STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petitions of ARTHUR SPITZER, HARVEY JACK MULLER AND BETTINA BRENDEL SPIC & SPAN ,INC. AND S & S ENTERPRISES, INC. ARATEX SERVICES, INC. For Review of Cleanup and Abatement Orders Nos. 88-10 and 88-69 of the California Regional Water Quality Control Board, Santa Ana Region. Our File Nos. A-537, A-537(a) and A-537(b).	ORDER NO. WQ 89- 8

BY THE BOARD:

On March 11, 1988, the Regional Water Quality Control Board, Santa Ana Region (Regional Board) adopted Cleanup and Abatement Order 88-10. The Order provides for the cleanup of soil and groundwater contaminated by perchloroethylene (PCE) at a site where dry cleaning businesses had operated for many years. PCE is commonly used as a dry cleaning solvent. The property is located at 14072 Magnolia Avenue in the City of Westminster (the Property). The dischargers named in the order include New Fashion Cleaners, Inc., which operated a dry cleaning business on the Property (New Fashion) and Spic & Span, Inc. and S & S Enterprises, Inc. (collectively referred to as Spic & Span). Spic & Span leased a building on the Property and its subsidiary, S & S Enterprises,Inc., operated a dry cleaning business there.

Spic and Span and S & S have petitioned the State Board for review of Order No. 88-10. Also named as dischargers were Arthur Spitzer, Harvey Jack Muller and Bettina Brendel, who are the owners of the Property (referred to collectively, along with all their predecessors in interest, as the Owners). They have also petitioned the State Board for review of Order No. 88-10. Sol E. Tunks and Ed Tsuruta (formerly T & F, Inc.) are lessees of the Property under a ground lease and they subleased the property to the dry cleaners. They were also named as dischargers but are not petitioners.

After Order 88-10 was issued, the Regional Board learned that New Fashion had been acquired by Aratex, Services Inc. (Aratex). On July 8, 1988, the Regional Board adopted Cleanup and Abatement Order 88-69 to include Aratex. Aratex has petitioned the State Board for review of both Orders No. 88-10 and 88-69 (Cleanup and Abatement Orders 88-10 and 88-69 are referred to collectively as the Orders).

Because Order 88-69 was adopted after Spic & Span and Owners had filed petitions and because Orders No. 88-69 merely amends Order No. 88-10, their petitions will be reviewed as applicable to both Orders.

I. BACKGROUND

On July 6, 1987 a construction contractor discovered a manhole cover which was part of an old subsurface disposal system on the Property. The contractor was working for Shopwest

Partners, Ltd. (the successor in interest of Los Angeles Land Company, collectively referred to as L.A. Land) which was developing the Property as a shopping center. Further investigations would disclose that the soils around the disposal system were contaminated with PCE and that there was a pollution plume extending approximately 250 feet from the disposal system. On March 11, 1988, the Regional Water Quality Control Board, Santa Ana Region issued Cleanup and Abatement Order 88-10, requiring numerous parties to provide for the cleanup of the PCE. The dispute under review here encompasses the responsibilities of the many individuals and business entities that have owned or occupied the Property, and their successors in interest.

The history of ownership and possession of this Property is complex and that history is an important element of this case.

In 1959, the Owners leased the Property to Ed Tunks and Martha E. Tunks for a period of 75 years.[1] The Tunks' then assigned their ground lease to T & F, Inc. (T & F)[2]

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[1] The owners in 1959, were Arthur Spitzer and his wife, Bettina Brendel. During the term of the ground lease, Arthur Spitzer's ownership interest in the Property was assigned to the Ann Violet Spitzer Lucas Trust. The trustees of the Trust are Arthur Spitzer and Jack Harvey Muller. Mr. Spitzer and Mr. Muller are named in the Cleanup and Abatement Order as trustees of the Trust. Bettina Brendel's ownership was continuous through the date of the Cleanup and Abatement Order. They are referred to in this order collectively as the Owners.

[2] T & F, Inc. dissolved in 1987 and assigned the ground lease to Sol E.Tunks and Ed Tsuruta, who are named as dischargers in the Cleanup and Abatement Order.

