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October 8, 2024

Katrina Fleshman, Executive Assistant
Lahontan Regional Water Quality Control Board
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150
Via Email: Katrina.Fleshman@Waterboards.ca.gov

Re: Revised CAO No. R6T-2022-(PROPOSED) for former Big O Tires

Dear Ms. Fleshman:

This office represents David and Kathleen Barnett (Barnett) and CAD Enterprises, LLC (CAD) of which David Barnett is a managing member. Barnet owned the real property located at 1961 Lake Tahoe Boulevard in the "Y" area of South Lake Tahoe (the "Property" or "Site") from approximately 1975 to 2002. CAD has owned the Property from approximately 2002 to Present. Various lessees operated a Big O Tires franchise store ("Big O") on the Property from approximately 1975 to 2006. On behalf of Barnett and CAD, we submit this letter in objection to the above-referenced Cleanup and Abatement Order ("Proposed CAO").

Background

Perchloroethylene (PCE) concentrations in groundwater (GW) at the "Y" were first detected in municipal water supply wells in 1989. Many general and site-specific investigations and remedial actions have since been conducted in the area to address the GW contamination. An investigation of the soil and GW beneath the Property (three borings were drilled from which several soil and GW samples were collected) was conducted in 2001, and a more extensive investigation (11 borings were drilled from which 23 soil samples and 11 GW samples were collected) was conducted at the Property in 2006. Investigations have also been conducted in the last two decades at various other properties in the Y area with past and/or present uses known or believed to use or store PCE or PCE-containing products, including dry cleaning businesses, auto body shops and printing shops.

Consideration of No Further Action Required

Based on the results of the aforementioned 2001 and 2006 investigations, Lahontan issued neither a cleanup and abatement order nor an order for additional investigation at the Site. Rather, on October 7, 2015, the Regional Board notified Petitioners and other property owners in the area that it was considering closing Case SCP #T6S034 for the Property and Big O (the "Notice"). A copy of the notice, with the below-referenced case summary, is attached as **Exhibit A**. Enclosed with the Notice was a draft case summary which identified "spills" of petroleum

hydrocarbons and chlorinated hydrocarbons as the "unauthorized release" at the Site and set forth the following conclusions:

- Degraded gasoline, diesel and motor oil were detected in ***soil*** samples at 3 feet below ground surface (bgs) and lesser concentrations were detected at greater depths.
- PCE of 42 parts per billion (ppb) was detected in one ***soil*** sample at 3 feet bgs and no deeper.
- The GW contaminant plume beneath the Property poses a low threat to human health, safety, and the environment for the reasons listed below, and the Property / Big O is no longer required to conduct investigations.
    - The GW plume previously contained 140 ppb Total Petroleum Hydrocarbons (TPH) as diesel, 31 ppb benzene, 4,700 ppb PCE, 92 ppb trichloroethene (TCE), and 1,130 ppb dichloroethane (DCE), all exceeding their respective drinking water standards.
    - Petroleum compounds (TPH and benzene) in GW are likely due to on-site spills from vehicle repairs.
    - Solvent compounds (PCE, TCE, DCE) in GW are due primarily to historical releases at an upgradient site.
    - Low levels of benzene in GW do not pose an indoor air or inhalation threat to receptors.
    - ***Solvent compounds in GW have been reduced over time to 6 ppb due to the remedial actions at the former Lake Tahoe Laundry Works (LTLW) site located upgradient from the Property at 1024 Lake Tahoe Boulevard*** and should not pose an inhalation or safety threat at the Property.
- Existing conditions at the Site are protective of human health for the following reasons:
    - Low concentrations of VOC in GW do not pose a vapor intrusion.
    - GW contamination is approximately 16 feet bgs.
    - There are no wells on-site for people to have direct contact with GW.
    - Since the Site is primarily covered in concrete foundation and pavement, there are no outdoor air exposure pathways except in small landscape areas.
- Closure is justified at the Site/Big O for the following reasons:
    - Petroleum hydrocarbons in GW at the Site have not been detected in nearby water supply wells and will attenuate over time.
    - PCE detected in soil at 3 feet bgs is too shallow to be affected by a rising water table, currently at 16 feet bgs; therefore, it is unlikely the Site contributed to the solvent concentrations detected in GW at the Y.
- GW and soil remediation for solvent contamination at the LTLW site has reduced solvent compounds in GW to 6 ppb which no longer poses a threat to human health and the environment at the Property.

Around the time the Regional Board issued the Notice for Big O, it issued a Proposed Cleanup and Abatement Order, No. R6T-2015-PROP, for the Lake Tahoe Laundry Works (LTLW) site.

Having received the Notice and facing a new Cleanup and Abatement Order, representatives of the LTLW site spared no effort in opposing the Regional Board's consideration of closing the case against Big O. Consequently, the Regional Board declined to issue a No Further Action Required Letter for the Property and has since entirely switched its position.

