

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401-7906**

CLEANUP AND ABATEMENT ORDER NO. R3-2009-0042

**16495 and 16470 VINEYARD BLVD
(formerly identified as 190 Mast Street)
MORGAN HILL, CA
SANTA CLARA COUNTY**

Issued to:

**CASTLE VEGTECH, INC.
CASTLE FAMILY TRUST
c/o Ms. Jean Castle
18425 Castle Ridge Drive
Morgan Hill, CA 95037**

**PTM DEVELOPMENT, LLC
MR. ALAN HUI
3522 Ambra Way
San Jose, CA 95132**

**JAMINA INVESTMENTS
MR. MICHAEL CASTLE
MS. NANCY BUCHANAN
4575 Crystal Street
Capitola, CA 95010**

**MANGANO & ASSOCIATES, LLC
MR. MICHAEL MANGANO
Address unknown**

**MR. JAMES CASTLE
7491 Crawford Drive
Gilroy, CA 95020**

**TANSY DEVELOPMENT, INC.
MR. MICHAEL TANSY
1121 Trabing Road
Watsonville, CA 95076**

FINDINGS:

The California Regional Water Quality Control Board, Central Coast Region (hereafter Central Coast Water Board), finds:

1. Discharge of waste material in a manner which causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the water of the state and creates, or threatens to create, a condition of pollution or nuisance is a violation of the Porter-Cologne Water Quality Control Act (California Water Code, Division 7. Water Quality [CWC]) Section 13304. The State Water Resources Control Board has interpreted the term "discharge" in CWC section 13304 to include not only an active, initial release, but also a passive migration of waste.

Item No. 6
October 23, 2009 Meeting
Former Castle Vegtech
Settlement Consideration
Attachment 3

2. The following entities and individuals have discharged pesticides and other chemicals to soil and waters of the state at 16495 and 16470 Vineyard Boulevard, Morgan Hill, California (hereafter "Property") and are named as responsible parties (collectively hereafter "Dischargers") in this Cleanup and Abatement Order No. R3-2009-0042:
 - a. Castle Vegtech, Inc., a California corporation (hereafter "Castle Vegtech")
 - b. Jamina Investments, a general partnership of James A. Castle, Michael C. Castle, and Nancy Buchanan (hereafter "Jamina"),
 - c. Castle Family Trust, revocable trust agreement dated March 25, 1983
 - d. PTM Development, LLC
 - e. Mangano and Associates, LLC
 - f. Tansy Development, Inc.; and
 - g. James Castle, Michael C. Castle, Nancy Buchanan, Alan Hui, Michael Mangano and Michael Tansy as individuals
3. The current and previous property owners are included as Dischargers in this Order. Current property owners are responsible for the discharge of waste that continues to exist and/or migrate at and from the site. (*In the Matter of Arthur Spitzer et al. (1989) SWRCB Order WQ 89-8; In the Matter of Vallco Park, Ltd. (1986) SWRCB Order WQ 86-18; In the Matter of John Stuart, dba Stuart Petroleum (1986) SWRCB Order WQ 86-15; In the Matter of Logsdon (1984) SWRCB Order WQ 84-6*). Responsibilities continue for the current owner even if all activities that originally caused the discharges of wastes ceased before the current owner acquired the property.
4. From 1958 until 1985, A.L. Castle, Inc., (A.L. Castle) operated a pesticide formulation, sales, and application business at 16470 Vineyard Boulevard (formerly identified as 190 Mast Street) in Morgan Hill. In the course of business, A.L. Castle allowed pesticide-related wastes to leak or spill into or onto the ground, which polluted soils and groundwater beneath the site. During an August 1982 site inspection, Central Coast Water Board staff observed that wastewater, oils, and/or chemicals had been discharged from the facility to adjacent properties where they could percolate to groundwater or be washed into surface waters. Beginning with the site's first Cleanup and Abatement Order (CAO) No. 82-61 in September 1982, compliance with Central Coast Water Board cleanup orders property has been deficient by A.L. Castle and subsequent property owners.
5. A.L. Castle was sold to ARCO Seed on August 9, 1985. According to the *Agreement for Purchase and Sale of Capital Stock of A.L. Castle* dated August 9, 1985, Thomas Castle and Jean Castle as Trustee under Castle Family Trust Agreement, and Jamina Investments, a general partnership consisting of James Castle, Michael Castle, and Nancy Castle Buchanan, were the stockholders of A.L. Castle at the time of sale. As of September 1, 1985, all of A.L. Castle's chemical operations were transferred over to Castle Vegtech, as described to