In 1960, T & F built a market building on the Property, which was vacant land at the time. A few years later, T & F built another building which was used for a variety store until 1966. In 1966, T & F subleased the variety store to New Fashion which installed dry cleaning equipment in the building and began operation. At that time the building was not connected to a sewer but used a subsurface disposal system. A sewer connection was completed in 1969 but the subsurface disposal system remained in place.

In 1970, New Fashion moved out and Spic & Span moved in under a sublease with T & F. Spic & Span operated a dry cleaning business in the variety store building until May, 1987.

In 1986, the Owners and T & F completed negotiations with L. A. Land, a company which wanted to develop a shopping center on the Property. As a result of these discussions Owners and T & F negotiated a new ground lease of the Property so that T & F could sublease the entire Property to L. A. Land.

In December, 1986, T & F agreed to sublease the entire Property to L. A. Land until May 30, 2034. Under the sublease, T & F, assigned to L.A. Land all of its rights and responsibilities under the ground lease between Owners and T & F. T & F, Inc. also assigned to L.A. Land, its sublease with Spic & Span. Subject to the terms of the sublease and the ground lease, L.A. Land will have exclusive possession and control of the Property for the next forty-five years.

L.A. Land also negotiated a lease termination agreement with Spic & Span. Among other things, the termination agreement provided that Spic & Span

> "shall remove all toxic or hazardous wase (sic) containers from the Premises, and they have no knowledge of other toxic or hazardous waste on the Premises."

The termination agreement also provided that the Spic & Span sublease would terminate May 22, 1987, one day after the effective date of the sublease between L.A. Land and T & F.

On July 6, 1987, a contractor who was grading the Property for L.A. Land encountered a manhole cover which was part of the old subsurface disposal system. The manhole cover had been buried under one or two feet of soil and was part of what appeared to be a septic tank or seepage pit.

Liquid sludge was observed after the cover was removed. The Garden Grove Sanitary District instructed the contractor to pump out the sludge. The following day approximately 30 gallons of sludge were pumped out by a waste hauler.

The grading contractor then proceeded to further excavate the area and remove the underground structure which was part of the subsurface disposal system. In the process, the structure's cover was broken and the pieces were removed to another part of the Property. As excavation of the area immediately below the seepage pit progressed, severe PCE fumes began to emanate from the area. After complaints from neighbors, local fire department and health department officials ordered

that the pit and the contaminated soils be temporarily covered with clean soils to eliminate the fumes until the soils could be fully excavated and hauled away.

L.A. Land immediately retained contractors to excavate the site and remove contaminated soils. Approximately 338 cubic yards of soil was removed. Soils were removed to the level at which ground water was encountered.

In August, 1987, L.A. Land's consultant installed monitoring wells in order to perform a preliminary assessment of the extent of the groundwater pollution at the site. Samples showed PCE in the groundwater as high as 72,000 parts per billion. Data indicated that a pollution plume extended at least 250 feet from the excavation site. A diagram showing the locations of the wells is attached and incorporated in this order as Exhibit A.

The consultant also designed and installed an interim groundwater cleanup system. Some elements of the system, a recovery well and infiltration gallery, were installed in December, 1987. The treatment system was not installed and so the cleanup system is not operational.

The Regional Board issued Cleanup and Abatement Order No. 88-10 on March, 11 1988. It required New Fashion, Spic & Span, and T & F to delineate the pollution plume and to cleanup of the pollution by certain dates. The Order also provided that the Owners would be responsible for these activities only if the other named dischargers did not timely complete these tasks. The

Regional Board decided not to include L. A. Land in the Order. A few months later the Regional Board learned that New Fashion had changed its name to Fashion-Tex and that all of its stock had been purchased by Aratex. They adopted Order 88-69 amending Order 88-10 to substitute Aratex for New Fashion.

Since the Orders were adopted, planning for cleanup has proceeded. However, to date the partially installed system has not been completed nor is any other cleanup system operated on the Property.

