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REFER TO FILE NUMBER 16586-2

August 21, 2024

Re: Petition for Review of Cleanup and Abatement Order NO. R4-2024-0132

State Water Resources Control Board:
Office of Chief Counsel
Michael A.M. Lauffer, Esq.
Adrianna M. Jerome
1001 "I" Street, 22nd Floor
Sacramento, California 95812-0100

Dear State Water Resources Control Board:

Pursuant to California Water Code section 13320 and Title 23, California Code of Regulations (CCR) sections 2050-2068, Petitioner, E-Z Storage Marina-2, L.P., a California Limited Partnership (“Marina-2”), petitions the State Water Resources Control Board for review of Cleanup and Abatement Order No. R4-2024-0132 directed to “E-Z Storage Marina 2, L.P.” and issued by the Los Angeles Regional Water Quality Control Board (“Regional Water Board”) on July 23, 2024. See Exhibit A, a copy of the Order, attached hereto.¹

I. Petitioner

The name and address of Petitioner is:

E-Z Storage Marina-2, L.P.
17050 Ventura Boulevard, Suite 200
Encino, California 91316
Attn: James E. Greenberg, Manager

Please direct notices and other communications to:

Stephen T. Holzer, Esq.
Lewitt, Hackman, Shapiro, Marshall & Harlan
16633 Ventura Boulevard
Encino, California 91364
(818) 907-3299
sholzer@lewitthackman.com

¹ This Petition is being transmitted both by E-mail and by Hand Delivery.



II. Action of the Regional Water Board to Be Reviewed, Including a Copy of the Action Being Challenged

Petitioner is petitioning for review of Cleanup and Abatement Order No. R4-2024-0132 dated July 23, 2024; specifically Petitioner contends that it is wrongly included (i) as a suspected discharger with respect to 12901 Culver Boulevard, Los Angeles, California (the “Culver Boulevard property”) and groundwater contamination both under and downgradient of that property; and (ii) in the requirement that Petitioner participate in various technical reports, in long-term downgradient groundwater monitoring and in other response/remediation activity directed to soil contamination at the property and to contaminated groundwater.

III. Date of the Regional Water Board Action

The Regional Water Board signed the Order on July 23, 2024. This Petition is timely pursuant to Water Code Section 13320.

IV. Statement of Reasons Why the Regional Water Board’s Action Was Inappropriate and Improper

A. There is no evidence that E-Z Storage “discharged” or permitted the discharge of any contaminants at the Culver Boulevard property

At least since the 1920’s, there were extensive business operations on the property.

The only use of the property by Marina-2 has been as a storage facility. No industrial or manufacturing operations have been permitted. Whatever others might have done at the property before Marina-2 took over, Marina-2 has never discharged, or permitted the discharge, of the contaminating chemicals specified in the Order.

1. Water Code Section 13304 (a) allows for an Order to issue only against dischargers or those who permit others to discharge.

The Regional Water Board relies upon Water Code Section 13304 as authority for issuance of the Order. Section 13304 (a) provides:

(a) A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement 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. (emphases added).

There have been multiple entities historically operating on the Culver Boulevard property and potentially discharging waste, or at least permitting waste discharge to occur, including but not limited to Southern Pacific Transportation Company and its predecessors, agricultural operations, Teledyne Technologies, Inc., and the American Fruit Grower Exchange. In contrast to these other entities, Marina-2 can and did show the Regional Water Board that it (Marina-2) did not cause, or permit, discharges to occur.

“Discharge” means “the act of depositing ... something laid, placed or thrown down’.” *People ex ref. Younger v. Super. Ct.*, 16 Cal. 3d 30, 43 (1976) (quoting Webster’s Third Int’l Dict., Unabridged (1963)); *overruled in part on other grounds, Los Angeles Unified School Dist v. Superior Court*, 14 Cal. 5th 758, 775 (2023). *Accord, Lake Madrone Water Dist. v. State Water Res. Control Bd.*, 209 Cal. App. 3d 163, 174 (1989) (quoting Webster’s New Int’l Dict., 644 (3d ed. 1961)): discharge means “relieve[d] ... a charge, load or burden’....”

The case law is in accord with the concept that some affirmative conduct (whether a discharge or at least a permission to discharge) is necessary before an RWQCB Order can issue² to an alleged “discharger”:

In *Wells Fargo Bank, N.A., as Trustee for the Clara Poppic Trust, Plaintiff v. Kenneth G. Renz, et al., Defendants and Related Actions*, (2011 N.D. Cal.) 795 F. Supp. 2d 898, 918, the Court stated: Section 13304(a) “derives from the common law of nuisance. ... Thus, the relevant question for purposes of liability is ‘whether the defendant created or assisted in the creation of the nuisance.’” *Accord, Redevelopment Agency of the City of Stockton v. BNSF Railway Company, et al.*, (2011 9 Cir.) 643 F. 3d 668, 678 : “[S]ection 13304 should be construed harmoniously with the law of nuisance....[T]he California Court of Appeal has concluded that the words ‘causes or permits’ within section 13304 were not intended ‘to encompass those whose involvement with a spill was remote and passive.’... (‘ “[T]hose who took affirmative steps directed toward the improper discharge of [hazardous] wastes ... may be liable under [section 13304]....” ’).”³

Put another way, “Under section 13304, subdivision (a), prior to issuing a cleanup or abatement order to a specified person, a regional board is required to establish a causal or

² To the extent the RWQCB has adopted a contrary interpretation of Section 13304 (a) (see Regional Water Board’s “Response to Comments to Draft Cleanup and Abatement Order”, item A.9., page 6; this Response is attached to the Order (Exhibit “A” hereto). While a “discharge” may continue as long as the contaminant is in and/or moves through soil and/or groundwater, this concept is analytically separate from determining which entity is the “discharger”). The Regional Water Board’s interpretation of “discharger” is squarely at odds with both the plain wording of the statute and with case law and should be abandoned.

³ The analysis here also applies to defining a “discharger” under Water Code Section 13267, the other Water Code Section cited by the Regional Water Board as authority for the Order.



connecting link between the person and an actual or threatened discharge of waste into state waters.” (emphasis added). *San Diego Gas & Electric Company v. San Diego Regional Water Quality Control Board*, (2019) 36 Cal. App. 5th 427, 442.

Here, there is no evidence, whether direct or even circumstantial, of an affirmative act of Marina-2, whether directly or through permission to another, to discharge waste. As discussed above, any such discharge occurred before Marina-2 became involved in the Culver Boulevard property.

2. The Legislative history of Water Code Section 13304 (a) shows that an Order cannot issue to a present owner of property where only others have discharged waste prior to the present ownership of the property.

The legislative history shows that the State Legislature was focused on the actual discharger when the Legislature adopted the present version of Section 13304 (a) in 1980. Prior to the 1980 amendment, the language of Section 13304(a) was essentially the same as it was after the amendments. The jurisdiction of the Regional Water Board was expressly limited to dischargers, because *dischargers* were the subject of Waste Discharge Requirements; and violators of those Requirements were noncompliant *dischargers*.

The Legislature certainly had the power to expand the Regional Water Board’s authority to include categories of persons in addition to dischargers, but that expansion would have required a change in language. The word "owner," for example, could have been used if the Legislature had wished to allow the regional boards to order owners to clean-up and abate contaminants discharged by someone else.

But the Legislature did not change the language in that manner even though it certainly had an example available in the CERCLA law first enacted in 1980 by the United States Congress, 42 U.S.C. §§ 9601 *et seq.*, and the California equivalent adopted in 1981, the Hazardous Substances Account Act ("HSAA"), Cal. Health & Safety Code § 25300 *et seq.* Both statutes designate "owners", "operators" and "arrangers" as the responsible parties for clean-up and remediation of designated sites.

Those terms have been comprehensively defined by statute and case law. The omission of any of them could not have been an accident or oversight. "The Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes "in the light of such decisions as have a direct bearing upon them" ". *San Diego Gas & Electric Company, supra*, 36 Cal. App. 5th at 439.

It is beyond the power of the Regional Water Board to refashion the scope of its own authority to conform to CERCLA, the HSAA or other laws when the Legislature has not done so. *See, e.g.*, Cal. Health & Safety Code § 25187(b)(5) (providing for enforcement against "present and prior owners" of hazardous waste facilities); Cal. Health & Safety Code § 25360.3(c)(2)



(providing for recovery actions against property owners for the release of a hazardous substance, including for a "release [that] occurred before the date that the owner acquired the property"); Authors Statement for AB2700 (1980 amendments to Health & Safety Code permitting DTSC to issue an order to "owners ... and any prior owners of the site"); *City of Stockton, supra*, 643 F.3d at 677- 78 (applying different standards when determining if the defendant had liability under the Polanco Act, which would allow recovery if defendant had been liable under either (1) Water Code § 13304(a), which requires that defendant actively or knowingly caused or permitted the contamination or (2) CERCLA, which only requires proof of passive ownership).

3. There is no causal connection between EZ Storage’s ownership and operation of the Culver Blvd. property and the discharge of waste.

The State Water Resources Control Board has long held that:

"To meet the requirement of fairness, the Regional Board, before acting on waste discharge requirements and proposed orders, must ensure that there is a factual and legal basis in the record for its decision and must indicate its reasoning and the factual basis for its decision to the affected parties."

In the Matter of Project Alpha, 1974 State Board Order No. WQ 74-1.
(emphases added).

See also Topanga Ass'n for a Scenic Cmty. v. City of L.A., (1974) 11 Cal. 3d 506, 514-15 (1974) (an agency "must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the [legal] basis for the board’s action"; and the findings must "bridge the analytic gap between the raw evidence and ultimate decision or order," disclosing "the analytic route the . . . agency traveled from evidence to action"),

Here, the facts demonstrate that, of all the parties which should be under investigation by the Regional Water Board, Marina-2 is the one who can demonstrate it has done nothing to cause it to be considered a discharger under Water Code Section 13304 (a). There is thus no basis to name Marina-2 as a responsible party.

B. The Regional Water Board did not make a reasonable effort to identify dischargers

Investigation has revealed that other, obvious Responsible Parties that should have been named in the Order were ignored. Parties which should have been subject to the Order but were not named, include Southern Pacific Transportation Company and its predecessors; American Fruit Growers’ Exchange; and Caltrans.



23 CCR § 2907, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*, provides:

The procedures Regional Water Boards shall implement in making decisions as to when a person may be required to undertake an investigation related to a discharge or threat of a discharge subject to WC § 13304.

The Regional Water Board shall:

- Use any relevant evidence to identify dischargers;**
- Make reasonable efforts to identify dischargers;**
- Require identified dischargers to investigate; and**
- Coordinate with other agencies.**

(emphases added).

Here, the RWQCB has not yet used all relevant evidence or made reasonable efforts to identify dischargers. The Culver Boulevard property has, at least since the 1920's, been a site on which substantial activity by various potentially polluting third parties has taken place. For example, despite the fact that the Southern Pacific Transportation Company and its predecessors owned the Culver Boulevard property for over 60 years, from 1924-1985, and during that time leased the property to various business entities, the RWQCB has not reasonably investigated the railroad's tenure.

C. The Administrative Procedure Act and its Bill of Rights Apply to this Matter

Under the Administrative Procedure Act and the Act's Bill of Rights, the decision maker on whether to issue the Order should have been a separate person or persons from the staff that investigated the issue. This is true whether the procedure is formal or informal. See August 2, 2006 Memorandum from Michael A.M. Lauffer, Chief Counsel, to the State Water Resources Control Board and California Regional Water Quality Control Boards, "*Summary of California Adjudicative Proceedings Before the California Water Boards*".

The Regional Water Board performed a judicial function in issuing the Order. As stated in an April 25, 2013 Memorandum (p. 1) from Mr. Lauffer to the State Water Resources Control Board and the Regional Water Boards (emphasis added):

The State Water Resources Control Board and the nine California Regional Water Quality Control Boards perform a variety of functions. The boards convene to set broad policy consistent with the laws passed by Congress and the Legislature. In this regard, the boards perform a legislative function. The boards also routinely determine the rights and



duties of individual dischargers or even a class of dischargers. In this regard, the boards perform a judicial function. (emphasis added).

Accordingly, to the extent the investigative function and the adjudicative function of the Regional Water Board were not kept separate, with separate staff, the State Water Board should regard this failure to observe the Administrative Procedure Act, the Bill of Rights and the memo from Mr. Laufer, this is another, and independent, reason the issuance of the Order to Marina-2 was inappropriate and improper.⁴

V. How the Petitioner Is Aggrieved

Petitioner is aggrieved by the Regional Water Board’s action because Petitioner is and will be subject to significant time and costs to comply with and/or appeal the Order directed to a non-discharger. Petitioner would be subject to daily fines for each day the requirements of the Order are not met.

Petitioner in any event is not in a financial position to respond to the Order. The Regional water Board in the Order estimates that costs to comply with the Order will be in the range of \$700,000 to \$1,300,000. This does not even include long-term remediation of the soil and groundwater. While presumably Marina-2 can share some costs with Teledyne Technologies, Inc. (the other target of the Order), the difficulty this poses for a small business is substantial.

Further, there is no practical reason to subject Petitioner, a small business, to the Order. As referenced above, there are other entities which potentially qualify as “dischargers” and which are capable of incurring the expense of compliance with the order who potentially qualify as “dischargers”.

VI. State Water Board Action Requested By Petitioner

Petitioner requests that, at the earliest possible date, the State Water Board (1) find that the Regional Water Board’s naming of Marina-2 as a suspected “discharger” was improper and that there was no other proper basis for including Marina-2 in the Order and (2) Direct the Regional Water Board to rescind the Order as it applies to Marina-2.

VII. Statement of Points and Authorities in Support of Legal Issues Raised in Petition

Pursuant to Water Code section 13320 and California Code of Regulations, title 23, sections 2050 *et. seq.*, any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action. Also, see the discussion in Part IV. A.-C.

⁴ Petitioner raised this account with the Regional Water Board (letter of December 13, 2022, Exhibit “A” to the letter, discussed in Section IX., *infra*) but never received a response.



VIII. Statement Regarding Service of the Petition on the Regional Water Board

A copy of this Petition was sent to the Regional Water Board to the attention of Mr. Eric Nelson (Eric.Nelson@waterboards.ca.gov) and Ms. Angelica Castaneda (Angelica.Castaneda@waterboards.ca.gov), both by e-mail and by hand delivery, who are listed as contact people at the Regional Water Board regarding this Order.

IX. Statement Regarding Issues Presented to the Regional Water Board

Petitioner corresponded with Mr. Robert Ehe of the Regional Water Board via letter dated September 26, 2018 with respect to the history of potential dischargers on or to the Culver Boulevard property and with Messrs. Hugh Marley and Eric Nelson of the Regional Water Board via letter dated December 13, 2022 concerning, among other things, the issues raised in this Petition (see Exhibit “A” to letter). Marina-2 also met with representatives of the Regional Water Board on October 2, 2018 with respect to the “discharger” issue.

X. Request for Stay

Petitioner also hereby requests a stay of enforcement of the Order.

The factors justifying a stay are set forth in the Declarations of James E. Greenhut and Stephen T. Holzer attached hereto as, respectively, Exhibits B (substantial harm to the Petitioner) and C (no substantial harm to other interested persons and substantial questions of law and fact regarding the disputed action).

Sincerely,

LEWITT, HACKMAN, SHAPIRO

By: Stephen T. Holzer

STH:aws
encl.

Cc: Mr. Eric Nelson (w/attachments)
Ms. Angelica Castaneda (w/attachments)
Dana Palmer, Esq. (w/attachments)

EXHIBIT “A”



Los Angeles Regional Water Quality Control Board

July 23, 2024

Mr. James E Greenhut
E-Z Storage-Marina 2, L.P.
17050 Ventura Blvd Ste 200
Encino CA 91316

Certified Mail
Return Receipt Requested
Claim No. 7018 1830 0001 5952 5728

Teledyne Technologies, Inc.
c/o Mr. Dana P. Palmer, Esq.
McGuireWoods, LLP
1800 Century Park East, 8th Floor
Los Angeles, CA 90067

Certified Mail
Return Receipt Requested
Claim No. 7018 1830 0001 5952 5735

SUBJECT: CLEANUP AND ABATEMENT ORDER NO. R4-2024-0132

**SITE: E-Z STORAGE, 12901 CULVER BOULEVARD, LOS ANGELES, CA
(SITE CLEANUP PROGRAM FILE NO. 1496)**

Dear Mr. Greenhut and Mr. Palmer:

The California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) is the public agency with primary responsibility under the Porter-Cologne Water Quality Control Act (Cal. Water Code §§13000 et seq.) for the protection of the quality of the waters of the state, including ground water and surface water within major portions of Los Angeles County and Ventura County. The above-referenced site (Site) is situated within the jurisdiction of the Los Angeles Water Board.

As part of our effort to protect water quality, pursuant to California Water Code Sections 13304 and 13267, enclosed is Order No. R4-2024-0132 (Order), naming E-Z Storage-Marina 2, L.P. and Teledyne Technologies Incorporated as Dischargers for the purpose of investigating and cleaning up soil, soil vapor, and groundwater from releases at the Site to the extent that it no longer poses a threat to water quality and human health. Should the Dischargers fail to comply with any provision of the Order, they may be subject to further enforcement action, including injunction and civil liability, pursuant to applicable California Water Code sections including, but not limited to, sections 13268, 13304, 13308, and 13350.

NORMA CAMACHO, CHAIR | SUSANA ARREDONDO, EXECUTIVE OFFICER

320 West 4th Street, Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

This Order establishes requirements and deadlines for investigation and cleanup and abatement actions.

On November 15, 2022, a draft of this CAO was provided to you for comment; the comment period ended on December 15, 2022. The Los Angeles Water Board has reviewed all comments received and prepared the attached document, entitled *Response to Comments to Draft Cleanup and Abatement Order No. R4-2022-XXXX* (Response to Comments), summarizing the comments received and providing responses to those comments. Where appropriate, the Los Angeles Water Board made changes to the draft Order based on the Dischargers' comments and minor clarifying changes. In providing the parties with a copy of the revised Order and Response to Comments document, we are not opening a new comment period.

If you have any questions, please contact Mr. Eric Nelson at (213) 576-6713 Eric.Nelson@waterboards.ca.gov, or Dr. Angelica Castaneda, Site Cleanup Unit IV Supervisor, at (213) 576-6737 or via email at Angelica.Castaneda@waterboards.ca.gov.

Sincerely,

 Digitally signed by
Susana Arredondo
Date: 2024.07.23
12:17:30 -07'00'

Susana Arredondo
Executive Officer

Enclosures:

Cleanup and Abatement Order No. R4-2024-0132
Response to Comments to Draft Cleanup and Abatement Order No. R4-2022-XXXX
Comments Received to Draft Cleanup and Abatement Order No. R4-2022-XXXX

Electronic copy:

Mr. Benson Williams, Manager, E-Z Storage
Ms. Melanie S. Cibik, Esq., Teledyne
Mr. Mark Egbert, Teledyne
Mr. Michael Shearer, Teledyne
Mr. Mike Cassidy, Alta Environmental
Mr. Stephen Holzer, Lewitt Hackman
Ms. Saraswati Poudel Acharya, Division of Financial Assistance
Mr. Uzi Daniel, West Basin Municipal Water District

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

CLEANUP AND ABATEMENT ORDER NO. R4-2024-0132
REQUIRING

TELEDYNE TECHNOLOGIES INCORPORATED

E-Z STORAGE-MARINA 2, L.P.

TO ASSESS, CLEANUP, AND ABATE

WASTE DISCHARGED TO WATERS OF THE STATE PURSUANT TO CALIFORNIA
WATER CODE SECTIONS 13267 AND 13304

AT

EZ STORAGE FACILITY
12901 CULVER BOULEVARD, LOS ANGELES, CALIFORNIA
(SITE CLEANUP PROGRAM FILE NO. 1496, GLOBAL ID NO. T10000020683)

This Cleanup and Abatement Order No. **R4-2024-0132** (Order) is issued to Teledyne Technologies Incorporated and E-Z Storage-Marina 2, L.P. based on provisions of Water Code sections 13304 and 13267, which authorize the California Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) to issue this Cleanup and Abatement Order and require the submittal of technical and monitoring reports.

The Los Angeles Water Board finds that:

BACKGROUND

1. **Discharger(s):** Teledyne Technologies Incorporated and E-Z Storage-Marina 2, L.P. (hereinafter collectively called Dischargers) have caused or permitted waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State, which creates, or threatens to create, a condition of pollution or nuisance. The presence of high levels of contamination in groundwater, the soil matrix, and soil vapor and the threat of vapor intrusion caused by these contaminants constitutes a public nuisance per se because the pollution occurred as a result of discharges of wastes in violation of the Water Code.
2. **Location:** The site is located at 12901 Culver Boulevard, Los Angeles, California, and the Los Angeles County Assessor's Identification Number (AIN) for the parcel is 4223-009-006 [see, Attachment A, Figure 1, Vicinity Map] (Site). Attachment A includes figures depicting the location and conditions of the Site. The land use setting in the vicinity of the Site is mainly commercial but includes residential land use along Panama Street to the west, the Ocean Charter School to the north, and the Marina freeway to the south.

SITE HISTORY

- 3. Site Description and Activities:** The approximately 1.7-acre Site is a rectangular parcel with flat terrain, approximately 60 feet wide by 1,245 feet long and is occupied by the E-Z Storage facility, which has three two-story structures and paved parking. The Site is currently gated. The building identified as Building C occupies the southernmost third of the Site, which is the portion primarily impacted by volatile organic compounds (VOCs). The Site is currently owned by E-Z Storage-Marina 2, L.P. and occupied by the E-Z Storage-Marina 2, L.P. facility.

The Pacific Electric Railway Venice–Inglewood Line operated on the Site from the 1920s through the 1940s, when ownership transferred to the Southern Pacific Transportation Company. Between the 1940s and the 1980s, Southern Pacific Transportation Company owned the Site and operated a railroad on it. All tracks along the route had been removed by 1981. Southern Pacific Transportation Company also maintained a paved parking area on the Site to the west/southwest of the railroad from the 1960s to the 1980s. The E-Z Storage self-storage facility was constructed in 1985 and has operated to the present day, renting self-storage units and spaces.

Teledyne Microelectronics Technologies (Teledyne), a business unit of Teledyne Technologies Incorporated, operated from 1957 until July 2013 in the parcel immediately adjacent to the northwest of the Site, located at 12964 Panama Street, Los Angeles, (AINs 4223-008-014 through 4223-008-021) (Adjacent Site [See Attachment A, Figure 2]). The Adjacent Site is part of an active site cleanup program case (SCP File No. 1292) with the Los Angeles Water Board. Teledyne has acknowledged a discharge of chlorinated solvents during their operations, which may have occurred in the transfer, movement and use of chemicals and equipment at the Adjacent Site. In addition, Teledyne leased portions of the Site for vehicle parking, including in the area of the detections of VOCs in shallow soil, and had access to the Site from September 1978 until March 1985. The Adjacent Site is considered a source of VOC impacts in soil, soil vapor, and groundwater at the Site. Therefore, Teledyne is considered a discharger of VOCs that have impacted the Adjacent Site and which have comingled with the VOCs discharged and that have migrated to the Site.

The property ownership and operations history of the Site are summarized in Table 1 below.

Table 1 – Site Ownership and Operations History

APPROXIMATE PERIOD	OWNER / OPERATOR	OPERATION	CURRENT SUCCESSOR
1920s – 1940s	Pacific Electric Railway Co.	Railroad (Alla Station)	Southern Pacific Transportation Co.
1940s - 1994	Southern Pacific Transportation Co. (From 1978 to 1984 leased portion operated by Teledyne)	Railroad (leased portions for vehicle parking)	None
1994-2010	E-Z Storage-Marina, Ltd.	Self-Storage	None
2011	E-Z Storage-Marina, L.P.	Self-Storage	None
2012	E-Z Storage L.L.C. / Michael E Greenhut and Darolyn G Greenhut / Kilrenney Associates Ltd	Self-Storage	None
2013 - 2015	Michael E Greenhut Trust	Self-Storage	None
2015	E-Z Storage-Marina, L.L.C. / E-Z Storage-Marina, L.P.	Self-Storage	None
2015 - Present	E-Z Storage-Marina 2, L.P.	Self-Storage	None

4. **Chemical Usage:** Industrial waste permits and other permits issued by local and state agencies, regulatory correspondence, letters from historical companies, site inspection reports, a chemical use and storage questionnaire, and other documents available in the case file indicate that:

- a. Teledyne’s operation at the Adjacent Site included the use and storage of chemicals of concern (COCs) at the Site, including VOCs, primarily tetrachloroethene (PCE), trichloroethene (TCE), *cis*-1,2-dichloroethylene (*cis*-1,2-DCE), 1,1,1-trichloroethane (1,1,1- TCA), methylene chloride, chlorobenzene, trichlorotrifluoroethane (Freon 113), and 1,1,2-trichloroethane (1,1,2-TCA). Teledyne leased a portion of the Site that shared a property line with the Adjacent Site between 1978 and 1984, and COCs may have been transported and discharged by Teledyne at the property line between the Site and the Adjacent Site. Samples collected at the property line between the Site and the Adjacent Site indicate that the highest concentrations of PCE in soil that were detected at either site occur at the boundary between the Sites, possibly indicating either a discharge in this vicinity or the migration of COCs from one site to the other.
- b. Mr. James Greenhut submitted a *Chemical Storage and Use Questionnaire* (CUQ) dated May 7, 2018, to the Los Angeles Water Board on behalf of E-Z Storage L.L.C., the current property operator, and E-Z Storage-Marina 2, L.P., the current

property owner, which stated that over the past 32 years the E-Z Storage facility could not have caused a discharge of COCs to the subsurface at the Site because they have not used or stored those chemicals at the Site. This notwithstanding, the location and depth of the shallow soil impacts at the Site are consistent with a surface discharge of COCs at the Site within that time period.

EVIDENCE OF WASTE DISCHARGE AND BASIS FOR SECTION 13304 ORDER

The above sections summarize the ownership and documented chemical usage at the Site. The following evidence indicates discharges occurred:

5. Evidence of Waste Discharges:

Records indicate past evidence of illegal chemical storage on the Site, including Los Angeles Police Department records in 2012. While tenant contracts specifically prohibit the business use of leased space for manufacturing of any kind as well as the use or storage of hazardous substances, operations at the Site may have not maintained adequate control or full knowledge of their tenant's on-site activities.

Teledyne conducted manufacturing operations in several former buildings at the Adjacent Site, which included the use of solvents, paints, and other chemicals. The use and historical handling of chemicals at the Adjacent Site resulted in the documented discharge of VOCs to soil, soil vapor, and groundwater. The April 1985 discharge of TCE to the subsurface at the Adjacent Site was documented in Los Angeles County, Department of Public Health, investigator records, when a 55-gallon drum containing TCE was ruptured at the Adjacent Site and an approximately 10 by 15-foot area of staining on asphalt was observed by the investigator following the incident.

6. Summary of Findings from Investigations:

The following site assessments indicate that (1) soil, soil vapor, and groundwater are impacted with VOCs at the Site, and (2) VOCs in soil vapor and groundwater migrated to the Site from the Adjacent Site.

- a. The *Site Assessment Report* (Assessment Report) dated August 15, 2014, prepared by Alta Environmental on behalf of Teledyne, indicates that stormwater surface flow on the southern portion of the Adjacent Site drains to a west-east trending concrete swale in the southern parking lot and discharged to a former storm channel which ran along the property line between the Adjacent Site and the Site. The topography across the Adjacent Site and Site were reported as generally flat, with a slight slope to the south (see Attachment A, Figure 2). Analytical results for soil matrix sampling conducted at the Adjacent Site in July 2013, detected PCE concentrations at boring location B10, in the vicinity of the former Building #1 / former hazardous waste storage yard area, at 40.6 milligrams per kilogram (mg/kg) at 2.5 feet below ground surface (bgs) (see Attachment A, Figure 3) and 3.4 mg/kg

at 2.5 feet bgs at boring location B80, near the boundary of the Site. PCE was detected at 15 mg/kg at 5 feet bgs in boring location GW3, near the boundary of the Site (see Attachment A, Figure 4 and Copy of Table 5A of Assessment Report from Adjacent Site dated August 15, 2014). TCE, and *cis*-1,2-DCE were detected at the Adjacent Site at concentrations up to 1.2 mg/kg at boring B39 at 2.5 feet bgs and 4.3 mg/kg at boring B55 at 2.5 feet bgs, respectively.

- b. The *Removal Action Completion Report* dated July 21, 2017 (Completion Report) prepared by Alta Environmental on behalf of Teledyne, documents remedial soil excavation and off-site disposal of impacted soils at the Adjacent Site. The Completion Report includes results of confirmation sidewall soil sampling, within Area 19 of the remedial excavation, on the boundary at the Adjacent Site and the Site. Results of the sidewall confirmation soil samples indicated concentrations in soil remaining in-place at the boundary of the Site exceeding United States Environmental Protection Agency (USEPA) Region IX's direct contact exposure pathways regional screen level (RSL) for residential and commercial/industrial land uses and for protection of groundwater. At sampling location A19S5 from a depth of 2.5 feet bgs (see Attachment A, Figure 5 and Copy of Page 28 of Table 3 of Completion Report from Adjacent Site Dated July 21, 2017), PCE was detected at a concentration of 139 mg/kg and TCE at a concentration of 5.7 mg/kg. At the same sampling location, A19S5, PCE was detected at 555 mg/kg and TCE was detected at 2.4 mg/kg at a depth of 7.5 feet bgs. In the same area at the Adjacent Site, adjacent along the boundary of the Site, at boring A19S6, PCE was detected at 120 mg/kg and TCE was detected at 2 mg/kg at a depth of 2.5 feet bgs.
- c. Additional site assessment was reported in the *Additional Offsite Assessment Report – E-Z Storage Property* (Site Assessment Report) dated January 30, 2018. In January 2018, PCE was detected in shallow soil from boring B128 at 2.5 feet bgs at 25.4 mg/kg (see Attachment A, Figure 6) consistent with a surface discharge at the parking area of the Site. Soil-vapor sampling and analysis detected on-Site PCE concentrations up to 684,000 micrograms per liter ($\mu\text{g/L}$), and TCE up to 556 $\mu\text{g/L}$ detected at the boundary of the Site (see Attachment A, Figure 7). Groundwater grab samples were collected at three on-Site locations and analyzed for VOCs. PCE was detected in groundwater up to 31,600 $\mu\text{g/L}$ and TCE up to 357 $\mu\text{g/L}$ (see Attachment A, Figure 8).
- d. Quarterly groundwater monitoring activities have been conducted at the Site since February 2019. The *First Quarter 2024 Groundwater Monitoring Report* (GMR) dated April 15, 2024, prepared by Alta Environmental on behalf of Teledyne, documents the first groundwater monitoring event at both the Site and the Adjacent Site. Quarterly groundwater monitoring was conducted from 17 shallow wells (GW1-R, GW2, MW4 through MW7, MW9 through MW19) and the four deep wells (DW1 through DW4) associated with the Adjacent Site and the Site. The depth to groundwater was approximately 10 to 15 feet bgs at the Site, and groundwater flow direction of the uppermost groundwater zone was calculated to be to the south-southwest. During this event, the highest concentration of PCE in

groundwater was detected in on-Site groundwater monitoring well MW18 at a concentration of 27,000 µg/L (see Attachment A, Figure 9).

7. The Los Angeles Water Board has reviewed and evaluated the technical reports and records pertaining to the discharge, detection, and distribution of wastes at the Site and vicinity. Elevated concentrations of VOCs have been detected in soil vapor, soil matrix, and groundwater beneath the Site, presenting a threat to human health and the environment.
 - a. The maximum concentrations of PCE, TCE, and *cis*-1,2-DCE in the soil matrix on Site are 555 mg/kg at sampling location A19S5, from a depth of 7.5 feet bgs, 5.7 mg/kg at sampling location A19S5, from a depth of 2.5 feet bgs, and 6.0 mg/kg at sampling location A19S7, from a depth of 2.5 feet bgs, respectively. The concentrations of PCE and TCE in the soil matrix exceed the USEPA Region IX's direct contact exposure pathways RSLs for residential and commercial/industrial land uses.
 - b. The maximum concentrations of PCE and TCE detected in on-Site soil vapor are up to 684,000 µg/L (location B122) and 556 µg/L (location B127), respectively (see Attachment A, Figure 7). The concentrations of PCE and TCE in the soil vapor exceed the San Francisco Bay Regional Water Quality Control Board's Environmental Screening Levels (ESLs) of 0.015 µg/L (PCE) and 0.016 µg/L (TCE), respectively, for residential land use and 0.067 µg/L (PCE) and 0.100 µg/L (TCE), respectively, for commercial/industrial land use. The highest concentrations were detected near the southwest corner of the on-Site building. The presence of VOCs, primarily PCE and TCE beneath the Site threatens to cause vapor intrusion into buildings and warrant remediation.
 - c. The maximum concentration of PCE detected in groundwater at the Site was 86,100 µg/L at well MW18 on November 9, 2020. The maximum concentration of TCE detected in groundwater at the Site was 342 µg/L at well MW18 on March 1, 2021. The maximum concentration of *cis*-1,2-DCE detected in the groundwater at the Site was 520 µg/L at well MW18 on March 1, 2021. The concentrations of PCE in groundwater exceed the California Maximum Contaminant Levels (MCL) of 5 µg/L by over four orders of magnitude.
 - d. The depth to groundwater is approximately 13 feet bgs. Because the depth to groundwater is shallow, the presence of the VOCs beneath the Site threatens to cause vapor intrusion into buildings, including the E-Z Storage facility building. Long-term migration of VOCs in groundwater at the Site could potentially impact surface water at Ballona Creek.
8. **Source Elimination and Remediation Status:** The following source removal and soil cleanup activities have been completed at the Site over the years:
 - a. No cleanup activities have occurred at the Site.

- b. In November 2016, Alta Environmental conducted soil remediation activities on the Adjacent Site up to the boundary of the Site due to discharges of PCE, TCE and *cis*-1,2-DCE at the Adjacent Site. Approximately 22,932 cubic yards of impacted soil that exceeded site-specific cleanup goals was removed up to the property line of the Site. A total of 697 confirmation sidewall and bottom soil samples were collected and analyzed for VOCs. Three sidewall samples collected at the boundary between the Adjacent Site and Site exceeded the acceptable potential cancer risk due to the elevated concentrations of PCE, TCE, and *cis*-1,2-DCE in the soil detected at 2.5, 5, and 10 feet bgs.
9. **Regulatory Status:** No prior regulatory orders have been issued for the Site. On January 16, 2014, the Los Angeles Water Board issued California Water Code Section 13267 Investigative Order No. R4-2014-0103 requiring technical or monitoring reports for the Adjacent Site. On March 15, 2018, the Los Angeles Water Board issued a “No Further Action (NFA) for Soil-only” letter for the Adjacent Site. This letter states that the NFA for soil only does not affect the ongoing requirements in the Los Angeles Water Board’s October 13, 2017 letter issued to Teledyne, requiring on-site and off-site quarterly groundwater monitoring for the Adjacent Site. Also, the letter states, “this no further action determination for soil-only does not extend to on-site groundwater or to groundwater, soil-vapor, and soil impacts to adjacent and other off-site properties to the Site which Teledyne is required to investigate, including but not limited to the E-Z Storage property to the southeast of the Site. As of the issuance of this no further action determination for soil-only, the [Los Angeles Water Board] continues to require Teledyne to complete assessment of soil, soil-vapor and groundwater, and evaluate cleanup as necessary on the E-Z Storage property”.
10. **Sources of Information:** The sources for the evidence summarized above include but are not limited to: reports and other documentation in Los Angeles Water Board files, including documentation of meetings and telephone calls, and e-mail communication with Dischargers, their attorneys, and/or consultants, and site visits. Relevant reports and data are available in the GeoTracker database at:

https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004824

AUTHORITY – LEGAL REQUIREMENTS

11. Water Code section 13304, subdivision (a) provides that:

“(a) Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement 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. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the 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.”