- the Central Coast Water Board in a letter from A.L. Castle dated September 18, 1985, and the provisions of the *Agreement for Purchase and Sale of Capital Stock of A.L. Castle*. Jamina Investments subsequently acquired the property after the sale of A.L. Castle to ARCO Seed. According to a Report of Waste Discharge filed October 21, 1985, Castle Vegtech was described as a agricultural chemical warehouse and application service and Jamina Investments is listed as a the legal owner of the property. Castle Vegtech's operations on the site included pesticide and agricultural chemical storage, chemical loading areas, chemical application wash pad, and hot water seed treatment. According to several field inspections and information provided by Castle Vegtech, there was no drainage system installed at the site for surface water. Water falling on or running onto the site drained over the ground surface to open fields south and west of the facility improvements.
6. Administrative Civil Liability Order (ACL) No. 92-78 and ACL Order No. 92-83 were issued to Castle Vegtech and Jamina, respectively, in June 1992 for failure to comply with CAO No. 91-28 requirements for cleanup and reporting. After the Central Coast Water Board filed a lawsuit to collect on the penalties, the collection of \$85,000 plus interest was deferred pursuant to a Settlement Agreement dated June 1997 in which Castle Vegtech and Jamina agreed to a condition that they complete cleanup and comply with any applicable orders related to the Property.
 7. Castle Vegtech and Jamina were named as responsible parties in subsequent CAO No. 92-104. The Central Coast Water Board adopted CAO No. 92-104 on July 10, 1992, which established cleanup levels for soil and groundwater beneath the site. The Central Coast Water Board adopted CAO No. 93-111 on October 8, 1993; CAO No. 93-111 established compliance schedules for the delineation and remediation of wastes in groundwater and soil. As a result of the Dischargers' failure to meet the compliance schedules, the Board adopted ACL Order No. 94-71 against Castle Vegtech and Jamina on July 8, 1994. ACL No. 94-71 suspended \$338,000 contingent upon the Dischargers' proceeding in an expeditious manner to clean up soil and groundwater at the site. ACL No. 94-71 remains in effect.
 8. CAO No. 96-063 issued December 20, 1996, required excavation and disposal of contaminated soil, and required groundwater extraction and treatment until cleanup levels established in CAO No. 92-104 were met. Central Coast Water Board staff issued Monitoring and Reporting Program (MRP) No. 98-22 on January 14, 1998; the MRP requires semiannual and annual groundwater monitoring for various wells, with quarterly monitoring reports. During Jamina's property ownership, only 4 of the required 12 quarterly groundwater monitoring reports under MRP 98-22 were submitted.
 9. Alan Hui acquired the property in January 2001, and later transferred the title to Michael Mangano. Public records indicate Mr. Hui and Mr. Mangano were

interested in developing the property and aware of the need for cleanup actions at the time of purchase. Cleanup and reporting during this period of ownership also did not meet requirements. During this period of ownership, only one of the required 13 quarterly groundwater monitoring reports was submitted:

10. Michael Tansy acquired the property in May 2004 through a foreclosure sale. Public records and a phone conversation with Mr. Tansy and Central Coast Water Board staff in May 2004 indicated Mr. Tansy was aware of the site contamination and the need for cleanup actions. In letters dated June 8, 2004, and September 15, 2004, Central Coast Water Board staff provided Mr. Tansy written notification of his responsibility for cleanup actions at the site. Since Mr. Tansy's property ownership began, only two of the required 20 quarterly groundwater monitoring reports have been submitted.
11. In May 2007, Mr. Tansy added amendments to the soil in an unsuccessful effort to clean up or abate the discharges of waste without seeking approval of a workplan or consulting with Central Coast Water Board staff. In June 2008, Mr. Tansy submitted a preliminary report of shallow soil sampling results. This work was also performed without Central Coast Water Board consultation or an approved workplan. Central Coast Water Board staff issued comments on the report in August 2008. To date, no workplan has been submitted to address either soil and or groundwater assessment and remediation.