II. CONTENTIONS AND FINDINGS

1. Contention: The Owners contend that they should not be included in the order because they have no involvement or control over the use of the Property.

Finding: A long line of State Board orders have upheld Regional Board orders holding landowners responsible for cleanup of pollution on their property regardless of their involvement in the activities that initially caused the pollution. Most recently, this Board held that a landowner had ultimate responsibility for a cleanup even though he acquired the property after a previous owner had discharged pesticides to the land. (Schmidl, (1989) Order No. WQ 89-1)

A Regional Board may order any person to cleanup a discharge if that person has permitted or permits a discharge which causes water pollution (Water Code Section 13304). A discharge is

> "the flowing or issuing out, of harmful material from the site of the particular operation into the

water of the State. The operation which produced the harmful material need not, however be currently conducted." (27 Ops Atty Gen. 182, 183 (1956); Zoecon, (1986) Order No. WQ 86-2)

A landowner is ultimately responsible for the condition of his property, even if he is not involved in day-to-day operations. If he knows of a discharge on his property and has sufficient control of the property to correct it, he should be subject to a cleanup order under Water Code Section 13304 (Logsdon, (1984) Order No. 84-6; Vallco Park, Ltd., (1986) Order No. WQ 86-18; cf. Leslie Salt Company v. San Francisco Bay Conservation & Development Commission (1984) 153 Cal.App.3d 605, 200 Cal.Rptr. 575).

The Owners in this case claim that they did not know anything about activities on the Property. Although, they knew that a dry cleaning business was located there, they did not know what the dry cleaners were doing with the PCE. However, they now know that there is PCE contamination in the soil and ground water at the Property. The discharge of the PCE did not cease when the dry cleaning businesses stopped. The discharge continues as long as the PCE remains in the soil and ground water. Therefore, the Owners do know about the discharge of pollutants on their property. (Zoecon, supra; Schmidl, supra.

The Owners also have sufficient control of the Property to permit them to conduct a cleanup in the event that T & F and the other parties named in the cleanup and abatement order fail

to do so.[3] The original lease with T & F required the lessee to,

> "perform all work necessary to maintain the premises in good order and condition and to comply with all laws, ordinances, orders, rules, regulations and requirements of federal, state and municipal governments, and appropriate departments, commissions, boards and officers thereof." (Petition of Owners, Points and Authorities, Page 2)

A new lease was negotiated in 1986 and the original lease was terminated. According to Owner's petition;

> "The new lease also requires the tenant, at no cost or expense to the landlord, to keep and maintain the premises in good order and condition, and the tenant has agreed to comply with all laws, ordinances, rules orders and regulations from time to time applicable, including those relating to health, safety, noise, environmental protection, waste disposal, and air and water quality."(Ibid.)

The Owners have the right to regain possession of the Property if the lessee does not perform its obligations.

These lease terms are very similar to the lease terms analyzed in two previous State Board orders, Logsdon, supra and Vallco Park, Ltd, supra, which addressed the issue of landlord control over leased property. In Vallco Park, Ltd. and in the case at hand, the landlord was not required to cleanup the pollution unless the lessee or other responsible parties failed to do so. In both Logsdon and Vallco Park, Ltd., it was determined that the landlord had control of the property sufficient to permit the landlord to comply with the Regional

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[3] Cleanup and Abatement Orders 88-10 and 88-69 do not require Owners to undertake cleanup unless the other named parties fail to comply with the time schedule in the orders.

Board order. (See also Southern California Edison Co. (1986) Order No. WQ 86-11; U.S. Forest Service (1987) Order No. WQ 87-5; Prudential Insurance Company of America, (1987) Order No. WQ 87-6). We reach the same conclusion here.

2. Contention: All of the petitioners contend that L.A. Land should have been included in the Orders as a discharger. This contention is based on three separate theories which are discussed below under the sub-headings of Contentions A, B and C.

Contention A: Spic & Span and Aratex contend that when L.A. Land excavated the subsurface disposal system it shattered a septic tank spilling PCE on the Property.

Findings: The evidence does not support this contention.