12. Water Code section 13304, subdivision (c)(1) 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. . . .”

13. Water Code section 13267, subdivision (b)(1) provides that:

“In conducting an investigation . . . , 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 . . . 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.”

This Order requires investigation and submittal of work plans. Based upon Los Angeles Water Board staff experience with similar investigations, the approximate cost of these reports is in the range of \$700,00 to \$1,300,000. The burden, including costs, of these reports bears a reasonable relationship to the need for the reports and the benefits to be obtained. Specifically, the technical reports required by this Order are necessary to assure compliance with Water Code section 13304 and State Water Board Resolution 92-49, *the Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* (Resolution 92-49), including to adequately investigate the extent and persistence of discharges, and intrinsic to cleanup of the Site to protect the beneficial uses of waters of the State, to protect against nuisance, and to protect human health and the environment.

14. The State Water Resources Control Board (hereafter State Water Board) has adopted Resolution No. 92-49. 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 68-16).

Resolution 92-49 and the Los Angeles Water Board's *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (Basin Plan) establish the cleanup levels to be achieved. Resolution 92-49 requires dischargers to clean up and abate the effects of discharges in a manner that promotes attainment of background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored. A concentration limit greater than the background level (i.e., alternative cleanup level) may only be established in accordance with California Code of Regulations, title 23, section 2550.4.

15. The Basin Plan identifies beneficial uses and sets forth water quality objectives to protect those uses. The Site overlies groundwater within the Coastal Plain of Los Angeles Groundwater Basin, Santa Monica Subbasin. The designated beneficial uses of the groundwater beneath the Site are domestic and municipal supply (MUN), industrial service supply (IND), industrial process supply (PROC), and agricultural supply (AGR). Water quality objectives to protect the beneficial use of MUN that apply to the groundwater at the Site include "Chemical Constituents" and "Radioactive Substances", which incorporate by reference the State's MCLs set forth in Title 22 of the California Code of Regulations. The MCLs for PCE and TCE are both 5 µg/L. As set forth in the above Findings, the concentrations of PCE and TCE in groundwater at and downgradient of the Site exceed the water quality objectives applicable to the wastes.
16. The exceedance of applicable narrative or numeric water quality objectives in the Basin Plan constitutes "pollution," as defined in Water Code section 13050.
17. VOCs, primarily PCE, TCE, and *cis*-1,2-DCE, and other waste constituents discharged at the Site constituted "waste" as defined in Water Code section 13050, subdivision (d).
18. The wastes detected in the soil matrix and soil vapor at the Site have caused and threaten to continue to cause nuisance, as defined in Water Code section 13050.
19. The threat of vapor intrusion into buildings at and near the Site has caused or threatens to cause nuisance as defined in Water Code section 13050, subdivision (m). The presence of COCs, including VOCs (primarily TCE and PCE), at the known levels is potentially injurious to health, indecent or offensive to the senses, and/or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property and affects at the same time an entire community and occurs during or as a result of the treatment or disposal of waste. The wastes detected in groundwater, the soil matrix, and soil vapor at the Site continue to migrate and have caused and threaten to continue to cause pollution, including contamination, and nuisance.
20. The Los Angeles Water Board may require the Dischargers to submit a Public Participation Plan or engage in other activities to disseminate information and gather community input regarding the Site, as authorized or required by Water Code sections 13307.1, 13307.5 and 13307.6.

21. This Order requires investigation and cleanup of the Site in compliance with the Water Code, the applicable Basin Plan, State Water Board Resolutions 92-49 and 68-16, and other applicable plans, policies, and regulations. All Dischargers are responsible for complying with each and every requirement, unless otherwise specifically noted.

DISCHARGER LIABILITY

22. The relevant facts and weight of the evidence indicate that the following Dischargers caused or permitted waste to be discharged into waters of the State and are therefore appropriately identified in this Order:

E-Z Storage-Marina 2, LP is a discharger because they are the current owner of the Site, and have caused or permitted waste to be discharged or deposited where it has discharged to waters of the State and has created, and continues to threaten to create, a condition of pollution or nuisance.¹ As the current owner of the property, E-Z Storage-Marina 2, LP has the legal ability to control the discharge.

Teledyne Technologies Incorporated is a discharger because its activities caused or permitted waste to be discharged or deposited where it has discharged to waters of the State and created, and continues to threaten to create, a condition of pollution or nuisance.

Finding numbers 3, 4, and 5 above describe the use of COCs on the Site and Finding numbers 6 and 7 describe the investigations that provide data demonstrating discharges of wastes at the Site and Adjacent Site. Decades of Los Angeles Water Board staff experience with industries that use, store and transfer chemicals such as solvents (e.g., VOCs such as PCE and TCE), provide evidence that small amounts of spilled chemicals discharge during routine operations and seep through concrete and other intended containment, leading to the type of contamination found at the Site. The Los Angeles Water Board is currently overseeing numerous cleanup operations resulting from improper and inadequate handling of hazardous materials. Standard chemical handling practices often unknowingly allow adverse environmental impacts, like the ones observed at the Site, to occur. These factors, taken as a whole, lead to

¹ Under precedential Orders issued by the State Water Resources Control Board (State Water Board), E-Z Storage-Marina 2, L.P is liable for the cleanup of wastes at the Site regardless of its involvement in the activities that initially caused the pollution. The discharge of chemicals continues today, as the plume of groundwater contamination continues to migrate, unabated. This is the subject of a recent Court of Appeals case, *Tesoro Refining & Marketing Company LLC v. Los Angeles Regional Water Quality Control Board*, 42 Cal.App.5th 453, 457 (2019), which held “the term ‘discharge’ must be read to include not only the initial occurrence [of a discharge], but also the passive migration of the contamination into the soil.” The Court affirmatively cited State Board precedent: “State Board held that a continuous and ongoing movement of contamination from a source through the soil and into the groundwater is a discharge to waters of the state and subject to regulation.” (Ibid., citing State Water Board Order WQ 86-2 (Zoecon Corp), WQ74-13 (Atchison, Topeka, et al), and WQ 89-8 (Spitzer) (“[D]ischarge continues as long as pollutants are being emitted at the site”). See also State Water Board Order WQ 89-1 (Schmidl).) Under California law, courts have historically held, and modern courts maintain, that possessors of land may be liable for a nuisance on that land even if the possessor did not create the nuisance. (See *Leslie Salt Co. v. San Francisco Bay Conservation and Dev. Comm’n* (1984) 153 Cal.App.3d 605, 619–620).

the conclusion that high concentrations of COCs have been discharged and must be cleaned up and abated to protect the environment and human health.²

23. Due to the activities described in this Order, the Dischargers have caused or permitted wastes, including PCE, TCE, and *cis*-1,2-DCE, to be discharged or deposited where the wastes are, or probably will be discharged into the waters of the State, which creates a condition of pollution or nuisance.
24. The Dischargers have caused or permitted VOCs, primarily PCE, TCE, and *cis*-1,2-DCE, to be discharged or deposited where the wastes are or probably will pose a potential human health threat to occupants of the Site through direct contact exposure to contaminated soil, soil vapor and/or groundwater, or through vapor intrusion into indoor air or through other exposure pathways.
25. The Los Angeles Water Board will consider whether additional dischargers caused or permitted the discharge of waste at the Site and whether additional dischargers should be added to this Order. The Los Angeles Water Board may amend this Order or issue a separate order or orders in the future as more information becomes available. The Los Angeles Water Board is issuing this Order to avoid further delay of Site remediation.

OTHER CONSIDERATIONS

26. Issuance of this Order is being taken for the protection of the environment and as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code §§ 21000 et seq.) in accordance with title 14, California Code of Regulations, sections 15061, subdivision (b)(3), 15306, 15307, 15308, and 15321. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup activities at the Site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. If the Los Angeles Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Los Angeles Water Board will conduct the necessary and appropriate environmental review prior to Executive Officer's approval of the applicable plan.
27. Pursuant to Water Code section 13304, the Los Angeles Water Board may seek reimbursement for all reasonable costs to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action.

² State Water Board Order WQ 86-16 (*Stinnes-Western*) notes that, "given the very low action levels for these chemicals, today we are concerned with any discharge." (*Ibid.* at n. 4.)

28. It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Order promotes that policy by requiring the Dischargers to clean up the groundwater to meet drinking water standards.
29. Any person aggrieved by this action of the Los Angeles Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Note that filing a petition does not stay the requirements of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request or may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

REQUIRED ACTIONS

THEREFORE, IT IS HEREBY ORDERED, pursuant to Water Code sections 13304 and 13267 that the Dischargers shall investigate, cleanup the waste and abate the effects of waste forthwith discharging at and from 12901 Culver Boulevard, Los Angeles, California. "Forthwith" means as soon as reasonably possible, but in any event no later than the compliance dates below. More specifically, the Dischargers shall:

1. **Develop and Submit a Site Conceptual Model:** The Site Conceptual Model (SCM) shall include a written presentation with graphic illustrations of the discharge scenario(s), geology and hydrogeology, waste fate and transport in the soil matrix, soil vapor, and groundwater, distribution of wastes, exposure pathways, sensitive receptors, and other relevant information. The SCM shall be based upon the actual data already collected from the Site and shall identify data gaps, i.e., areas that require further investigation.

If information presented in the SCM suggests that assessment, characterization and delineation of waste constituents is incomplete, the Dischargers shall prepare and submit a work plan to complete assessment and characterization of VOCs and other potential waste constituents in soil vapor, the soil matrix and groundwater and to fully delineate the vertical and lateral extent of wastes in the soil and groundwater onsite and offsite as set forth in Order Number 2 below.

The SCM shall also be updated as new information becomes available. The SCM shall be updated and submitted upon request by the Los Angeles Water Board.

2. **Develop, Submit, and Implement a Site Assessment Work Plan(s) to Assess, Characterize and Delineate the Extent of Wastes in Soil, Soil Vapor and Groundwater:**

- a. Fully assess, characterize, and delineate the vertical and lateral extent of wastes onsite and offsite in the soil matrix, soil vapor, and groundwater, including VOCs, such as TCE and PCE, and any other waste constituents from the Site.
 - b. Identify the locations of all waste sources at the Site such as USTs, clarifiers, sumps, and other sources to allow for full assessment of the extent of waste discharged at the Site.
 - c. Update the data on the concentrations of waste constituents in the soil vapor by conducting a site-wide soil vapor survey. Assessment of vapor intrusion into any building(s) shall be performed if warranted
 - d. Include a schedule for implementation of the Site Assessment Work Plan(s).
 - e. Upon Executive Officer approval of the Site Assessment Work Plan(s), the Dischargers shall implement the Site Assessment Work Plan in accordance with the approved schedule.
 - f. Phased Site Assessment may be warranted, and completion of the Site Assessment may require multiple approved work plans.
3. **Prepare a Human Health Risk Assessment (HHRA) and if applicable an Ecological Risk Assessment (ERA):** The HHRA and ERA shall consider all waste constituents in the soil matrix, soil vapor, and groundwater, all exposure pathways and sensitive receptors and should apply existing regulatory human health and ecological screening levels and/or acceptable risk assessment models.
4. **Conduct Remedial Action:** Implement a cleanup and abatement program for the cleanup of wastes in the soil matrix, soil vapor, and groundwater and the abatement of the effects of the discharges of waste on water quality and beneficial uses of water. Specifically, the Dischargers shall:
- a. Submit an Interim Remedial Action Plan (IRAP) acceptable to the Executive Officer to evaluate interim remedial action alternatives for areas where: 1) soil vapor screening levels indicate risk to indoor air, or 2) where VOCs in soil exceed industrial soil screening levels, or 3) where VOCs in groundwater exceeds 100 times their respective MCL and the plume has migrated offsite. The IRAP shall recommend one or more alternatives for implementation. The IRAP shall specify a proposed time schedule, with remedial measures commencing in the timeframe established in Attachment B. Work may be phased to allow the investigation to proceed efficiently.
 - b. Complete tasks in the IRAP and submit a technical report acceptable to the Executive Officer documenting completion. For ongoing actions, such as soil vapor extraction (SVE), groundwater extraction, indoor air remediation and/or monitoring, the report shall document start-up as opposed to completion.

- c. Develop a comprehensive Remedial Action Plan(s) (RAP) for cleanup of wastes in the soil matrix, soil vapor, and groundwater originating from the Site and submit it to the Los Angeles Water Board for review and approval. The RAP shall include, at a minimum:
 - i. A feasibility study and assessment report for evaluation of the cleanup levels and corresponding cleanup and abatement technologies considered for remediation of waste discharge impacts to the soil matrix, soil vapor, and groundwater and the need for interim remedial measures and pilot tests. Multiple remedial measures may be needed and may be implemented to achieve all site cleanup goals.
 - ii. Cleanup levels for soil and groundwater that comply with State Water Board Resolution 92-49 and Resolution 68-16. If background concentrations cannot be achieved, a technical and economic feasibility analysis shall be included to determine alternative cleanup levels.
 - iii. A description of the selection criteria for choosing the proposed method(s) over other potential remedial options. Discuss the technical merit, suitability of the selected method(s) under the given Site conditions and waste constituents present, economic and technological feasibility, and immediate and/or future benefits to the people of the state.
 - iv. A description of any pilot projects intended to be implemented
 - v. An estimation of the cumulative mass of wastes to be removed with the selected method. Include all calculations and methodology used to obtain this estimate
 - vi. A proposed schedule for completion of the RAP
 - d. Upon Los Angeles Water Board approval of the RAP (s), the Dischargers shall implement the RAP(s) in accordance with the approved schedule.
 - e. The Dischargers shall submit remediation progress reports to the Los Angeles Water Board according to the requirements and schedule specified in Attachment B. The remediation progress reports shall document all performance data associated with the operating systems.
 - f. Complete all remedial actions and submit a remedial action completion report no later than the deadline specified in Attachment B.
5. **Submit a Public Participation Plan:** The Dischargers shall submit information and take actions addressing public participation requirements of Water Code sections 13307.5 and 13307.6 as required in Attachment B or when otherwise directed by the Executive Officer. The Dischargers are required to prepare and submit a Public

Participation Plan for review and approval by the Executive Officer, with the goal of having the Los Angeles Water Board provide the stakeholders and other interested persons with periodic, meaningful opportunities to review, comment upon, and to influence investigation and cleanup activities at the Site.

The following tasks shall be completed by the deadlines in Attachment B:

- a. Submit a baseline community assessment.
- b. Submit an interested persons contact list.
- c. Submit a draft fact sheet that provides information, appropriately targeted to the literacy and language needs of the community, about the investigation and remedial activities concerning the discharges of waste at the Site.
- d. Deliver an approved fact sheet to all interested persons on a schedule to be determined by the Executive Officer.

Public participation activities shall coincide with key decision-making points throughout the process as specified or as directed by the Executive Officer.

6. **Conduct Groundwater Monitoring:** Implement a quarterly groundwater monitoring program as set forth in **Attachment C**. The quarterly groundwater monitoring reports shall be submitted according to the schedule specified in Attachment C.
7. **Time Schedule:** The Dischargers shall submit all required work plans and reports and complete work within the schedule in any approved work plan or RAP and the time schedule set forth in Attachment B attached hereto and incorporated herein by reference, which may be revised by the Executive Officer at his/her discretion.
8. The Los Angeles Water Board's authorized representative(s) shall be allowed:
 - a. Entry upon premises where a regulated facility or activity is located, conducted, or where records are stored, under the conditions of this Order;
 - b. Access to copy any records that are stored under the conditions of this Order;
 - c. Access to inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
 - d. The right to photograph, sample, and monitor the Site for the purpose of ensuring compliance with this Order, or as otherwise authorized by the California Water Code.
9. **Contractor/Consultant Qualification:** As required by the Business and Professions Code sections 6735, 7835, and 7835.1, all reports shall be prepared by, or under the supervision of, a California registered professional engineer or geologist and signed by the registered professional. All technical reports submitted by the Dischargers shall

include a statement signed by the authorized representative certifying under penalty of law that the representative has examined and is familiar with the report and that to his knowledge, the report is true, complete, and accurate. All technical documents shall be signed by and stamped with the seal of the above-mentioned qualified professionals that reflects a license expiration date.

10. This Order is not intended to permit or allow the Dischargers to cease any work required by any other Order issued by the Los Angeles Water Board, nor shall it be used as a reason to stop or redirect any investigation or cleanup or remediation programs ordered by the Los Angeles Water Board or any other agency. Furthermore, this Order does not exempt the Dischargers from compliance with any other laws, regulations, or ordinances which may be applicable, nor does it legalize these waste treatment and disposal facilities, and it leaves unaffected any further restrictions on those facilities which may be contained in other statutes or required by other agencies.
11. The Dischargers shall submit a notice to the Los Angeles Water Board 30-days in advance of any planned changes in name, ownership, or control of the Site and shall submit a notice to the Los Angeles Water Board 30-days in advance of any planned physical changes to the Site that may affect compliance with this Order. In the event of a change in ownership or operator, the Dischargers also shall provide a notice 30-days in advance, by letter, to the succeeding owner/operator of the existence of this Order, and shall submit a copy of this advance notice to the Los Angeles Water Board.
12. Abandonment of any groundwater well(s) at the Site must be approved by and reported to the Los Angeles Water Board at least 30 days in advance. Any groundwater wells removed must be replaced within a reasonable time, at a location approved by the Los Angeles Water Board. With written justification, the Los Angeles Water Board may approve the abandonment of groundwater wells without replacement. When a well is removed, all work shall be completed in accordance with California Department of Water Resources Bulletin 74-90, "California Well Standards," Monitoring Well Standards Chapter, Part III, Sections 16-19.
13. In the event compliance cannot be achieved within the terms of this Order, the Dischargers have the opportunity to request, in writing, an extension of the time specified. The extension request shall include an explanation why the specified date could not or will not be met and justification for the requested period of extension. Any extension request shall be submitted as soon as the situation is recognized and no later than the compliance date. Extension requests not approved in writing with reference to this Order are denied.
14. Reference herein to determinations and considerations to be made by the Los Angeles Water Board regarding the terms of the Order shall be made by the Executive Officer or his/her designee. Decisions and directives made by the Executive Officer in regard to this Order shall be as if made by the Los Angeles Water Board.
15. The Los Angeles Water Board, through its Executive Officer, may revise this Order as additional information becomes available. Upon request by the Dischargers, and for

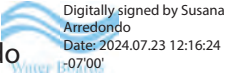
good cause shown, the Executive Officer may defer, delete or extend the date of compliance for any action required of the Dischargers under this Order. The authority of the Los Angeles Water Board, as contained in the California Water Code, to order investigation and cleanup, in addition to that described herein, is in no way limited by this Order.

16. The Dischargers shall continue any remediation or monitoring activities until such time as the Executive Officer determines that sufficient cleanup has been accomplished and this Order has been rescinded.
17. The Dischargers shall reimburse the Los Angeles Water Board for reasonable costs associated with oversight of the investigation and cleanup of the waste at or emanating from the Site. The Dischargers shall provide the Los Angeles Water Board with the name or names and contact information for the person to be provided billing statements from the State Water Resources Control Board.
18. The Dischargers shall submit information and take actions addressing public participation requirements of Water Code sections 13307.5 and 13307.6 when directed by the Executive Officer.
19. As necessary to assure compliance with the California Environmental Quality Act, the Dischargers shall provide information or prepare draft environmental documentation evaluating the potential environmental impacts associated with implementation of the Remedial Action Plans and submit to the Los Angeles Water Board as directed by the Executive Officer.
20. The Los Angeles Water Board, under the authority given by Water Code section 13267, subdivision (b)(1), requires the Dischargers to include a perjury statement in all reports submitted under this Order. The perjury statement shall be signed by a senior authorized representative (not by a consultant). The perjury statement shall be in the following format:

“I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
21. The State Water Board adopted regulations requiring the electronic submittals of information over the internet using the State Water Board GeoTracker data management system. The Dischargers are required to comply by uploading all reports and correspondence prepared to date on to the GeoTracker data management system. The text of the regulations can be found at the URL:

https://www.waterboards.ca.gov/water_issues/programs/ust/electronic_submittal/

22. Failure to comply with the terms or conditions of this Order may result in imposition of civil liabilities, imposed either administratively by the Los Angeles Water Board or judicially by the Superior Court in accordance with Water Code sections 13268, 13304, 13308, and/or 13350, and/or referral to the Attorney General of the State of California.
23. None of the obligations imposed by this Order on the Dischargers are intended to constitute a debt, damage claim, penalty or other civil action which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of California intended to protect the public health, safety, welfare, and environment.

Ordered by: Susana Arrendondo  Digitally signed by Susana Arrendondo
Date: 2024.07.23 12:16:24 -07'00'

Date: 07/23/2024

Susana Arrendondo
Executive Officer

ATTACHMENT A
FIGURES AND TABLES

ATTACHMENT A: FIGURE 1: VICINITY MAP

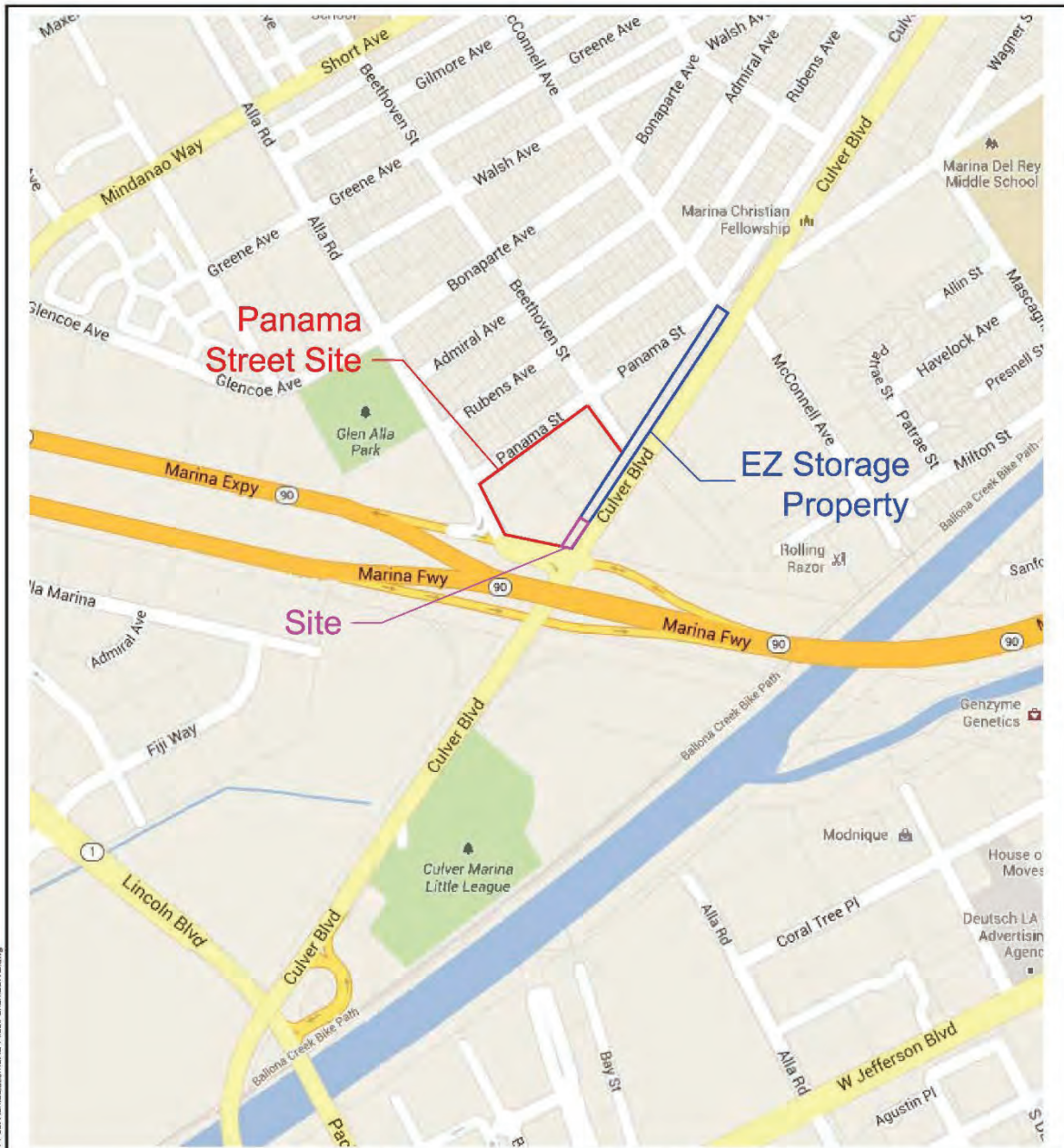


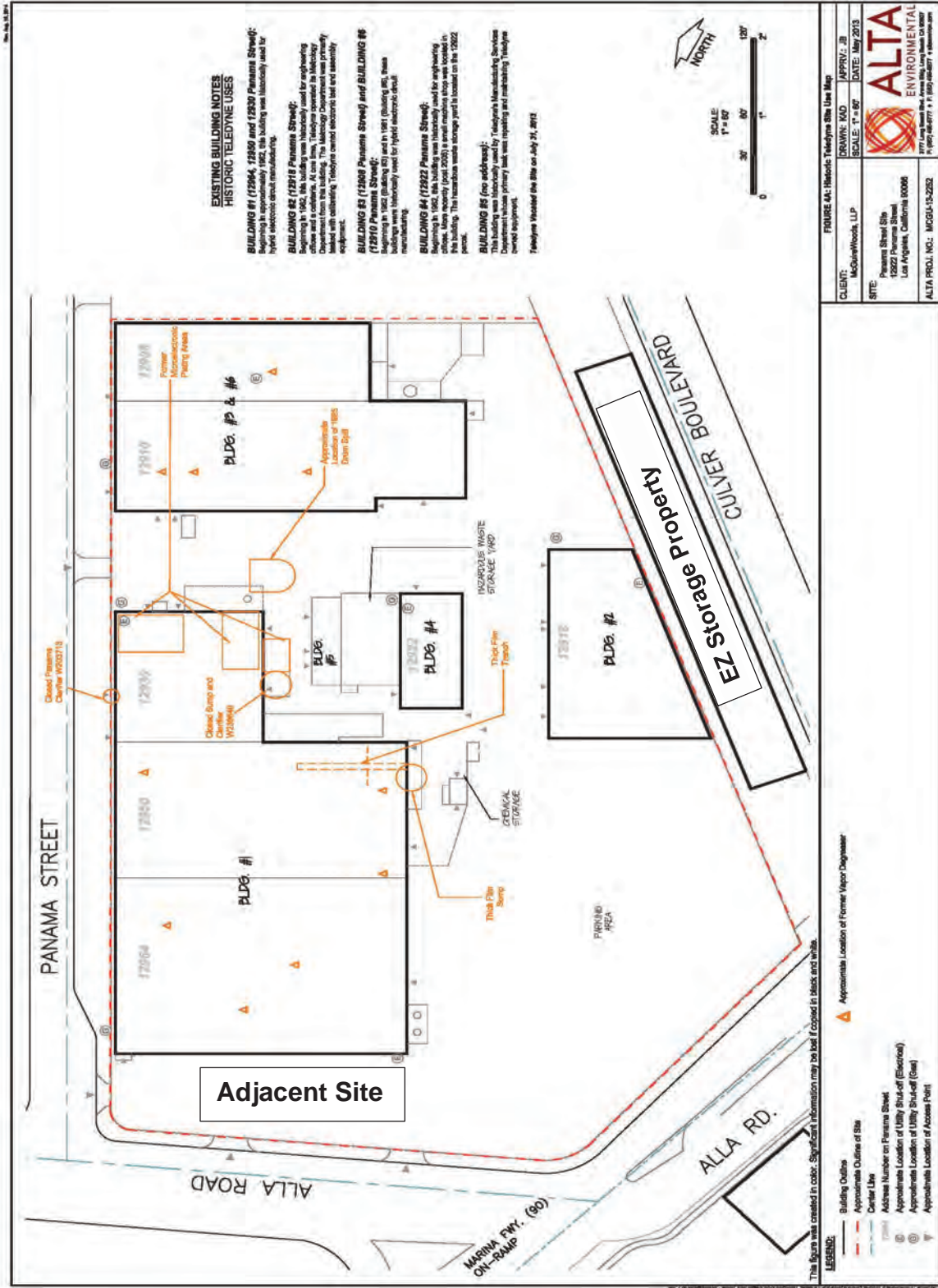


FIGURE 1: Vicinity Map

CLIENT: McGuire Woods, LLP		LOCATION: EZ Storage Facility 12901 Culver Boulevard Los Angeles, California 90066	
PROJECT #: MCGU-17-7364		DRAWN: BP	APPROVED: JB
 3777 Long Beach Blvd., Annex Bldg. Long Beach, CA 90807 (562) 495-5777 www.altaviron.com		SCALE: None	DATE: Jan. 2018
			 NORTH

W:\Clients\H-AltMcGuire Woods (MCGU)\MCGU-17-7364 Post Remediation\CAD Files\PanamaSITE.dwg

ATTACHMENT A: FIGURE 2: COPY OF FIGURE 4A OF SITE ASSESSMENT REPORT FROM ADJACENT SITE DATED AUGUST 15, 2014



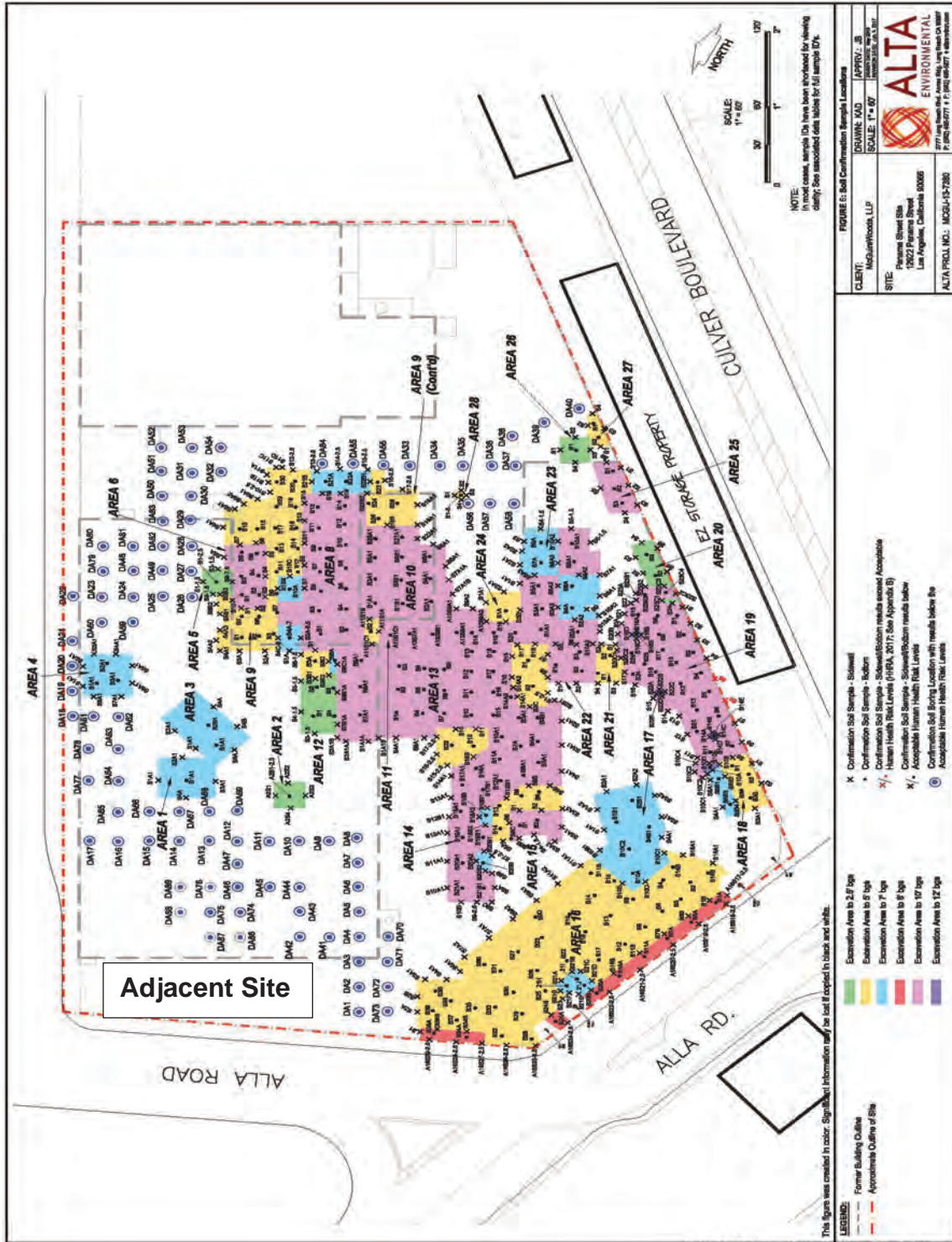
**ATTACHMENT A: FIGURE 3: COPY OF FIGURE 9 OF ASSESSMENT REPORT
FROM ADJACENT SITE DATED AUGUST 15, 2014**



ATTACHMENT A: FIGURE 4: COPY OF FIGURE 10 OF ASSESSMENT REPORT FROM ADJACENT SITE DATED AUGUST 15, 2014



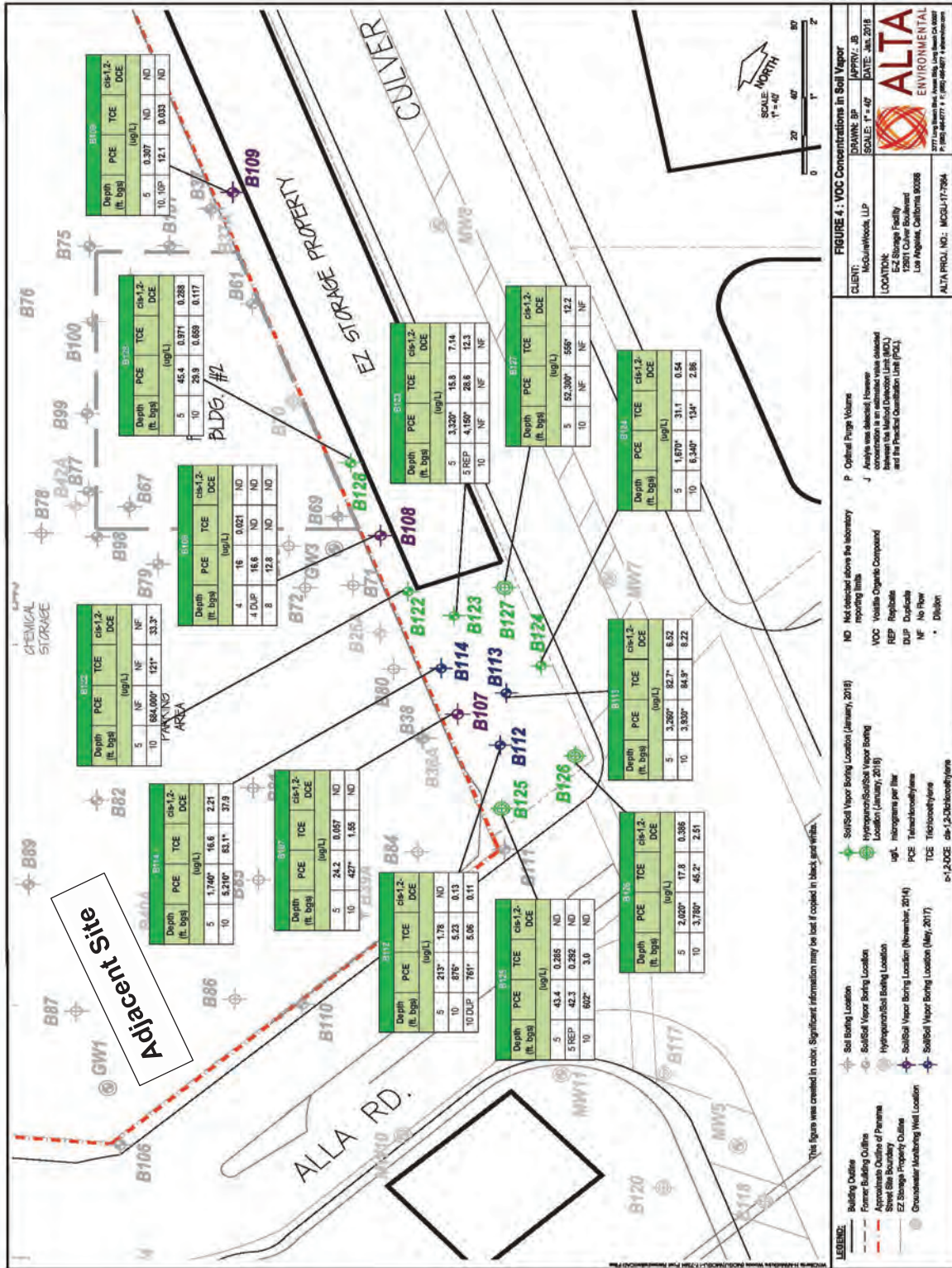
ATTACHMENT A: FIGURE 5: COPY OF FIGURE 6 OF COMPLETION REPORT FROM ADJACENT SITE DATED JULY 21, 2017