AUTHORITY – LEGAL REQUIREMENTS

12. Section 13304(a) of the California Water Code provides that:

"Any person who has discharged or discharges waste into waters of the state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including but not limited to, overseeing cleanup and abatement efforts. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the regional board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant."

13. Section 13267(b)(1) of the California Water Code provides that:

"In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports."

14. Section 13304(c)(1) of the California Water Code provides that:

". . . the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial actions. . ."

15. The State Water Resources Control Board (hereafter State Water Board) has adopted Resolution No. 92-49, the Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304. This Policy sets forth the policies and procedures to be used during an investigation or cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution 68-16, the Statement of Policy With Respect to Maintaining High Quality of Waters in California. Resolution No. 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution No. 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with Title 23, California Code of Regulations (CCR) Section 2550.4. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution No. 92-49 directs that investigation proceed in a progressive sequence. To the extent practical, it directs the Regional Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

16. The Basin Plan contains numerical water quality objectives (WQOs) that apply to surface water and groundwater, including, for example, drinking water maximum contaminant levels (MCLs) promulgated in Title 22, CCR, Division 4, Chapter 15 (hereafter Title 22) that the Basin Plan applies directly to waters designated as MUN.

DISCHARGER LIABILITY

17. Discharges of pesticides and other chemicals have resulted in chemical concentrations in groundwater exceeding water quality objectives contained in the Water Quality Control Plan, Central Coast Basin (hereafter Basin Plan), including MCLs, creating a condition of pollution. This finding is based on investigation results submitted by the Dischargers.
18. Dischargers have submitted analytical results confirming groundwater is polluted by pesticides and volatile organic compounds as follows:

Groundwater Constituent	Maximum detection (µg/L*)	MCL (µg/L*)
Volatile Organic Compounds		
Trichloroethene (TCE)	5.0	5.0
Tetrachloroethene (PCE)	10	5.0
1,2-dichloropropane	7,300	5.0
Carbon tetrachloride	80	0.5
1,1-dichloroethane	43	5.0
1,2-dichloroethane	105	0.5
1,1-dichloroethene	100	6.0
1,1,2,2-tetrachloroethane	11	1.0
Pesticides		
Toxaphene	230	3.0
Dieldrin	7,000	none
Dichloro-Diphenyl-Trichloroethane (DDT)	19.8	none
Endrin	2,400	2.0
Gamma BHC (lindane)	7,900	0.2

* µg/L = micrograms per liter

19. The chemicals listed above in Item No. 18 are wastes as defined in Water Code section 13050 and are also hazardous substances. These chemicals may cause a significant increased risk of cancer and/or other serious health problems if concentrations exceed MCLs established by the DPH and/or the USEPA. Significant concentrations of these chemicals also make water unsuitable for use as drinking due to adverse taste and odor.

20. Groundwater underlying the property has beneficial uses including domestic and municipal supply, agricultural supply, and industrial supply (Chapter 2, Section I of the Basin Plan). In addition to other standards, State Water Board's Resolution No. 68-16 (Antidegradation Policy) and State Water Board's Resolution No. 92-49 (Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under CWC Section 13304) apply to such discharges. Wastes in soils at the Property continue to discharge into groundwater.
21. This Order rescinds CAO No. 92-104 and CAO No. 93-111 except for the purposes of enforcement action.
22. This enforcement action is being taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with Sections 15307 and 15308, Chapter 3, Title 14, California Code of Regulations (CCR). The issuance of this Order is also an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), pursuant to Section 15321(a)(2), Title 14, CCR.
23. As of December 31, 2008, the balance due for Central Coast Water Board cleanup oversight at the Property is \$99,042.91. The Central Coast Water Board has provided annual estimates of oversight costs, as well as quarterly invoices, to the responsible parties. To date, responsible parties have paid \$2,594.78 towards Central Coast Water Board oversight costs. Pursuant to Water Code section 13304(c), the amount of oversight costs constitute a lien on the affected property upon service of a copy of the notice of lien and recordation.
24. Pursuant to CWC Section 13304(c), Dischargers are hereby notified that the Central Coast Water Board is entitled to and may seek reimbursement of all reasonable staff costs incurred in its oversight of cleanup of wastes at the Property, abating the effects thereof, or taking other remedial action. The Central Coast Water Board may seek retroactive reimbursement in addition to future Central Coast Water Board staff costs.