The evidence indicates that the subsurface disposal structure was a seepage pit or cess pool and not a septic tank. The only eyewitness report, that of L.A. Land's contractor, describes it as a seepage pit or cess pool with a concrete cover. No government representative who observed the pieces of the concrete structure after it was removed describes it as a tank. The only contradictory evidence is a declaration of Spic & Span's manager who did not see the structure but who states that L.A. Land's representative described it as a tank. This declaration does not outweigh the other evidence to the contrary.

Regardless of the nature of the structure, other evidence on the record indicates that L.A. Land's excavation did not cause the PCE pollution on the Property.

Liquid sludge was observed in the seepage pit area and the Garden Grove Sanitary District instructed L.A. Land to pump the sludge out. Although, Spic & Span claims that only half of the sludge was pumped, they have no evidence to prove this claim. There is no reason why L.A. Land would report its findings to the Sanitary District and then not follow the District's instructions. Because the liquid sludge was pumped before the structure was removed, the likelihood of a spill was minimized.

Moreover, the evidence demonstrates that PCE had been present in the soils for many years. Monitoring wells at the site indicate a pollution plume of approximately 250 feet emanating from the area of the seepage pit. L.A. Land's consultants indicate an average flow rate of 2.1 feet/year. Based on lithology from boreholes, which indicate a heterogeneous section consisting of interfingering lenses of sand, silt, and clay, and the consultant's estimate of the ground water gradient, this is a reasonable figure. Assuming a worst case situation, with a steeper gradient and a hydraulic conductivity characteristic of a sand medium, the flow rate could be as high as 480 feet/year (although a flow rate this high is unlikely due to the heterogeneity and poorly sorted nature of the soils). Given this range of flow rates, a 250 foot plume could not have occurred unless the PCE was been present before the excavation

started. Additionally, PCE had been detected in a nearby drinking water well in 1986, indicating that the soils and water were polluted before excavation began.

The excavation may have caused a minor increase in discharge by disturbing the soils. However, any disturbance was offset by the removal of approximately 338 cubic yards of contaminated soils.

Contention B: Spic & Span and Aratex contend that L.A. Land contaminated a previously protected deep-water aquifer by negligently drilling through a protective clay layer protecting the aquifer, providing a vertical conduit through which PCE contaminated water may have descended.

Findings: There is no evidence on the record that the deeper aquifer was polluted after the drilling was done. In fact, samples taken from a deep aquifer drinking water well collected after L.A. Land came on the scene did not contain PCE, even though samples taken in 1986 did contain PCE.

There is not substantial evidence demonstrating that the drilling pierced the protective clay layer. L.A. Land's consultant stated that the well was drilled to 55 feet. Regional characteristics indicate that the protective clay layer begins at 40 to 50 feet but may begin as deep as 60 feet. The clay layer is approximately 10 feet thick. Gamma logs provided by L.A. Land's consultant show that the clay layer was not pierced. Although gamma logs are not reliable without additional evidence, there is no evidence to the contrary.

The Orders require dischargers to define the vertical extent of the PCE contamination, including possible contamination of the deeper aquifer. If evidence is produced which shows deeper aquifer contamination or that the well drilling did pierce the protective clay layer, this issue should be reconsidered by the Regional Board.

Contention C: All petitioners assert that L.A. Land should be included as a discharger under the Orders because L.A. Land has exclusive possession and control of the Property and the Cleanup system which it installed.

Findings: It is undisputed that L.A. Land had no connection with the Property at the time that the dry cleaning businesses were operated. It is also clear, based on previous orders of this board, that if L.A. Land had purchased fee title to the Property it would have been named as a discharger in the Orders. (Zoecon, supra; Schmidl, supra). However, even though L.A. Land is not the fee owner, it did acquire exclusive possession and control of the Property for a term exceeding forty-five years. Additionally, L.A. Land took possession of the land knowing that hazardous chemicals had been used there and was aware of the possibility of pollution.[4]

The question is whether L.A. Land is a person who is permitting the discharge of pollutants, within the meaning of

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[4] This is evidenced by the termination agreement with Spic & Span which required Spic & Span to remove all hazardous waste from the site.