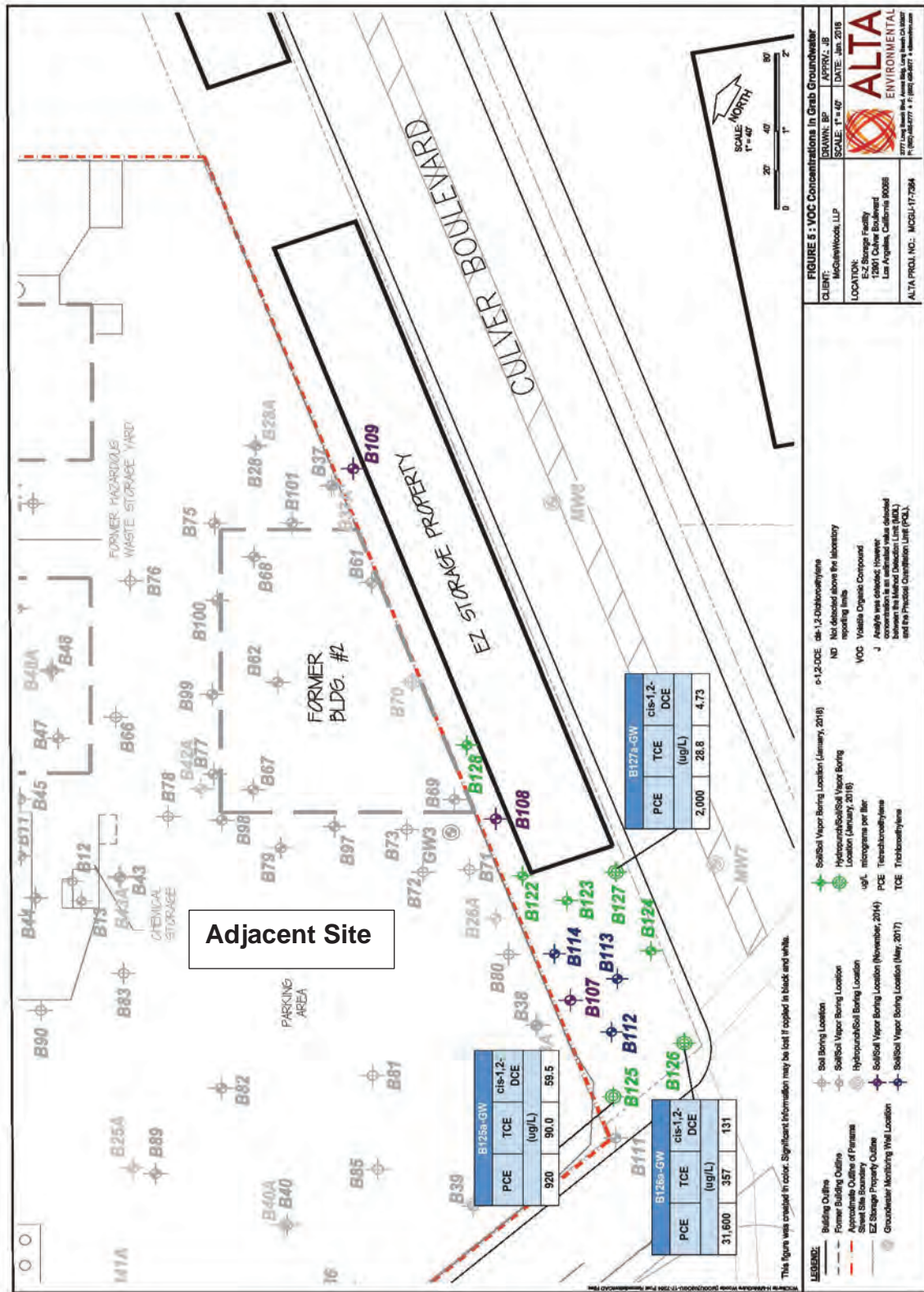
ATTACHMENT A: FIGURE 6: COPY OF FIGURE 3 OF SITE ASSESSMENT REPORT FROM ADJACENT SITE DATED AUGUST 15, 2014



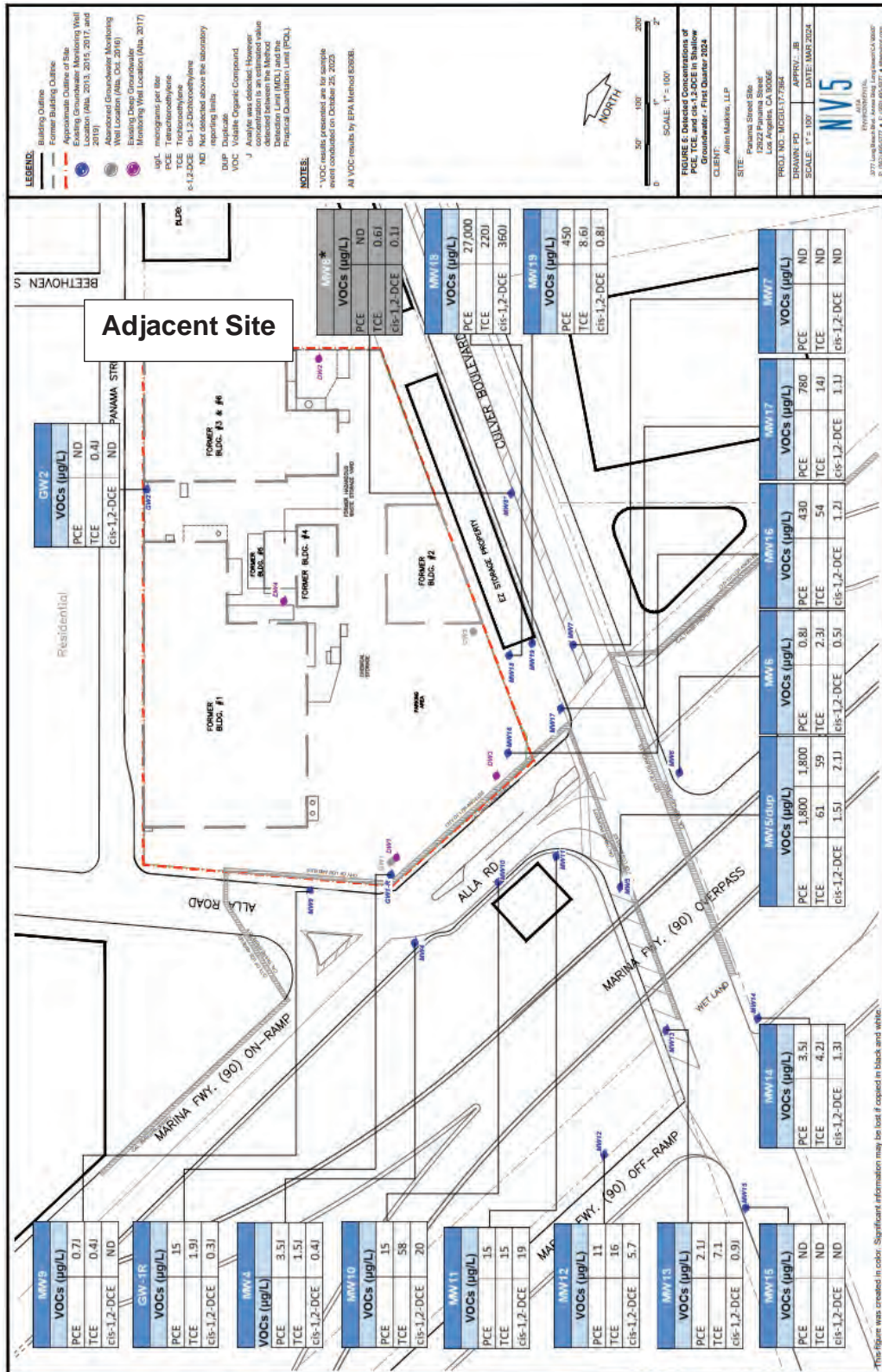
**ATTACHMENT A: FIGURE 7: COPY OF FIGURE 4 OF SITE ASSESSMENT REPORT
 FROM ADJACENT SITE DATED AUGUST 15, 2014**



ATTACHMENT A: FIGURE 8: COPY OF FIGURE 5 OF SITE ASSESSMENT REPORT FROM ADJACENT SITE DATED AUGUST 15, 2014



ATTACHMENT A: FIGURE 9, COPY OF FIGURE 5 OF FIRST QUARTER 2024 GMR FOR ADJACENT SITE DATED APRIL 15, 2024



**ATTACHMENT A: COPY OF TABLE 5A OF ASSESSMENT REPORT FROM
ADJACENT SITE DATED AUGUST 15, 2014**

TABLE 5A
Soil Matrix Sample Results for VOCs - ENVIRON Split Samples
12922 Panama Street
Los Angeles, California

VOCs in Soil by EPA Method 8260B	Sample ID:		ENV B39B	ENV B39B	ENV B55B	ENV B55B	ENV GW1B	ENV GW1B	ENV GW3B	ENV GW3B
	Date:		2.5	5	2.5	5	2.5	5	2.5	5
	MDL (µg/kg):	PQL (µg/kg):	7/18/2013	7/18/2013	7/18/2013	7/18/2013	7/18/2013	7/18/2013	7/18/2013	7/18/2013
VOC Concentration (µg/kg)										
Acetone	5.0 - 280	40 - 2200	63	10J	58	ND	32J	ND	13J	ND<280
Benzene	0.10 - 5.8	0.80 - 44	2.6	ND	1.6	ND	1.0	ND	1.8	ND<5.8
Bromobenzene	0.17 - 9.3	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<9.3
Bromochloromethane	0.55 - 31	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<31
Bromodichloromethane	0.19 - 10	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<10
Bromoform	0.63 - 35	4.0 - 220	ND	ND	ND	ND	ND	ND	ND	ND<35
Bromomethane	7.5 - 420	16 - 890	ND	ND	ND	ND	ND	ND	ND	420J
2-Butanone	3.0 - 170	16 - 890	14J	ND	11J	ND	6.3J	ND	ND	ND<170
n-Butylbenzene	0.12 - 7.0	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<7.0
sec-Butylbenzene	0.46 - 26	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<26
tert-Butylbenzene	0.12 - 6.7	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<6.7
Carbon Disulfide	0.24 - 14	8.0 - 440	4.6B,J	ND	1.2B,J	0.52B,J	1.1B,J	0.58B,J	0.55B,J	22B,J
Carbon Tetrachloride	0.23 - 13	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<13
Chlorobenzene	0.18 - 10	0.80 - 44	ND	ND	0.83J	ND	ND	ND	ND	ND<10
Chloroethane	1.2 - 66	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<66
Chloroform	0.19 - 11	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<11
Chloromethane	0.24 - 14	16 - 890	ND	ND	ND	ND	ND	ND	ND	ND<14
2-Chlorotoluene	0.18 - 10	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<10
4-Chlorotoluene	0.17 - 9.5	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<9.5
Dibromochloromethane	0.45 - 25	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<25
1,2-Dibromo-3-Chloropropane	1.4 - 77	4.0 - 220	ND	ND	ND	ND	ND	ND	ND	ND<77
1,2-Dibromoethane	0.20 - 11	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<11
Dibromomethane	0.62 - 34	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<34
1,2-Dichlorobenzene	0.18 - 10	0.80 - 44	0.34J	ND	ND	ND	ND	ND	ND	ND<10
1,3-Dichlorobenzene	0.14 - 7.8	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<7.8
1,4-Dichlorobenzene	0.18 - 9.9	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<9.9
Dichlorodifluoromethane	0.35 - 20	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<20
1,1-Dichloroethane	0.17 - 9.4	0.80 - 44	0.45J	ND	3.5	1.7	ND	ND	ND	ND<9.4
1,2-Dichloroethane	0.25 - 14	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<14
1,1-Dichloroethene	0.28 - 15	0.80 - 44	0.49J	ND	ND	ND	ND	ND	ND	ND<15
c-1,2-Dichloroethene	0.22 - 12	0.80 - 44	32	0.78J	4,300*	580*	4.1	5.1	ND	ND<12
t-1,2-Dichloroethene	0.40 - 23	0.80 - 44	1.9	ND	1.2	1.2	1.3	ND	ND	ND<23
1,2-Dichloropropane	0.35 - 19	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<19
1,3-Dichloropropane	0.20 - 11	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<11
2,2-Dichloropropane	0.26 - 15	4.0 - 220	ND	ND	ND	ND	ND	ND	ND	ND<15
1,1-Dichloropropene	0.26 - 15	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<15
c-1,3-Dichloropropene	0.20 - 11	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<11
t-1,3-Dichloropropene	0.48 - 27	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<27
Ethylbenzene	0.12 - 6.7	0.80 - 44	0.19J	ND	ND	ND	ND	ND	ND	ND<6.7
2-Hexanone	1.4 - 78	16 - 890	ND	ND	ND	ND	ND	ND	ND	ND<78
Isopropylbenzene	0.44 - 24	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<24
p-Isopropyltoluene	0.50 - 28	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<28
Methylene Chloride	1.1 - 60	8.0 - 440	ND	ND	ND	ND	ND	ND	ND	ND<60
4-Methyl-2-Pentanone	3.4 - 190	16 - 890	ND	ND	ND	ND	ND	ND	ND	ND<190
Naphthalene	0.65 - 36	8.0 - 440	ND	ND	ND	ND	ND	ND	ND	ND<36
n-Propylbenzene	0.40 - 22	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<22
Styrene	0.48 - 27	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<27
1,1,1,2-Tetrachloroethane	0.19 - 11	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<11
1,1,2,2-Tetrachloroethane	0.28 - 15	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<15
Tetrachloroethene	0.17 - 47	0.80 - 220	84	0.77J	ND	ND	7.6	0.97	130	15,000*
Toluene	0.41 - 23	0.80 - 44	1.2	ND	0.78J	ND	0.50J	ND	1.1	ND<23
1,2,3-Trichlorobenzene	0.73 - 41	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<41
1,2,4-Trichlorobenzene	0.25 - 14	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<14
1,1,1-Trichloroethane	0.18 - 10	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<10
1,1,2-Trichloroethane	0.28 - 16	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<16
1,1,2-Trichloro-1,2,2-Trifluoroethane	0.28 - 16	8.0 - 440	4.9J	ND	3.9J	ND	ND	ND	ND	ND<16
Trichloroethene	0.24 - 14	1.6 - 91	1,200*	2.0	0.87J	1.1J	19	0.82J	2.3	230
Trichlorofluoromethane	0.30 - 17	8.0 - 440	ND	ND	ND	ND	ND	ND	ND	ND<17
1,2,3-Trichloropropane	0.66 - 37	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<37
1,2,4-Trimethylbenzene	0.47 - 26	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<26
1,3,5-Trimethylbenzene	0.44 - 24	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<24
Vinyl Acetate	3.8 - 210	8.0 - 440	ND	ND	ND	ND	ND	ND	ND	ND<210
Vinyl Chloride	0.40 - 22	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<22
p/m-Xylene	0.21 - 12	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<12
o-Xylene	0.44 - 25	0.80 - 44	ND	ND	ND	ND	ND	ND	ND	ND<25
Methyl-t-Butyl Ether (MTBE)	0.24 - 13	1.6 - 89	ND	ND	ND	ND	ND	ND	ND	ND<13
Dilution Factor:	*	*	0.829/45.3*	0.89	0.99/44.1*	0.825/41.9*	0.88	0.801	0.887	44.5/220*

NOTES:
 VOC = Volatile Organic Compound
 PQL = Practical Quantitation Limit
 MDL = Method Detection Limit, ranges of MDLs shown. See laboratory report for specific MDL for each sample. Note the MDLs of all unlisted samples for the chemicals of concern are below the AF-SSLs and ESLs.
 ND = Indicated constituents not detected above the MDL
 µg/kg = micrograms per kilogram
 J = Analyte detected, However result is an estimated value between the MDL and the PQL.
 B = Analyte was present in the associated method blank.
 * Concentration exceeded calibration range; Dilutions for these compounds
 * = Not Applicable

ATTACHMENT B: TIME SCHEDULE

DIRECTIVE	DUE DATE
<p>1. Site Conceptual Model:</p> <ul style="list-style-type: none"> a. Submit initial Site Conceptual Model. b. Submit Final Site Conceptual Model. 	<ul style="list-style-type: none"> a. Initial Site Conceptual Model due within 60 calendar days from adoption of this Order b. Final Site Conceptual Model due within 60 calendar days of completing the Site Assessment or July 31, 2026 whichever comes first.
<p>2. Site Assessment Work Plan:</p> <ul style="list-style-type: none"> a. Submit Site Assessment Work Plan. b. Implement the Site Assessment Work Plan. c. Submit a Site Assessment Completion Report. 	<ul style="list-style-type: none"> a. Within 90 calendar days from adoption of this Order b. According to the schedule approved by the Executive Officer. Vertical and lateral delineation must be complete no later than December 31, 2026. c. According to the schedule approved by the Executive Officer.
<p>3. Submit a Human Health Risk Assessment and an Ecological Risk Assessment</p>	<ul style="list-style-type: none"> a. Within 120 calendar days from adoption of this Order
<p>4. Conduct Remedial Action:</p> <ul style="list-style-type: none"> a. Submit an Interim Remedial Action Plan (IRAP). b. Implement the IRAP and submit an IRAP Completion Report. c. Submit a Remedial Action Plan(s) (RAP). d. Implement the RAP. 	<ul style="list-style-type: none"> a. Within 120 calendar days of adoption of the Order. b. According to the schedule approved by the Executive Officer. c. According to the schedule approved by the Executive Officer.

DIRECTIVE	DUE DATE
<p>e. Prepare and submit Remediation Progress Reports for the remediation system implemented.</p> <p>f. Upon completion of implementation of the RAP, submit a Remedial Action Completion Report.</p>	<p>d. According to the schedule in the RAP approved by the Los Angeles Water Board. All remedial actions must be complete and approved cleanup levels achieved no later than December 31, 2031.</p> <p>e. Quarterly, beginning October 15 of the year implementation of the RAP begins.</p> <p>f. Within 60 calendar days of RAP completion deadline.</p>
<p>5. Public Participation Plan</p> <p>a. Submit a baseline community assessment</p> <p>b. Submit an interested persons contact list</p> <p>c. Submit a draft fact sheet</p> <p>d. Distribute fact sheet and/or complete other public participation requirements</p>	<p>a. Within 60 calendar days of adoption of the Order.</p> <p>b. Within 60 calendar days of adoption of the Order.</p> <p>c. Within 60 calendar days of adoption of the Order.</p> <p>d. As directed by the Executive Officer.</p>
<p>6. Groundwater Monitoring:</p> <p>Conduct quarterly groundwater monitoring according to Attachment C (Monitoring and Reporting Program) and the following schedule.</p> <p>Monitoring Period January – March April – June July – September October – December</p>	<p>The next groundwater monitoring report is due on October 15, 2024.</p> <p>Report Due Date April 15th July 15th October 15th January 15th</p>

ATTACHMENT C:

MONITORING AND REPORTING PROGRAM FOR CLEANUP AND ABATEMENT ORDER NO. R4-2024-0132

This Monitoring and Reporting Program is part of Cleanup and Abatement Order No. R4-2024-0132 (CAO). Failure to comply with this program constitutes noncompliance with the CAO and California Water Code, which can result in the imposition of civil monetary liability. All sampling and analyses shall be by USEPA approved methods. The test methods chosen for detection of the constituents of concern shall be subject to review and concurrence by the Los Angeles Water Board.

Laboratory analytical reports to be included in technical reports shall contain a complete list of chemical constituents, which are tested for and reported on by the testing laboratory. In addition, the reports shall include both the method detection limit and the practical quantification limit for the testing methods. All samples shall be analyzed allowable holding time. All quality assurance/quality control (QA/QC) samples must be run on the same dates when samples were actually analyzed. Proper chain of custody procedures must be followed and a copy of the completed chain of custody form shall be submitted with the report. All analyses must be performed by a State Water Resources Control Board Division of Drinking Water accredited laboratory.

The Los Angeles Water Board's *Quality Assurance Project Plan, Updated February 15, 2015*, can be used as a reference and guidance for project activities involving sample collection, handling, analysis, and data reporting. The guidance is available on the Los Angeles Water Board's website at:

https://www.waterboards.ca.gov/rwqcb4/water_issues/programs/remediation/DocAndInfo/RWQCB_QAPP_2015_FINAL_03-05-15.pdf

GROUNDWATER MONITORING

The Dischargers shall collect groundwater samples from all groundwater monitoring wells installed for the purpose of site investigation and monitoring. Any monitoring wells installed in the future shall be added to the groundwater monitoring program and sampled quarterly. The groundwater surface elevation (in feet above mean sea level [MSL]) in all monitoring wells shall be measured and used to determine the gradient and direction of groundwater flow.

The following shall constitute the monitoring program for groundwater.

Constituent	EPA Method
Volatile Organic Compounds (full scan)	EPA 8260B
1,4-Dioxane	EPA 8270C
Temperature	Field*
pH	Field*
Electrical Conductivity	Field*
Dissolved oxygen	Field*
Oxidation-Reduction Potential (ORP)	Field*
Turbidity	Field*

* Field – To be measured in the field.

REMEDIATION SYSTEMS

Reports on remediation systems shall contain the following information regarding the site remediation systems:

1. Maps showing location of all remediation wells and groundwater monitoring wells, if applicable;
2. Status of each remediation system including amount of time operating and down time for maintenance and/or repair;
3. Air sparge well operating records including status of each well and volume and pressure of air being injected;
4. Soil vapor extraction well records including status of each well and PID readings of other acceptable methods of determining relative volatile concentrations taken at a minimum quarterly. Readings of volatile concentrations drawn from SVE wells need to be taken at a frequency that allows the efficient operation and evaluation of the SVE system. A system operation log to document the system's total hours of operation and parameters, including the system's flow rate, temperature, and applied vacuums at the SVE treatment system and the system manifold;
5. In-situ well operating records including injection volume and pressure of the amendment being introduced. Prior to implementation of the injection, all in-situ remediation shall enroll under appropriate Waste Discharge Requirements from the Los Angeles Water Board;
6. The report shall include documentation and manifest forms of waste generated during operation of the remedial system;

7. The report shall include copies of all required valid permits to construct and operate the remedial systems;
8. The report shall include tables summarizing the operating and performance parameters for the remediation systems; and
9. System inspection sheets shall document field activities conducted during each Site visit and shall be included in quarterly monitoring reports.

MONITORING FREQUENCIES

Specifications in this monitoring program are subject to periodic revisions. Monitoring requirements may be modified or revised by the Executive Officer based on review of monitoring data submitted pursuant to this Order. Monitoring frequencies may be adjusted or parameters and locations removed or added by the Executive Officer if Site conditions indicate that the changes are necessary.

REPORTING REQUIREMENTS

1. The Dischargers shall report all monitoring data and information as specified herein. Reports that do not comply with the required format will be REJECTED and the Dischargers shall be deemed to be in noncompliance with the Monitoring and Reporting Program.
2. Quarterly groundwater monitoring reports shall be submitted to the Los Angeles Water Board according to the schedule below.

Monitoring Period	Report Due
January – March	April 15
April – June	July 15
July – September	October 15
October – December	January 15

Groundwater monitoring reports shall include a contour map showing groundwater elevations at the Site and the groundwater flow direction and figures showing iso-concentration curves for the constituents of concern such as PCE, and TCE. The quarterly groundwater monitoring reports shall include a table with monitoring well construction specifications such as well identification date constructed, total depth of borehole, total depth of casing, screen interval, gravel pack interval, land surface elevation, and elevation of PVC casing and tables summarizing the historical depth-to-water, groundwater elevations, and historical analytical results for each monitoring well. The results of any monitoring done more frequently than required at the locations specified in the Monitoring and Reporting Program shall be reported to the Los Angeles Water Board. Field monitoring well sampling sheets shall be completed for each monitoring well sampled and included in the report.

Quarterly remediation progress reports shall be submitted to the Los Angeles Water Board according to the schedule below.

Monitoring Period	Report Due
January – March	April 15
April – June	July 15
July – September	October 15
October – December	January 15

3. Remediation progress reports shall include an estimate of the cumulative mass of contaminant removed from the subsurface, system operating time, the effectiveness of the remediation system, any field notes pertaining to the operation and maintenance of the system, and, if applicable, the reasons for and duration of all interruptions in the operation of any remediation system and actions planned or taken to correct and prevent interruptions.
4. In reporting the monitoring data, the Dischargers shall arrange the data in tabular form so that the date, the constituents, and the concentrations are readily discernible. The data shall be summarized to demonstrate compliance with the requirements. All data shall be submitted in electronic form in a form acceptable to the Los Angeles Water Board.



Los Angeles Regional Water Quality Control Board

**Response to Comments to Draft Cleanup and Abatement Order
No. R4-2024-0132**

Site: 12901 Culver Blvd., Los Angeles, CA
(SCP File No. 1496, Site ID No. XXXXXX, Global ID T10000020683)

Comment Period: November 15, 2022 – December 15, 2022

Comments received

Bates Page

- A. Stephen T. Holzer (Lewitt, Hackman, Shapiro, Marshall, and Harlan LP) 1 – 7
- B. Dana P. Palmer (Allen Matkins Leck Gamble Mallory & Natsis LLP) 8 – 16

Acronyms

1,2-DCA	1,2-Dichloroethane
1,4-DMB	1,4-Dimethylbenzene
Adjacent Site	The Panama Site located at 12965 Panama Street. Los Angeles, CA 90066
bgs	below ground surface
CAO	Cleanup and Abatement Order
COC	Chemical of concern
CUQ	Chemical Storage and Use Questionnaire
CVOC	Chlorinated Volatile Organic Compounds
Dischargers	E-Z Storage Marina 2, Limited Partnership, and Teledyne Technologies Incorporated.
Draft Order or Draft CAO	Draft Cleanup and Abatement Order No. R4-2022-XXXX issued November 15, 2022, by the Los Angeles Water Board.
EO	Executive Officer
EPA or USEPA	United States Environmental Protection Agency
E-Z Storage	E-Z Storage Marina 2, LP.
Final Order or Final CAO	Final Cleanup and Abatement Order No. R4-2024-0132
LAPD	Los Angeles Police Department
LP	Limited Partnership
Los Angeles Water Board or RWB	Los Angeles Regional Water Quality Control Board
mg/kg	Milligrams per kilogram
µg/L	Micrograms per liter
PCE	Tetrachloroethylene or perchloroethylene
RR	Railroad
Site	E-Z Storage facility, located at 12901 Culver Blvd. Los Angeles, CA 90066
SWRCB or State Water Board	State Water Resources Control Board
TCA	Trichloroacetic Acid
TCE	Trichloroethylene
Teledyne	Teledyne Technologies Incorporated

USEPA 2015 OSWER Memo	United States Environmental Protection Agency, 2015 - Office of Solid Waste and Emergency Response - Technical Guidance for assessing and mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air Memorandum. June 2015.
VOCs	Volatile organic compounds

Comment Identifier	Comment Summary	Response	Action
A.1.1	The draft CAO calls for certain deliverables within 60 and 90 days of the formal issuance of the CAO. As the Board is aware, since the draft CAO is being issued both to E-Z storage and Teledyne, the two entities must negotiate and then coordinate their work on deliverables. Such negotiation and coordination cannot reasonable be accomplished and deliverables provided within the 60-day and 90-day timeframes. Therefore, E-Z storage Requests and extension of time for the initial deliverables to respectively, March 15, 2023 and April 15, 2023.	Cooperation among parties does not generally necessitate additional time, particularly here, where the deadlines are already longer than necessary for the respective deliverables. The request to extend the due dates for all the initial deliverables is denied. The deliverables in Attachment B and the associated due dates will be due from the adoption of the Final CAO (CAO No. R4-2024-0132). If there is a specific deliverable that will require additional time to complete, a formal letter requesting an extension shall be sent to the Los Angeles Water Board, for the specific deliverable in question. The extension letter shall include a justification and a proposed new due date for compliance.	No Changes
A.1.2	Moreover, the draft CAO seems to envision that remedial action is to be achieved within these timeframes (see p. 13 of the draft CAO, "Conduct Remedial Action"). While the other deliverables may, with difficulty, be achievable within the timeframes set by the draft CAO, provided the extensions requested herein are granted, it is unclear how the Board envisions the remedial action to be completed within such timeframes. The Board should clarify its intention in this regard.	An IRAP will be submitted in accordance with Attachment B. As part of the IRAP, the Dischargers will propose a time schedule to meet the requirements under "Required Actions" (pg 13 of the Final CAO). The proposed time schedule shall be generated with consideration for the timeframes established in Attachment B. This proposed time schedule will be approved by the Los Angeles Water Board EO.	No Changes
A.2.1	It is our understanding that, other than making an initial inquiry of the railroad, the Board has done nothing further with respect to investigating the railroad's activities on the Site.	A CUQ was required to be filled out per a 13267 order for the RR. Additional inquiries into historical property documents (ownership, successors, lessees) were reviewed.	No Changes
A.2.2	We would respectfully suggest that no CAO should issue against E-Z storage unless and until the potential responsibility of the railroad for its	We are aware that the RR leased a portion of the site to Teledyne for parking from 1978 to 1985. If you have evidence of a release by the RR or on the	No Changes

Comment Identifier	Comment Summary	Response	Action
	activities during its 60-year tenure on the Site are more fully investigate;	RR property during the time of its ownership, please provide this information to the Los Angeles Water Board. The Draft Order notes the ability of the RWB to add additional parties in the future, and RWB staff will consider any evidence supporting the identification of additional dischargers. This is consistent with State Water Board Resolution 92-49, which states that “[i]t is not necessary to identify all dischargers for the Regional Water Board to proceed with requirements for a discharger to investigate and clean up.”	
A.2.3	or alternatively, enforcement of the draft CAO against E-Z should be delayed until the Board figures out whether the railroad should have been joined as a responsible party in the CAO.	See above comment A.2.1 and A.2.2	No Changes
A.2.4	If the Board does not accept these requests, then this section of the draft CAO should at least be revised to state, after the last sentence quoted above, “Further investigation of the railroad’s activities on the Site from the 1920’s to the mid-1980’s is warranted.”	See above comment A.2.1 and A.2.2.	No Changes
A.3.1	<p>P. 4 of the draft CAO states in part: “the location and depth of the shallow soil impacts at the Site, with the general operation of public storage spaces, suggest a possible surface discharge of COCs at the Site within that time period.”</p> <p>This statement is unwarranted given that the statement itself admits it is based on speculation and no evidence of surface discharge is provided.</p>	The statement is based upon evidence provided in the section entitled “Evidence of Waste Discharge and Basis for Section 13304”. It specifically spells out the shallow depths and concentrations of contaminants under section 6.a. through 6.c.	<p>We have revised the statement as follows:</p> <p>This notwithstanding, the location and depth of the shallow soil impacts at the Site are <u>consistent with a surface discharge of</u></p>

Comment Identifier	Comment Summary	Response	Action
			COCs at the Site within that time period.
A.3.2	Accordingly, this section of the draft CAO should read: “the location and depth of the shallow soil impacts at the Site, with the general operation of public storage spaces, suggest a possible surface discharge of COCs at the Site within that time period. Other than an incident investigated in 2012 in connection with a tenant’s storage of unknown chemicals at the site in an area of the Site different from the contamination impacts on the southern portion, there is no direct evidence of any hazardous chemical storage or discharge by either E-Z or its tenants.”	See above response to comment A.3.1. In addition, we decline to add this sentence, as it is inconsistent with the text of the Order regarding the detection of COCs in the shallow soil.	No Changes
A.4	This section of the draft CAO should accordingly be revised to state: “The following evidence allows the Board to infer that discharges on the southern portion of the Site occurred: Records indicate past evidence of illegal chemical storage on the Site, including Los Angeles Police Department (“LAPD”) records in 2012. While the discharge addressed by the LAPD was not on the southern portion of the Site, while chemicals involved in the illegal storage and discharge are unknown, and while the tenant contracts specifically prohibit the business use of leased space for manufacturing of any kind as well as the use or storage of hazardous substances, operations at the Site may have not maintained adequate control or full knowledge of their Tenant’s on-site activities.”	We decline to add the additional text, which speculates as to E-Z Storage’s knowledge.	No Changes

Comment Identifier	Comment Summary	Response	Action
A.5	<p>P. 7 of the Draft CAO states in part: “The highest concentrations were detected near the southwest corner of the on-Site building. The presence of VOCs, primarily PCE and TCE beneath the Site threatens to cause vapor intrusion into buildings. Elevated concentrations of PCE and TCE warrant indoor air sampling, which has not been conducted at the Site.”</p> <p>In fact, Partner’s PowerPoint presentation Historical Records / Land Use Review and Contaminant Impact Summary – October 2, 2018, indicates ALTA performed indoor air sampling in one building at the EZ Storage Site in 2015. See Exhibit “B” hereto. This PowerPoint presentation was presented to the Board. Also see the October 2018 e-mail to Robert Ehe and its attachments enclosed as Exhibit “B” hereto. The indoor air sampling indicated that the results were mostly non-detect.</p> <p>Accordingly, the statement, “Elevated concentrations of PCE and TCE warrant indoor air sampling, which has not been conducted at the Site”, should be eliminated.</p>	<p>Comment noted. The threat to vapor intrusion is still present and will warrant additional indoor air sampling, consistent with the USEPA 2015 OSWER Memo and the 2023 State Water Board Final Draft Supplemental Vapor Intrusion Guidance. In addition, soil vapor concentrations warrant active remediation.</p>	<p>The text has been modified to acknowledge your comment. The text “Elevated concentrations of PCE and TCE warrant indoor air sampling, which has not been conducted at the Site” has been removed and replaced with “The presence of VOCs, primarily PCE and TCE beneath the Site threatens to cause vapor intrusion into buildings and warrant remediation”.</p>
A.5.1	<p>The indoor air sampling indicated that the results were mostly non-detect.</p>	<p>See above response to comment A.5</p>	<p>No Changes</p>
A.6	<p>In light of the fact that indoor air sampling was conducted and that the results were mostly non-detect, the language “Because the depth to groundwater is shallow, the presence of the VOCs beneath the Site threatens to cause vapor intrusion into buildings, including the E-Z Storage facility building” should be eliminated.</p>	<p>See above response to comment A.5.</p>	<p>No Changes</p>