IT IS HEREBY ORDERED, pursuant to Sections 13267 and 13304 of the California Water Code that the Dischargers, their agents or assigns, shall clean up degraded groundwater and soil at and near the Property, as follows:

GROUNDWATER

1. By **August 31, 2009**, Dischargers shall locate, inspect, and document the conditions of all wells previously installed as part of the Property's investigation, previous extraction system, and/or monitoring network (MW-1 through MW-19,

OPMW-1, OLMW-1, OHMW1 through OHMW-4, OHMW-1R through OHMW-4R, ONMW-1 through ONMW-3, and RW-1). Dischargers shall retain the services of a licensed land surveyor to attempt to locate wells that are not readily visible or otherwise "missing." If for any reason any well cannot be located, Dischargers must provide substantial and acceptable justification as to why they could not meet this requirement. Dischargers shall submit a report documenting the condition of the wells, including any appropriate documentation (e.g., well destruction reports, well permits, survey results, photographs, etc.). Dischargers shall also provide documentation of current access agreements for groundwater monitoring activities for off-site wells. If those agreements are not in place, Discharger shall provide substantial and acceptable documentation demonstrating good faith efforts to secure those necessary agreements.

2. By **August 31, 2009**, Dischargers shall submit a detailed **well installation, abandonment, or repair workplan** for re-establishing an adequate groundwater monitoring well network. The workplan shall include the proposed tasks, detailed scope of work, procedures and methods to be used, proposed new well locations, a sample and analysis plan, quality control/quality assurance measures, and tentative implementation dates.
 - a. On or before the 60th day following Executive Officer approval, Dischargers shall implement the Well Installation, Abandonment, or Repair Workplan as approved by the Executive Officer, or the parts approved by the Executive Officer. If the Executive Officer determines the Workplan or parts thereof are inadequate and requires revisions to the Workplan, those revisions shall be submitted within 45 days of the written notification requiring the revisions, unless otherwise specified by the Executive Officer. Dischargers shall implement Workplan revisions no later than 60 days after submittal, subject to Executive Officer approval.
3. Groundwater sampling and reporting shall begin immediately at each accessible monitoring well in accordance with MRP No. 98-22 or any subsequent monitoring programs the Executive Officer requires. If for any reason a well is not sampled according to MRP No. 98-22, the Dischargers shall submit an explanation and proposal to address the data gap as part of the monitoring report.
4. By **August 31, 2009**, Dischargers shall submit a detailed **workplan to restart groundwater remediation**. The workplan shall address the restart of the previous groundwater extraction and treatment system. If no portions of the previous system are still viable, Dischargers shall include a detailed plan and schedule for installing the replacement system. Dischargers may propose an alternative groundwater remediation system, provided the new alternative is equally or more effective than the existing extraction/treatment type. In either case, Dischargers shall include the proposed tasks, treatment methodology and description, detailed scope of work, procedures and methods, a sampling and

analysis plan, quality control/quality assurance measures, and permitting needs. Dischargers shall operate the groundwater extraction and treatment system until shut-down is approved by the Executive Officer.

- a. On or before the 60th day following Executive Officer approval of the workplan, Dischargers shall commence groundwater remediation. If the Executive Officer determines the Workplan or parts thereof are inadequate and requires revisions to the Workplan, those revisions shall be submitted within 45 days of the written notification requiring the revisions, unless otherwise specified by the Executive Officer. Dischargers shall implement Workplan revisions no later than 60 days after submittal, subject to Executive Officer approval.
- b. The Dischargers may submit a study to evaluate the feasibility, effectiveness, and relative cost of cleanup alternatives in compliance with Resolution No. 92-49, which provides that the goal for groundwater cleanup is to remove wastes to background levels. If the Central Coast Water Board is to consider a less stringent cleanup level, the Dischargers must demonstrate that background concentrations are not technologically or economically achievable, but the proposed cleanup level must still protect current and anticipated beneficial uses of groundwater, not pose a threat to human health and safety, and provide the maximum benefit to the people of the state.