Water Code Section 13304, even though it does not have fee title to the Property. The answer is yes. During the forty-five year term of its lease, L.A. Land has the same ability to control the continuing discharge on the Property as it would have if it had fee title. Therefore, it is permitting the discharge of pollutants and should be named as a discharger under the Orders.

Previous orders of this Board, Attorney General's opinions and common law principles regarding duties to abate hazardous conditions on real property support this conclusion. They indicate that responsibility rests with one who has possession and control of the property and that it is not limited to those who hold fee ownership.

As noted above, the Attorney General has concluded that discharge continues as long as pollutants are being emitted at the site. He has further concluded that the "dischargers are the persons who now have legal control of the property from which such drainage arises." (26 Ops. Atty. Gen. 88, 90 (1955); 27 Ops. Atty. Gen. 182 (1956)). The Attorney General has also noted that in the case of a discharge from a mine if the fee ownership of the mine is separate from the mineral rights ownership, both the holder of the mineral rights as well as the fee owner are "dischargers." (Ibid.)

We applied similar reasoning in Stuart Petroleum, (1986) Order No. 86-15, when we held a lessee was liable for cleanup of pollution caused by its sublessee. We held that to "permit" a discharge included failing to take action when "the

ability to obviate the condition " existed. In that case it was found that lessee knew about the sublessee's activities at the time the initial release occurred. Nonetheless, the same reasoning applies here when the one who controls the property knows of an ongoing discharge and has the ability to obviate it.

This interpretation is supported by common law principles regarding responsibility for hazardous conditions on property. In ruling on this issue in the past, this Board has relied on the principles stated in Rowland v. Christian (1968) 69 C.2d 108, 70 Cal.Rptr. 97, 443 P.2d 651. In Rowland, the California Supreme Court held that a possessor or occupier of land is liable for injuries when he fails to exercise reasonable care in the management of his property. The defendant in that case was a tenant of the property and not the fee owner. She was held liable for injuries caused by a broken faucet. There was no finding that she had caused the defect in the faucet. The court emphasized the tenant's failure to correct problem after she discovered it, not her culpability in causing it. The Court's holding was based on what it characterized as "the basic policy of the state" in Civil Code Section 1714 which provides in pertinent part,

> "Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person...."

Commentators have also enunciated the principle that the possession not ownership is a key factor in liability.

"The liability is imposed on an owner or possessor. 'The important thing in the law of torts is the possession, and not whether it is or is not rightful as between the possessor and some third person.' (6 Witkin Summary of California Law, (9th edition 1988) Section 892, p. 261 quoting Restatement of Torts 2d, Section 328E, Comment a)

Following the reasoning in Rowland, a person who possesses property is responsible for the maintenance of hazardous conditions on the property such as water pollution. Legal ownership is not a significant factor. Therefore, one who possesses and controls property should be considered a person who is permitting the continued discharge of water pollution on the property and is subject to a Cleanup and Abatement Order under Water Code Section 13304 during the term of that possession and control.

Although, L.A. Land should be named as a discharger in the Orders, it should have the same status as the Owners. It should be required to take responsibility for the cleanup only if the other dischargers fail to perform. This would be the equitable conclusion because, L.A. Land had no connection with the activities which initially caused the pollution, the parties directly responsible for the PCE release have been identified and are making some progress toward cleanup, and while L.A. Land has possession and control of the Property for a very long time, it shares that control with the Owners, who have the reversionary rights to the Property.

3. Contention: Aratex, which purchased all the stock of New Fashion in 1984, contends that it should not be named as a

discharger in the Orders because it is not legally responsible for the actions of New Fashion which occurred between 1966 and 1969.

Findings: New Fashion operated a dry cleaning business on the Property from 1966 through 1969 during the time that the drainage system was connected to a subsurface disposal system. Studies indicate that PCE pollution has existed on the Property for many years. It is reasonable to conclude that New Fashion disposed of at least some of the PCE found on the Property.