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A.7	<p>P. 8 of the Draft CAO reads: “This Draft CAO requires investigation and submittal of work plans. Based upon Los Angeles Water Board staff experience with similar investigations, the approximate cost of these reports is in the range of \$700,00 to \$1,300,000.”</p> <p>It is unclear to what scope of work this estimate of expense is referring. Is the estimate referring to the point where the Site is eligible for a no further action determination by he [sic] Board? Or is the estimate referring only to the preliminary deliverables due within 60-90 days after the formal issuance of the CAO? This statement needs clarification.</p>	<p>The cost range refers to investigation and monitoring required pursuant to Water Code section 13267, which can vary greatly, depending upon the extent of discharge of waste, the number and depths of sampling locations and the extent of investigation and monitoring needed.</p>	No Changes
A.8	<p>P. 9 of the Draft CAO states in part: “The threat of vapor intrusion into buildings at and near the Site has caused or threatens to cause nuisance as defined in Water Code section 13050, subdivision (m).”</p> <p>In fact, as discussed above, the vapor intrusion investigation which was done at E-Z revealed essentially no such threat. As for buildings “near the Site”, we are aware of none; if the Board intends on making this statement, it is too vague to follow and at least the general areas of such buildings should be described. Otherwise, this sentence should just be eliminated.</p>	<p>See above response to comment A.5.</p>	No Changes
A.9	<p>P. 10 of the Draft CAO states in part: “E-Z Storage-Marina 2, LP is a discharger because they are the current owner of the Site, and have caused or permitted waste to be discharged or deposited where it has discharged to waters of the State and has created, and continues to</p>	<p><i>Tesoro Refining & Marketing Co. LLC v. Los Angeles Regional Water Quality Control Bd.</i> (2019) 42 Cal.App.5th 453 governs these circumstances because E-Z Storage owns property where an ongoing migration of contamination is occurring.</p>	No Changes

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	<p>threaten to create, a condition of pollution or nuisance. As the current owner of the property, E-Z Storage-Marina 2, LP has the legal ability to control the discharge.”</p> <p>Review of historical lease records indicated that approximately 29,000 square feet (SF) of the westernmost current E-Z Storage property was leased to and utilized by Teledyne from at least 1978 to 1983. Historical aerial photographs show the 29,000 SF area of the Site being used for parking along with the southern portion of the Teledyne property. Additionally, no records of chemical use on E-Z Storage were identified that could possibly have resulted in the high concentrations of VOCs that have been detected during the ALTA/Teledyne investigations at the Site.</p> <p>Accordingly, the above quoted text in the draft Draft CAO should be eliminated.</p>	<p>The State Water Board has defined the term “discharge” in this statutory provision consistently for the past 40 years to refer to the entire time during which the discharged waste remains in the soil or groundwater and continues to impact or to threaten the groundwater.</p> <p>(<i>Tesoro, supra</i>, 42 Cal. App. 5th at p. 471 [citing State Water Board Order No. WQ 86-2 (Zoecon) at p. *3; State Water Board Order No. WQ 74-13 (Atchison, Topeka) at p. *9; and State Water Board Order No. WQ 89-8 (Spitzer), at p. *17 [“[D]ischarge continues as long as pollutants are being emitted at the site.”].)</p> <p>As stated in those decisions, discharge refers to any movement of waste from soils to groundwater and from contaminated to uncontaminated groundwater and continues to occur if the waste continues to move through the soils and groundwater and poses a threat of further degradation to groundwater. [Citing <i>Atchison, Topeka, supra</i>, at p. *9.] An actionable discharge, therefore, encompasses not simply the initial episode of contamination, but rather includes the time during which the waste uncontrollably flows or migrates from its source, through the soil, and into and within the groundwater.</p> <p>(<i>Tesoro, supra</i>, 42 Cal. App. 5th at p. 472.) E-Z Storage has objected to any participation in the investigation or cleanup of the Site. Failing to contain or remediate the contamination causes and</p>	

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		<p>permits the ongoing migration - discharge - of waste on its property.</p> <p>State Water Board and case law precedents establish that a current landowner is a discharger and responsible for controlling contamination migrating from property it owns. Current landowners are responsible for cleanup, regardless of whether the landowner owned the property at the time of the initial release. (State Water Board Order No. WQ 84-6 (Logsdon).) A landowner has ultimate responsibility for cleanup even when the landowner acquired the property <i>after</i> a previous owner had discharged pesticides to the land. (State Water Board Order No. WQ 89-1 (Schmidl).)</p> <p>A regional water board may order any person to clean up 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, <i>supra</i>.) A landowner is ultimately responsible for the condition of his property, even if he is not involved in day-to-day operations. If a landowner knows of a discharge on his property and has sufficient control of the property to correct it, the landowner may be subject to a cleanup order under Water Code Section 13304 (Logsdon, <i>supra</i>; State Water Board Order No. WQ 86-18 (Vallco Park, Ltd.); <i>Leslie Salt Company v. San Francisco Bay Conservation & Development Commission</i> (1984) 153 Cal.App.3d 605, 619-20 [possessors of land</p>	

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		<p>liable for a nuisance on the land even if they did not create the nuisance].)</p> <p>In both Logsdon and Vallco Park, Ltd., the State Water Board determined that the landlord had control of the property sufficient to permit the landlord to comply with the Regional Board order. (See also State Water Board Order No. WQ 86-11 (Southern California Edison Co.); State Water Board Order No. WQ 87-5 (U.S. Forest Service); State Water Board Order No. WQ 87-6 (Prudential Insurance Company of America); State Water Board Order No. WQ 89-8 (Spitzer). Although not relevant here, where E-Z Storage clearly knows of the presence of the contamination, State Water Board Order WQ 85-16 (John Stuart Petroleum) also notes that “actual knowledge of the contamination need not be shown where it is reasonable for a person to be aware of the dangers generally inherent in an activity.” That same Order cites to an earlier order (State Water Board Order WQ 84-6 (Logsdon)) for the proposition that "one who should have known is in the same position as one who did know." A vigilant landowner knows or should know of the activities of its tenant. This is consistent with the conclusion in 27 Ops.Atty.Gen. 182 Opinion No. 55-236 (1956) regarding issuance of waste discharge requirements for inactive, abandoned or completed operations. The opinion concluded: "The person upon whom the waste discharge requirements should be imposed to correct any condition of pollution or nuisance which may result from discharges of the materials discussed above are those persons who in each case are responsible for the current discharge. In general, they would be the persons who presently have legal control over the</p>	

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		property from which the harmful material arises, and thus have the legal power either to halt the escape of the material into the waters of the State or to render the material harmless by treatment before it leaves their property. Under this analysis, the fact that the persons who conducted the operations which originally produced or exposed the harmful material have left the scene does not free from accountability those permitting the existing and continuing discharge of the material into the waters of the State.” (<i>Id.</i> at p. 185.)	
A.10	<p>P. 11, fn 2 of the Draft CAO states: “State Water Board Order WQ 86-16 (Stinnes-Western) supports the use of evidence of chemical use, standard chemical handling practices, and detections of that chemical in the environment as reasonable bases supporting a cleanup and abatement order. ‘As we noted earlier, given the very low action levels for these chemicals, today we are concerned with any discharge.’ (Ibid. at n. 4.):</p> <p>But as the above comments show, 2 of these 3 components—evidence of chemical use and standard chemical handling practices—are missing in the case of E-Z. Therefore, fn 2 should be eliminated.</p>	<p>The critical part of that footnote is the State Water Board’s observation that even small discharges must be addressed. The Draft Order has been edited as shown.</p> <p>“State Water Board Order WQ 86-16 (Stinnes-Western) notes that, “given the very low action levels for these chemicals, today we are concerned with <u>any</u> discharge.’ (Ibid. at n. 4.)”</p>	<p>The Final Order has been edited as follows:</p> <p>“State Water Board Order WQ 86-16 (Stinnes-Western) notes that, “given the very low action levels for these chemicals, today we are concerned with <u>any</u> discharge.’ (Ibid. at n. 4.)”</p>
A.11	<p>P. 15 of the Draft CAO requires E-Z Storage to “Conduct Groundwater Monitoring”. This requirement appears to be duplicative of what Teledyne is already doing, to wit: The 3rd Quarter</p> <p>2022 Groundwater Monitoring Report (dated September 14, 2022) for the Teledyne property and off-site wells prepared by NV5 Alta</p>	<p>Teledyne is required to conduct groundwater monitoring on and offsite for the adjacent Panama Site. Upon adoption of this Order, all named Dischargers will be responsible for conducting the required groundwater monitoring. We recommend that the parties work together to coordinate future groundwater monitoring events to avoid</p>	No Changes

Comment Identifier	Comment Summary	Response	Action
	<p>Environmental (Alta) summarizes the results of monitoring performed since 2016 and the current results. Alta concludes the Report with a recommendation for monitoring to be reduced from quarterly, to semi-annually.</p> <p>Accordingly, being duplicative, the just-quoted requirement should be eliminated from the CAO as formally issued.</p>	duplication, and E-Z Storage may request to reduce groundwater monitoring in the future.	
B.1	¹ When possible, please update this author's email and physical addresses in your database.	Noted.	GeoTracker has been updated with the contact information.
B.2.1	The Draft CAO <i>fails to name parties documented to have operated on the Site</i> , including railroads and outdoor advertising companies. Both of these classes of entities, in addition to E-Z Storage itself, are much more likely to have contaminated soil and soil vapor at the Site than Teledyne, yet inexplicably these are not targets of the Draft CAO.	See above response to comment A.2.2. In addition, the outdoor advertising company does not own the property and has no history of spills associated with the signage, based upon the CUQ. If you have additional information about either of these entities, please provide this information to the Los Angeles Water Board.	No Changes
B.2.2	Furthermore, these entities submitted <i>Chemical Storage and Use Questionnaires</i> that were hardly complete; this incomplete record should have been remedied by Regional Board staff prior to formal enforcement. Together, this oversight strongly suggests that Regional Board staff have not complied with mandatory obligations under Title 23, California Code of Regulations, Section 2907.	The adequacy of the responses to the chemical use questionnaires will be addressed under a separate proceeding and is not relevant to this order.	No Changes
B.3	The Draft CAO also <i>fails to fully address the consequences of the significant historical gradient between the Site and the Panama Street Site ("Adjacent Site")</i> to the north. This gradient makes it unlikely that Teledyne, which used the Site only for employee parking for a	Based upon a review of historical elevations at the site, prior to the remedial excavations and property redevelopment (i.e., grading landscaping etc.), the Site and the Adjacent Site were historically at the same elevation. Based upon this information, there was a potential for contamination to migrate from	No Changes

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	comparatively short duration, materially contributed to conditions in the vadose zone, while having all the hallmarks of contamination by E- Z Storage, E-Z Storage customers, or prior owners and tenants for which E-Z Storage now is responsible.	the Adjacent Site to the Site along the surface. If Teledyne has additional information regarding historical elevations at the two sites, please present that information, particularly during both ownership and lease periods of the Adjacent Site.	
B.4	Page 1, Issue 2: This paragraph references Attachment A, Figure 1, which shows both the E-Z Storage property and the Panama Street Site (“Adjacent Site”) in red. To avoid confusion, only the E-Z Storage Site should be outlined in red to better illustrate the focus of the Draft CAO.	Figure 1 to remain the same for the purposes of the CAO.	No Changes
B.5	Page 2, Issue 3: The second paragraph should include a specific discussion of the former train station “Alla Station.” The Alla Station is presently noted in Table 1, but should be addressed in the narrative, as the station’s historical presence increases the potential for releases and leaks while train cars were stopped at the station or when train cars were serviced there.	The Site Description and Activities is not intended to be a comprehensive discussion of every related fact. While the potential for releases may have existed, we have no evidence of a definitive release from the Alla Station or the RR at this time. If Teledyne or its consultants have information to the contrary, please provide this information to the Los Angeles Water Board.	No Changes
B.6	Page 2, Issue 3: In the third paragraph in the discussion of the Adjacent Site formerly leased by Teledyne, the significant historical grade difference between the Site (higher) and the Adjacent Site (lower) should be noted. This historical significant grade difference (1) makes it less likely that contaminants migrated in soil from the Adjacent Site to the Site, (2) made it easier for contaminants to mobilize from the Site to the Adjacent Site, including especially from the drains servicing the Site and discharging onto the Adjacent Site. The grade difference also supports the theory that shallow	See above response to comment B.3.	No Changes

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	surface releases on the Site were not caused by Teledyne.		
B.6.1	This historical significant grade difference (1) makes it less likely that contaminants migrated in soil from the Adjacent Site to the Site,	See above response to comment B.3.	No Changes
B.6.2	This historical significant grade difference (2) made it easier for contaminants to mobilize from the Site to the Adjacent Site, including especially from the drains servicing the Site and discharging onto the Adjacent Site.	See above response to comment B.3.	No Changes
B.7	<p>Page 2, Issue 3: The third paragraph states that “Teledyne has previously acknowledged a discharge of chlorinated solvents during their operations, which may have occurred in the transfer, movement and use of chemicals and equipment to the Adjacent Site.” Teledyne has previously and transparently documented the locations of its operations, and associated chemical storage and use, as part of a voluntary cleanup case at the Adjacent Site. Teledyne did not use chemicals on the Site or transport chemicals across it. Instead, chemical deliveries occurred off of Panama Street to the north, and chemical use and storage occurred within buildings on the Adjacent Site. As previously documented in commercial leases submitted to the Regional Board, Teledyne’s use of the Adjacent [sic] Site was limited to employee parking and employee pedestrian traffic, the exclusive uses permitted by Teledyne’s former landlord Southern Pacific Transportation Company. Alta July 2019 Report, PDF pp. 18-40. The last sentence of the paragraph should be modified to state “Teledyne is considered a discharger of VOCs that have impacted the</p>	<p>Detections in the soil and soil vapor are consistent with both a discharge on the Adjacent Site that migrated to the Site and also a discharge on the Site that has commingled with a discharge migrating from the Adjacent Site. In either scenario, Teledyne is liable as a discharger and jointly and severally responsible for cleanup of the commingled plume.</p>	<p>Teledyne is considered a discharger of VOCs and is jointly and severally liable for cleanup of its discharges, including any commingled areas. The Text has been updated to reflect both scenarios “ Teledyne is considered a discharger of VOCs that have impacted the Adjacent Site and which have comingled with the VOCs discharged and that have migrated to the Site”</p>

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	Adjacent Site and have comingled with the VOCs discharged on the Site.”		
B.8	Page 2, Issue 3: The Draft CAO should also specifically note the long-term outdoor advertising uses on the Site, which could have employed chlorinated solvents in its operations. Alta July 2019 Report, PDF pp. 43-59.	See above response to comment B.2.1.	No Changes
B.9	Page 3, Issue 4.a: As stated above, Teledyne did not use chemicals on the Site or transport chemicals across it. There were designated transportation path and storage areas for new and spent chemicals, all of which were distant from the Site, making the Site inconvenient and otherwise nonsensical for chemical transport or use.	See above response to comment B.7	No Changes
B.10	Page 3, Issue 4.b: The previous Chemical Storage and Use Questionnaires submitted by a railroad and advertising company were glaring in their absence of detail and obvious lack of time invested in their completion. Regional Board staff should follow-up on these insufficient questionnaires prior to agendizing the Draft CAO for Board consideration. This would put the Regional Board in a significantly better position in any dispute later about the sufficiency of compliance with Title 23, California Code of Regulations, Section 2907. It also would place all parties on a better footing in addressing—and allocating responsibility for—the contamination later in time, by naming all appropriate parties at the start.	See above response to comments A.2.2 and A.11	No Changes
B.11	Page 4 (top), Issue 4.b: Regional Board staff should note detections in soil of contaminants of concern at varying depths and that the highest PCE concentrations in groundwater	Detections in soil, soil vapor, and groundwater contaminants are addressed in section 6.a through 6.d of the Draft CAO. Specific depths and dates of sample collection are included.	No Changes

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	have consistently been detected beneath the area of “possible surface discharge” at the Site as reflected in well MW18.		
B.12	Page 4 (top), Issue 4.b: The photo excerpted below, originally presented in the Alta July 2019 Report, shows a high volume of chemical storage at the Site from just a single tenant. This photo could also be considered to show chemical usage. Overall, the volume of chemicals in the photo could exceed the volume of chemicals stored by Teledyne in its hazardous waste storage area on any given day: (Photo)	Noted.	No Changes
B.13	Page 4, Issue 5: This section should categorically state that E-Z Storage did not maintain adequate control or full knowledge of their tenants’ on-site activities, or they would have known about the chemical storage of the type shown in the photo above. It may never be fully known the quantity or type of chemicals stored or used by E-Z Storage tenants over the approximately 35-year history. What we do know is that E-Z Storage has essentially been an absentee landlord with little to no actual knowledge of what is being stored in, or what is leaking from, customer storage units.	The Draft Order is not intended to contain a comprehensive discussion of every related fact.	No Changes
B.14	Page 4, Issue 5: The second paragraph is confusing, as it could be read to indicate there was a release near or at former Building #2 on the Adjacent Site, which was located along the southern property line, close to the Site. However, the 1985 release (1) is documented to have been of TCA, not TCE and (2) actually occurred in the former main driveway off of Panama Street at the north side of the Adjacent Site.	The barrel of waste discharged is additional evidence of handling practices that led to discharges at the Adjacent Site but is not necessary to establish liability.	The Final Order has been edited as follows: “Teledyne conducted manufacturing operations in several former buildings at the Adjacent Site,

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			which included the use of solvents, paints, and other chemicals”
B.15	<p>Page 4, Issue 6: In the first paragraph, the referenced site assessments also indicate a third scenario that is not mentioned: that volatile chemicals in the subsurface have actually migrated from the Site to the Adjacent Site. On this topic, Regional Board staff should reconsider what degree of contamination migrated from the Site to the Adjacent Site, whether from runoff or migration of contaminants in the subsurface or through groundwater. This scenario should be specifically discussed in the Draft CAO, whether in this section or another.</p>	<p>Comment acknowledged. If additional information becomes available that depicts an uncontrolled spill had occurred at the Site and migrated to the Adjacent Site affecting the subsurface or groundwater, we will revisit this scenario. However, the current and historical information gathered at the Site and the Adjacent Site does not support this scenario. See Comment B.7.</p>	No Changes
B.16	<p>Page 5, Issue 6.a: This paragraph and others should detail the environmentally-significant historical grade difference between the Site (higher) and the Adjacent Site (lower), as vividly illustrated in these photographs: (Photos)</p> <p>As a result of this grade difference, the Adjacent Site received a significant proportion of runoff from the Site. In these photos, the higher Site is towards the back, while the lower Adjacent Site is in the foreground.</p>	<p>The assumption that an uncontrolled run-off spill occurred at the Site and that the surficial soil results encountered are at a higher elevation is unknown. Based upon the photos provided (specifically the left photo on pg. 5), it is unclear that a spill originated on the Site or a spill migrated from the Adjacent Site to the Site through the drains seen in the side of the concrete. Within these photos it appears that an effort was made to prevent run-off from the Adjacent Site into the drains on the Site, and that the drains are at or near the historical surface of the Adjacent Site. See Comment B.7.</p>	No Changes

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	As also shown in the photos above, a retaining wall separating the two sites clearly showing this elevation difference was present prior to recent construction. This retaining wall was on the Site side of the concrete storm channel (or swale) and would have blocked any surface flow from the Adjacent Site to the Site.		
B.16.1	As also shown in the photos above, a retaining wall separating the two sites clearly showing this elevation difference was present prior to recent construction. This retaining wall was on the Site side of the concrete storm channel (or swale) and would have blocked any surface flow from the Adjacent Site to the Site.	See comment B.16.	No Changes
B.16.2	Last, this photo shows one of the drains that discharge from the Site to the Adjacent Site. As stated in the Alta Environmental's December 20, 2019 Response to Documents: "This storm channel was just adjacent to the change in grade between the EZ Storage Investigation Area and the Panama Street Site [Adjacent Site]. Understanding the topography in this area prior to recent construction activities is important to understanding the relationship between the two properties. Prior to the recent grade work conducted on the Panama Street Site, the greatest elevation difference, approximately 2.5 feet, was located in the vicinity of boring B122. Beginning near boring B130, the elevation difference began to taper off to the southwest. This elevation difference, which has existed since at least the time of the E-Z Storage property development in the mid-1980s, is evidenced by a	See comment B.16.	No Changes

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	<p>topographical design survey conducted by a third party, prior to the implementation of soil remediation activities conducted on the Panama Street Site. Appendix A presents a copy of the survey.”</p> <p>Thus, stormwater and any other runoff from the Site flowed from pipes into the swale on the Adjacent Site and could not have flowed from the Adjacent Site to the Site. This is strong evidence of the Site’s likely contribution to conditions at the swale dividing the two sites where contamination has been found.</p>		
B.17	<p>Page 5, Issue 6.a: The quoted 15 mg/kg concentration in boring GW3 was from Environ’s split sample for a prior owner of the Adjacent Site, but Teledyne’s sample result was 2.96 mg/kg.</p>	<p>A higher analytical concentration will be used to evaluate samples, from either split or duplicate, to be conservative in the data evaluation.</p>	<p>No Changes</p>
B.17.1	<p>In addition, the reference in this section to MW18 is misplaced, as MW18 did not exist during the time period discussed.</p>	<p>Text will be modified to say “near the boundary of the site”. The reference to MW18 will be removed</p>	<p>The Final Order has been edited as follows:</p> <p>“PCE was detected at 15 mg/kg at 5 feet bgs in boring location GW3, near the boundary of the Site (see Attachment A, Figure 4 and Copy of Table 5A of Assessment Report from Adjacent Site dated August 15, 2014)”</p>

Comment Identifier	Comment Summary	Response	Action
B.18	<p>Page 5, Issue 6.c: This paragraph discusses the E-Z Storage Additional Investigation Report from 2018, but should also address Alta Environmental's March 29, 2019 "Additional Offsite Assessment and Well Installation Report."4 While the shallowest samples collected during the 2018 investigation are limited to 2.5 ft bgs, the 2019 investigation report identifies samples collected from 0.5, 1.0 and 1.5 feet bgs. These even shallower surface samples show elevated contaminant concentrations which provide further evidence of a surficial release on the E-Z Storage property.</p>	<p>Additional report sources were evaluated as part of the Draft CAO, however, not all sources are summarized and the Final Order is not intended to be a comprehensive discussion of every related fact.</p>	No Changes
B.19	<p>Page 6 (top), Issue 6.d (continued from Page 5): Quarterly groundwater activities at the Site began in February 2019, not January 2019. The first groundwater monitoring events for the Site and the Adjacent Site are actually discussed in other quarterly reports not cited here as part of background discussions.</p>	<p>The text will be modified to the most recent data from first quarter 2024.</p>	<p>The text of the Final Order has been updated with the groundwater data from the most current groundwater monitoring report dated April 15, 2024.</p>
B.19.1	<p>The 1Q2022 report is not the only instance. The second sentence of 6.d should therefore be clarified. The PCE concentration referenced in the last sentence (56,100 µg/L) is from the 4Q2021 groundwater monitoring event, so this last sentence should also be clarified.</p>	<p>The text will be modified to the most recent data from first quarter 2024.</p>	<p>The text of the Final Order has been updated with the groundwater data from the most current groundwater monitoring report dated April 15, 2024.</p>

Comment Identifier	Comment Summary	Response	Action
B.20	Page 8, Issue 13: Please specify which of the “Required Actions” the cost estimate is meant to cover.	See above response to comment A.7.	No Changes
B.21	Page 15, Issue 6: Should the Draft CAO come into force, Teledyne proposes that the Regional Board follow NV5’s long-standing recommendations as to a reduction in groundwater parameters and constituents to monitor pertaining to the Adjacent Site. These parameters and constituents should be monitored on a semi-annual rather than quarterly basis and they should be the same for both the Site and the Adjacent Site.	Changes in groundwater monitoring and sampling will be evaluated separately under a separate report review.	No Changes
B.22	Attachment A: Many of the figures included in Attachment A are from older assessment reports and do not include all data available for the Site. For example, Borings B129 through B134 and MW17 through MW19 are missing. These figures should be updated to reflect the most recent data from the Site.	The Draft CAO does not need to be comprehensive to be enforceable. Additional sources of information were used in the evaluation of the Site but are not necessary to determine liability.	No Changes
B.23	While Teledyne appreciates the opportunity to provide input, it must necessarily reserve all rights moving forward. We especially urge you to closely consider whether prior parties operating at the Site should be further investigated, as required by regulation, prior to agendizing the Draft CAO for Regional Board consideration. We also urge Regional Board staff to evaluate further the likely contribution by E-Z Storage to contamination on the Adjacent Site.	Noted. See also above response to comment A.2.2.	No Changes



Los Angeles Regional Water Quality Control Board

**Comments Received to Draft Cleanup and Abatement Order
No. R4-20XX-XXXX**

Comment Period: November 15, 2022 – December 15, 2022

Comments received

Bates Page

- A. Stephen T. Holzer (Lewitt, Hackman, Shapiro, Marshall, and Harlan LP) 1 – 82
- B. Dana P. Palmer (Allen Matkins Leck Gamble Mallory & Natsis LLP) 83 – 112



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REFER TO FILE NUMBER 16586-2

LEWITT | HACKMAN
SHAPIRO | MARSHALL | HARLAN
A LAW CORPORATION

December 14, 2022

VIA MESSENGER

Mr. Hugh Marley
Mr. Eric Nelson, PG
Assistant Executive Officer
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, California 90013

Re: Draft CAO R4-2022-XXXX issued November 15, 2022 to E-Z Storage Marine 2, LP

Dear Messrs. Marley and Nelson:

INTRODUCTION

My law firm is counsel to E-Z Storage Marina 2, LP (“E-Z Storage”). In that capacity, I am responding in this letter to the draft Cleanup and Abatement Order issued by the Los Angeles Regional Water Quality Control Board (the “Board” and the “draft CAO”) enclosed with your letter of November 15, 2022.

This response consists of two parts. In the body of this letter, per your invitation, I respond with comments on the text of the Draft CAO. As a second part, I attach as Exhibit “A” another copy of my letter dated October 11, 2019 to Ms. Tamara Austin of the State Water Resources Control Board explaining why the issuance of an order to E-Z Storage is improper. The reasons stated in Exhibit “A” remain as valid as they were when I sent Exhibit “A” in 2019.

REQUEST FOR EXTENSION

The draft CAO calls for certain deliverables within 60 days and 90 days of the formal issuance of the CAO. As the Board is aware, since the draft CAO is being issued both to E-Z Storage and Teledyne, the two entities must negotiate and then coordinate their work on the deliverables. Such negotiation and coordination cannot reasonably be accomplished and deliverables provided within the 60-day and 90-day timeframes. Therefore, E-Z Storage requests an extension of time for the initial deliverables to, respectively, March 15, 2023 and April 15, 2023.

A.1.1



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A.1.2 Moreover, the draft CAO seems to envision that remedial action is to be achieved within these timeframes (see p. 13 of the draft CAO, “Conduct Remedial Action”). While the other deliverables may, with difficulty, be achievable within the timeframes set by the draft CAO, provided the extensions requested herein are granted, it is unclear how the Board envisions the remedial action to be completed within such timeframes. The Board should clarify its intention in this regard.

COMMENTS ON DRAFT CAO

COMMENT 1:

P. 2 of the draft CAO states in part: “The Pacific Electric Railway Venice–Inglewood Line operated on the Site from the 1920s through the 1940s, when ownership transferred to the Southern Pacific Transportation Company. Between the 1940s and the 1980s, Southern Pacific Transportation Company owned the Site and operated a railroad on it. Southern Pacific Transportation Company also maintained a paved parking area on the Site to the west/southwest of the railroad from the 1960s to the 1980s.”

A.2.1 It is our understanding that, other than making an initial inquiry of the railroad, the Board
A.2.2 has done nothing further with respect to investigating the railroad’s activities on the Site. We
A.2.3 would respectfully suggest that no CAO should issue against E-Z Storage unless and until the potential responsibility of the railroad for its activities during its 60-year tenure on the Site are more fully investigated; or alternatively, enforcement of the draft CAO against E-Z should be delayed until the Board figures out whether the railroad should have been joined as a responsible party in the CAO.

A.2.4 If the Board does not accept these requests, then this section of the draft CAO should at least be revised to state, after the last sentence quoted above, “Further investigation of the railroad’s activities on the Site from the 1920’s to the mid-1980’s is warranted.”

COMMENT 2:

A.3.1 P. 4 of the draft CAO states in part: “the location and depth of the shallow soil impacts at the Site, with the general operation of public storage spaces, suggest a possible surface discharge of COCs at the Site within that time period.”

This statement is unwarranted given that the statement itself admits it is based on speculation and no evidence of surface discharge is provided. As stated in Partner Engineering’s *Historical Records and Database Review – August 16, 2018*: “Based on the review of historical records, it appears that no historical activities have occurred on the subject property while it was



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operating as the EZ Storage Facility that would result in contaminant impacts to the subsurface. However, historical records (aerial photographs and historical lease records in particular) indicate that the subject property was formerly leased to Teledyne Micro Electronics from as early as 1978. Historical aerial photographs illustrate the Teledyne facility appears contiguous with the subject property during that time.”

A.3.2

Accordingly, this section of the draft CAO should read: “the location and depth of the shallow soil impacts at the Site, with the general operation of public storage spaces, suggest a possible surface discharge of COCs at the Site within that time period. **Other than an incident investigated in 2012 in connection with a tenant’s storage of unknown chemicals at the site in an area of the Site different from the contamination impacts on the southern portion, there is no direct evidence of any hazardous chemical storage or discharge by either E-Z or its tenants.**”

COMMENT 3:

P. 4 of the draft CAO states in part: “The following evidence indicates discharges occurred: Records indicate past evidence of illegal chemical storage on the Site, including Los Angeles Police Department records in 2012. While tenant contracts specifically prohibit the business use of leased space for manufacturing of any kind as well as the use or storage of hazardous substances, operations at the Site may have not maintained adequate control or full knowledge of their Tenant’s on-site activities.”

The California Clandestine Drug Lab (CDL) database listing indicates that use of Unit #1167 on the Site as a CDL was reported on February 16, 2012. Detectives from the Los Angeles Police Department (LAPD) reportedly took possession of Unit #1167 on April 5, 2012 and removed the contents from the premises, noting that it had been used as a drug lab. The CDL listing does not provide any information identifying the substance(s) removed.

Further, Unit #1167 is located in Building A, a considerable distance from where contamination impacts are found and there is no information regarding remedial actions undertaken and/or recommended by the LAPD. Pictures by LAPD of the drums when pulled from Unit 1167 indicated that the drums were on the north side of the building and not near the south side parking lot where contamination impacts have been detected.

A.4

This section of the draft CAO should accordingly be revised to state: “The following evidence allows the Board to infer that discharges on the southern portion of the Site occurred: Records indicate past evidence of illegal chemical storage on the Site, including Los Angeles Police Department (“LAPD”) records in 2012. **While the discharge addressed by the LAPD was not on the southern portion of the Site, while chemicals involved in the illegal storage and**



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A.4

discharge are unknown, and while the tenant contracts specifically prohibit the business use of leased space for manufacturing of any kind as well as the use or storage of hazardous substances, operations at the Site may have not maintained adequate control or full knowledge of their Tenant’s on-site activities.”

COMMENT 4:

P. 7 of the Draft CAO states in part: “The highest concentrations were detected near the southwest corner of the on-Site building. The presence of VOCs, primarily PCE and TCE beneath the Site threatens to cause vapor intrusion into buildings. Elevated concentrations of PCE and TCE warrant indoor air sampling, which has not been conducted at the Site.”

A.5

In fact, Partner’s PowerPoint presentation *Historical Records / Land Use Review and Contaminant Impact Summary – October 2, 2018*, indicates ALTA performed indoor air sampling in one building at the EZ Storage Site in 2015. See Exhibit “B” hereto. This PowerPoint presentation was presented to the Board. Also see the October 2018 e-mail to Robert Ehe and its attachments enclosed as Exhibit “B” hereto. The indoor air sampling indicated that the results were mostly non-detect.

A.5.1

Accordingly, the statement, “Elevated concentrations of PCE and TCE warrant indoor air sampling, which has not been conducted at the Site”, should be eliminated.

COMMENT 5:

P. 6 of the Draft CAO states in part: “The depth to groundwater is approximately 13 feet bgs. Because the depth to groundwater is shallow, the presence of the VOCs beneath the Site threatens to cause vapor intrusion into buildings, including the E-Z Storage facility building. Long-term migration of VOCs in groundwater at the Site could potentially impact surface water at Ballona Creek.”

A.6

In light of the fact that indoor air sampling was conducted and that the results were mostly non-detect, the language “**Because the depth to groundwater is shallow, the presence of the VOCs beneath the Site threatens to cause vapor intrusion into buildings, including the E-Z Storage facility building**” should be eliminated.



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COMMENT 6:

P. 8 of the Draft CAO reads: “This Draft CAO requires investigation and submittal of work plans. Based upon Los Angeles Water Board staff experience with similar investigations, the approximate cost of these reports is in the range of \$700,00 to \$1,300,000.”

A.7

It is unclear to what scope of work this estimate of expense is referring. Is the estimate referring to the point where the Site is eligible for a no further action determination by the Board? Or is the estimate referring only to the preliminary deliverables due within 60-90 days after the formal issuance of the CAO? This statement needs clarification.

COMMENT 7:

P. 9 of the Draft CAO states in part: “The threat of vapor intrusion into buildings at and near the Site has caused or threatens to cause nuisance as defined in Water Code section 13050, subdivision (m).”

A.8

In fact, as discussed above, the vapor intrusion investigation which was done at E-Z revealed essentially no such threat. As for buildings “near the Site”, we are aware of none; if the Board intends on making this statement, it is too vague to follow and at least the general areas of such buildings should be described. Otherwise, this sentence should just be eliminated.

COMMENT 8:

P. 10 of the Draft CAO states in part: “E-Z Storage-Marina 2, LP is a discharger because they are the current owner of the Site, and have caused or permitted waste to be discharged or deposited where it has discharged to waters of the State and has created, and continues to threaten to create, a condition of pollution or nuisance. As the current owner of the property, E-Z Storage-Marina 2, LP has the legal ability to control the discharge.”

A.9

Review of historical lease records indicated that approximately 29,000 square feet (SF) of the westernmost current E-Z Storage property was leased to and utilized by Teledyne from at least 1978 to 1983. Historical aerial photographs show the 29,000 SF area of the Site being used for parking along with the southern portion of the Teledyne property. Additionally, no records of chemical use on E-Z Storage were identified that could possibly have resulted in the high concentrations of VOCs that have been detected during the ALTA/Teledyne investigations at the Site.

Accordingly, the above quoted text in the draft Draft CAO should be eliminated.



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COMMENT 9:

A.10

P. 11, fn 2 of the Draft CAO states: “State Water Board Order WQ 86-16 (*Stinnes-Western*) supports the use of evidence of chemical use, standard chemical handling practices, and detections of that chemical in the environment as reasonable bases supporting a cleanup and abatement order. ‘As we noted earlier, given the very low action levels for these chemicals, today we are concerned with any discharge.’ (*Ibid.* at n. 4.):

But as the above comments show, 2 of these 3 components—evidence of chemical use and standard chemical handling practices—are missing in the case of E-Z. Therefore, fn 2 should be eliminated.

COMMENT 10:

A.11

P. 15 of the Draft CAO requires E-Z Storage to “Conduct Groundwater Monitoring”. This requirement appears to be duplicative of what Teledyne is already doing, to wit: The 3rd Quarter 2022 Groundwater Monitoring Report (dated September 14, 2022) for the Teledyne property and off-site wells prepared by NV5 Alta Environmental (Alta) summarizes the results of monitoring performed since 2016 and the current results. Alta concludes the Report with a recommendation for monitoring to be reduced from quarterly, to semi-annually.

Accordingly, being duplicative, the just-quoted requirement should be eliminated from the CAO as formally issued.

CONCLUSION

Thank you for considering these comments. I and other representatives of E-Z are available to discuss at your request.



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Please note that E-Z Storage regards the present proceeding as subject to the Administrative Procedure Act's Bill of Rights and that E-Z Storage's participation in responding to the draft CAO is not intended to, and does not, waive EZ Storage's defenses, rights and remedies.