Order to Submit Technical Reports

Substantial, uncontroverted evidence proves the LTLW site is the source of the PCE contamination in GW at the Y. The high concentrations of solvents (PCE, TCE, and DCE) detected in GW 16 feet bgs beneath the Big O parking lot are within 100 feet of the LTLW site where contamination is known to have existed since the late 1970s. Further, the location of the high solvent concentrations beneath the Big O Parking Lot is upgradient of any potential release location on the Property. In all of the documents submitted to the Regional Board by representatives of LTLW opposing the closure of Big O, not a single piece of evidence demonstrates Big O has contributed to the regional PCE plume.

Nevertheless, on March 10, 2019, nearly 13 years after 23 soils samples and 11 GW samples were collected and analyzed at the Site in 2006, Lahontan issued an order to provide information concerning chemical storage and operations at the Site and investigation work plan ("Investigative Order"). The Investigative Order negates the conclusions the Regional Board reached in 2015 (summarized above) and cites the results of the 2001 and 2006 investigations as evidence additional investigation is necessary at the Site. Certainly, Lahontan had a duty to act expeditiously in 2001 and 2006 if sampling results indicated the Site was a potential contributor to the regional plume.

In compliance with the Investigative Order and as approved by Lahontan, Barnett and CAD caused additional investigations to be conducted at the Site in 2020. The results of the investigations do ***not*** suggest the Site is a contributor to the regional plume, similar to those of the 2001 and 2006 investigations. Consequently, additional investigation to determine whether the Site contributes to the GW contamination at the Y is neither warranted nor justified.

Proposed CAO

Despite the lack of evidence to suggest the Site is a regional contributor and taking no action with regard to the Site for almost two decades, Lahontan continues its crusade against the Site via the Proposed CAO. Barnett and CAD owned the Property during Big O's operation but were not responsible for the operation or any alleged discharges. As noted in Paragraph 5 of the Proposed CAO "[h]azardous waste permits and other permits issued by local and state agencies… indicate the use of Safety-Kleen service and product to clean parts used in tire mounting and light mechanical repair" at the Site. These local and state agencies and the Big O operators "knew or should have known that activities on the Site created a reasonable possibility of discharge into waters of the state of wastes that could create or threaten to create a condition of pollution or nuisance" – not Barnett, as the Regional Board suggests in Paragraph 43 of the Proposed CAO.

David Barnett is a retired CPA and 50-year resident of Lake Tahoe, Nevada. He is now in his 80s and trying to get his estate in order to make sure his heirs (his wife is also over 80 years old) are not burdened by a substantial financial hardship neither he nor CAD had any contributing role in, other than the misfortune of purchasing a commercial property that contained a tire store. The Proposed CAO would require Barnett / CAD to expend funds, time and other resources they do not possess to fill data gaps the Regional Board suggests exist, 20 years after a draft No Further Action letter was posted. Notably, additional investigation is not necessary to determine the source of the regional PCE plume at the Y. The Proposed CAO is therefore unjust and an abuse of discretion vis a vis Barnett / CAD.

We respectfully request a meeting with the appropriate staff of the Regional and State Boards to discuss this matter and chart a path forward that will extricate the Property from an upgradient, well documented source of contamination and enable Barnett to plan for his heirs without the distress and threat of liability for a condition he did not create. Please contact me with any questions or if you wish to discuss.

Sincerely,

FELDMAN THIEL LLP

By:
Kara L. Thiel

KLT/ld
cc: Anna L. Garcia, Lahontan (Anna.Garcia@Waterboards.ca.gov)
Timothy J Middlemis-Clark (Timothy.Middlemis-Clark@Waterboards.ca.gov)
Client

EXHIBIT A

October 7, 2015

*******NOTIFICATION*******

Consideration of No Further Action Required
Former Big O Tire Store
1061 Lake Tahoe Boulevard
South Lake Tahoe, El Dorado County
Lahontan SCP Case #T6S034

Lahontan Water Board staff (Staff) is considering case closure (No Further Action Required) for a historical unauthorized release of petroleum and chlorinated hydrocarbons at the above referenced site cleanup program (SCP) site.

The State Water Board adopted the Low-Threat Underground Storage Tank Case Closure Policy (LTCP), which became effective on August 17, 2012. An electronic copy of the LTCP and additional information can be found at: http://www.waterboards.ca.gov/ust/lt_cls_plcy.shtml.

Prior to case closure, the Lahontan Water Board notifies and provides a 60-day comment period to the following interested parties:

- Municipal and county water districts
- Water replenishment districts
- Special act districts with groundwater management authority
- Agencies with the authority to issue building permits for land affected by the petroleum release
- Owners and occupants of the property impacted by the petroleum release
- Owners and occupants of all parcels adjacent to the impacted property.

You are receiving this letter because you have been identified as a potentially interested party.

Staff has evaluated the data collected from this site and has determined the historical release of petroleum and solvent chemicals does not pose a threat to human health, safety, and the environment. Therefore, Staff considers it appropriate to issue a No Further Action Required letter for this site. A draft case summary is attached. You can find additional information regarding this site at the State Water Board's Geotracker website:

http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL0601756146

Please provide questions, concerns, or comments regarding this site within 60 days from the date of this letter. Please contact Lisa Dernbach by phone at (530) 542-5424, by email at lisa.dernbach@waterboards.ca.gov, or by mail at the address in our letterhead.

