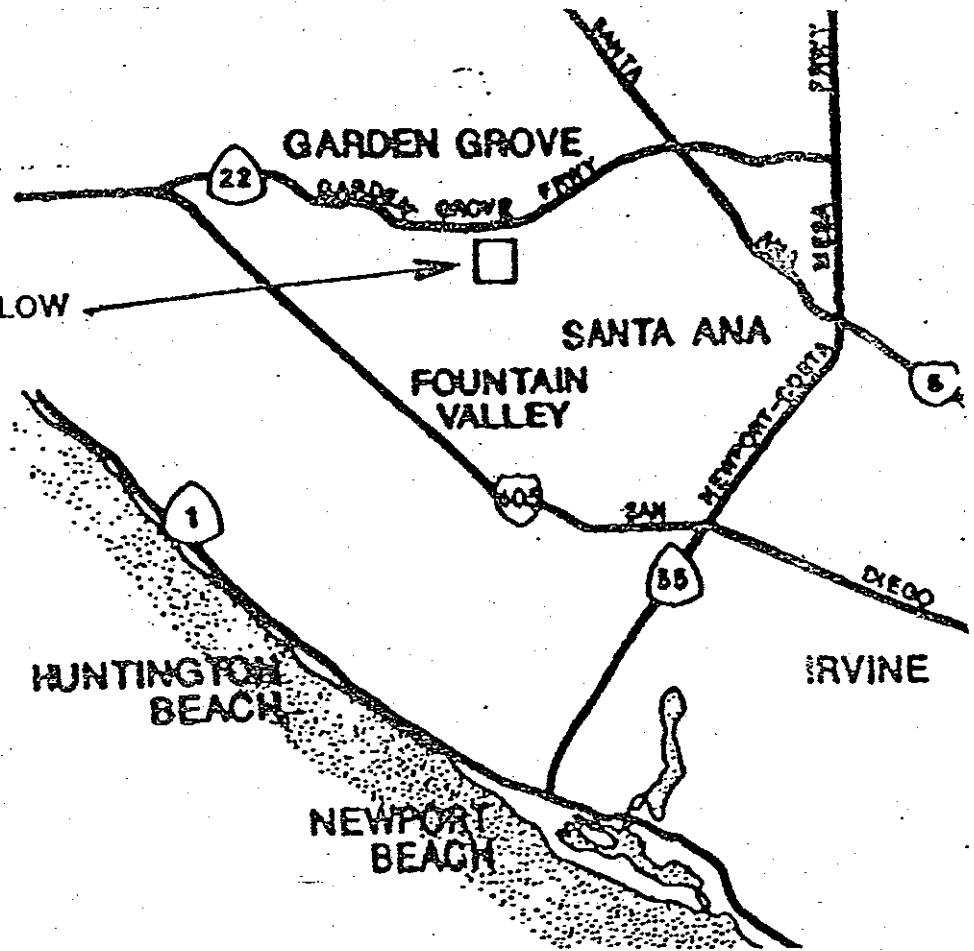
Cleanup consisted of high pressure hot water and caustic detergent washes to dislodge the tar-like material from the channel. The tailings from this activity were allowed to flow downstream to the containment dam at McFadden Avenue where they were extracted and placed in 20,000 gallon portable holding tanks (Baker tanks). Although the diversion of nuisance water from above the spill location was successful, other nuisance water entering the two miles of contaminated channel was significantly impairing the cleanup efforts. Because of the number of inputs and the volume, it was not logistically feasible to divert them. As a result, it was necessary to increase the extraction rate from the channel at McFadden Ave. The increased extraction rate created an additional

burden for storage capacity unless a quick means of disposal could be achieved. An analysis of the material being extracted indicated that, while it would certainly have a negative impact on the wetlands, it would be feasible to discharge it to the sanitary sewer if the Baker tanks were operated as crude clarifiers. CSDOC approved the discharge into their system on Friday the 27th.

From this point on the cleanup went relatively smoothly; however, it took longer than expected due to the lower one mile of channel being lined with riprap which made cleanup slow and tedious (the upper mile was concrete lined). Once the channel was considered clean, a new dam with underflow pipes was constructed immediately downstream of the primary containment dam as a precautionary measure. This was done so that when the water was once again allowed to flow through the channel on August 9, 1990, the floatables (oil, sheens, etc.) could be contained and removed. Analyses of the underflow indicated that no appreciable amounts of petroleum hydrocarbons were present.