Very truly yours,

LEWITT, HACKMAN, SHAPIRO,
MARSHALL & HARLAN

By: *Stephen T. Holzer*
Stephen T. Holzer

cc: Dana Palmer, Esq., Teledyne counsel

EXHIBIT "A"

EXHIBIT "A"

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REFER TO FILE NUMBER
16586-2

October 11, 2019

VIA EMAIL & FEDERAL EXPRESS

Tamarin Austin, Esq.
State Water Resources Control Board
1001 I Street
Sacramento, California 9 5 814

Re: 12901 Culver Boulevard, Los Angeles, California

Dear Ms. Austin:

As you know, my law firm represents E-Z Storage.¹ I am taking this opportunity to provide the Regional Water Quality Control Board (“RWQCB”) with our view, and argument in support of our view, that EZ Storage should not be named as a responsible party under a Cleanup and Abatement Order in connection with the RWQCB’s investigation and oversight of contamination issues at 12901 Culver Blvd., Los Angeles (the “Culver Blvd. property”)

I. INTRODUCTION

EZ Storage first began ownership and occupancy of the Culver Boulevard property on April 22, 1985. Declaration of Michael Greenhut (“Greenhut Decl.”) submitted herewith, ¶ 1. Prior to that time, there were extensive business operations on the property. As ALTA itself puts it: There is a “[l]ong history of industrial activity going back to at least 1924 when the property was used by the Pacific Electric Railroad Company.” *Re Panama Street Site, Alta Additional Offsite Assessment and Well Installation Report-E-Z Storage Property-MCGU-17-7364*, dated March 29, 2019 (“*ALTA March 29, 2019 report*”), Section 2.2.2.

From 1902-1985, Southern Pacific Transportation Company and its predecessors (the “railroad”) owned the property and ran railroad tracks through the property. *090618 ALTA Power Point-EZ Storage History (“ALTA Power Point”)*, slide 3 and *ALTA March 29, 2019 report*, Section 2.1. From approximately 1927 to at least 1956, there was agricultural use in the “general vicinity” of the property. *ALTA Power Point*, slide 3.

¹ The reference to “EZ Storage” herein includes reference to all limited partnership entities or Trusts with a present ownership or leasehold interest in 12901 Culver Boulevard, Los Angeles, California (the “Culver Boulevard property”) and any of such entities or Trust’s predecessors which at various times also have had an interest in the property since April 22, 1985.

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In April 1979, the railroad leased a portion of the property to Marjorie Wisdom for the sale of pottery and nursery stock, which business she ran as the American Fruit Growers' Exchange (the "Exchange"). See the lease from the railroad to Ms. Wisdom submitted herewith as Exhibit "1" and the map submitted herewith as Exhibit "2"

Note also that the map submitted herewith as Exhibit "2" shows that the Exchange enterprise apparently had a sizable building with two loading docks. As the map shows, the Exchange and the two loading ramps were located in the southwest vicinity of the hot spots of contamination found by investigations of the property.²

As mentioned, in 1985 EZ Storage acquired the Culver Boulevard property from the railroad. In connection with the acquisition, the railroad terminated leases on the Culver Boulevard property. See Exhibit "3" hereto, railroad letters of March 4, 2018 to Teledyne and Marjorie Wisdom, telling the lessees "to remove all your improvements situated on the lease premises as sale of the property will soon be completed."³

There has been a billboard on the Culver Boulevard property during the time that EZ Storage has occupied the property. However, as the Partner Engineering and Science "Professional Opinion Regarding Potential Contaminant Impacts from Historical Billboard Operations" submitted herewith explains, the chemicals used in connection with the billboard cannot be the cause of the contamination at issue.

When the property was taken over by EZ Storage, it was in fact vacant; Greenhut Decl., ¶ 2. The only use of the property since then has been as a storage facility. Greenhut Decl., ¶ 3. No industrial or manufacturing operations have been permitted. Greenhut Decl., ¶ 3.⁴ In short, whatever others might have done at the property before EZ Storage took over in 1985, EZ Storage has never discharged, or permitted the discharge, of the contaminating chemicals now under discussion.

² In July 1979 the railroad leased a part of the Culver Boulevard property to Isadore Chernick and Goldie Chernick. Nothing is presently known about what activities they conducted on the property

³ EZ Storage has come across a document indicating that, at one point in December 1984, approximately five months before the closing of the acquisition of the Culver Blvd. property, the railroad was going to assign the Teledyne and Wisdom leases to EZ Storage. Exhibit "4" hereto. However, the assignment was never accepted (the EZ Storage signatures are blank) and Mr. Greenhut, one of the partners of EZ Storage when it acquired the property, has no recollection of ever signing Exhibit "4." Greenhut Decl., ¶ 4.

⁴ This Declarant's percipient witness experience covers the entire 34+ years that EZ Storage has owned the Culver Blvd. property.

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II. **THE BOARD HAS NOT MADE A REASONABLE EFFORT TO IDENTIFY DISCHARGERS OR ENTITIES THAT PERMITTED DISCHARGES**

23 CCR § 2907, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*, provides:

The procedures Regional Water Boards shall implement in making decisions as to when a person may be required to undertake an investigation related to a discharge or threat of a discharge subject to WC § 13304.

The Regional Water Board shall:

- Use any relevant evidence to identify dischargers;**
- Make reasonable efforts to identify dischargers;**
- Require identified dischargers to investigate; and**
- Coordinate with other agencies.**

(emphasis added).

Here, the RWQCB has not yet used all relevant evidence or made reasonable efforts to identify dischargers. As discussed above, the Culver Blvd. property has, at least since the 1920's, been a site on which (until EZ Storage's ownership) substantial activity by various potentially polluting third parties has taken place. Despite the fact that the railroad owned the Culver Boulevard property for over 60 years, from 1924-1985 and during that time leased the property to various business entities, the RWQCB has not fully investigated the railroad's tenure.

III. **THERE IS NO EVIDENCE THAT EZ STORAGE "DISCHARGED" OR PERMITTED THE DISCHARGE OF ANY CONTAMINANTS AT THE CULVER BLVD. PROPERTY**

- A. **Water Code Section 13304 (a) allows for an Order to issue only against dischargers or those who permit others to discharge.**

Water Code Section 13304 (a) provides:

(a) A person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted,

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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.
(emphasis added).

There have been multiple entities operating on the Culver Blvd. property and potentially discharging waste, or at least permitting waste discharge to occur, including but not limited to the railroad, agricultural operations, Teledyne, the American Fruit Grower Exchange and the Chernicks. EZ Storage is in fact the only entity that can show it did not cause, or permit, discharges to occur.

“Discharge” means “the act of depositing ... something laid, placed or thrown down’.” *People ex ref. Younger v. Super. Ct.*, 16 Cal. 3d 30, 43 (1976) (quoting Webster’s Third Int’l Dict., Unabridged (1963)). *Accord, Lake Madrone Water Dist. v. State Water Res. Control Bd.*, 209 Cal. App. 3d 163, 174 (1989) (quoting Webster’s New Int’l Dict., 644 (3d ed. 1961)): discharge means “relieve[d] ... a charge, load or burden’....” Thus, the concept of “discharge” as used in Section 13304 (a) inherently means an affirmative act or permission for others to take an affirmative act.

The case law is in accord with this interpretation that some affirmative conduct is necessary before an RWQCB Order can issue⁵:

In *Wells Fargo Bank, N.A., as Trustee for the Clara Poppic Trust, Plaintiff v. Kenneth G. Renz, et al., Defendants and Related Actions*, (2011 N.D. Cal.) 795 F. Supp. 2d 898, 918, the Court stated: “The Act derives from the common law of nuisance. ... Thus, the relevant question for purposes of liability is ‘whether the defendant created or assisted in the creation of the nuisance.’” *Accord, Redevelopment Agency of the City of Stockton v. BNSF Railway Company, et al.*, (2011 9 Cir.) 643 F. 3d 668, 678 : “[S]ection 13304 should be construed harmoniously with the law of nuisance....[T]he California Court of Appeal has concluded that the words ‘causes or permits’ within section 13304 were not intended ‘to encompass those whose involvement with a spill was remote and passive.’ ... (“[T]hose who took affirmative steps directed toward the improper discharge of[hazardous] wastes ... may be liable under [section 13304]....” ’).” (emphasis in original).

⁵ To the extent the RWQCB may have in the past adopted a contrary interpretation of Section 13304 (a), such interpretation is squarely at odds with both the plain wording of the statute and with case law and should be abandoned.

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Put another way, “Under section 13304, subdivision (a), prior to issuing a cleanup or abatement order to a specified person, a regional board is required to establish a causal or connecting link between the person and an actual or threatened discharge of waste *into state waters*.” (emphasis added in part). *San Diego Gas & Electric Company v. San Diego Regional Water Quality Control Board*, (2019) 36 Cal. App. 5th 427, 442.

Here, there is no evidence, whether direct or even circumstantial, of an affirmative act of EZ Storage, whether directly or through permission to another, to discharge waste. As discussed above, any such discharge occurred before EZ Storage became involved in the Culver Blvd. property.

B. The Legislative history of Section 13304 (a) shows that an Order cannot issue to a present owner of property where only others have discharged waste prior to the present ownership of the property.

The legislative history shows that the State Legislature was focused on the actual discharger when the Legislature adopted the present version of Section 13304 (a) in 1980. Prior to the 1980 amendment, the language of Section 13304(a) was essentially the same as it was after the amendments. The jurisdiction of the RWQCB was expressly limited to dischargers, because *dischargers* were the subject of Waste Discharge Requirements; and violators of those Requirements were noncompliant *dischargers*.

The Legislature certainly had the power to expand the RWQCB’s authority to include categories of persons in addition to dischargers, but that expansion would have required a change in language. The word “owner,” for example, could have been used if the Legislature had wished to allow the regional boards to order owners to clean-up and abate contaminants discharged by someone else.

But the Legislature did not change the language in that manner even though it certainly had an example available in the CERCLA law first enacted in 1980 by the United States Congress, 42 U.S.C. §§ 9601 *et seq.*, and the California equivalent adopted in 1981, the Hazardous Substances Account Act (“HSAA”), Cal. Health & Safety Code § 25300 *et seq.* Both statutes designate “owners”, “operators” and “arrangers” as the responsible parties for clean-up and remediation of designated sites.

Those terms have been comprehensively defined by statute and case law. The omission of any of them could not have been an accident or oversight. The “Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes ‘in the light of such decisions as have a direct bearing upon them’ ”. *San Diego Gas & Electric Company, supra*, 36 Cal. App. 5th at 439.

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It is beyond the power of the RWQCB to refashion the scope of its own authority to conform to CERCLA, the HSAA or other laws when the Legislature has not done so. *See, e.g.*, Cal. Health & Safety Code § 25187(b)(5) (providing for enforcement against "present and prior owners" of hazardous waste facilities); Cal. Health & Safety Code § 25360.3(c)(2) (providing for recovery actions against property owners for the release of a hazardous substance, including for a "release [that] occurred before the date that the owner acquired the property"); Authors Statement for AB2700 (1980 amendments to Health & Safety Code permitting DTSC to issue an order to "owners ... and any prior owners of the site"); *City of Stockton, supra*, 643 F.3d at 677-78 (applying different standards when determining if the defendant had liability under the Polanco Act, which would allow recovery if defendant had been liable under either (1) the Water Code § 13304(a), which requires that defendant actively or knowingly caused or permitted the contamination or (2) CERCLA, which only requires proof of passive ownership).

C. **There is no causal connection between EZ Storage's ownership and operation of the Culver Blvd. property and the discharge of waste.**

The State Water Resources Control Board has long held that:

"To meet the requirement of fairness, the Regional Board, before acting on waste discharge requirements and proposed orders, must ensure that there is a factual and legal basis in the record for its decision and must indicate its reasoning and the factual basis for its decision to the affected parties."

In the Matter of Project Alpha, 1974 State Board Order No. WQ 74-1, at 3, Exhibit "5" hereto.

See also Topanga Ass'n for a Scenic Cmty. v. City of L.A., (1974) 11 Cal. 3d 506, 514-15 (1974) (an agency "must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the [legal] basis for the [agency's] action"; and the findings must "bridge the analytic gap between the raw evidence and ultimate decision or order," disclosing "the analytic route the . . . agency traveled from evidence to action"); *City of Brentwood v. Centr. Valley Reg'/ Water Quality Control Bd.*, 123 Cal. App. 4th 714, 720 (2004).

Here, the facts demonstrate that, of all the parties which should be under investigation by the RWQCB, EZ Storage is the only one who can demonstrate it has done nothing to cause it to be considered a discharger under Water Code Section 13304 (a). There is no thus basis to name EZ Storage as a responsible party.

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October 11, 2019
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IV. THE LOS ANGELES POLICE DEPARTMENT RAID ON A TENANT'S STORAGE SPACE AND PARKED CARS CANNOT ACCOUNT FOR THE CONTAMINATION AT ISSUE

It has been suggested that a tenant's chemical storage may be responsible for the contamination at issue. *ALTA Power Point*, slide 11. This suggestion is far-fetched, in that the contamination at issue is located in the south western portion of the Culver Blvd. property while the storage space was located in the furthest building away from the contamination in the northeastern portion of the property. Greenhut Decl., ¶ 5.

It has also been suggested that cars parked on EZ Storage's parking lot in the southwestern portion of the Culver Blvd. property are responsible for the contamination. *ALTA Power Point*, slide 11. There has been no effort factually to establish that the types and volume of chemical waste found (25,400 ug/kg of PCE in soil; 684,000 ug/l of PCE in soil vapor; and 31,000 ug/l in groundwater; *Partner Engineering and Science April 24, 2019* letter to RWQCB, p. 1) came from parked cars, even putting aside the fact that EZ Storage has never permitted its tenants to act as amateur mechanics on the cars. Greenhut Decl., ¶ 6.

V. THE ADMINISTRATIVE PROCEDURE ACT AND ITS BILL OF RIGHTS BILL OF RIGHTS APPLY TO THIS MATTER

I also must express concern over the procedure the RWQCB intends to employ in deciding whether or not to issue a Section 13304 Order to EZ Storage. Under the Administrative Procedure Act and the Act's Bill of Rights, the decision maker on this issue should be a separate person or persons from the staff that is investigating the issue. This is true whether the procedure is formal or informal. See August 2, 2006 Memorandum from Michael A.M Lauffer, Chief Counsel, to the State Water Resources Control Board and California Regional Water Quality Control Boards, "*Summary of California Adjudicative Proceedings Before the California Water Boards*" submitted herewith as Exhibit "6" (pursuant to this Memo, under the circumstances here the procedure should be formal).

The RWQCB in this matter is now performing a judicial function. As stated in an April 25, 2013 Memorandum (p. 1) from Mr. Lauffer to the State water Resources Control Board and the Regional Water Quality Control Boards, Exhibit "7" hereto (emphasis added):

The State Water Resources Control Board and the nine California Regional Water Quality Control Boards perform a variety of functions. The boards convene to set broad policy consistent with the laws passed by Congress and the Legislature. In this regard, the boards perform a legislative function. The boards also routinely determine the rights and duties of individual dischargers or even a class of dischargers. In this regard, the boards perform a judicial function.

Tamarin Austin, Esq.
October 11, 2019
Page 8

Accordingly, EZ Storage would like to know the procedure the RWQCB will employ in making its decision as to whether or not to name EZ Storage in an Order. We would like this disclosure in writing, including but not limited to identifying the decision maker who will make the decision as to whether or not to name EZ Storage in an Order and the names of the staff who are investigating the issue. We would also like to know if the RWQCB is billing Teledyne for its investigation of EZ Storage.


VI. CONCLUSION

Whoever caused the contamination at issue and however such contamination was caused, this did not occur on EZ Storage's watch. For the reasons discussed, Water Code Section 13304 does not provide a basis for the RWQCB to name EZ Storage as a responsible party under a Cleanup and Abatement Order.

Please note that EZ Storage regards the present proceeding as subject to the Administrative Procedure Act Bill of Rights and that EZ Storage's participation in informal discussion with the RWQCB is not intended to, and does not, waive EZ Storage's position with respect to this issue.

Sincerely,

LEWITT, HACKMAN, SHAPIRO,
MARSHALL & HARLAN

By: 
Stephen T. Holzer

STH/ke
Enclosures
cc: Dana Palmer, Esq.

EXHIBIT 1

Approved as to form by General Counsel
June 1, 1967

S-2252

SPTCo "ORIGINAL"
COMMERCIAL LEASE

LEASE AUDIT
No. 18718B
2

M.P. N
Non-0

This Lease, made this 17TH day of APRIL, 1979,
by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY,
a corporation, herein called "Railroad", and MARJORIE WISDOM, an individual,
address: 141 Arnez Street, Beverly Hills, California 90211,
herein called "Lessee"

Witnesseth: That Railroad hereby leases to Lessee the premises of Railroad at or near
Alla Station, County of Los Angeles

State of California, shown on attached print,
for the term of one (1) year from the 15TH day of APRIL, 1979,
upon the following terms and conditions

1. Railroad reserves for itself, its successors, assigns and licensees, the right to construct, maintain and operate any ~~existing or new~~ existing and new or additional pipe, telegraph, telephone and power transmission lines upon, over and beneath the leased premises.

In addition to the taxes as hereinafter specified,
2. Lessee agrees to pay rental at the rate of

FOUR HUNDRED FIFTY Dollars (\$ 450.00)

per month, payable monthly in advance ~~at the end of each month~~
~~based on the effective date of this lease or the first day of the month, whichever date is later~~
~~and the rental shall be paid to the Railroad on the first day of the month following each anniversary of the effective date of this lease.~~

Any privilege, sales, gross income or other tax (not including income tax) imposed upon the rentals herein provided to be paid by the Lessee, or upon the Railroad in an amount measured by the rentals received by Railroad, shall be paid by the Lessee, in addition to the amounts set forth herein, whether such imposition of tax be by The United States of America, the state in which the leased premises are located, or any subdivision or municipality thereof.

3. Said premises shall be used by Lessee solely and exclusively for the installation, maintenance and use of Lessee-owned improvements and related facilities for the sale of pottery and nursery stock.

Lessee agrees to comply with all applicable laws and regulations with respect to the use of the leased premises.

If the Lessee does not, within ninety (90) days, commence the use of the leased premises for the purposes herein mentioned, or discontinues such use for a period of ninety (90) days, Railroad may terminate this lease on fifteen (15) days' written notice.

Lessee agrees not to pile or store or permit to be piled or stored upon the leased premises, ~~with~~ ~~any~~ ~~of~~ ~~the~~ ~~explosives~~ ~~or~~ ~~ammunition~~ ~~or~~ ~~any~~ ~~other~~ ~~explosive~~ ~~substance~~ ~~or~~ ~~material~~, any gunpowder, dynamite, gasoline or other explosive substance or material.

4. Lessee agrees to keep the leased premises and all buildings and structures thereon free from rubbish and in a neat and safe condition and satisfactory to Railroad. Lessee shall maintain, at Lessee's sole cost and expense, in good condition and repair, satisfactory to Railroad, all buildings and structures upon said leased premises, except those owned by the Railroad. The leased premises and buildings and structures thereon shall not be used for displaying signs and notices other than those connected with the business of Lessee contemplated by this lease. Such notices and signs shall be neat and properly maintained. Railroad shall have the right to enter the leased premises at reasonable times to inspect the same.

5. Lessee agrees to pay, before they become delinquent, all taxes and assessments against the leased premises, or which might become a lien thereon, by reason of any buildings, structures or other property, real or personal, on the leased premises (except those owned by Railroad), or by reason of Lessee's activities. Railroad may at its option pay such taxes or assessments, and such payments will be repaid by Lessee on demand.

6. In the event Lessee shall not promptly correct any default by Lessee hereunder after receipt of notice of such default from Railroad, Railroad shall have the right to terminate this lease forthwith and to re-take possession of the leased premises. Waiver of any default shall not be construed as a waiver of a subsequent or continuing default. Termination of this lease shall not affect any liability by reason of any act, default or occurrence prior to such termination.

7. Upon the expiration or termination of this lease, or any extension or renewal thereof, Lessee, without further notice, shall deliver up to Railroad the possession of the leased premises. Lessee, if not in default hereunder, shall be entitled, at any time prior to such expiration or termination, to remove from the leased premises any buildings or structures wholly owned by Lessee. Lessee shall restore said leased premises to the condition in which they existed at the time Lessee took possession. Upon the failure or refusal of Lessee to remove from the leased premises all buildings, structures and all personal property owned by Lessee, prior to the expiration or termination of this lease, said buildings, structures and personal property shall thereupon, at the option of Railroad, become the sole property of Railroad, or if Railroad so elects it may remove from the leased premises any buildings, structures and other personal property owned by Lessee, and Railroad may also restore the leased premises to substantially the condition in which they existed at the time Lessee took possession, all at the expense of Lessee, which expense Lessee agrees to pay Railroad upon demand. In the event of such failure or refusal of Lessee to surrender possession of said leased premises, Railroad shall have the right to re-enter upon said leased premises and remove Lessee, or any person, firm or corporation claiming by, through or under Lessee, therefrom.

8. Lessee shall not construct, reconstruct or alter structures of any character upon the leased premises without the prior written consent of Railroad. Lessee shall not commence any repairs (except emergency repairs) until fifteen (15) days after written notice to Railroad.

Lessee further agrees not to install or extend any electrical wires in any Railroad-owned improvements on the leased premises without the prior written consent of Railroad.

9. Lessee agrees to arrange and pay for all water, gas, electricity and other utilities used by Lessee on the leased premises direct to the company providing such service.

10. Lessee will fully pay for all materials joined or affixed to the leased premises, and pay in full all persons who perform labor upon the leased premises and will not suffer any mechanics' or materialmen's liens of any kind to be enforced against the leased premises for any work done, or materials furnished, at the Lessee's instance or request. If any such liens are filed thereon, Lessee agrees to remove the same at Lessee's own cost and expense and to pay any judgment which may be entered thereon or thereunder.

Should the Lessee fail, neglect or refuse so to do, Railroad shall have the right to pay any amount required to release any such lien or liens, or to defend any action brought thereon, and to pay any judgment entered therein, and the Lessee shall be liable to the Railroad for all costs, damages, and reasonable attorney fees, and any amounts expended in defending any proceedings, or in the payment of any of said liens or any judgment obtained therefor. Railroad may post and maintain upon the leased premises notices of non-responsibility as provided by law.

11. In case the leased premises or any part thereof are in either the State of Arizona or Utah, Lessee will give Railroad and the lessor of Railroad, before allowing any construction, alteration or repair to be done upon the leased premises, a bond satisfactory in form and amount and to be issued by some surety company to be approved by Railroad, conditioned that the Lessee shall pay or cause to be paid all contractors, sub-contractors, laborers, operatives and other persons who may labor or furnish labor, materials or tools in the performance of such construction, alteration, or repair.

12. Lessee agrees to release and indemnify Railroad from and against all liability, cost and expense for loss of or damage to property and for injury to or deaths of persons (including, but not limited to the property and employees of each party hereto), when arising or resulting from:

- (a) the use of said premises by Lessee, its agents, employees or invitees, or
- (b) breach of provisions of this lease by Lessee

whether or not caused or contributed to by any act or omission of Railroad, its employees, agents, contractors, subcontractors or their employees or agents, or any other person.

The term "Railroad" as used in this Section 12 shall include the successors, assigns and affiliated companies of Railroad, ~~and any other rail track company operating upon Railroad tracks~~ if requested,

Lessee shall provide Railroad satisfactory evidence of insurance covering Lessee's liability under this lease in amounts not less than \$300,000/750,000 Bodily Injury and \$100,000/100,000 Property Damage. Except where prohibited by law, Lessee's Workmen's Compensation insurance covering operations on the leased premises shall include a waiver of subrogation against Railroad.

It is agreed that the limits of insurance specified above are the minimum amounts required by Railroad and shall be subject to revision from time to time.

13. In case Railroad shall successfully bring suit to compel performance of, or to recover for breach of, any covenant, agreement or condition herein written, Lessee will pay to Railroad reasonable attorney fees in addition to the amount of judgment and costs.

14. In case Lessee shall (except by Railroad) be lawfully deprived of the possession of the leased premises or any part thereof, Lessee shall notify Railroad in writing, setting forth in full the circumstances in relation thereto, whereupon Railroad may, at its option, either install Lessee in possession of the leased premises, or terminate this lease and refund to Lessee the pro rata amount of the rental for the unexpired term of the lease after the receipt of such notice, whereupon no claims for damages of whatsoever kind or character incurred by Lessee by reason of such dispossession shall be chargeable against Railroad.

15. There is reserved to Railroad the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying said premises, or that may be produced therefrom, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas and other hydro-carbon substances and products derived therefrom, together with the exclusive and perpetual right thereto, without, however, the right to use or penetrate the surface of, or to enter upon, said premises within five hundred (500) feet of the surface thereof, to extricate or remove the same.

16. Any notice to be given by Railroad to Lessee hereunder shall be deemed to be properly served if delivered to Lessee, or if deposited in the post office, postpaid, addressed to Lessee at the leased premises or to last known address.

17. Either party hereto may terminate this lease upon thirty (30) days' written notice to the other party. In the event of such termination by Railroad, the proportion of rent paid in advance allocable to any period after the termination date shall be refunded to Lessee.

18. In case Lessee holds over the term of this lease, with the consent of Railroad, such holding over shall be deemed a tenancy only from month to month, and upon the same terms and conditions as herein stated.

19. Time and specific performance are each of the essence of this lease.

20. In addition to the taxes specified in Section 5 hereof, Lessee shall reimburse Railroad for all taxes levied against the land included in this lease during the life hereof.

21. In the event Railroad enters into an agreement with a utility company providing service to Lessee at the leased premises for Lessee's sole use, Lessee shall pay to Railroad a charge of One Hundred Twenty-five Dollars (\$125) upon receipt of bill therefor to partially defray administrative costs.

22. Absence of markers does not constitute a warranty by Railroad of no subsurface installations.

23. Sections 24 and 25 on the attached Insert are hereby made parts of this lease.

THIS LEASE shall inure to the benefit of and be binding upon the heirs, administrators, executors, successors and assigns of the parties hereto, but shall not be assigned or subleased by Lessee without the prior written consent of Railroad.

IN WITNESS WHEREOF, the parties hereto have executed this lease in duplicate the day and year first above written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

WITNESSED BY:

By [Signature]
DISTRICT MANAGER-REAL ESTATE

[Signature]
(See Note) (Marjorie Wisdom) (Lessee)

NOTE: - If an incorporated company, lease should be executed by an authorized officer thereof and his title indicated; otherwise signature should be witnessed by an employee of Railroad, if practicable, if not, by a disinterested party.

I N S E R T

24. Should any leakage, spillage, or pollution of any type occur upon the leased premises due to Lessee's use and occupancy thereof, Lessee, at its expense, shall be obligated to clean the premises to the satisfaction of the environmental protection agency and/or other governmental body having jurisdiction thereover.

Lessee shall promptly and fully reimburse and indemnify Railroad should Railroad suffer or incur any fine, penalty, cost or charge due to such leakage, spillage, or pollution upon the leased premises.

Any related expense of required compliance with federal, state or local environmental regulations incurred by Railroad or Lessee shall be borne by Lessee, including any fines and judgments levied against Railroad or its property.

25. Notwithstanding anything to the contrary above or elsewhere in this lease, if improvements on the leased premises other than those which are owned by Railroad are not removed and premises restored prior to termination date, either by Lessee or by Railroad at Lessee's expense, then this lease, with all terms contained herein, including the payment of rental, shall, at Railroad's option, remain in effect until improvements are removed and premises restored.

*

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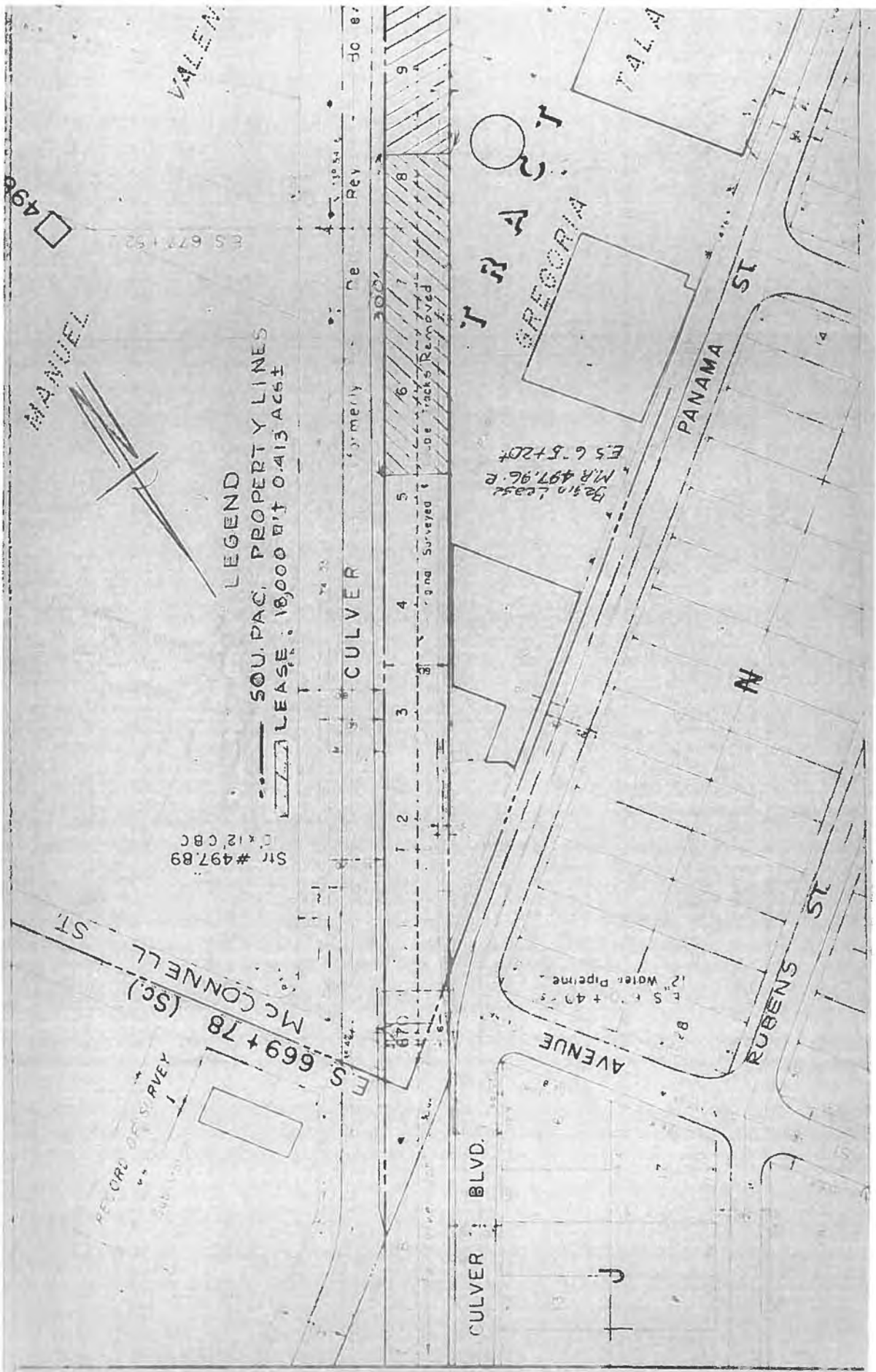
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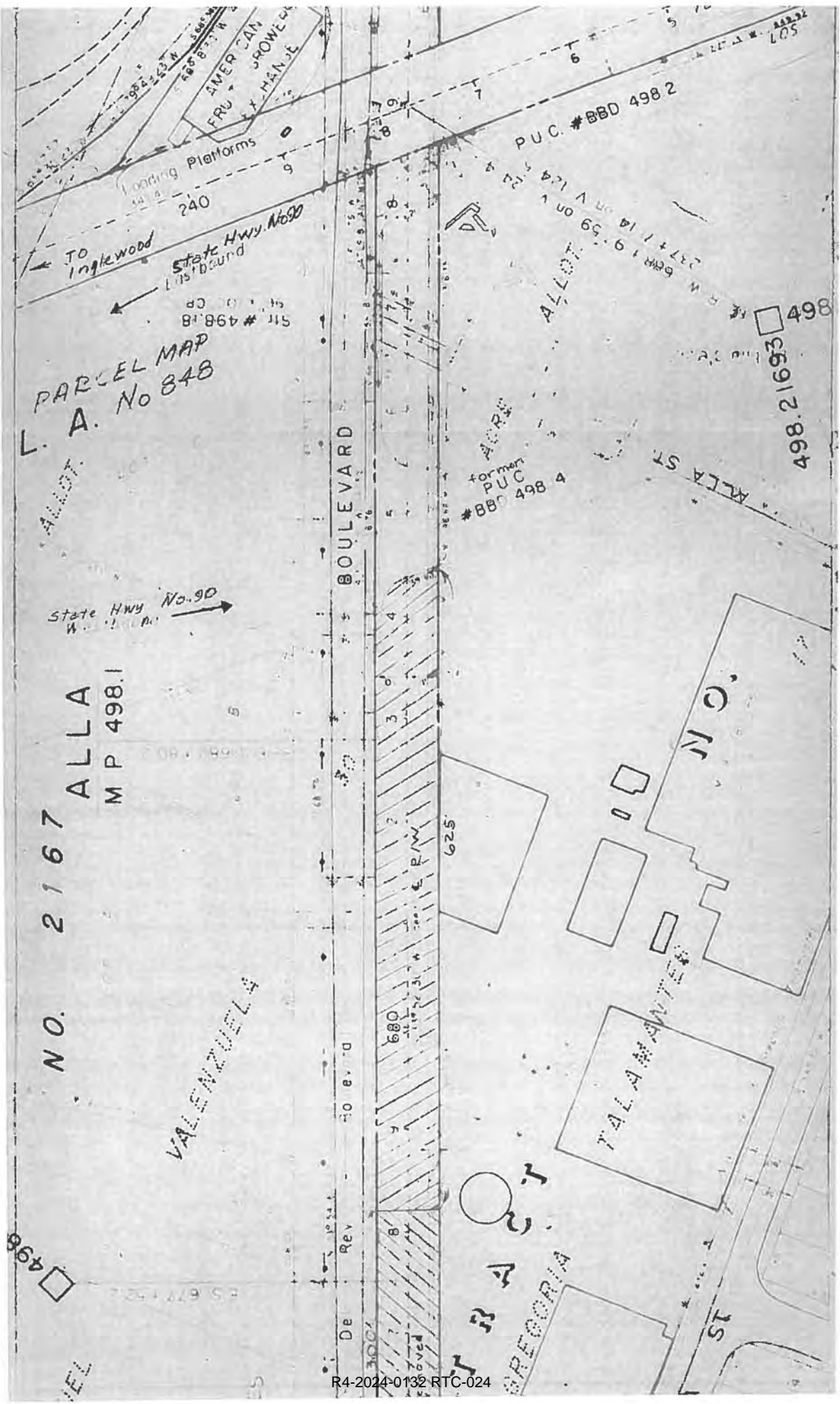
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PARCEL MAP
L. A. No 848

NO. 2167
ALLA
MP 498.1

State Hwy No. 90
W. p. →

ALLOT.