In 1982, New Fashion changed its name to Fashion-Tex Services, Inc. (Fashion-Tex). In 1984 the two shareholders of Fashion-Tex, Grant Wada and Shoji Yoshihara (collectively Wada and Yoshihara) sold all of their stock to Aratex. The purchase agreement required the officers of Fashion-Tex to resign and according to the records of the Secretary of State, the president of Aratex became the president of Fashion-Tex.

The question here is whether Aratex is legally responsible for the actions of Fashion-Tex which occurred fourteen years before Aratex purchased its stock.

Generally a parent corporation is not liable for the actions of its subsidiary. Like any other stockholder it is protected from liability by the corporate veil (McLaughlin v. L. Bloom Sons Co. (1962) 206 Cal.App.2d 848, 24 Cal.Rptr. 311). However, that corporate veil may be pierced if it is determined that the parent is really the alter ego of the subsidiary (6

Witkin Summary of California Law (8th Edition 1974) Corporations Section 11, p. 4323).

The conditions under which a corporate entity may be disregarded are founded in equity and vary depending on the special circumstances of the case (Goldsmith v. Tub-O-Wash (1959) 199 Cal.App.2d 132, 18 Cal.Rptr. 446, 451). Generally, the corporate entity will be disregarded when it is "so organized and controlled and its affairs are so conducted, as to make it merely an instrumentality, agency, conduit, or adjunct of another corporation." (McLaughlin v. L. Bloom Sons Co., supra 24 Cal.Rptr. at 313)

Aratex asserts that an inequity would result if it were held liable for actions taken by Fashion-Tex fourteen years before Aratex purchased it. However, it should be emphasized that the equities to be considered here do not concern Aratex's involvement in the release of the pollution on the Property. It is undisputed that they had no direct involvement there. The equities to be considered here, concern Aratex's status as the owner of Fashion-Tex and whether Aratex's control of Fashion-Tex was in accordance with accepted principles of corporate law. (See generally 2 Marsh's California Corporation Law (1988) Section 15-16).

Directing our analysis to corporate law, we conclude that it would be inequitable if Aratex were not held liable. The California Supreme Court has stated the principle that if one corporation acquires all the assets of another corporation

without paying substantial consideration for the assets, the purchasing corporation is liable for the pre-purchase activities of the selling corporation. (Ray v. Alad, (1977) 19 Cal.3d 22, 136 Cal.Rptr. 574; Malone v. Red Top Cab, (1936) 16 Cal.App.2d 268, 60 P.2d 543; see Schoenberg v. Benner, (1967) 251 Cal.App.2d 154, 59 Cal.Rptr. 359). That principle applies here. Aratex acquired control of the assets of Fashion-Tex while ostensibly buying only the stock of Fashion-Tex. It then permitted Fashion-Tex to go out of business, leaving no corporate assets or ongoing business to pursue for the obligations of Fashion-Tex.

Aratex purchased Fashion-Tex from Wada and Yoshihara. Wada and Yoshihara received the proceeds of the sale and set up a new, wholly unrelated corporation, coincidentally called New Fashion Cleaners. The corporation, Fashion-Tex, received no payment in that transaction. Only the former stockholders were paid.

The effect of the stock purchase was that Aratex acquired the assets of Fashion-Tex without paying cash to Fashion-Tex. Aratex's attorney testified at the Regional Board hearing that Fashion-Tex's assets "were not sold to the parent corporation; they were held by Aratex" (Regional Board hearing transcript, July 8 1988 at 22:13-14). Another Aratex attorney in correspondence to the State Board, repeatedly refers to the 1984 stock purchase as a purchase of Fashion-Tex assets (letter dated February 12, 1989, from Bonnie Ezkanazi, Aratex's attorney, to Jennifer Soloway, Staff Counsel, State Board). It is also

reasonable to conclude that Aratex is using Fashion-Tex's assets because Fashion-Tex is not using them. Aratex's attorney has testified that Fashion-Tex does not carry on any business (Regional Board Transcript, July 8 1988, 18:8-13).