The California Water Code provides that those who are responsible for the spill become liable for the costs of cleanup of the spill. It is understood that the Regional Board or the State Board will attempt to recover funds expended from the CAA from any responsible parties.

EXPANDED AREA SHOWN BELOW



GARDEN GROVE FRWY

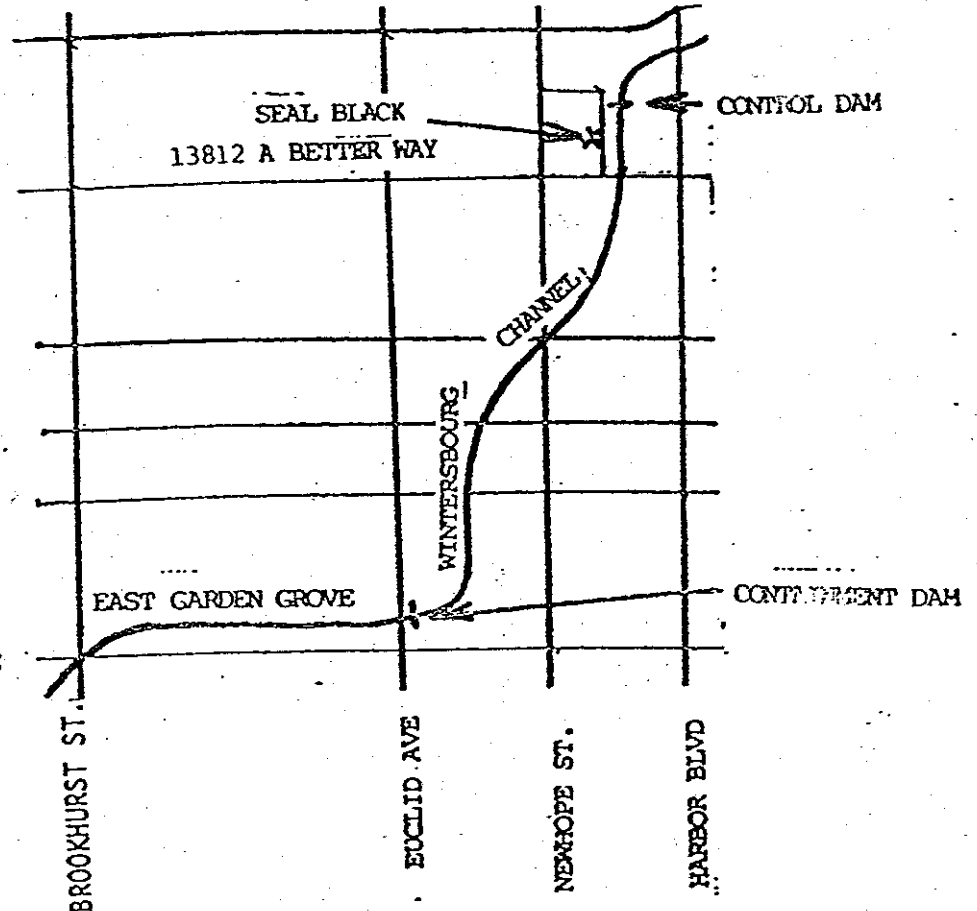
WESTMINSTER AVE

HAZARD AVE

5TH ST.

1ST ST.

McFADDEN AVE



LOCATION MAP

COUNTY OF ORANGE

AUDITOR-CONTROLLER
 P.O. BOX 567
 SANTA ANA, CALIFORNIA 92702

INVOICE NO. 084302 -

DATE May 20, 1991

REFERENCE THIS NUMBER -
 ON YOUR REMITTANCES
 FOR PROPER CREDIT.

SOLD TO

AME Seal-Black Co., Inc.
 ADDRESS 13812 A Better Way
 Garden Grove, CA 92643

Attn: Wm. R. Green, Secretary/Treas.