BOULEVARD

VALENZUELA

STRAUT
GREGORIA

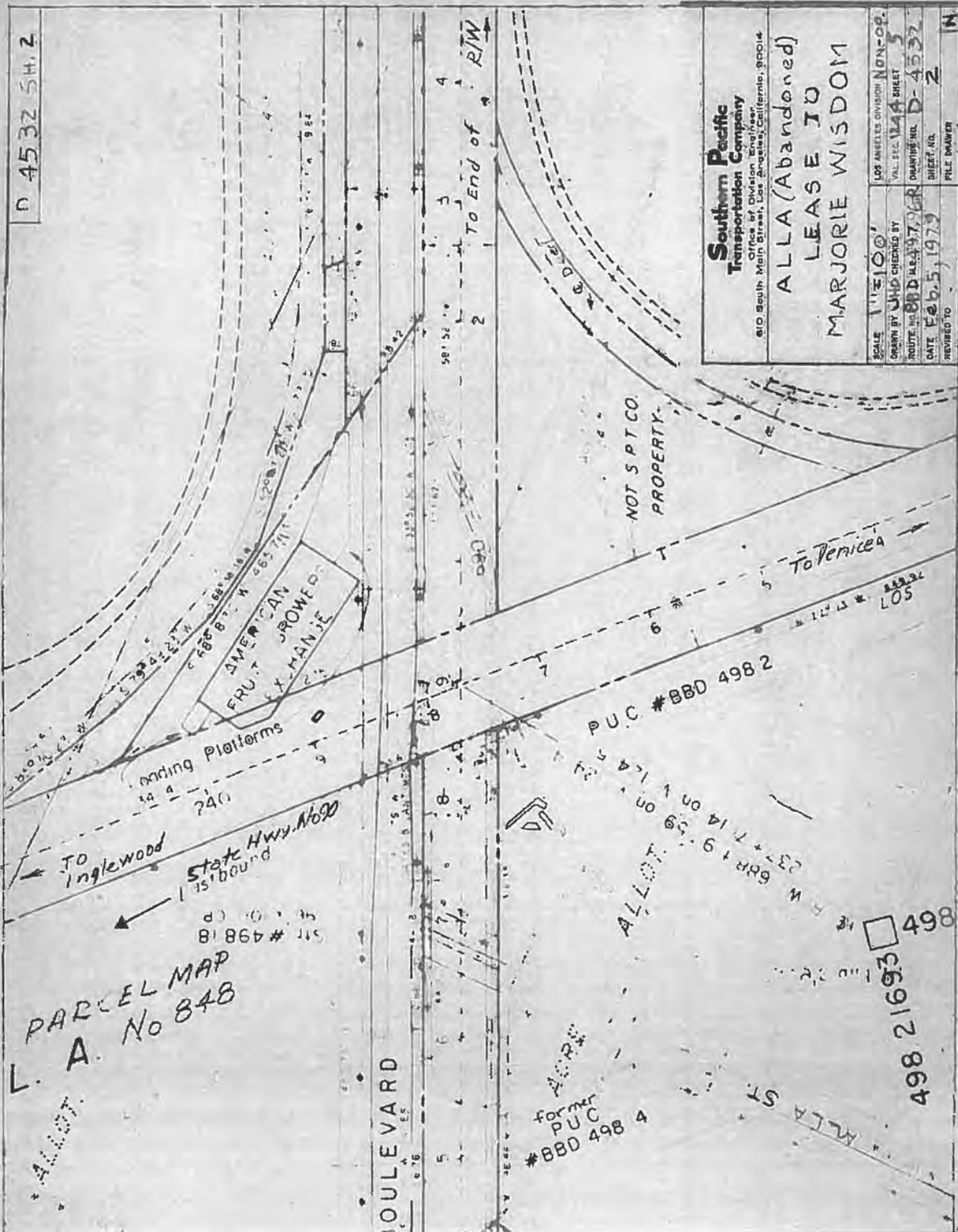
TALAMANTES
NO.

PUC. #BBD 498 2

former
PUC
#BBD 498 4

498.21693 498

D 4532 SH. 2



**Southern Pacific
Transportation Company**
Office of Division Engineer
610 South Main Street, Los Angeles, California, 90014

ALLA (Abandoned)
LEASE TO
MARJORIE WISDOM

SCALE	1" = 100'	LOS ABANDONED DIVISION	NON-OP.
DESIGNED BY	JHD	VAL. SEC.	144
ROUTE	BBD 498 2	DATE	Feb. 5, 1979
DATE	Feb. 5, 1979	QUANTITY	2
REVISED TO		SHEET NO.	2
		FILE NUMBER	IN

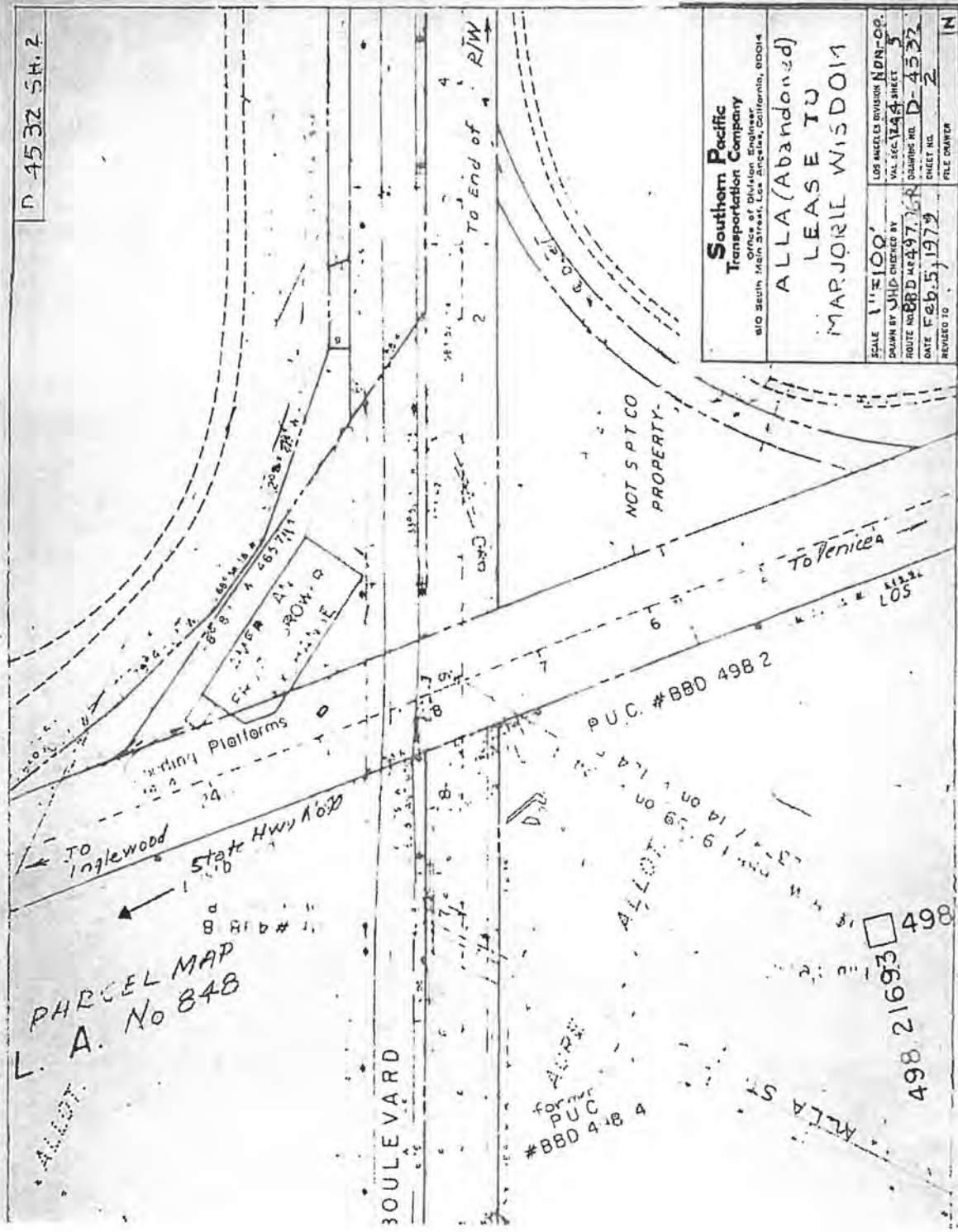
PARCEL MAP
L. A. No 848

FORMER
PUC
#BBD 498 4

498 21693 498

EXHIBIT 2

D 4532 SH. 2



Southern Pacific Transportation Company Office of Division Engineer 810 South Main Street, Los Angeles, California, 90014	
ALLA (Abandoned) LEASE TO MARJORIE WISDOM	
SCALE 1" = 100' DRAWN BY JHP checked by VAL SEC 1244 ROUTE # BBO 498 2 DATE Feb. 5, 1979	LOS ANGELES DIVISION NDR-CP. VAL SEC 1244 SHEET 5 DRAWING NO. D-4532 SHEET NO. 2 FILE DRAWER N

EXHIBIT 3

Santa Fe Pacific Realty Corporation

610 South Main Street
Los Angeles, California 90014
213/629-6503

R-14737-Alla-Wisdom-RJB

March 4, 1985

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Marjorie Wisdom
141 Arnez Street
Beverly Hills, California
90211

Dear Ms. Wisdom:

Refers to Lease Audit No. 187182 dated April 17, 1979 covering your use of Southern Pacific Transportation Company property at Los Angeles (Alla Station), California, for the installation, maintenance and use of Lessee-owned improvement and related facilities for the sale of pottery and nursery stock.

Further reference is made to my letter dated October 12, 1984 giving you thirty (30) day notice, as required under terms and conditions of lease, to remove all your improvements situated on the lease premises as Southern Pacific Transportation Company is in process of conveying its property.

In the event that you have not removed your improvement, you should arrange to do so as soon as possible as sale of property will soon be completed.

Representative of this office will inspect the property prior to executing Termination Agreements on behalf of Southern Pacific Transportation Company.

Should you have any questions, please contact Mr. R. J. Barry at 629-6615.

Very truly yours,

SOUTHERN PACIFIC TRANSPORTATION COMPANY
by SANTA FE PACIFIC REALTY CORPORATION,
its Agent

ORIGINAL SIGNATURE
R. A. SCHUFFENHAUER

Asst. Regional Manager
Real Estate

M.L.C./BJA

cc: Mr. David Greenhut
E Z Storage
16240 Dickens St.
Encino, CA. 91436

A Santa Fe Southern Pacific Company

Santa Fe Pacific Realty Corporation

610 South Main Street
Los Angeles, California 90014
213/629-8503

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Alla-Teledyne-RJB

March 4, 1985

Mr. Robert M. Penn
Teledyne Microelectronics
12964 Panama Street
Los Angeles, California 90066

Dear Mr. Penn:

Refers to Lease Audit Nos. 185699 and 195241 covering your use of Southern Pacific Transportation Company property at Los Angeles (Alla Station), California, for parking of vehicles.

Further reference is made to my letter dated October 12, 1984 giving you thirty (30) day notice, as required under terms and conditions of lease, to remove all your improvements situated on the lease premises as Southern Pacific Transportation Company is in process of conveying its property. With my letter, you were furnished duplicate counterparts of Termination Agreement for your execution and return.

With return of Termination Agreements, please advise if you have removed your improvements so that we may arrange to inspect the property prior to execution of Termination Agreement on behalf of Southern Pacific Transportation Company.

In the event that you have not removed your improvements, you should arrange to do so as soon as possible as sale of this property will soon be completed.

Should you have any questions, please contact Mr. R. J. Barry at 629-6615.

Very truly yours,

SOUTHERN PACIFIC TRANSPORTATION COMPANY
by SANTA FE PACIFIC REALTY CORPORATION
its Agent

ORIGINAL SIGNED
R. A. SCHUFFENHAUER

Asst. Regional Manager
Real Estate

MLC/BJA

cc: Mr. David Greenhut
E Z Storage
16240 Dickens St.
Encino, CA. 91436

A Santa Fe Southern Pacific Company

EXHIBIT 4

FOR VALUE RECEIVED, the undersigned, SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation, (Railroad), effective as of the _____ day of _____, 1984, hereby assigns, transfers, and sets over unto E Z STORAGE, a partnership composed of MICHAEL E. GREENHUT, CALVIN B. GROSS, MICHAEL J. BRINKMAN and DAVID GREENHUT, all of its right, title and interest in and to the following:

- (1) Lease dated September 27, 1978, between Railroad and Teledyne Micro Electronics, a corporation, as subsequently amended, relating to the leasing of certain premises of Railroad at Alla, California, as more particularly described on the print attached thereto, for parking operations (Railroad's Lease 185699),
- (2) Lease dated April 17, 1979, between Railroad and Majorie Wisdom, an individual, relating to the leasing of certain premises of Railroad at Alla, California, as more particularly described on the print attached thereto, for the maintenance and use of Lessee-owned improvements and facilities for the sale of pottery and nursery stock (Railroad's Lease 187182), and
- (3) Lease dated March 10, 1982, between Railroad and Teledyne Micro Electronics, a corporation, relating to the leasing of certain premises of Railroad at Alla, California, as more particularly described on the print attached thereto, for parking of vehicles (Railroad's Lease 195241).

The original counterpart of each of the above leases is attached and made a part hereof.

DATED at San Francisco, California, this 14th day of December, 1984.

SOUTHERN PACIFIC TRANSPORTATION COMPANY
By Southern Pacific Land Company, its Agent

By L. H. Phipps L. H. Phipps
Asst. Gen. Mgr.
Real Estate

The undersigned partnership hereby accepts the above leases and agrees to be bound by all the terms, covenants, and conditions of the attached leases.

WITNESSED BY:

E Z STORAGE

By _____
Michael E. Greenhut - Partner

Calvin B. Gross - Partner

Michael J. Brinkman - Partner

David Greenhut - Partner

DK67,DC21

EXHIBIT 5

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of
Project Alpha to Review Order
No. 73-37 of the California Regional
Water Quality Control Board, Santa
Ana Region

Order No. WQ 74-1

BY THE BOARD:

On June 29, 1973, the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) adopted Order No. 73-37 prohibiting the discharge of waste by Project Alpha (petitioner), at a proposed Class I disposal site near Corona, Riverside County.

On July 24, 1973, petitioner filed its petition with the State Water Resources Control Board (State Board) requesting review of Order No. 73-37. A supplemental petition was filed on August 27, 1973. Petitioner specifically requests that the State Board vacate and rescind Order No. 73-37 and adopt an order incorporating the Regional Board's staff recommendations prescribing waste discharge requirements for the site. Petitioner advances nine specific contentions in support of its allegation that the Regional Board's action was inappropriate and improper.

After review of the records of the Regional Board, and after consideration of the contentions of the petitioner, we have determined that the action of the Regional Board in adopting Order No. 73-37 was inappropriate and improper for the reasons hereafter stated.

I. BACKGROUND

Petitioner proposed to develop a Class I and Class II disposal site located two miles southwest of the City of Corona. A public hearing was held by the Regional Board on June 29, 1973, to consider the proposed site and appropriate waste discharge requirements for the site. During the hearing, the Regional Board staff and the petitioner offered evidence that the portion of the disposal area proposed as a Class I site (West Canyon) fulfilled the criteria for classification as a Class I disposal site. Some contrary evidence was introduced by a number of protestants. At the conclusion of the hearing, the Regional Board staff recommended approval of the West Canyon portion of the site as a Class I disposal site, subject to appropriate waste discharge requirements, and recommended that no discharge of Group 1 or 2 wastes be allowed in the East Canyon. The Regional Board, however, unanimously voted to prohibit discharge at the site.

At the time of its decision, the Regional Board did not make any factual finding or state any grounds for prohibition of the discharge at the proposed site.

II. CONTENTIONS OF PETITIONER AND FINDINGS

In addition to contending that the Regional Board failed to prescribe discharge requirements in accord with the evidence presented to it, the petitioner generally alleges prejudicial misconduct of members of the Regional Board, failure to comply with statutory obligations, denial of a fair and impartial hearing, and excess of jurisdiction by the Regional Board.

Among its other contentions, petitioner contends that the action of the Regional Board was improper because Order No. 73-37

was adopted contrary to the Regional Board's staff recommendations, without studied deliberations by the Regional Board members, and without factual findings to support the order.

A question is thus presented as to whether, and to what extent, the Regional Board members must make findings or otherwise provide support in the record for a decision which is in conflict with the recommendations of their staff.

Regional Board members are not compelled to act in accordance with the recommendations of their staff. The Regional Board, not the staff, is the decision-making authority. However, in exercising their discretion, Regional Board members must respect certain legal requirements to assure that those who are affected by their decisions have been fairly treated. To meet the requirement of fairness, the Regional Board, before acting on proposed waste discharge requirements or other proposed orders, must ensure that there is a factual and legal basis in the record for its decision and must indicate its reasoning and the factual basis for its decision to the affected parties.

The right of affected parties to fair treatment by administrative agencies is protected by the parties' right to judicial review of the agency's decision. But judicial review is virtually impossible where the agency has provided no record of the basis for its decision from which a court can determine whether the agency properly acted under its decision-making authority and whether its ultimate decision was based on sufficient factual material.

For this reason the courts, both state and federal, have been consistent in their demand that an administrative agency's reasons be clearly disclosed in the agency's records. As is said in Davis' Treatise on Administrative Law, Section 1605, "The practical reasons for requiring administrative findings are so powerful that the requirement has been imposed with remarkable uniformity by virtually all federal and state courts, irrespective of a statutory requirement. The reasons have to do with facilitating judicial review, avoiding judicial usurpation of administrative functions, assuring more careful administrative consideration, helping parties plan their cases for rehearings and judicial review and keeping agencies within their jurisdiction." (See also Wichita R. & L. Co. v. Public Utilities Comm., 260 U.S. 48, 43 Sup.Ct. 51; Atchison, T. & SF. Ry. Co. v. Commerce Comm., 335 Ill. 624, 167 N.E. 831; United States v. Chicago, M. St. P. & P.R. Co., 294 U.S. 499, 55 Sup.Ct. 462; Beaumont, S.L. & W. Ry. Co. v. United States, 282 U.S. 74, 51 Sup.Ct. 1; Swars v. Council of City of Vallejo, et al., 33 Cal.2d 867, 206 P.2d 355.

When a regional board disagrees with the staff's recommendation, it might take any one of a number of courses of action to insure creation of a proper record. First, at the conclusion of the hearing the members could individually explain their intended votes and the reasons for them, including the facts which they find most convincing. This method has several disadvantages inasmuch as it allows regional board members little time for reasoned consideration of the evidence presented at the hearing and their individual expressions of views may not indicate with sufficient clarity the

basis for their decision. Second, the members might articulate a number of questions which they feel remain unanswered (if this is the case) and ask for a continuation of the hearing. Third, the members could indicate to the staff what they feel the findings should be and ask that revised written findings and a revised order be presented to the Board at its next meeting.

We have examined the transcript of the hearing in this matter and find that the Regional Board failed to set forth appropriately the reasons for its action in adopting Order No. 73-37. On the contrary, the record discloses that the Regional Board, upon close of the hearing, immediately moved and adopted unanimously a motion prohibiting the discharge without explanation. There were no findings or indication for the record as to the reasoning or factual basis for the decision.

Not only was the petitioner thereby deprived of necessary notice of the reasons and grounds for Regional Board action, we are confronted with a record which is incomplete and which affords no indication to us of the reasoning and factual basis for the order under review.

In the light of the order hereafter made, it is not necessary or appropriate at this time to consider the remainder of petitioner's contentions.

III. CONCLUSIONS

After review of the record and consideration of contentions of the petitioner, the State Board concludes that the action of the Regional Board in adopting Order No. 73-37 was inappropriate and improper because of its failure to explain the reasons for the order and the factual basis for them.

NOW, THEREFORE, IT IS ORDERED:

Order No. 73-37 of the Regional Board is set aside and the matter of determination of appropriate site classification, if any, for petitioner's proposed disposal site and determination of appropriate waste discharge requirements for the proposed site is remanded to the Regional Board for further consideration in light of the views expressed herein.

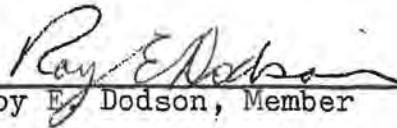
Dated: January 17, 1974



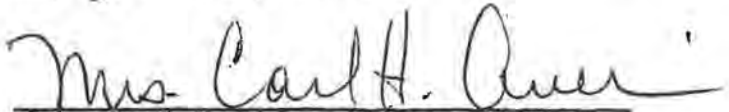
W. W. Adams, Chairman



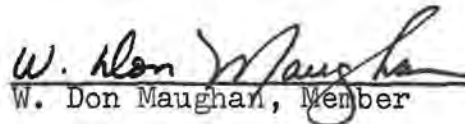
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EXHIBIT 6



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Arnold Schwarzenegger
Governor

TO: [via e-mail and U.S. Mail]
Board Members
**STATE WATER RESOURCES CONTROL BOARD AND
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS**


FROM: Michael A.M. Lauffer
Chief Counsel
OFFICE OF CHIEF COUNSEL

DATE: August 2, 2006

SUBJECT: SUMMARY OF REGULATIONS GOVERNING ADJUDICATIVE PROCEEDINGS
BEFORE THE CALIFORNIA WATER BOARDS

This memorandum outlines and reinforces some of the primary requirements that apply when the State Water Resources Control Board (State Water Board) and the nine California Regional Water Quality Control Boards conduct adjudicative proceedings. Adjudicative proceedings are the evidentiary hearings used to determine the facts by which a water board reaches a decision that determines the rights and duties of a particular person or persons. Adjudicative proceedings include, but are not limited to, enforcement actions and permit issuance.

Background

The California Water Boards perform a variety of functions. The boards set broad policy consistent with the laws passed by Congress and the Legislature. The boards also routinely determine the rights and duties of individual dischargers or even a class of dischargers. In this regard, the boards perform a judicial function. The judicial function manifests itself when the boards adopt permits and conditional waivers or take enforcement actions.

Different rules apply depending on the type of action pending before a water board. One of the distinctions between the two types of proceedings is the prohibition against ex parte communications. A prohibition on ex parte communications only applies to adjudicative proceedings.¹ Besides the ex parte communications prohibition, additional rules, procedures, and participant rights adhere in adjudicative proceedings. This memorandum outlines some of the more important procedural mechanisms associated with adjudicative proceedings.

¹ The Office of Chief Counsel addressed ex parte communications in a July 25, 2006 memorandum and questions and answers document.

Adjudicative Proceedings

What is an adjudicative proceeding?

Adjudicative proceedings are the evidentiary hearings used to determine the facts by which a water board reaches a decision that determines the rights and duties of a particular person or persons. Generally, this includes permitting and enforcement actions, but does not include planning and general regulatory functions such as Basin Plan amendments and Total Maximum Daily Loads.

Below is a partial list of common water board actions that are of an adjudicative nature:

- National Pollutant Discharge Elimination System (NPDES) permits;
- Waste discharge requirements (WDRs);
- Water right permits and requests for reconsideration;
- Orders conditionally waiving waste discharge requirements;
- Administrative civil liability (ACL) orders;
- Cease and desist orders;
- Cleanup and abatement orders;
- Water quality certification orders (401 certification);
- Permit revocations.

What laws govern adjudicative proceedings?

Adjudicative proceedings are governed by Chapter 4.5 of the Administrative Procedure Act² and by regulations adopted by the State Water Board³. By regulation, the State Water Board has chosen not to apply several sections of the Administrative Procedure Act to the California Water Boards' proceedings. These sections are Language Assistance, Emergency Decisions, Declaratory Decision, and Code of Ethics. All other sections and provisions of Administrative Procedure Act Chapter 4.5 apply.

Who are the parties to an adjudicative proceeding?

Parties to an adjudicative proceeding are any person or persons to whom a water board's action is directed as well as any other person or persons that the board chooses to designate as a party. In some cases, certain members of a water board's staff will be a party to an adjudicative proceeding. If some water board staff are designated as a party, other staff will be assigned to advise the board members. Anyone who is not a party, but who participates in the proceedings (other than staff advisers to the water board), is considered an interested person. The process for deciding who is a party is left to the discretion of a water board. A hearing may be held on the issue or the chair may be delegated to make such determinations. When a party is designated, the chair should provide notice in advance of the hearing to the water board staff and the discharger.

What is a formal hearing?

Most of the time an adjudicative proceeding will be a formal hearing in which a water board requires parties to follow a pre-determined process that may include such procedural issues as

² Gov. Code, § 11400 et seq.

³ Cal. Code Regs., tit. 23, §§ 648-648.8.

submittal of the names of witnesses, qualifications of experts, exhibits, proposed testimony, and legal argument. A hearing notice will be drafted spelling out the requirements and the timeframes. The terms and conditions of the notice are left to the discretion of the water board conducting the proceeding, though it is suggested that some level of formality is useful in preserving decorum and fostering efficiency. A hearing under Chapter 4.5 of the Administrative Procedure Act and the State Water Board's regulations is considered a "formal hearing," even if it does not have some attributes of hearing formality, unless it is officially designated as an "informal hearing" under Government Code section 11445.20 and California Code of Regulations, title 23, section 648.7.

The order of proceedings is within the discretion of a water board as well. However, the regulations suggest a specific order and should generally be followed unless the facts and circumstances of a particular case indicate otherwise. Normally, the proceedings begin with an opening statement by the chair followed by the administration of the oath to those indicating that they intend to participate. Then the parties make their presentations through testimony and the introduction of exhibits. Typically, witnesses may be cross-examined by other parties but the timing of such cross-examination is within the discretion of the regional board. If the re-direct examination has been specified in the notice, re-direct examination follows cross-examination. A water board should decide in advance how it would like to handle questions from board members. Interruptions and questions by board members should not count against time allotted to a party. At some point during the proceeding, comments from interested persons must be admitted. Thereafter, the regulations anticipate a closing statement from each party.

What are the rules of evidence in an adjudicative proceeding?

The rules of evidence are not those that apply in the courtroom. Any relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, no matter what the statutory or customary rule may be. Hearsay evidence is admissible, but only for the purpose of supplementing or explaining other evidence. If an objection is raised that certain testimony constitutes hearsay evidence, the chair should note for the record that the evidence will be admitted but that it cannot, by itself, support a finding. If no other evidence is introduced in support of that finding, a water board must ignore the hearsay evidence and decline to make such a finding.

A water board may accept evidence by taking official notice of certain things such as laws, court decisions, regulations, and facts and propositions that are common knowledge or not in reasonable dispute.

What are informal hearings?

Informal hearings may be used in place of formal hearings in some instances, if a water board thinks it advisable. Generally, this process can be used where significant facts are not in issue and the proceeding held is to determine only what consequences flow from those facts. In deciding whether to use the informal process, a water board should consider how many parties are involved, whether any of the parties have requested a more formal process, how many interested persons there are, how complex the issues facing the water board may be, and how important a formal record may be if petitions and appeals result. If any party objects to the informality of the process, a water board or its chair must address and resolve the objections before proceeding.

Because of the flexibility the regulations provide for formal hearings, a water board may find it advisable to conduct its hearings as formal hearings with streamlined procedures, as opposed to conducting an informal hearing. The regulations provide that a water board may waive any of the regulatory requirements that are not required by a statute. While this is certainly within the prerogative of a water board, caution should be exercised before any such waiver. These regulations generally seek to preserve the fairness of the process and omission of any of these provisions may result in unnecessary disputes over procedural issues.

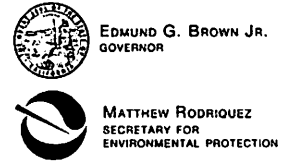
How can the chair control the conduct of the adjudicative proceeding?

A water board need not tolerate disruption of an adjudicative proceeding. The Administrative Procedure Act and State Water Board regulations provide that a water board may cite for contempt any person who defies a lawful order, refuses to take an oath, obstructs or interrupts a meeting by disorderly conduct or breach of the peace, violates the ex parte communication rules, or refuses to comply with a subpoena or similar order of a water board. No immediate action can be taken, but the matter may be referred to the local Superior Court for action, including sanctions and attorneys fees.

cc: [All via e-mail only]


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EXHIBIT 7



State Water Resources Control Board

TO: [via e-mail]
Board Members
**STATE WATER RESOURCES CONTROL BOARD AND
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS**

FROM: 
Michael A.M. Lauffer
Chief Counsel
OFFICE OF CHIEF COUNSEL

DATE: April 25, 2013

SUBJECT: TRANSMITTAL OF EX PARTE COMMUNICATIONS QUESTIONS AND ANSWERS DOCUMENT

Attached please find an updated document on ex parte communications. This memorandum and the accompanying Ex Parte Questions and Answers supersede all previous Office of Chief Counsel memoranda on the same subject.¹

The changes in the attached reflect recent legislation that amends the Porter-Cologne Water Quality Control Act effective January 1, 2013. The changes resulting from Senate Bill 965 (Wright) (Stats. 2012, ch. 551) generally allow ex parte communications about issues concerning certain pending general orders of the water boards, but make certain interested persons subject to reporting requirements. Questions 28 through 35 and question 45 of the Ex Parte Questions and Answers document address these new ex parte communication rules and reporting requirements for general orders.

The State Water Resources Control Board and the nine California Regional Water Quality Control Boards perform a variety of functions. The boards convene to set broad policy consistent with the laws passed by Congress and the Legislature. In this regard, the boards perform a legislative function. The boards also routinely determine the rights and duties of individual dischargers or even a class of dischargers. In this regard, the boards perform a judicial function. The judicial function manifests itself when the boards adopt permits and conditional waivers or take enforcement actions. Some water board actions, such as the adoption of general permits, straddle the line between judicial and legislative functions because they establish rights and duties of future, unnamed dischargers.

¹ The most recent memorandum was a December 28, 2012 memorandum from me to members of the State Water Resources Control Board and the California Regional Water Quality Control Boards. That memo superseded prior memoranda from the Office of Chief Counsel concerning ex parte communications. The only change since my December 28, 2012 memorandum is the addition of question 45 addressing site visits and pending general orders.

Different rules apply depending on the type of action pending before a water board. One of the distinctions between legislative and judicial proceedings is the prohibition against ex parte communications. An ex parte communication is a communication to a board member about a pending water board matter that occurs in the absence of other parties to the matter and without notice and opportunity for all parties to participate in the communication. In legislative-type proceedings, ex parte communications are allowed. In judicial-type proceedings, ex parte communications are prohibited. In hybrid proceedings, such as the issuance of certain general permits, ex parte communications are generally allowed, but communications from certain interested persons must be disclosed. The accompanying questions and answer document addresses common issues pertaining to ex parte communications.

I have structured the questions and answers document to serve as a reference document for board members and the attorneys within the Office of Chief Counsel. By breaking the subject matter into discrete questions, my intent is to provide a list that board members can quickly scan to identify relevant issues and the accompanying legal answer.

There are four broad themes pertaining to communications with board members.

1. If a proceeding is not pending or impending before a water board, board members may communicate with the public and governmental officials regarding general issues within the water board's jurisdiction. Water board members may also participate in information gathering efforts such as tours or site visits.
2. If a proceeding is pending or impending before a water board for the issuance of general waste discharge requirements, a categorical waiver, or a general 401 certification, board members may communicate with the public and government officials about the pending order. Special disclosure requirements apply to communications that involve certain persons with an interest in the proceeding.
3. If any other adjudicative proceeding is pending or impending before a water board, ex parte communications with that water board's members regarding an issue in that proceeding are prohibited.
4. If a rulemaking or other proceeding is pending or impending before a water board, a board member may, if he or she chooses to do so, have ex parte communications regarding issues in that proceeding.

The questions and answer document does not and cannot address all the issues pertaining to ex parte communications. Over time additional questions may be added based on feedback from board members.

Attachment

cc: [All via e-mail only]
Tom Howard, EXEC
Jonathan Bishop, EXEC
Caren Trgovcich, EXEC
All Executive Officers, Regional Water Boards
All Assistant Executive Officers, Regional Water Boards
Branch Offices
All Office of Chief Counsel attorneys

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EX PARTE QUESTIONS AND ANSWERS

I. EX PARTE SUMMARY

Summary of ex parte framework:

1. If a proceeding is not pending or impending before a water board, board members may communicate with the public and governmental officials regarding general issues within the water board's jurisdiction. Water board members may also participate in information gathering efforts such as tours or site visits.
2. If a proceeding is pending or impending before a water board for the issuance of general waste discharge requirements, a categorical waiver, or a general 401 certification, board members may communicate with the public and government officials about the pending order. Special disclosure requirements apply to communications that involve certain persons with an interest in the proceeding.
3. If any other adjudicative proceeding is pending or impending before a water board, ex parte communications with that water board's members regarding an issue in that proceeding are prohibited.
4. If a rulemaking or other proceeding is pending or impending before a water board, a board member may, if he or she chooses to do so, have ex parte communications regarding issues in that proceeding.

1. Q. What is an ex parte communication?

A. An ex parte communication is a communication to a board member from any person¹ about a pending water board matter that occurs in the absence of other parties to the matter and without notice and opportunity for all parties to participate in the communication. People often refer to these communications as "one-sided," "off-the-record," or private communications between a board member and any person concerning a matter that is pending or impending before the applicable water board.

One-sided communications does not mean that the communication must occur in privacy or among two people in order to be an ex parte communication. Even a public communication before a large audience may still be an ex parte communication if other parties to the proceeding do not have notice of and an opportunity to participate in the communication.

Examples of ex parte communications include:

1. A water board has scheduled a hearing to consider the assessment of administrative civil liability against a discharger for an illegal discharge. Before the hearing, a representative of an environmental group attempts to speak to a new board member regarding the discharger's alleged long-term violations of environmental laws. Such a communication would be ex parte.
2. A water board has scheduled a hearing to consider the issuance of a new discharge permit to Dairy X. The president of Dairy X invites a board member out to the site to

¹ There are special rules for certain staff who advise the board member. Please see Question 22.

EX PARTE QUESTIONS AND ANSWERS

show him/her the facility and explain its operation. Such a communication would be ex parte.

2. Q. What is a communication?

Communications include face-to-face conversations, phone calls, written correspondence, e-mails, instant messaging, and the next level of technology that presents itself. The Office of Chief Counsel also considers site visits and tours to be ex parte communications. By their very nature, site visits communicate evidentiary information to board members. Site visits can be a useful part of the decision-making process and special procedures should be used for site visits. (Please see Questions 43-45.)

3. Q. What purposes are served by limitations on ex parte communications?

Rules regarding ex parte communications have their roots in constitutional principles of due process and fundamental fairness. With public agencies, ex parte communications rules also serve an important function in providing transparency. Ex parte communications may contribute to public cynicism that decisions are based more on special access and influence than on the facts, the laws, and the exercise of discretion to promote the public interest.

Ex parte communications are fundamentally offensive in adjudicative proceedings because they involve an opportunity by one party to influence the decision maker outside the presence of opposing parties, thus violating due process requirements. Such communications are not subject to rebuttal or comment by other parties. Ex parte communications can frustrate a lengthy and painstaking adjudicative process because certain decisive facts and arguments would not be reflected in the record or in the decisions. Finally, ex parte contacts may frustrate judicial review since the record would be missing such communications.

4. Q. Do ex parte communications rules prevent water board members from understanding the issues and people's concerns?

Ex parte communications rules do not prevent the flow of information to water board members. Instead, ex parte rules shape how the board members receive that information and are intended to ensure that board members receive relevant information in a fair and transparent manner. A person can share issues and concerns by filing appropriate documents with the board and during a public meeting consistent with the water boards' administrative procedures.

Essentially, ex parte rules allow everyone to know and, if desired, rebut the information upon which the water boards make decisions before they make their decisions. The rules are also intended to ensure that all board members have a common record upon which to make their decisions and that a court will be able to ascertain the bases for such decisions.

EX PARTE QUESTIONS AND ANSWERS

5. Q. How can board members educate themselves without violating the prohibition on ex parte communications?

Rules on ex parte communications should not serve to prevent board members from understanding the matters to be considered and decided by the board. If a board member needs additional information about a matter, there are appropriate processes that can be used. There is no substitute for an active, engaged board member when it comes to understanding an issue. Asking questions on the record, or requesting staff and interested persons to specifically address certain issues on the record, helps provide the necessary foundation for board action. In addition, staff assigned to advise the board (see Question 22) may provide assistance and advice, and may help evaluate evidence in the record, so long as the staff does not furnish, augment, diminish, or modify the evidence in the record.

6. Q. How can water board members explain ex parte rules to the public?

This is a decision for individual board members to make. Board members are free to refer callers to the Office of Chief Counsel. If the board member chooses to explain ex parte limitations with a person, there are certain themes to keep in mind when explaining ex parte rules.