Enclosure: Draft Case Summary

LSD/ma/T: 60 comment letter for Big O Tires closure 9-15

Case Summary

Lahontan Regional Water Quality Control Board - Region 6

South Lake Tahoe Office:
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150

Victorville Office:
14440 Civic Drive, Suite 200
Victorville, CA 92392

1. Lahontan Regional Water Quality Control Board Contact

Case Worker: Lisa Dernbach	**Phone:** (530) 542-5424
Date Form Completed: 9/29/2015	

2. Case Information

Lahontan Case #: SCP #T6S034	**Geotracker Global ID #**: SL0601729739
Site Name: Former Big O Tires Store #147	**Site Address**: 1961 Lake Tahoe Blvd, South Lake Tahoe CA 96150
Release Date: Not known	**County**: El Dorado
Water Board Permits and Cleanup and Abatement Orders Issued: CAO R6T-2003-0031 and R6T-2003-0031A1	

3. Responsible Parties

Fee Title Owner(s): **Roert Novasel** **c/o CAD Enterprises, LLC** **Owner Address(es):** 3170 Highway 50, Suite 10 South Lake Tahoe, CA 96150	**Designated Responsible Party(ies):** **Harry Krupp, c/o Lightnin II, Inc.** **CAMCO, BOT 65, Inc, c/o Mark Strong** **RP Address(es):** 1835 Clydesdale Dr. Carson City, NV 89703 6620 Canyon Edge Rd Pollock Pines, CA 95726-9219

4. Notifications

Date fee title ownership confirmed through county assessor's office? 9/25/15
How was fee title owner notified of proposed closure? US Mail
60-day comment period begin date: *to be added*
Comments:

DRAFT

5. Unauthorized Release Description

Type of product released: Petroleum hydrocarbons and chlorinated hydrocarbons
Primary source/release mechanism: Spills
Comments: Degraded gasoline, diesel, and motor oil (based on low volatile organic compound (VOC) concentrations) detected in soil samples at 3 ft below ground surface (bgs) and lesser concentrations detected at >7.5 ft bgs. PCE of 42 ppb detected in one soil sample at 3 ft bgs but not deeper.

6. Site Setting

Site Location (describe general site area, e.g., located in a commercial area) and Site Land Use (current and any known planned use of the site): Former tire store and mechanics shop located in a commercial area. Business is currently a stove and fireplace store. No change to planned use is known.
Comments:

7. Media Specific Criteria

Groundwater Pathway Discussion: *(Explain why the groundwater contaminant plume poses, under current and reasonably anticipated near-term future scenarios, a low threat to human health, safety, and the environment.)*

Groundwater plume beneath this parcel previously contained 140 ppb Total Petroleum Hydrocarbons (TPH) as diesel, 31 ppb benzene, PCE 4,700 ppb, TCE 92 ppb, and DCE 130 ppb, all exceeding their respective drinking water standards.

Petroleum compounds (TPH and benzene) likely due to on-site spills from vehicle repairs. Solvent compounds (PCE, TCE, DCE) in groundwater is due primarily to historical releases at an upgradient site.

Low levels of benzene in groundwater do not pose an indoor air and inhalation threat to receptors. Solvent concentrations in groundwater have been reduced over time to 6 ppb due to remedial actions at the Lake Tahoe Laundry Works, across Lake Tahoe Boulevard, and shouldn't pose an inhalation or safety threat at the former Big O Tire Store property.

Based on the above information, the former Big O Tire Store property owner is no longer required to conduct investigations.

Vapor Intrusion to Indoor Air Pathway: (*Explain why existing site conditions are protective of human health, or describe what mitigation measures or institutional or engineering controls were used to reduce risk to human health to less than significant levels.)*

Low concentrations of VOC in groundwater do not pose a vapor intrusion threat and are protective of human health.

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Direct Contact and Outdoor Air Exposure Pathways: (*Explain why existing site conditions are protective of human health and the environment, or the mitigation measures, institutional or engineering controls that reduce risk to human health and the environment to less than significant levels.)*

Existing conditions are protective of human health and the environment because groundwater contamination is about 16 feet below ground surface and there are no wells on site for people to have direct contact. Since the site is primarily covered with a concrete foundation and pavement, there are no outdoor air exposure pathways except in small landscape areas.

Rationale for No Further Action Required: (*Provide rationale to support No Further Action Required status*.)

Closure is justified since petroleum hydrocarbons in groundwater from the site have not been detected in nearby water supply wells and will attenuate over time. Closure is also justified since PCE detected at 3 feet in soil is too shallow to be affected by a rising water table, currently at 16 ft bgs. Thus, it is unlikely that this site added to solvent concentrations detected in groundwater in the past and currently.

Groundwater and soil remediation for solvent contamination is occurring at 1024 Lake Tahoe Blvd, at the Lake Tahoe Laundry Works site. These actions have reduced solvent compounds in groundwater to 6 ppb and no longer pose a threat to human health and the environment at the former Big O Tires Store property. Therefore, closure of this case is appropriate.

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