ACCOUNTING CODE

FUND B/U	OBJ	SUB OBJ	RESP CTR	PPS	PROJECT NUMBER	GRANT	AMOUNT
4001	653	000	470		F 27018186		\$70,121.07

THIS INVOICE PREPARED BY: Chris Rudolph, EMA/Accounting PHONE # 714-234-5339

QUANTITY	DESCRIPTION	PRICE	AMOUNT
	Oil Spill cleanup in C-5 Channel on Euclid North of McFadden Avenue Date of Oil Spill 7/26/90		\$70,121.07

PLEASE RETURN BLUE COPY OF INVOICE WITH YOUR REMITTANCE.
 PERSONAL CHECKS MUST BE IMPRINTED WITH - NAME, ADDRESS
 AND TELEPHONE NUMBER. DRIVER'S LICENSE AND SOCIAL SECURITY
 NUMBERS ARE ALSO REQUESTED.

TOTAL DUE \$70,121.07

Handwritten: 8/20/91

Memorandum

al

To : Gerard Thibeault, Executive Officer
Region 8, Riverside

Date : JUL 29 1993

ORIGINAL SIGNED BY

From : Harry M. Schueller, Chief
Division of Clean Water Programs
STATE WATER RESOURCES CONTROL BOARD
2014 - T Street, Suite 130
Sacramento, CA 95814 Mail Code: G-8

Subject: REQUEST OF ORANGE COUNTY ENVIRONMENTAL MANAGEMENT AGENCY REGARDING 1990 SEAL
BLACK COMPANY SPILL

Please review the attached request. I would appreciate receiving any material that was provided to the Regional Water Board on July 16, 1993 regarding this case. In addition, I would appreciate receiving any information you have as to the reasoning it would be inappropriate to pursue recovery of costs from Seal Black Company. Our file indicates that the State Water Board has formally requested the Attorney General to pursue the recovery of costs. This was supported in your memorandum to me dated November 1, 1991.

Attachment

bcc: WGPettit, Exec. w/enclosure
AGarbutt, CWP w/enclosure

HMSchueller:lryder (7/28/93)

Memorandum

To: Harry Schueller, Chief
Division of Clean Water Programs
State Water Resources Control Board

Date: August 20, 1993

From: CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SANTA ANA REGION
2010 IOWA AVENUE, SUITE 100, RIVERSIDE, CALIFORNIA 92507-2409
Telephone: CALNET 632-4130 Public (909) 782-4130

Subject: REQUEST OF ORANGE COUNTY ENVIRONMENTAL MANAGEMENT AGENCY
REGARDING 1990 SEAL BLACK COMPANY SPILL

This is in response to your July 29, 1993 memo to me in which you requested information concerning the Regional Board's decision not to pursue further litigation against Seal Black Company.

In closed session the Board discussed this case with Carol Squire, Deputy Attorney General, from San Diego. For the benefit of our newer Board members, Ms. Squires briefly described the facts of the incident. Of particular interest to the Board members were (1) the incident was the result of vandalism through a locked gate with no knowledge of the company; (2) the Seal Black insurance carrier, Golden Eagle, had an environmental exclusion and would provide no coverage for this incident; (3) Seal Black authorized the payment of the first \$25,000 of cleanup costs; and (4) the very pessimistic picture painted by the Deputy Attorney General of the chances of recovering anything from Seal Black, even if this case were to be pursued vigorously by the Attorney General with a very large expenditure of state funds. Given the concerns of the Attorney General's office with respect to workload and staffing priorities, and the low potential for recovery in this case, the Board believed that public resources would be better utilized elsewhere.

Ms. Squire told the Board that the liability issues in this case were very unclear because the spill was the result of vandalism. The Board was also very concerned that the apparent absence of insurance coverage might cause this company to be put out of business in the event of a ruling favorable to our recovery. As you know, the Regional Board is required to consider the economic impacts of their decisions, and there was very little support for damaging this company, especially when the company was the victim of vandalism. Further, the Regional Board is well aware that the Cleanup and Abatement Account is currently quite healthy and is supported by assessments and settlements from true environmental miscreants.


Harry Schueller
Seal Black Spill
August 20, 1993

Page 2

With regard to the request by Orange County Environmental Management Agency for funds from the Cleanup and Abatement Account, we are grateful for the continued partnership we have with Orange County in responding to such spill events. Their efforts and cooperation are invaluable, and if we can bolster their ability to respond to spill events in the future, water quality will benefit.