First, ex parte rules do not prevent anyone from providing information to the water boards or requesting specific actions from the water boards. Ex parte rules simply require that the information come into the record through a writing subject to public review or in a duly noticed, public meeting. Second, ex parte rules are designed to ensure fairness for everyone. No person or interest uniquely benefits from ex parte rules. The rules apply to everyone, and prevent any one person or interest from having special access to water board members. Third, ex parte rules provide transparency, allowing everyone to understand and to appreciate how the water boards reach a decision. By encouraging persons to submit written comments or speak on the record, a person's comments will be heard by all the water board members and other stakeholders. If a person persists, however, a board member can explain that s/he might become subject to disqualification, in which case the person's efforts to communicate with the board member will have been to no avail.

7. Q. What proceedings are subject to the prohibition on ex parte communications?

Only adjudicative proceedings are subject to the prohibition on ex parte communications. The water boards function in many capacities, from setting broad policies on water quality control, to planning to implement those policies, to implementing those policies through specific regulatory actions that determine the rights and duties of a person or class of persons. Adjudicative proceedings fall in the latter category of implementing policies through actions that determine the specific rights and duties of persons. (Please see Questions 8-10.)

The continuum from policy-setting to policy-implementing does not have discrete breakpoints. This question and answer document is designed to answer some of the most common questions and provide a useful framework for understanding ex parte issues. It does not create any rules beyond those contained in the Administrative

EX PARTE QUESTIONS AND ANSWERS

Procedure Act or court decisions. Board members will need to work closely with legal counsel at times to determine whether the prohibition on ex parte communications applies to a specific action or proceeding.

II. ADJUDICATIVE PROCEEDINGS

A. Types of Adjudicative Actions

8. Q. What actions are adjudicative?

Adjudicative actions are those actions where the water boards make a decision after determining specific facts and applying laws and regulations to those facts. Adjudicative proceedings are the evidentiary hearings used to determine the facts by which a water board reaches a decision that determines the rights and duties of a particular person or persons. Adjudicative proceedings include, but are not limited to, enforcement actions and permit issuance. For example, any person who proposes to discharge waste to waters of the state must apply for a discharge permit. The proceeding to consider whether to issue the permit and the conditions to include in the permit would be adjudicative.

Below is a partial list of common water board actions that often follow adjudicative proceedings:

- National Pollutant Discharge Elimination System (NPDES) permits;
- Waste discharge requirements (WDRs);
- Water right permits and requests for reconsideration;
- Orders conditionally waiving waste discharge requirements;
- Administrative civil liability (ACL) orders;
- Cease and desist orders;
- Cleanup and abatement orders;
- Water quality certification orders (401 certification);
- Permit revocations.

A list of common actions that are not subject to the ex parte prohibition is provided in Part III.

9. Q. Are ex parte communications prohibited for pending adjudicative actions?

Yes. The ex parte communications prohibition for adjudicative proceedings originates in court decisions and has been codified in Chapter 4.5 of the Administrative Procedure Act. The Administrative Procedure Act prohibits “direct or indirect” communications to water board members about an issue in a pending adjudicative proceeding.

10. Q. Does the ex parte communications prohibition apply to a conditional waiver of waste discharge requirements that identifies a specific person or persons?

Yes. The issuance of a conditional waiver pursuant to Water Code section 13269 that identifies a specific person or persons is more appropriately considered an adjudicative proceeding. These types of waivers determine the rights and duties of those persons identified in the order. The orders are directly enforceable against the persons. Conditional waivers are specifically exempt from the rulemaking provisions of the

EX PARTE QUESTIONS AND ANSWERS

Administrative Procedure Act. The water boards adopt conditional waivers following the same procedures that are used for any other permitting decision, as opposed to the legislative procedures used to adopt water quality control plans or for administrative rulemaking. Conditional waivers are also subject to the same judicial review standards as any other permit. Together these attributes mean that the issuance of a conditional waiver is an adjudicative action.

11. Q. May discrete policy issues within an adjudicative proceeding be considered separately in a non-adjudicative proceeding?

Under appropriate circumstances, a discrete, significant policy issue may be segregated from the adjudicative proceeding and decided using suitable procedures for policy-setting (e.g., regulations, amendments to a water quality control plan, or state policy for water quality control). The Court of Appeal recently sanctioned this approach in the *State Water Resources Control Board Cases*,² while noting the importance of recognizing the different requirements that apply to matters decided in an adjudicative proceeding and those decided separately in legislative proceedings. Those issues considered in the policy-setting procedure would not be subject to the prohibitions on ex parte communications during the policy-setting proceeding. However, the ex parte communications prohibition still applies to the adjudicative proceeding (including those issues not involved in the policy-setting proceeding and those issues addressed in the policy-setting proceeding once the policy-setting proceeding has concluded).

B. Pending Adjudicative Proceeding
12. Q. When is a proceeding pending?

A proceeding is pending from the time the water board issues an initial pleading in an evidentiary proceeding, or from the time an application for a decision is filed that will require an evidentiary hearing, whichever is earlier. In many circumstances, the “initial pleading” will be a notice of hearing with the staff’s proposed action.

For example, an adjudicative proceeding is pending for an administrative civil liability order from the time an administrative civil liability complaint is issued. A proceeding for issuance of waste discharge requirements is pending before a regional water board when the board receives a report of waste discharge, because that is an application for decision that will occur in a hearing before the board. For general waste discharge requirements, the notice of an evidentiary hearing makes the matter pending. For water rights permits, the best legal interpretation is that the proceeding is pending when the State Water Board issues a notice of hearing, because prior to that time there is no assurance that there will be an evidentiary hearing since the division chief may issue certain water rights permits.

13. Q. What is an impending matter?

The Administrative Procedure Act only addresses “pending” proceedings, however, there may be circumstances where board members are aware that an adjudicative

² *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674.

EX PARTE QUESTIONS AND ANSWERS

action is impending. The fairness and transparency of the process are no less compromised if an ex parte communication takes place a few days before the issuance of a notice of hearing or the filing of a report of waste discharge. The desire of a person to speak with a board member about a specific site should generally be viewed as a signal that something is impending. Where a proceeding is clearly impending, water board members should consider ex parte communications to be prohibited based on due process considerations. For example, if a water board member knows that a notice on an enforcement action is to be signed on a Tuesday, it would be inappropriate for the board member to receive an ex parte communication concerning the enforcement matter on Monday night. On the other hand, a matter would generally not be considered impending if the issuance of a notice of hearing or the filing of a report of waste discharge is not reasonably expected to occur until several months after the communication in question.

The issues concerning impending matters can be difficult and fact-specific. The most important issue with impending matters is to avoid a situation where it appears the communication was timed to avoid the Administrative Procedure Act's prohibition on ex parte communications for pending adjudicative actions. In the event there is a communication received on an impending matter, the board member may want to consider whether an appropriate disclosure should be made to avoid a subsequent allegation of impropriety. (Please see Question 26.) Water board members should consult with legal counsel if they have any questions on a specific communication in an impending matter.

14. Q. How can a board member determine whether an action is pending?

Some regional water boards maintain a list of applications under consideration and outstanding notices. Confer with your regional water board's Executive Officer (or for State Water Board members, the Executive Director) to determine how your water board maintains a list of pending adjudicative actions.

15. Q. Are adjudicative matters pending before the regional water boards also pending before the State Water Board?

No, but once the State Water Board receives a petition requesting the State Water Board to commence review of a regional water board action, the ex parte communications prohibition applies to the petition proceeding. The State Water Board has the authority to review the regional water boards' adjudicative actions. Most regional water board adjudicative actions are not petitioned to the State Water Board. It would be inappropriate to consider a matter pending before the State Water Board while it is still pending before the regional water board and it might never be challenged to the State Water Board.

A State Water Board member may wish to confer with the Office of Chief Counsel before having a communication about a controversial regional water board adjudicative action where there is a substantial likelihood that a petition will be filed with the State Water Board. In certain circumstances, the more cautious legal advice may be to regard the adjudicative proceeding as *impending* before the State Water Board, even though it is still pending before the regional water board. Determining whether the matter is

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impending would be a fact-specific inquiry, and would only be the advice of legal counsel in light of those facts.

Once the State Water Board receives a petition, the basis for the State Water Board's review will generally be the evidentiary and administrative record before the regional water board. As a result, the same prohibition on ex parte communications that applies to regional water board members in the region taking the action applies to the State Water Board members deciding the petition on the merits. The prohibition on communications with the State Water Board members concerning a petition begins when the State Water Board receives a petition requesting the State Water Board to commence review of a regional water board's action or inaction.

The State Water Board's regulations authorize an interested person to submit a petition and hold that petition abeyance. The regulations also authorize a petitioner to request that a petition be removed from active review and placed in abeyance. Consistent with the Administrative Procedure Act, a petition in abeyance is not pending before the State Water Board because a petition in abeyance does not request the State Water Board to make a decision. The petition in abeyance serves as placeholder that allows the interested person to request a decision from the State Water Board at a later date. Until and unless a petition in abeyance is activated, there is no application for a decision pending before the State Water Board.

16. Q. Does a reopener provision in a permit mean an action is pending?

No, not until a specific reopener or permit modification action is noticed for board action. Many permits include provisions that allow the regional water board to modify the permit based on subsequent information or conditions. The ability for a regional water board to reopen and modify the permit in the future does not trigger the prohibition on ex parte communication. However, once a water board issues a notice to reopen the permit, the rules concerning pending adjudicative proceedings would apply to the consideration of permit amendments.

C. Scope of Ex Parte Communications Prohibition

17. Q. What subjects are covered by the ex parte communications prohibition?

The Administrative Procedure Act's prohibition on ex parte communications is very broad. It extends to "direct and indirect" communications. Board members must be mindful that persons who ordinarily would not be subject to the prohibition (e.g., secretaries, staff assigned to advise the board) cannot be used as a conduit for a prohibited ex parte communication, and thereby a source of an indirect communication.

The ex parte communications prohibition also extends to "any issue in the proceeding." With limited exceptions discussed in Questions 19-20, if the communication involves any issue in the proceeding, be it a factual issue, a legal issue, or a policy issue, it is subject to the ex parte communications prohibition.

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- 18. Q. Are all communications prohibited with a person interested in an adjudicative proceeding pending before a water board?**

No. Communications are only prohibited to the extent they reach an issue in the proceeding. Even where a matter is pending before a water board, a communication with a party to the matter is not considered ex parte if the communication does not relate to the matter.

- 19. Q. Are there exceptions to the prohibition?**

There are certain limited exceptions to the prohibition on ex parte communications. First, as discussed in Questions 28-3534, different rules apply to proceedings involving general orders. Second, as discussed in Question 22, certain staff advising the board are not subject to the prohibition. Second, there are limited statutory exemptions, but generally they should only be used after consultation with legal counsel. The first statutory exemption is typically not available to the water boards, and involves communications to resolve an ex parte matter specifically authorized by statute. The second statutory exemption is for communications that concern a matter of procedure or practice that is not in controversy.

- 20. Q. What is a matter of practice or procedure that is not in controversy?**

The Law Revision Commission comments supporting the Administrative Procedure Act give several examples of the types of “practice and procedure” matters that are not in controversy. Matters of practice and procedure include the format of papers to be submitted, the number of copies, manner of service, and calendaring meetings. The Administrative Procedure Act also identifies continuances, as a matter of practice or procedure. Delays associated with a continuance request, however, may often be controversial. As a result, a request for continuance ordinarily should be made through more formal procedures to ensure that all parties are aware of the request and have an opportunity to respond.

Generally, staff or counsel, as opposed to a board member, would handle the types of matters embraced by this exception to the Administrative Procedure Act’s prohibition on ex parte communications.

D. Persons Subject to the Ex Parte Communications Prohibition

- 21. Q. Who is subject to the rules prohibiting ex parte communications?**

Generally, the prohibition on ex parte communications extends to any person attempting to communicate with a board member about an issue in a pending adjudicative proceeding. The Administrative Procedure Act broadly defines person to include “an individual, partnership, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character.” As a result, essentially anyone expressing an interest in a water board action and attempting to communicate with a board member is subject to the prohibition on ex parte communications in adjudicative proceedings.

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The notable exceptions to the prohibition are for communications between board members and from certain staff of the water boards (see Question 22), as well as the exception to the prohibition for certain general orders (see Questions 28-35). Because board members collectively serve as the presiding officer for an adjudicative hearing, communications among the board members are not subject to the ex parte prohibition. Obviously the members remain subject to other substantive and procedural laws (such as the Bagley-Keene Open Meeting Act, which prohibits a quorum of a state board from discussing an issue either collectively or through serial discussions).

22. Q. May staff communicate with board members without violating ex parte rules?

Certain staff may communicate with the board members without violating ex parte rules. Staff may communicate with water board members about a pending adjudicative proceeding under three circumstances. Staff and legal counsel will generally be responsible for knowing their assignments on specific proceedings, and will only contact board members if appropriate pursuant to one of the following circumstances. If a board member wishes to communicate with staff and does not know which staff may be an appropriate contact, the board member should contact the Office of Chief Counsel to determine the appropriate staff contact. (Please see Question 51.)

(1) *Staff Assigned to Assist and Advise the Board:* In virtually all circumstances, there are some staff (including at least one attorney) assigned to assist and advise a water board. These staff members are not advocates for a particular action, and in fact, cannot have served as investigators, prosecutors, or advocates in the proceeding or its pre-adjudicative stage for the ex parte exception to apply. These staff members may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record. For certain proceedings, the water board may issue a memorandum detailing staff responsibilities and identifying the staff assigned to assist and advise the board.

(2) *Staff Advising the Board on a Settlement Offer:* A staff member of the water boards, even if s/he has previously served as an investigator or advocate in the pending adjudicative proceeding, may communicate with a board member concerning a settlement proposal advocated by the staff member. In order to fit within this exception, the settlement proposal must be a specific proposal, supported by the staff member and another party to the proceeding, and the staff member must be advocating for the specific proposal. While the Administrative Procedure Act permits such communications, the more cautious approach would be for the water board to receive the proposed settlement communication in writing to avoid any subsequent claims of irregularity and to allow the water board to receive a candid assessment from advisory staff who have not participated in the investigation or advocacy of a specific action. A written communication should be used when the proposed settlement is not supported by all the parties to the proceeding.

(3) *Staff Advising the Board in Nonprosecutorial Proceedings:* A staff member of the water boards, even if s/he has previously served as an investigator or advocate in the pending adjudicative proceeding may communicate with a board member concerning issues in a non-prosecutorial proceeding. These discussions are not subject to the ex parte communications prohibition.

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23. Q. Are other government officials subject to the ex parte rules?

Yes. Persons representing other government officials and agencies (local, state, or federal) are subject to the Administrative Procedure Act's prohibition on ex parte communications if they attempt to communicate with a water board member about a pending adjudicative proceeding. Keep in mind that the State Water Board and regional water boards are separate state agencies. As a result, the ex parte rules extend to communications between members of different water boards. However, the limitations on communications from governmental officials generally will not apply to certain general orders as discussed in Questions 28-35.

24. Q. May a board member attend a publicly noticed staff-level workshop on an adjudicative matter?

Yes. When water board staff notice a meeting, even as a staff-level workshop, interested persons are on notice that issues pertaining to the adjudicative matter will be discussed. The staff workshop record (including, for example, the audio tape from the workshop) would become part of the record and basis for the subsequent action by the water board. It is permissible for a board member or multiple board members to attend such a workshop, and the communications received during such a workshop are not ex parte communications. If a quorum of the water board may be present, a Bagley-Keene Open Meeting Act notice may also be necessary.

E. Consequences of Prohibited Ex Parte Communications

25. Q. What are the consequences of violating the ex parte communications prohibition?

Prohibited ex parte communications can have a number of consequences. First, board members must disclose a prohibited ex parte communication on the record and the board may be required to hear comments or additional evidence in response to the ex parte communication. Second, a prohibited ex parte communication may be grounds for disqualifying the board member from participating in the adjudicative proceeding. Third, a prohibited ex parte communication could be used as a basis for a subsequent legal challenge to the board's adjudicative action, especially if the communication is not properly disclosed and the board member participates in the proceeding. The Administrative Procedure Act also authorizes a water board to sanction a person violating the prohibition on ex parte communications, although this is likely to be used only for egregious or recurring violations.

26. Q. How may a board member cure an inadvertent ex parte communication?

The Administrative Procedure Act provides explicit procedures that a board member is required to follow if there has been an ex parte communications. These procedures do not subsume the rule or provide a mechanism for circumventing the Legislature's prohibition on ex parte communications in adjudicative proceedings.

In the event of receiving a prohibited ex parte communication, the water board member must disclose the communication on the record. Disclosure requires either (1) including

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a written ex parte communication in the record, along with any response from the board member, or (2) memorializing an oral communication by including a memorandum in the record stating the substance of the communication, identifying who was present at the time of the communication, and any response from the board member. The board member must notify all parties of the ex parte disclosures. Additional proceedings may be necessary if a party timely requests an opportunity to address the disclosure.

In the event a board member receives what may be a prohibited ex parte communication, it is important to work with legal counsel to determine whether the communication is indeed prohibited, and, if the communication is prohibited, that it is disclosed as required by the Administrative Procedure Act.

27. Q. What if a board member received a communication about an adjudicative proceeding before becoming a board member?

The Administrative Procedure Act requires a water board member to disclose any communications the member received, prior to becoming a board member, about adjudicative proceedings pending before the water board at the time the member received the communication. This provision recognizes that the communication was not per se prohibited (because the person was not yet a board member), but still provides a mechanism to disclose such communications in the interest of fairness. The disclosure follows the same procedure discussed in Question 26.

Importantly, this provision of the Administrative Procedure Act does not require all communications the new board member has ever received to be disclosed simply because the communication involves an issue in the adjudicative proceeding. Instead, the provision only reaches back to the time the adjudicative proceeding was pending before the water board. Further, the factual circumstances requiring disclosure rarely occur because there are three necessary elements to trigger this disclosure requirement: (1) a communication the member recalls receiving prior to serving on the board, (2) the communication involves an adjudicative matter pending before the board, and (3) the communication occurred at a time the adjudicative matter was already pending before the board.

F. Exception for Certain General Orders

28. Q. Are proceedings on general waste discharge requirements, categorical waivers, and general 401 certifications (general orders) considered adjudicative proceedings?

Yes. A general order determines the rights and duties of those persons subject to the general order. A general order does not identify the specific dischargers it covers by name, but instead allows dischargers to enroll for coverage under the general order. Upon enrollment, these general orders are directly enforceable against the dischargers who enroll under them. In addition, general orders are specifically exempt from the rulemaking provisions of the Administrative Procedure Act. The water boards also issue general orders following the same procedures that are used for any other permitting decision. Finally, general orders are subject to the same judicial review standards as any other permit. In function and form, the issuance of general orders is an adjudicative

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action. The proceedings culminating in the issuance of general waste discharge orders are, therefore, more appropriately considered adjudicative proceedings.

29. Q. Does the ex parte communications prohibition apply to general orders?

No. Effective January 1, 2013, the Water Code exempts general orders from the ex parte communications prohibition. A general order for this purpose is an order that does not name specific dischargers, but instead allows persons to enroll for coverage under the order. Any person may engage in oral or written ex parte communications with board members regarding a pending or impending general order, but certain categories of persons must provide public disclosure of those ex parte communications.

The ex parte exception for general orders only applies to the water board's adoption of the order. Once a facility enrolls in a general order, enforcement actions are subject to the usual ex parte communications prohibition.

30. Q. Who must disclose ex parte communications regarding general orders?

The Water Code requires three categories of persons to disclose ex parte communications with a water board member about a pending general order. These categories are:

- (i) a potential enrollee in the general order, and representatives or employees of such person;
- (ii) any person with a financial interest in the general order, and the representatives or employees of such person; and
- (iii) a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the board's decision.

For purposes of ex parte communications concerning general orders, these persons are considered "interested persons," and the ex parte communication disclosure requirements for general orders only apply to these three categories of interested person.

The Water Code places the disclosure obligation for general orders on the interested person engaged in ex parte communications with a board member. A board member who participates in ex parte communications regarding general orders is not required to make any oral or written disclosures; however, nothing precludes a board from assisting an interested person in making the required disclosure. Further, if for some reason an interested person neglects or refuses to make the required disclosure, then the board member should disclose the ex parte communication at the board meeting where the general order is considered to ensure completeness of the record and to afford an opportunity for other persons to address the communication.

There is no disclosure requirement for members of the public who do not fall within one of the three categories above. Board members are nevertheless encouraged to disclose ex parte communications in the same manner as in rulemaking proceedings. (Please see Questions 38-39.)

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31. Q. What disclosure requirements apply to ex parte communications regarding general orders?

As with other adjudicative proceedings, no disclosure is required for an ex parte communication about a matter of procedure or practice that is not in controversy. (Please see Question 20.) For all other ex parte communications concerning a general order, interested persons in the three categories identified in Question 30 must provide a written disclosure to the applicable water board within seven working days after the communication takes place. The disclosure must include the date, time, location, and type of communication (written, oral or both); identify all participants; state who initiated the communication; and describe the substance of the communication. All materials (including PowerPoint presentations) used as part of a meeting or other communication must be included.

Board members are encouraged to request meeting agendas in advance to facilitate the meeting participants' timely preparation of disclosure materials. Board members should remind any interested person requesting ex parte communications on a general order of the disclosure requirement, and provide contact information for the staff member designated to receive the disclosure documents.

Water board staff must post the disclosure on the board's website and email a copy to any available electronic distribution lists for the general order. Before posting and distributing a disclosure, the staff should provide a copy of the disclosure to the member and any water board staff who were present during the ex parte communication to ensure the disclosure accurately summarizes the communication.

Although the statute only refers to "pending" general orders, the same disclosure process should be used for "impending" general orders. (Please see Question 13.)

32. Q. How can a board member determine whether a member of a group is a "representative" for purposes of the disclosure requirements for general orders?

The special disclosure requirements for general orders apply to "representatives acting on behalf of" an association that intends to influence the board's decision. If it is not clear whether an individual represents an interest group or is simply a member, board members may ask what the individual's position is with the organization; whether the individual is speaking on behalf of the organization; whether the organization has formally or tacitly authorized the individual to speak on its behalf; and what the individual's role will be in preparing formal written comments or speaking at the hearing.

Because the disclosure requirement is intended to ensure fairness and transparency in water board proceedings, the term "representative" should be interpreted broadly. In cases where it is unclear whether a particular individual is acting in a representative capacity, board members should request the individual to provide the disclosure. Any questions about the requirements may be addressed to the board's legal counsel.

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33. Q. Can a water board limit ex parte communications regarding a pending general order?

Yes. A water board may prohibit ex parte communications during the 14 days prior to the board meeting at which the board is scheduled to adopt the general order. If the item is continued, the board may lift any existing 14-day prohibition on ex parte communications, in which case it then has the option to impose a new prohibition for the 14 days prior to any rescheduled adoption meeting. Individual board members may decline invitations to meet with members of the public at any time, even if no prohibition is in place.

34. Q. Are all region-wide or statewide permits “general orders”?

No. The ex parte exception only applies to orders that do not name specific dischargers but instead require eligible dischargers to enroll or file a notice of intent to be covered by the general order. Several regional water boards have issued region-wide or regional municipal separate storm sewer system (MS4) permits that identify specific dischargers. Issuance, reissuance, or modification of these orders is subject to the same prohibition on ex parte communications that applies to individual waste discharge requirements. Any other waste discharge requirement, waiver, or 401 certification issued to a group of named entities would also be subject to the ex parte communications prohibition.

35. Q. What are the consequences of violating the special disclosure requirements for general orders?

Board staff or legal counsel should contact the interested person for further information if a disclosure does not meet the statutory requirements. If the disclosure does not accurately summarize the communication, the board member or staff may request the interested person to correct the disclosure or the board member or staff may supplement the disclosure either in writing or at the board meeting where the general order is considered.

In appropriate circumstances, a water board may impose sanctions on an interested person who violates the disclosure requirements.

III. RULEMAKING AND OTHER PROCEEDINGS

36. Q. What actions are rulemaking?

Rulemaking proceedings are proceedings designed for the adoption, amendment, or repeal of any rule, regulation, or standard of general application. Rulemaking proceedings include proceedings to adopt regulations, water quality control plans, policies, or guidelines. The water boards adopt most total maximum daily loads (TMDLs) as basin plan amendments, so TMDLs typically are rulemaking proceedings.

Below is a partial list of common water board actions resulting from rulemaking proceedings:

- Water quality control plans (e.g., basin plan amendments, statewide plans such as the Ocean Plan);

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- State Policy for Water Quality Control (e.g., the State Water Board's Water Quality Enforcement Policy);
- Regulations;
- Guidelines.

37. Q. Is there a prohibition on private communications in rulemaking actions?

No. The Administrative Procedure Act contains no prohibition against private communications during rulemaking proceedings. However, information obtained outside of the public record for the rulemaking action may not form the basis for a board's action and the board's action must be supported by the information contained in the record. Some of the same policy rationales for the ex parte communications prohibition exist for rulemaking. Nothing prevents individual water board members from choosing to avoid such communications during rulemaking proceedings.

38. Q. What is the Office of Chief Counsel's recommendation on handling communications in rulemaking proceedings?

There is no constitutional or statutory duty to disclose private communications in rulemaking proceedings, but the Office of Chief Counsel advises water board members to disclose on the record any private communications received during rulemaking proceedings. The reasons for this recommendation are multifold. First, the water boards must base rulemaking decisions on the public record, because the public record is a water board's justification for defending an action in court. If a board member supports a specific rulemaking decision because of technical information the member receives from an ex parte communication but fails to disclose the communication, that information will not be in the record to support the board's action.

Second, the same fairness and transparency issues that underlie the ex parte prohibition for adjudicative proceedings support disclosing private communications in rulemaking proceedings. The water boards only have limited jurisdiction within the ambit delegated by the Legislature. It is appropriate that the public know the information and basis for the water boards' decisions to ensure that those decisions are being made not only in conformance with the law, but also within the scope of the considerations identified by the Legislature and water board regulations.

39. Q. If a member chooses to disclose a communication, what is the preferred procedure?

If a board member chooses to participate in private communications in rulemaking proceedings and chooses to disclose those communications, the Office of Chief Counsel recommends a procedure similar to that described in Question 26 for adjudicative proceedings. First, the board member would notify the person that a full disclosure of the private communication will be entered in the water board's record. Second, the board member would disclose the private communication in the water board's record. The disclosure would include the identity of the persons involved in the communication, the approximate date of the communication, and the substance of the communication.

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40. Q. May a board member communicate with a person about how a general requirement may be translated into a subsequent permit requirement?

Yes, as long as the subsequent permit proceeding is not pending or impending. When a water board is considering a general provision of rulemaking action it is appropriate to hear testimony about how the general provision may be converted into specific, subsequent permit requirements. The fact that this information is received during a rulemaking proceeding does not trigger the ex parte communications prohibition for the subsequent adjudicative proceeding that implements the requirements of the rulemaking. The ex parte communications prohibition will attach when the subsequent adjudicative action is pending. (Please see Questions 12-13.)

41. Q. What are “other proceedings”?

Certain proceedings before the water boards are neither adjudicative nor rulemaking proceedings. For example, the water boards often have informational items presented by staff or stakeholders. Informational items do not necessarily lead to a specific board action, but inform members about general water quality or water rights matters. In addition, the State Water Board takes some actions that are neither rulemaking or adjudicative actions (e.g., certain contracting and grants actions).

Below is a list of common, other proceedings:

- Information items;
- Workshops not conducted as part of an adjudicative or rulemaking proceeding;
- Contracting;
- Grant awarding;
- Hiring decisions and awards for employee accomplishments;
- Adopting or making comments to other entities conducting their own proceedings, such as comments on a federal Environmental Impact Statement;
- Discretionary actions to initiate or consider initiating proceedings, not amounting to a decision on the merits, such as referral of a matter to the Attorney General for enforcement.

42. Q. Are “other proceedings” subject to ex parte rules?

These other proceedings do not trigger ex parte communications prohibitions under the Administrative Procedure Act and do not have the same factors supporting the Office of Chief Counsel's recommendation to disclose ex parte communications in rulemaking proceedings. Where these proceedings involve closed sessions, communications subject to the attorney-client privilege, or certain law enforcement related information, confidentiality protections may apply. Otherwise, nothing prevents individual water board members from choosing to avoid such communications or to disclose such communications.

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IV. SITE VISITS

43. Q. Is a site visit a form of ex parte communication?

Yes. Unless a tour or site visit is publicly noticed, the Office of Chief Counsel considers a site visit or tour of a facility, while an adjudicative proceedings is pending for that facility, to be an ex parte communication. By their very nature, site visits communicate evidentiary information to water board members. In addition, site visits frequently result in communications from the site operator about the pending matter.

44. Q. Can a board member visit a regulated facility when an adjudicative action is pending?

Yes, but only if the board provides interested persons notice and an opportunity to participate. Site visits can be a useful part of the decision-making process and special procedures should be used for site visits. A site visit essentially moves part of the evidentiary proceeding from the board hearing to a visit of the site. It is not necessary that all board members participate in the site visit for it to be permissible. In fact, a single board member can participate in a staff-level site visit if the board properly notices the visit.

To notice a site visit, the interested party list for an adjudicative proceeding should be provided sufficient notice with information about the tour and how to participate. There may be special concerns about accessibility and liability that may raise other legal issues. It is important to work with legal counsel when arranging site visits during a pending adjudicative proceeding.

45. Q. Can a board member visit a facility that will be regulated by a pending general order when an adjudicative action is pending?

If a site visit concerns a facility that will be regulated by a pending general order subject to the special disclosure requirements of Questions 29-31, then the board member should work with legal counsel to determine the extent to which any special disclosure or notice requirements apply. The most transparent and fair way to handle site visits while a general order is pending is to provide notice and an opportunity for interested persons to participate as described in Question 44. Providing public notice also reduces potential evidentiary concerns. For these reasons, the Office of Chief Counsel recommends the procedure described in Question 44 for site visits to a facility that will be regulated by a pending general order.

If notice and an opportunity for public participation is not provided, then the disclosure requirements in Questions 29-31 apply to any site visit concerning a pending general order. Moreover, because site visits are inherently evidentiary in nature, steps should be taken either by the person hosting the site visit, the board member, or the water board staff to visually document the portions of the site visit relevant to the proceeding (e.g., photo documenting physical features, best management practices, etc.). Unlike most ex parte communications, which discuss or explain evidence that is already in the record, the visual documentation is evidentiary in nature. Therefore, any site visits should occur and be reported before the close of the evidentiary record. Board members should work

EX PARTE QUESTIONS AND ANSWERS

closely with staff and counsel to ensure the appropriate timing and documentation of these types of site visits.

46. Q. Can a board member visit a regulated facility when no adjudicative action is pending for that facility?

Yes. When there is no adjudicative action pending or impending, a water board member may visit a site that is subject to the water board's regulations. Before scheduling such a visit, it is important to coordinate with water board staff to ensure there is no pending enforcement action involving the facility and to ensure that the owner has no objection to a visit.

V. GENERAL ISSUES

47. Q. Why can legislators talk to anyone and the board members cannot?

Ex parte communications rules reflect the water boards' hybrid powers. Unlike the Legislature, the water boards have attributes of both legislative power and judicial power. The ex parte communications prohibition arises when the water boards are exercising their judicial power. Rules and due process preclude judges from receiving ex parte communications on matters pending before them or inferior courts. Similarly, even when exercising legislative power, the water boards do so within the narrow confines of power granted by the Legislature. Ex parte rules can help ensure that the water boards are exercising the powers conferred by the Legislature within the confines of the power conferred by the Legislature.

48. Q. Why can the public talk to city council members and not board members?

There is some overlap between ex parte communications prohibitions for city council members and water board members. To the extent the prohibition is broader for water board members it reflects the greater number of adjudicative matters decided by the water boards and the breadth of the Administrative Procedure Act. The Administrative Procedure Act is not directly applicable to city councils. As a result, ex parte communications with city council members do not necessarily reach "direct and indirect" communications on "any issue in the proceeding."

49. Q. How should a board member handle comments concerning pending adjudicative proceedings raised in connection with other proceedings in which the board member participates?

As part of a board member's participation in other matters, a board member may receive communications relating to specific adjudicative proceedings. For example, a legislator may ask a State Water Board member to participate in a meeting related to proposed proceedings relating to application processing. As part of that meeting the legislator or another participant may complain about how a particular application, that is the subject of a pending adjudicative proceeding, is being handled. The meeting does not involve an improper ex parte contact, because it concerns proposed legislation, not an adjudicative proceeding, but the specific complaint involves an inappropriate ex parte contact.

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To avoid this problem, board members should make clear at the outset that they cannot discuss specific adjudicative proceedings pending before the water boards. If, despite this warning, a participant begins to raise issues concerning a specific pending proceeding, the board member should interrupt to remind the participants that the board member cannot discuss those issues. Any ex parte communications that occur as part of the meeting should be disclosed following the procedures discussed in Question 26.

50. Q. Is a communication about a pending adjudicative matter, received during a public forum, an ex parte communication?

Yes. While the water boards traditionally allow members of the public to briefly address during a “public forum” any items not on the agenda, persons interested in a pending adjudicative proceeding do not have notice that their issue may be discussed during a specific public forum. Therefore, even though the board receives the communication during a public meeting, the communication may violate the ex parte prohibition if it concerns a pending adjudicative proceeding. Legal counsel will typically work with a water board’s chair if this circumstance occurs. Fortunately, such communications can typically be cured by including a copy of the public forum transcript or tape into the administrative record for the adjudicative proceeding.

51. Q. Whom can a board member speak with to clarify ex parte concerns?

Water board members should contact the Office of Chief Counsel with questions about ex parte issues. A regional water board member should contact the attorney assigned to represent the member’s region or the assistant chief counsel for regional board services. State Water Board members should contact the chief counsel.

In all circumstances, a water board member should indicate that he or she has a question about ex parte communications in *Matter X*—identifying the specific matter. It is important to identify the specific matter, because at times certain attorneys within the Office of Chief Counsel (even the chief counsel) may be recused from a matter or may be assigned to prosecute the matter. By identifying the matter from the outset of the communication, the attorney can make sure you are getting the correct advice from the correct person.

52. Q. Who is responsible for complying with the ex parte rules – the board members or the public?

There is a shared responsibility for complying with the ex parte communications prohibition of the Administrative Procedure Act. Water board members are expected to know the rules and remain vigilant in their application of the rule. If a person attempts to violate the prohibition on ex parte communications, the board member should be prepared to stop the communication, because of the risk the communication could result in disqualification of the board member.

Persons participating in adjudicative proceedings also have an obligation to understand and follow the rules, particularly attorneys and professional lobbyists. As discussed in

EX PARTE QUESTIONS AND ANSWERS

Question 25, in egregious circumstances violating the prohibition on ex parte communications can subject a person to civil contempt proceedings.

EXHIBIT "B"

EXHIBIT "B"

From: Stephen Holzer

Sent: Friday, October 05, 2018 4:12 PM

To: 'Ehe, Robert@Waterboards' <Robert.Ehe@waterboards.ca.gov>

Cc: Heath, Arthur@Waterboards <Arthur.Heath@waterboards.ca.gov>; Ly, Jillian@Waterboards <Jillian.Ly@waterboards.ca.gov>; 'david.coupe@waterboards.ca.gov' <david.coupe@waterboards.ca.gov>

Subject: EZ STORAGE-100518-FOLLOW UP TO 10-02-18 MEETING

Robert-

Enclosed are the indoor air-testing results at the EZ storage southernmost building, as produced through ALTA in November 2015.

Also, would you confirm that EZ will have a chance to comment on Teledyne's work plan after it is submitted on November 15, 2018 or at such later date as you may authorize?

Stephen T. Holzer, Esq.

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www.lewitthackman.com



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**JONES ENVIRONMENTAL
LABORATORY RESULTS**

Client: Alta Environmental Inc.
Client Address: 3777 Long Beach Blvd., Annex Building
Long Beach, CA 90807

Report date: 10/30/2015
JEL Ref. No.: ST-8841
Client Ref. No.: MCGV-14-4695:11

Attn: John Barkman

Date Sampled: 10/28/2015
Date Received: 10/29/2015
Date Analyzed: 10/29/2015
Physical State: Soil Gas

ANALYSES REQUESTED

1. EPA TO-15 - Volatile Organics by GC/MS

Sampling – Indoor Air samples were collected in 6-Liter SUMMA Canisters.