If Aratex had, in good faith, purchased the assets from Fashion-Tex, cash payment should have been made to the corporation not the shareholders. Here, Aratex may have paid substantial consideration to Wada and Yoshihara for their stock, but they paid nothing to Fashion-Tex for its assets. In accordance with the principle articulated in Ray v. Alad, supra, it would be inequitable to afford Aratex the protection of the corporate veil of Fashion-Tex.

Aratex asserts that if it is named in the Orders it should be only "secondarily" liable. That would not be appropriate. Fashion-Tex, under its former name, New Fashion, released PCE to the soils at the Property, polluting the waters of the State. There is no doubt that Fashion-Tex should be responsible for the cleanup to the same degree as Spic & Span and T & F. For the reasons stated above, Aratex has stepped into Fashion-Tex's shoes and is responsible for Fashion-Tex's liabilities. Therefore, there is no justification for imposing different liability against Aratex than would be imposed against than Fashion-Tex.

III. CONCLUSIONS

1. Arthur Spitzer, Harvey Jack Muller and Bettina Brendel are fee owners of the Property and are persons who are

permitting the discharge of pollutants on the Property and the Regional Board acted appropriately when it included them as dischargers in the Orders.

2. The evidence on the record demonstrates that L.A. Land did not cause a spill of PCE at the site when it excavated the subsurface disposal system.

3. There is not sufficient evidence on the record to support Spic & Span's contention that L.A. Land contaminated the deeper aquifer when drilling a monitoring well.

4. L.A. Land, which has exclusive possession and control of the Property until 2034, is a person who is permitting the discharge of pollution within the meaning of Water Code Section 13304 and the Regional Board acted improperly when it failed to include L.A. Land as a discharger in the Orders. L.A. Land should be responsible for the tasks required by the Orders. only if Spic & Span, Aratex and T & F fail to timely carry out the requirements of the Orders.

5. As a matter of law, Aratex is liable for the acts of Fashion-Tex Services, Inc. and the Regional Board acted appropriately when it included Aratex Services, Inc. in the Orders. Because Aratex is responsible for the actions of Fashion-Tex, Aratex should be responsible for the tasks required by the Orders on the same basis as Spic & Span and T & F.

IV. ORDER

1. The portion of the petition of Arthur Spitzer, Harvey Jack Muller and Bettina Brendel which requests that the Orders be amended to remove their names, is dismissed.

2. The portion of the petition of Aratex Services, Inc. which requests that the Orders be amended to remove its name, is dismissed.

3. The petition of Spic & Span, Inc. and S & S Enterprises, Inc., and the portion of the petition of Arthur Spitzer, Harvey Jack Muller and Bettina Brendel, and the portion of the petition of Aratex Services, Inc. which request that Los Angeles Land Company, Inc. and Shopwest Partners, Ltd. be included as dischargers in the Orders are granted and order No. 88-10 of the Regional Water Quality Control Board, Santa Ana Region is amended as follows:

(1) Amend the title by adding Los Angeles Land Company, Inc. and Shopwest Partners, Ltd. to the list of dischargers.

(2) Amend the introductory clause of item B. of the order to read:

"Spitzer, Los Angeles Land Company, Inc. and Shopwest Partners, Ltd. shall:"

The rest of item B. shall remain the same except as it may be amended by subsequent Regional Board order.

(3) Amend the introductory clause of item C. of the order to read:

"Spitzer, Los Angeles Land Company, Inc., Shopwest Partners, Ltd., Sol E. Tunks and Ed Tsuruta, Aratex Services, Inc., Spic and Span, Inc., and S & S Enterprises, Inc., shall:"

The rest of item C. shall remain the same except as it may be amended by subsequent Regional Board order.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 16, 1989.