SOILS

5. By **August 31, 2009**, Dischargers shall submit a detailed **workplan to recommence contaminated soil remediation**. The workplan shall include a plan to recommence soil excavation and disposal at a minimum rate of 100 tons per month until the soil remediation is complete, similar to previous Orders for the Property. Dischargers may propose an alternative soil remediation system, provided the new alternative is equally or more effective than the excavation and disposal option. Dischargers shall include the proposed tasks, detailed scope of work, procedures and methods, a sampling and analysis plan, quality control/quality assurance measures, and permitting needs.
 - a. On or before the 60th day following Executive Officer approval of the Soil Remediation Workplan, Dischargers shall commence soil remediation. If the Executive Officer determines the Workplan or parts thereof are inadequate and requires revisions to the Workplan, those revisions shall be submitted within 45 days of the written notification requiring the revisions, unless otherwise specified by the Executive Officer. Dischargers shall implement Workplan revisions no later than 60 days after submittal, subject to Executive Officer approval.

Cost Recovery

6. The Dischargers are liable, pursuant to California Water Code Section 13304, to the Central Coast Water Board for all reasonable costs incurred by the Central Coast Water Board to investigate unauthorized discharges of waste, or to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, pursuant to this Order, whether incurred before or after the issuance date of this Order. The Dischargers shall reimburse the Central Coast Water Board for all reasonable costs associated with investigation or oversight of the cleanup of this Property. Failure to pay any invoice for the Central Coast Water Board's investigation or oversight costs within the time stated in the invoice (or within thirty days after the date of invoice, if the invoice does not set forth a due date) shall be considered a violation of this Order. If the Property is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program.

Geotracker

7. As required by Code of Regulations, Title 23, Division 3, Chapter 30 and Title 27, Division 3, Subdivisions 1 and 2, the responsible party for the subject site, or an authorized representative, is required to electronically submit information to the State Water Resources Control Board (State Water Board). All technical reports (work plans, sites assessment, groundwater monitoring reports, etc.) shall be submitted in a portable data format (PDF) to the State Water Board's GeoTracker database over the internet. Additionally, monitoring data shall be submitted in electronic data format as described in the above referenced regulations.
8. Dischargers shall coordinate their work products such that all technical reports required in conjunction with this Order shall be submitted as a single response to a particular requirement. Dischargers shall not submit multiple responses to the same requirement, for example only one groundwater monitoring report shall be submitted for a particular monitoring event. Dischargers will be held equally responsible for compliance with the provisions and requirements of this Order.

Legal Provisions

9. All technical reports required in conjunction with this Order are required pursuant to Section 13267 of the California Water Code and shall include a statement by the Dischargers or an authorized representative of the Dischargers certifying under penalty of perjury under the laws of the State of California that the report is true, complete, and accurate. Hydrogeological reports and plans shall be prepared by, or under the direct supervision of, and signed and stamped by a professional geologist and/or an appropriately licensed engineer.

10. The technical reports required by this Order are needed by the Central Coast Water Board to evaluate the extent of waste present and to oversee the cleanup of such waste that is on, and migrating from, the Property. The Dischargers are required to follow these orders and submit these reports because waste has been detected at the Property at levels that threaten water quality. The Dischargers are legally responsible for the reasons stated above. More detailed information is available in the Central Coast Water Board's public file on this matter.
11. This Order in no way limits the authority of this Central Coast Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the Property consistent with California Water Code. This Order may be revised by the Executive Officer.
12. Any person affected by this action of the Central Coast Water Board may petition the State Water Board to review the action in accordance with section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.
13. Cleanup and Abatement Order No. 92-104 and Cleanup and Abatement Order No. 93-111 are hereby rescinded except for the purposes of enforcement action.

FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY SUBJECT THE DISCHARGERS NAMED IN THIS ORDER TO FURTHER ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO, ASSESSMENT OF CIVIL LIABILITY UNDER SECTIONS 13268 AND 13350 OF THE WATER CODE AND REFERRAL TO THE DISTRICT ATTORNEY OR ATTORNEY GENERAL FOR INJUNCTIVE RELIEF AND CIVIL OR CRIMINAL LIABILITY.

I, **Roger Briggs, Executive Officer**, do hereby certify the foregoing is a true full, true, and correct copy of an Order issued by me, on June 30, 2009.

Ordered By: 

Roger Briggs
Executive Officer

6-25-09

Date