We understand that Orange County has directed their counsel to attempt to recover their expenditures from Seal Black. If that effort is not successful, we recommend that the County's request be granted. I have discussed this with the Regional Board Chairman, but if you need further Regional Board consideration of Orange County's request, please let me know.

If we can provide any additional information, please contact me.


Gerard J. Thibeault
Executive Officer

cc. Regional Board
Walt Pettit, Executive Director, SWRCB

State of California

Memorandum

To: Harry Schueller, Chief
Division of Clean Water Programs
State Water Resources Control Board

Date: August 20, 1993

From: CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SANTA ANA REGION
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File

(916) 227-4428
(916) 227-4349 FAX

JUL 29 1993

Mr. Robert F. Wingard
County of Orange
Environmental Management Agency
P. O. Box 4048
Santa Ana, CA 92702-4048

Dear Mr. Wingard:

REQUEST FOR STATE WATER POLLUTION CLEANUP AND ABATEMENT ACCOUNT FUNDS

I have received your letter of July 26, 1993 requesting Cleanup and Abatement Account funding for a July 1990 spill at the Seal Black Company. One question I have is what prevents the County from seeking recovery of its own expenditures directly from the company? Please provide me with an answer to this question so that we may prepare an agenda item for a State Board meeting.

Sincerely,

ORIGINAL SIGNED BY

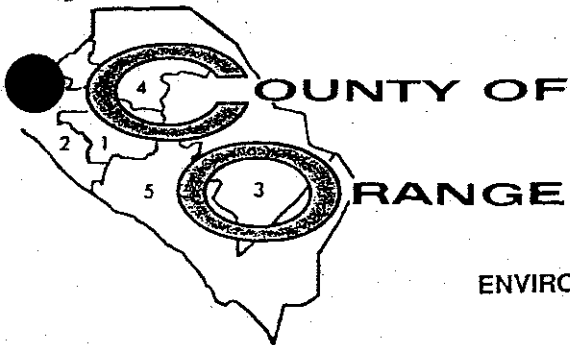
Harry M. Schueller, Chief
Division of Clean Water Programs

cc: Mr. Gerard J. Thibeault
Santa Ana Regional Water Quality
Control Board
2010 Iowa Avenue, Suite 100
Riverside, CA 92507-2409

bcc: Alan Garbutt

HMSchueller:lyder (7/28/93)
HARRY/Wingard

Garbutt
7/28/93



al Gabbutt

MICHAEL M. RUANE
DIRECTOR, EMA

ROBERT F. WINGARD
DIRECTOR OF REGULATION

LOCATION:
12 CIVIC CENTER PLAZA
SANTA ANA, CALIFORNIA

MAILING ADDRESS:
P.O. BOX 4048
SANTA ANA, CA 92702-4048

TELEPHONE:
(714) 834-2626
FAX # 835-7425

ENVIRONMENTAL MANAGEMENT AGENCY
REGULATION

SEP 8 1993

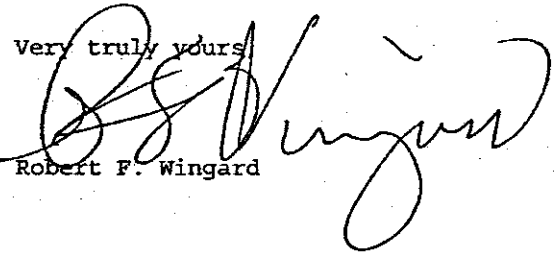
FILE

Mr. Harry M. Schueller, Chief
Division of Clean Water Programs
State Water Resources Control Board
P.O. Box 94212
Sacramento, CA 94244-2120

SUBJECT: REQUEST FOR STATE WATER POLLUTION CLEANUP AND
ABATEMENT ACCOUNT FUNDS

Dear Mr. Schueller:

In response to your letter of July 29, 1993, the County has, at the direction of the Board of Supervisors, initiated legal action against the Seal Black Company in an attempt to recover funds expended on the subject clean-up. To date, no progress has been in attempts to settle the case.

Very truly yours,

Robert F. Wingard

CC:rps
3090308204109

cc: Michael M. Ruane, EMA, Director