AYE: W. Don Maughan
Edwin H. Finster
Eliseo M. Samaniego

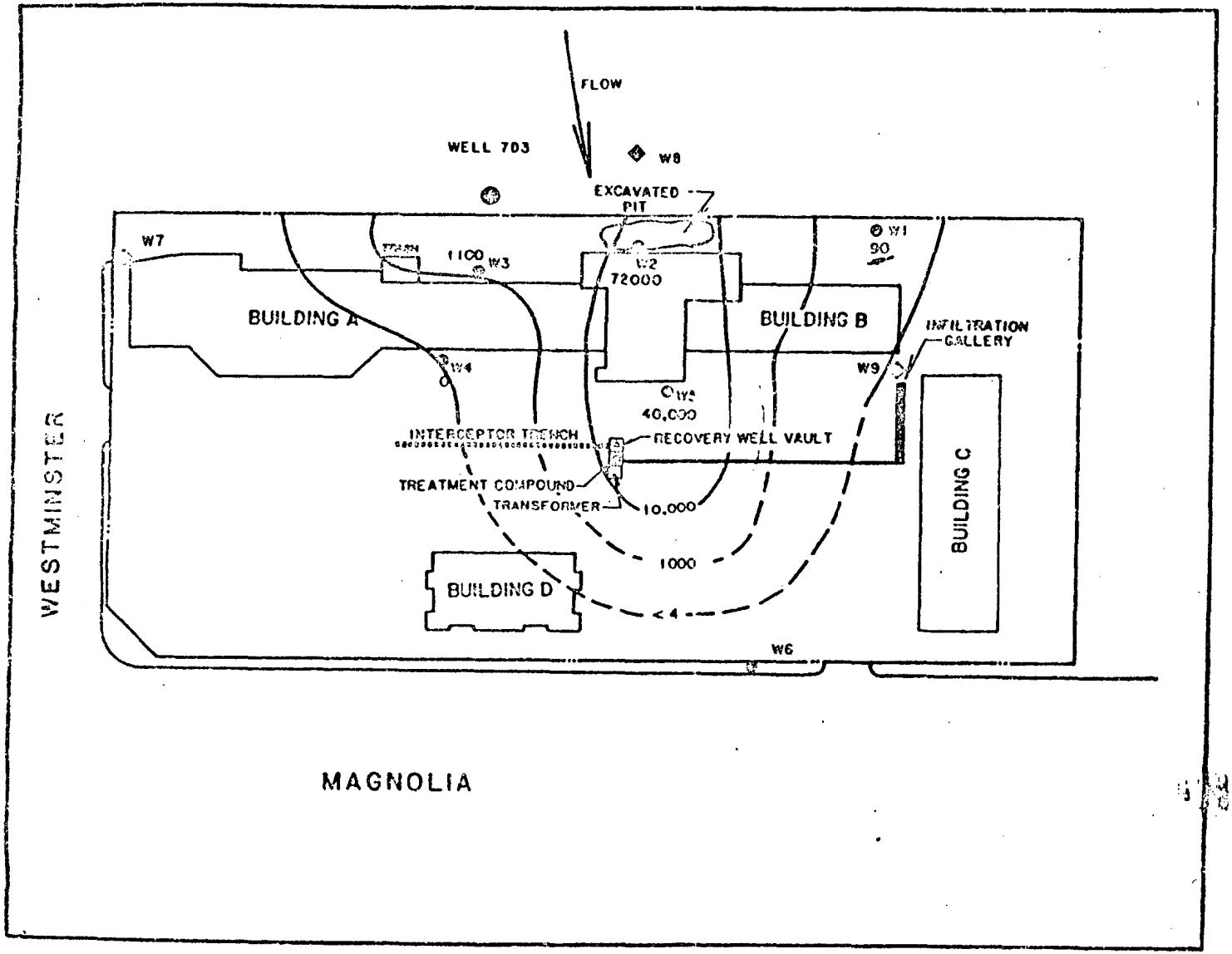
NO: Darlene E. Ruiz

ABSENT: Danny Walsh

ABSTAIN: None

Maureen Marche
Administrative Assistant to the Board

EXHIBIT A



LEGEND

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FEET

PROPERTY LINE

FUTURE LOCATING OF BUILDINGS AS SHOWN ON BLUEPRINT PLAN

RECOVERY WELL

PROPOSED WELL

SITE:

SITE LOCATION

FIGURE