Analytical – Indoor Air samples were analyzed using EPA Method TO-15. Instrument Continuing Calibration Verification, QC Reference Standards, and Instrument Blanks were analyzed every 24 hours as prescribed by the method. In addition, Matrix Spike (MS) and Matrix Spike Duplicates (MSD) were analyzed with each batch of Indoor Air samples.

Approval:

Steve Jones, Ph.D.
Laboratory Manager



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562-646-1611
805-399-0060

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JONES ENVIRONMENTAL LABORATORY RESULTS

Client: Alta Environmental Inc.
Client Address: 3777 Long Beach Blvd., Annex Building
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Report date: 10/30/2015
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Attn: John Barkman

Date Sampled: 10/28/2015
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Date Analyzed: 10/29/2015
Physical State: Soil Gas

EPA TO-15-Volatile Organics by GC/MS in Air/ Summa Canister

<u>Sample ID:</u>	AS 1	AS 2	AS 3	AS 4	AS 5		
<u>JEL ID:</u>	ST-8841-01	ST-8841-02	ST-8841-03	ST-8841-04	ST-8841-05	<u>Practical</u>	<u>Units</u>
						<u>Quantitation</u>	
						<u>Limit</u>	
Acetone	ND	ND	ND	ND	ND	0.17	µg/m3
Acrolein	ND	ND	ND	ND	ND	0.50	µg/m3
Benzene	2.1	2.1	ND	ND	ND	0.08	µg/m3
Benzyl chloride	ND	ND	ND	ND	ND	0.50	µg/m3
Bromodichloromethane	ND	ND	ND	ND	ND	0.67	µg/m3
Bromoform	ND	ND	ND	ND	ND	1.00	µg/m3
Bromomethane	ND	ND	ND	ND	ND	0.33	µg/m3
1,3-Butadiene	ND	ND	ND	ND	ND	0.17	µg/m3
2-Butanone (MEK)	ND	ND	ND	ND	ND	0.33	µg/m3
Carbon disulfide	ND	ND	ND	ND	ND	2.00	µg/m3
Carbon tetrachloride	ND	ND	ND	ND	ND	0.06	µg/m3
Chlorobenzene	ND	ND	ND	ND	ND	0.50	µg/m3
Chloroform	ND	ND	ND	ND	ND	0.33	µg/m3
Cyclohexane	ND	ND	ND	ND	ND	0.33	µg/m3
Dibromochloromethane	ND	ND	ND	ND	ND	0.83	µg/m3
1,2-Dibromoethane	ND	ND	ND	ND	ND	0.83	µg/m3
1,2-Dichlorobenzene	ND	ND	ND	ND	ND	0.67	µg/m3
1,3-Dichlorobenzene	ND	ND	ND	ND	ND	0.67	µg/m3
1,4-Dichlorobenzene	7.9	7.9	ND	ND	ND	0.67	µg/m3
1,1-Dichloroethane	ND	ND	ND	ND	ND	0.33	µg/m3
1,2-Dichloroethane	2.3	ND	ND	ND	ND	0.12	µg/m3
1,1-Dichloroethene	ND	ND	ND	ND	ND	0.33	µg/m3
Cis-1,2-Dichloroethene	ND	ND	ND	ND	ND	0.33	µg/m3
Trans-1,2-Dichloroethene	ND	ND	ND	ND	ND	0.33	µg/m3
1,2-Dichloropropane	ND	ND	ND	ND	ND	0.50	µg/m3
Cis-1,3-Dichloropropene	ND	ND	ND	ND	ND	0.50	µg/m3
Trans-1,3-Dichloropropene	ND	ND	ND	ND	ND	0.50	µg/m3
1,4-Dioxane	ND	ND	ND	ND	ND	0.33	µg/m3
Ethanol	ND	2.3	ND	ND	ND	0.17	µg/m3

JONES ENVIRONMENTAL LABORATORY RESULTS

EPA TO-15-Volatile Organics by GC/MS in Air/ Summa Canister

<u>Sample ID:</u>	AS 1	AS 2	AS 3	AS 4	AS 5		
<u>JEL ID:</u>	ST-8841-01	ST-8841-02	ST-8841-03	ST-8841-04	ST-8841-05	<u>Practical</u>	<u>Units</u>
<u>Analytes:</u>						<u>Quantitation</u>	
						<u>Limit</u>	
Ethyl acetate	ND	ND	ND	ND	ND	0.33	µg/m3
Ethyl benzene	3.2	3.1	ND	ND	ND	0.50	µg/m3
4-Ethyltoluene	1.7	ND	ND	ND	ND	0.50	µg/m3
Freon 11	ND	ND	ND	ND	ND	0.50	µg/m3
Freon 12	ND	ND	ND	ND	ND	0.50	µg/m3
Freon 113	ND	ND	ND	ND	ND	0.83	µg/m3
Freon 114	ND	ND	ND	ND	ND	0.67	µg/m3
Heptane	3.4	3.9	ND	ND	ND	0.33	µg/m3
Hexachloro-1,3-butadiene	ND	ND	ND	ND	ND	1.00	µg/m3
Hexane	ND	ND	ND	ND	ND	0.33	µg/m3
2-Hexanone (MBK)	ND	ND	ND	ND	ND	0.33	µg/m3
Isopropyl Alcohol	1.3	1.5	ND	ND	ND	0.33	µg/m3
4-Methyl-2-pentanone (MIBK)	ND	ND	ND	ND	ND	0.33	µg/m3
Methylene chloride	ND	ND	ND	ND	ND	0.33	µg/m3
MTBE	ND	ND	ND	ND	ND	0.33	µg/m3
Methylmethacrylate	ND	ND	ND	ND	ND	0.33	µg/m3
Naphthalene	ND	ND	ND	ND	ND	0.33	µg/m3
Propylene	ND	ND	ND	ND	ND	0.17	µg/m3
Styrene	1.8	2.3	ND	ND	ND	0.50	µg/m3
1,1,2,2-Tetrachloroethane	ND	ND	ND	ND	ND	0.67	µg/m3
Tetrachloroethene	2.9	2.7	0.6	0.8	0.8	0.33	µg/m3
Tetrahydrofuran	ND	ND	ND	ND	ND	0.33	µg/m3
Toluene	16.3	15.4	1.5	1.3	1.3	0.33	µg/m3
1,2,4-Trichlorobenzene	ND	ND	ND	ND	ND	0.50	µg/m3
1,1,1-Trichloroethane	ND	ND	ND	ND	ND	0.50	µg/m3
1,1,2-Trichloroethane	ND	ND	ND	ND	ND	0.50	µg/m3
Trichloroethene	ND	ND	ND	ND	ND	0.50	µg/m3
1,2,4-Trimethylbenzene	2.9	2.9	ND	ND	ND	0.50	µg/m3
1,3,5-Trimethylbenzene	ND	ND	ND	ND	ND	0.50	µg/m3
Vinyl Acetate	5.3	5.0	ND	ND	ND	0.67	µg/m3
Vinyl chloride	ND	ND	ND	ND	ND	0.31	µg/m3
o-Xylene	3.5	3.2	ND	ND	ND	0.50	µg/m3
p/m-Xylene	11.2	10.7	ND	ND	ND	0.50	µg/m3
<u>Dilution Factor</u>	1	1	1	1	1		
<u>Surrogate Recovery:</u>						<u>QC Limits</u>	
4-Bromofluorobenzene	82%	77%	80%	83%	82%	60-140	
	TO-102915- CHECKS	TO-102915- CHECKS	TO-102915- CHECKS	TO-102915- CHECKS	TO-102915- CHECKS		

ND= Not Detected



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JONES ENVIRONMENTAL LABORATORY RESULTS

Client: Alta Environmental Inc.
Client Address: 3777 Long Beach Blvd., Annex Building
Long Beach, CA 90807

Report date: 10/30/2015
JEL Ref. No.: ST-8841
Client Ref. No.: MCGV-14-41

Attn: John Barkman

Date Sampled: 10/28/2015

Date Received: 10/29/2015

Project:

Date Analyzed: 10/29/2015

Project Address:

Physical State: Soil Gas

EPA TO-15-Volatile Organics by GC/MS in Air/ Summa Canister

<u>Sample ID:</u>	AS 6	AS 7	<u>Practical Quantitation Limit</u>	<u>Units</u>
<u>JEL ID:</u>	ST-8841-06	ST-8841-07		
Analytes:				
Acetone	ND	ND	0.17	µg/m3
Acrolein	ND	ND	0.50	µg/m3
Benzene	ND	ND	0.08	µg/m3
Benzyl chloride	ND	ND	0.50	µg/m3
Bromodichloromethane	ND	ND	0.67	µg/m3
Bromoform	ND	ND	1.00	µg/m3
Bromomethane	ND	ND	0.33	µg/m3
1,3-Butadiene	ND	ND	0.17	µg/m3
2-Butanone (MEK)	ND	ND	0.33	µg/m3
Carbon disulfide	ND	ND	2.00	µg/m3
Carbon tetrachloride	ND	ND	0.06	µg/m3
Chlorobenzene	ND	ND	0.50	µg/m3
Chloroform	ND	ND	0.33	µg/m3
Cyclohexane	ND	ND	0.33	µg/m3
Dibromochloromethane	ND	ND	0.83	µg/m3
1,2-Dibromoethane	ND	ND	0.83	µg/m3
1,2-Dichlorobenzene	ND	ND	0.67	µg/m3
1,3-Dichlorobenzene	ND	ND	0.67	µg/m3
1,4-Dichlorobenzene	ND	ND	0.67	µg/m3
1,1-Dichloroethane	ND	ND	0.33	µg/m3
1,2-Dichloroethane	ND	ND	0.12	µg/m3
1,1-Dichloroethene	ND	ND	0.33	µg/m3
Cis-1,2-Dichloroethene	ND	ND	0.33	µg/m3
Trans-1,2-Dichloroethene	ND	ND	0.33	µg/m3
1,2-Dichloropropane	ND	ND	0.50	µg/m3
Cis-1,3-Dichloropropene	ND	ND	0.50	µg/m3
Trans-1,3-Dichloropropene	ND	ND	0.50	µg/m3
1,4-Dioxane	ND	ND	0.33	µg/m3
Ethanol	ND	ND	0.17	µg/m3

JONES ENVIRONMENTAL LABORATORY RESULTS

EPA TO-15-Volatile Organics by GC/MS in Air/ Summa Canister

<u>Sample ID:</u>	AS 6	AS 7		
<u>JEL ID:</u>	ST-8841-06	ST-8841-07	<u>Practical</u> <u>Quantitation</u>	<u>Units</u>
<u>Analytes:</u>			<u>Limit</u>	
Ethyl acetate	ND	ND	0.33	µg/m3
Ethyl benzene	ND	ND	0.50	µg/m3
4-Ethyltoluene	ND	ND	0.50	µg/m3
Freon 11	ND	ND	0.50	µg/m3
Freon 12	ND	ND	0.50	µg/m3
Freon 113	ND	ND	0.83	µg/m3
Freon 114	ND	ND	0.67	µg/m3
Heptane	ND	ND	0.33	µg/m3
Hexachloro-1,3-butadiene	ND	ND	1.00	µg/m3
Hexane	ND	ND	0.33	µg/m3
2-Hexanone (MBK)	ND	ND	0.33	µg/m3
Isopropyl Alcohol	ND	ND	0.33	µg/m3
4-Methyl-2-pentanone (MIBK)	ND	ND	0.33	µg/m3
Methylene chloride	ND	ND	0.33	µg/m3
MTBE	ND	ND	0.33	µg/m3
Methylmethacrylate	ND	ND	0.33	µg/m3
Naphthalene	ND	ND	0.33	µg/m3
Propylene	ND	ND	0.17	µg/m3
Styrene	ND	ND	0.50	µg/m3
1,1,2,2-Tetrachloroethane	ND	ND	0.67	µg/m3
Tetrachloroethene	ND	ND	0.33	µg/m3
Tetrahydrofuran	ND	ND	0.33	µg/m3
Toluene	1.3	1.2	0.33	µg/m3
1,2,4-Trichlorobenzene	ND	ND	0.50	µg/m3
1,1,1-Trichloroethane	ND	ND	0.50	µg/m3
1,1,2-Trichloroethane	ND	ND	0.50	µg/m3
Trichloroethene	ND	ND	0.50	µg/m3
1,2,4-Trimethylbenzene	ND	ND	0.50	µg/m3
1,3,5-Trimethylbenzene	ND	ND	0.50	µg/m3
Vinyl Acetate	ND	ND	0.67	µg/m3
Vinyl chloride	ND	ND	0.31	µg/m3
o-Xylene	ND	ND	0.50	µg/m3
p/m-Xylene	ND	ND	0.50	µg/m3
<u>Dilution Factor</u>	1	1		
<u>Surrogate Recovery:</u>			<u>QC Limits</u>	
4-Bromofluorobenzene	81%	85%	60-140	
	TO-102915- CHECKS	TO-102915- CHECKS		

ND= Not Detected



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JONES ENVIRONMENTAL LABORATORY RESULTS

Client: Alta Environmental Inc.
Client Address: 3777 Long Beach Blvd., Annex Building
Long Beach, CA 90807

Report date: 10/30/2015
JEL Ref. No.: ST-8841
Client Ref. No.: MCGV-14-41

Attn: John Barkman

Date Sampled: 10/28/2015
Date Received: 10/29/2015
Date Analyzed: 10/29/2015
Physical State: Soil Gas

EPA TO-15-Volatile Organics by GC/MS in Air/ Summa Canister

<u>Sample ID:</u>	METHOD		
	BLANK		
<u>JEL ID:</u>	ST-8841-08	<u>Practical</u>	<u>Units</u>
		<u>Quantitation</u>	
		<u>Limit</u>	
Analytes:			
Acetone	ND	0.2	µg/m3
Acrolein	ND	0.5	µg/m3
Benzene	ND	0.1	µg/m3
Benzyl chloride	ND	0.5	µg/m3
Bromodichloromethane	ND	0.7	µg/m3
Bromoform	ND	1.0	µg/m3
Bromomethane	ND	0.3	µg/m3
1,3-Butadiene	ND	0.2	µg/m3
2-Butanone (MEK)	ND	0.3	µg/m3
Carbon disulfide	ND	2.0	µg/m3
Carbon tetrachloride	ND	0.1	µg/m3
Chlorobenzene	ND	0.5	µg/m3
Chloroform	ND	0.3	µg/m3
Cyclohexane	ND	0.3	µg/m3
Dibromochloromethane	ND	0.8	µg/m3
1,2-Dibromoethane	ND	0.8	µg/m3
1,2-Dichlorobenzene	ND	0.7	µg/m3
1,3-Dichlorobenzene	ND	0.7	µg/m3
1,4-Dichlorobenzene	ND	0.7	µg/m3
1,1-Dichloroethane	ND	0.3	µg/m3
1,2-Dichloroethane	ND	0.1	µg/m3
1,1-Dichloroethene	ND	0.3	µg/m3
Cis-1,2-Dichloroethene	ND	0.3	µg/m3
Trans-1,2-Dichloroethene	ND	0.3	µg/m3
1,2-Dichloropropane	ND	0.5	µg/m3
Cis-1,3-Dichloropropene	ND	0.5	µg/m3
Trans-1,3-Dichloropropene	ND	0.5	µg/m3
1,4-Dioxane	ND	0.3	µg/m3
Ethanol	ND	0.2	µg/m3

JONES ENVIRONMENTAL LABORATORY RESULTS

EPA TO-15-Volatile Organics by GC/MS in Air/ Summa Canister

<u>Sample ID:</u>	METHOD		
	BLANK		
<u>JEL ID:</u>	ST-8841-08	Practical	Units
<u>Analytes:</u>		Quantitation	
		Limit	
Ethyl acetate	ND	0.3	µg/m3
Ethyl benzene	ND	0.5	µg/m3
4-Ethyltoluene	ND	0.5	µg/m3
Freon 11	ND	0.5	µg/m3
Freon 12	ND	0.5	µg/m3
Freon 113	ND	0.8	µg/m3
Freon 114	ND	0.7	µg/m3
Heptane	ND	0.3	µg/m3
Hexachloro-1,3-butadiene	ND	1.0	µg/m3
Hexane	ND	0.3	µg/m3
2-Hexanone (MBK)	ND	0.3	µg/m3
Isopropyl Alcohol	ND	0.3	µg/m3
4-Methyl-2-pentanone (MIBK)	ND	0.3	µg/m3
Methylene chloride	ND	0.3	µg/m3
MTBE	ND	0.3	µg/m3
Methylmethacrylate	ND	0.3	µg/m3
Naphthalene	ND	0.3	µg/m3
Propylene	ND	0.2	µg/m3
Styrene	ND	0.5	µg/m3
1,1,2,2-Tetrachloroethane	ND	0.7	µg/m3
Tetrachloroethene	ND	0.3	µg/m3
Tetrahydrofuran	ND	0.3	µg/m3
Toluene	ND	0.3	µg/m3
1,2,4-Trichlorobenzene	ND	0.5	µg/m3
1,1,1-Trichloroethane	ND	0.5	µg/m3
1,1,2-Trichloroethane	ND	0.5	µg/m3
Trichloroethene	ND	0.5	µg/m3
1,2,4-Trimethylbenzene	ND	0.5	µg/m3
1,3,5-Trimethylbenzene	ND	0.5	µg/m3
Vinyl Acetate	ND	0.7	µg/m3
Vinyl chloride	ND	0.3	µg/m3
o-Xylene	ND	0.5	µg/m3
p/m-Xylene	ND	0.5	µg/m3

Dilution Factor 1

<u>Surrogate Recovery:</u>		<u>QC Limits</u>
4-Bromofluorobenzene	76%	60-140

TO-102915-
CHECKS

ND= Not Detected



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**JONES ENVIRONMENTAL
QUALITY CONTROL INFORMATION**

Client: Alta Environmental Inc.
Client Address: 3777 Long Beach Blvd., Annex Building
Long Beach, CA 90807

Report date: 10/30/2015
JEL Ref. No.: ST-8841
Client Ref. No.: MCGV-14-4695:11

Attn: John Barkman

Date Sampled: 10/28/2015
Date Received: 10/29/2015
Date Analyzed: 10/29/2015
Physical State: Soil Gas

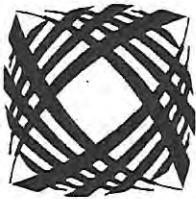
EPA TO-15-Volatile Organics by GC/MS in Air/ Summa Canister

Sample Spiked: JEL ID:	Ambient Air		GC#:	TO-102915-CHECKS		
	ST-8841-09	ST-8841-10		ST-8841-11		
Parameter	MS Recovery (%)	MSD Recovery (%)	RPD	Acceptability Range (%)	CCV	Acceptability Range (%)
Vinyl Chloride	118%	114%	3.2%	60-140	57%	70-130
1,1-Dichloroethylene	112%	107%	4.9%	60-140	53%	70-130
Cis-1,2-Dichloroethene	122%	115%	6.1%	70-130	58%	70-130
1,1,1-Trichloroethane	110%	112%	2.2%	70-130	53%	70-130
Benzene	116%	113%	2.7%	70-130	53%	70-130
Trichloroethylene	133%	132%	0.8%	70-130	66%	70-130
Toluene	107%	106%	1.2%	70-130	51%	70-130
Tetrachloroethene	121%	114%	5.7%	70-130	59%	70-130
Chlorobenzene	111%	108%	3.4%	70-130	53%	70-130
Ethylbenzene	118%	115%	2.8%	70-130	56%	70-130
1,2,4 Trimethylbenzene	117%	120%	2.0%	70-130	56%	70-130
Surrogate Recovery: 4-Bromofluorobenzene	88%	87%		75-125	83%	75-125

MS = Matrix Spike
MSD = Matrix Spike Duplicate
RPD = Relative Percent Difference; Acceptability range for RPD is ≤ 15%

Chain-of-Custody Record

Sheet / of /



ALTA
ENVIRONMENTAL

Project No./Name MC 67-14-46 95.11

Sampling Location E.E. Spang Colour Blvd

Project Mgr. J. Beckman e-mail results: jbeckman@altaenviron.com

Sampled by KB e-mail results: valdes@altaenviron.com

P.O. # Spe Prytz Laboratory Name Jones Env Per Standards

FIELD POINT NAME	SAMPLE ID	DATE	TIME	MATRIX	Quantity	CONTAINER		Preservative	Analyses by EPA Method	Per	Standards
						Size	Type				
ST-8841-01	AS1	10/28	1438	Air	1	6L	Suma		PHI/MS by 8015	X	B 2468
-02	AS2	10/28	1510	Air	1	6L	Suma		PHI/MS by 8015	X	B 2473
-03	AS3	10/28	1355	Air	1	6L	Suma		PHI/MS by 8015	X	12402
-04	AS4	10/28	1445	Air	1	6L	Suma		PHI/MS by 8015	X	B 2676
-05	AS5	10/28	1443	Air	1	6L	Suma		PHI/MS by 8015	X	B 1877
-06	AS6	10/28	1515	Air	1	6L	Suma		PHI/MS by 8015	X	B 2475
ST-8841-07	AS7	10/28	1505	Air	1	6L	Suma		PHI/MS by 8015	X	1814

ST-8841
NOTES

Relinquished by: [Signature] Date/Time: 10/29/15 Received by: [Signature] Date/Time: 12/13

Relinquished by: _____ Date/Time: _____ Received by: _____ Date/Time: _____

Relinquished by: _____ Date/Time: _____ Received by: _____ Date/Time: _____

Laboratory use only

Sample Turnaround: Normal 24 Hours 48 Hours 3 Days

Sample conditions on receipt: _____

Additional comments: _____

Results Due: _____

TABLE 1
 Indoor Air Evaluation at EZ Storage Facility
 Panama Street Site
 12922 Panama Street
 Los Angeles, California

EPA TO-15 Volatile Organics	Sample ID: AS 1 AS 2 AS 3 AS 4 AS 5 AS 6 AS 7									
	Sampling Date:			10/28/2015	10/28/2015	10/28/2015	10/28/2015	10/28/2015	10/28/2015	10/28/2015
	PQL (µg/m3):	DTSC (ug/m3)	RSL (ug/m3)	VOC Concentration (µg/m3)						
Acetone	0.17	140000	140000	ND	ND	ND	ND	ND	ND	ND
Acrolein	0.50	0.088	0.088	ND	ND	ND	ND	ND	ND	ND
Benzene	0.08	0.42	1.6	2.1	2.1	ND	ND	ND	ND	ND
Benzyl chloride	0.50	0.25	0.25	ND	ND	ND	ND	ND	ND	ND
Bromodichloromethane	0.67	0.33	0.33	ND	ND	ND	ND	ND	ND	ND
Bromoform	1.00	11	11	ND	ND	ND	ND	ND	ND	ND
Bromomethane	0.33	22	22	ND	ND	ND	ND	ND	ND	ND
1,3-Butadiene	0.17	0.072	0.41	ND	ND	ND	ND	ND	ND	ND
2-Butanone (MEK)	0.33			ND	ND	ND	ND	ND	ND	ND
Carbon disulfide	2.00	3100	3100	ND	ND	ND	ND	ND	ND	ND
Carbon tetrachloride	0.06	0.29	2.0	ND	ND	ND	ND	ND	ND	ND
Chlorobenzene	0.50	220	220	ND	ND	ND	ND	ND	ND	ND
Chloroform	0.33	0.53	0.53	ND	ND	ND	ND	ND	ND	ND
Cyclohexane	0.33	26000	4400	ND	ND	ND	ND	ND	ND	ND
Dibromochloromethane	0.83	0.45	0.45	ND	ND	ND	ND	ND	ND	ND
1,2-Dibromoethane	0.83	0.02	0.02	ND	ND	ND	ND	ND	ND	ND
1,2-Dichlorobenzene	0.67	880	880	ND	ND	ND	ND	ND	ND	ND
1,3-Dichlorobenzene	0.67			ND	ND	ND	ND	ND	ND	ND
1,4-Dichlorobenzene	0.67	1.1	1.1	7.9	7.9	ND	ND	ND	ND	ND
1,1-Dichloroethane	0.33	7.7	7.7	ND	ND	ND	ND	ND	ND	ND
1,2-Dichloroethane	0.12	0.47	0.47	2.3	ND	ND	ND	ND	ND	ND
1,1-Dichloroethene	0.33	310	880	ND	ND	ND	ND	ND	ND	ND
Cis-1,2-Dichloroethene	0.33	35		ND	ND	ND	ND	ND	ND	ND
Trans-1,2-Dichloroethene	0.33	350		ND	ND	ND	ND	ND	ND	ND
1,2-Dichloropropane	0.50	1.2	1.2	ND	ND	ND	ND	ND	ND	ND
Cis-1,3-Dichloropropene	0.50			ND	ND	ND	ND	ND	ND	ND
Trans-1,3-Dichloropropene	0.50			ND	ND	ND	ND	ND	ND	ND
1,4-Dioxane	0.33	1.6	2.5	ND	ND	ND	ND	ND	ND	ND
Ethanol	0.17			ND	2.3	ND	ND	ND	ND	ND
Ethyl acetate	0.33	310	310	ND	ND	ND	ND	ND	ND	ND
Ethyl benzene	0.50	4.9	4.9	3.2	3.1	ND	ND	ND	ND	ND
4-Ethyltoluene	0.50			1.7	ND	ND	ND	ND	ND	ND
Freon 11	0.50			ND	ND	ND	ND	ND	ND	ND
Freon 12	0.50			ND	ND	ND	ND	ND	ND	ND
Freon 113	0.83			ND	ND	ND	ND	ND	ND	ND
Freon 114	0.67			ND	ND	ND	ND	ND	ND	ND
Heptane	0.33			3.4	3.9	ND	ND	ND	ND	ND
Hexachloro-1,3-butadiene	1.00			ND	ND	ND	ND	ND	ND	ND
Hexane	0.33	3100	3100	ND	ND	ND	ND	ND	ND	ND
2-Hexanone (MBK)	0.33	130	130	ND	ND	ND	ND	ND	ND	ND
Isopropyl Alcohol	0.33	5300		1.3	1.5	ND	ND	ND	ND	ND
4-Methyl-2-pentanone (MIBK)	0.33	13000	13000	ND	ND	ND	ND	ND	ND	ND
Methylene chloride	0.33	12	1200	ND	ND	ND	ND	ND	ND	ND
MTBE	0.33	47	47	ND	ND	ND	ND	ND	ND	ND
Methylmethacrylate	0.33	3100	3100	ND	ND	ND	ND	ND	ND	ND
Naphthalene	0.33			ND	ND	ND	ND	ND	ND	ND
Propylene	0.17	13000	13000	ND	ND	ND	ND	ND	ND	ND
Styrene	0.50	3900	4400	1.8	2.3	ND	ND	ND	ND	ND
1,1,2,2-Tetrachloroethane	0.67	0.21	0.21	ND	ND	ND	ND	ND	ND	ND
Tetrachloroethene	0.33	2.1	47	2.9	2.7	0.6	0.8	0.8	ND	ND
Tetrahydrofuran	0.33			ND	ND	ND	ND	ND	ND	ND
Toluene	0.33	1300	22000	16.3	15.4	1.5	1.3	1.3	1.3	1.2
1,2,4-Trichlorobenzene	0.50	1.7	8.8	ND	ND	ND	ND	ND	ND	ND
1,1,1-Trichloroethane	0.50	4400	22000	ND	ND	ND	ND	ND	ND	ND
1,1,2-Trichloroethane	0.50	0.77	0.77	ND	ND	ND	ND	ND	ND	ND
Trichloroethene	0.50	3.0	3.0	ND	ND	ND	ND	ND	ND	ND
1,2,4-Trimethylbenzene	0.50	31	31	2.9	2.9	ND	ND	ND	ND	ND
1,3,5-Trimethylbenzene	0.50	180		ND	ND	ND	ND	ND	ND	ND
Vinyl Acetate	0.67	880	880	5.3	5	ND	ND	ND	ND	ND
Vinyl chloride	0.31	0.16	2.8	ND	ND	ND	ND	ND	ND	ND
o-Xylene	0.50	440	440	3.5	3.2	ND	ND	ND	ND	ND
p/m-Xylene	0.50	440	440	11.2	10.7	ND	ND	ND	ND	ND
Dilution Factor:				1	1	1	1	1	1	1

NOTES:
 PQL = Practical Quantitation Limit
 DTSC = California Department of Toxic Substances Scening Level, Commercial Scenario, Human and Ecological Risk Office - Note Number 3, May 2015
 RSL = Regional Screening Level, Industrial Air, May 2014.
 CHHSL = California Human Health Screening Levels, Indoor Air, Commercial Scenario, January 2005
 ND = Indicated constituents not detected above the PQL
 µg/m3 = micrograms per cubic meter



Dana P. Palmer

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Direct Dial: 213.955.5613 File Number: 379068.00001/4873-0740-8963.2

December 15, 2022

Ms. Jillian Ly
Regional Water Quality Control Board, Los Angeles Region
320 W. 4th St., Suite 200
Los Angeles, CA 90013

Re: Teledyne Comments on Draft Cleanup and Abatement Order, E-Z Storage, 12901 Culver Boulevard, Los Angeles, CA, Site Cleanup File No. 1496

Dear Ms. Ly:

On behalf of Teledyne Technologies Incorporated (“Teledyne”), we comment herein on the proposed draft cleanup and abatement order (“Draft CAO”) concerning the E-Z Storage property at 12901 Culver Boulevard in Los Angeles, California (the “Site”).¹

Teledyne concludes that the Draft CAO as currently presented is deficient for the following reasons, among other concerns.

- B.2.1 • The Draft CAO *fails to name parties documented to have operated on the Site*, including railroads and outdoor advertising companies. Both of these classes of entities, in addition to E-Z Storage itself, are much more likely to have contaminated soil and soil vapor at the Site than Teledyne, yet inexplicably these are not targets of the Draft CAO. Furthermore, these entities submitted *Chemical Storage and Use Questionnaires* that were hardly complete; this incomplete record should have been remedied by Regional Board staff prior to formal enforcement. Together, this oversight strongly suggests that Regional Board staff have not complied with mandatory obligations under Title 23, California Code of Regulations, Section 2907.
- B.2.2
- B.3 • The Draft CAO also *fails to fully address the consequences of the significant historical gradient between the Site and the Panama Street Site (“Adjacent Site”) to the north*. This gradient makes it unlikely that Teledyne, which used the Site only for employee parking for a comparatively short duration, materially contributed to conditions in the vadose zone, while having all the hallmarks of contamination by E-

B.1 ¹ When possible, please update this author’s email and physical addresses in your database.

B.3 | Z Storage, E-Z Storage customers, or prior owners and tenants for which E-Z Storage now is responsible.

Below, Teledyne provides comments on the referenced sections of the Draft CAO:

B.4 | **Page 1, Issue 2:** This paragraph references Attachment A, Figure 1, which shows both the E-Z Storage property and the Panama Street Site (“Adjacent Site”) in red. To avoid confusion, only the E-Z Storage Site should be outlined in red to better illustrate the focus of the Draft CAO.

B.5 | **Page 2, Issue 3:** The second paragraph should include a specific discussion of the former train station “Alla Station.” The Alla Station is presently noted in Table 1, but should be addressed in the narrative, as the station’s historical presence increases the potential for releases and leaks while train cars were stopped at the station or when train cars were serviced there.

B.6 | **Page 2, Issue 3:** In the third paragraph in the discussion of the Adjacent Site formerly leased by Teledyne, the *significant historical grade difference* between the Site (higher) and the Adjacent Site (lower) should be noted. This historical significant grade difference (1) makes it less likely that contaminants migrated in soil from the Adjacent Site to the Site, (2) made it easier for contaminants to mobilize from the Site to the Adjacent Site, including especially from the drains servicing the Site and discharging onto the Adjacent Site. The grade difference also supports the theory that shallow surface releases on the Site were not caused by Teledyne.²

B.6.1 |

B.6.2 |

B.7 | **Page 2, Issue 3:** The third paragraph states that “Teledyne has previously acknowledged a discharge of chlorinated solvents during their operations, which may have occurred in the transfer, movement and use of chemicals and equipment to the Adjacent Site.” Teledyne has previously and transparently documented the locations of its operations, and associated chemical storage and use, as part of a voluntary cleanup case at the Adjacent Site. Teledyne did not use chemicals on the Site or transport chemicals across it. Instead, chemical deliveries occurred off of Panama Street to the north, and chemical use and storage occurred within buildings on the Adjacent Site. As previously documented in commercial leases submitted to the Regional Board, Teledyne’s use of the Adjacent Site was limited to employee parking and employee pedestrian traffic, the exclusive uses permitted by Teledyne’s former landlord Southern Pacific Transportation Company. Alta July 2019 Report, PDF pp. 18-40. The last sentence of the paragraph should be modified to state “Teledyne is considered a discharger of VOCs that have impacted the Adjacent Site and have comingled with the VOCs discharged on the Site.”

² The document at the following link includes details illustrating the historical grade difference, including cross-sections, a design survey, and photos:
https://geotracker.waterboards.ca.gov/getfile?filename=/esi/uploads/geo_report/2476000308/T10000004824.PDF (“Alta July 2019 Report”).

B.8 | **Page 2, Issue 3:** The Draft CAO should also specifically note the long-term outdoor advertising uses on the Site, which could have employed chlorinated solvents in its operations. Alta July 2019 Report, PDF pp. 43-59.

B.9 | **Page 3, Issue 4.a:** As stated above, Teledyne did not use chemicals on the Site or transport chemicals across it. There were designated transportation path and storage areas for new and spent chemicals, all of which were distant from the Site, making the Site inconvenient and otherwise nonsensical for chemical transport or use.

B.10 | **Page 3, Issue 4.b:** The previous *Chemical Storage and Use Questionnaires* submitted by a railroad and advertising company were glaring in their absence of detail and obvious lack of time invested in their completion. Regional Board staff should follow-up on these insufficient questionnaires prior to agendaing the Draft CAO for Board consideration. This would put the Regional Board in a significantly better position in any dispute later about the sufficiency of compliance with Title 23, California Code of Regulations, Section 2907. It also would place all parties on a better footing in addressing--and allocating responsibility for--the contamination later in time, by naming all appropriate parties at the start.

B.11 | **Page 4 (top), Issue 4.b:** Regional Board staff should note detections in soil of contaminants of concern at varying depths and that the highest PCE concentrations in groundwater have consistently been detected beneath the area of “possible surface discharge” at the Site as reflected in well MW18 .

B.12 | **Page 4 (top), Issue 4.b:** The photo excerpted below, originally presented in the Alta July 2019 Report, shows a high volume of chemical storage at the Site from just a single tenant. This photo could also be considered to show chemical usage. Overall, the volume of chemicals in the photo could exceed the volume of chemicals stored by Teledyne in its hazardous waste storage area on any given day:

Regional Board Case #1292 Update
E-Z Storage Property Overview



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B.13 **Page 4, Issue 5:** This section should categorically state that E-Z Storage did not maintain adequate control or full knowledge of their tenants' on-site activities, or they would have known about the chemical storage of the type shown in the photo above. It may never be fully known the quantity or type of chemicals stored or used by E-Z Storage tenants over the approximately 35-year history. What we do know is that E-Z Storage has essentially been an absentee landlord with little to no actual knowledge of what is being stored in, or what is leaking from, customer storage units.

B.14 **Page 4, Issue 5:** The second paragraph is confusing, as it could be read to indicate there was a release near or at former Building #2 on the Adjacent Site, which was located along the southern property line, close to the Site. However, the 1985 release (1) is documented to have been *of TCA, not TCE* and (2) actually occurred *in the former main driveway off of Panama Street* at the north side of the Adjacent Site.

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B.15

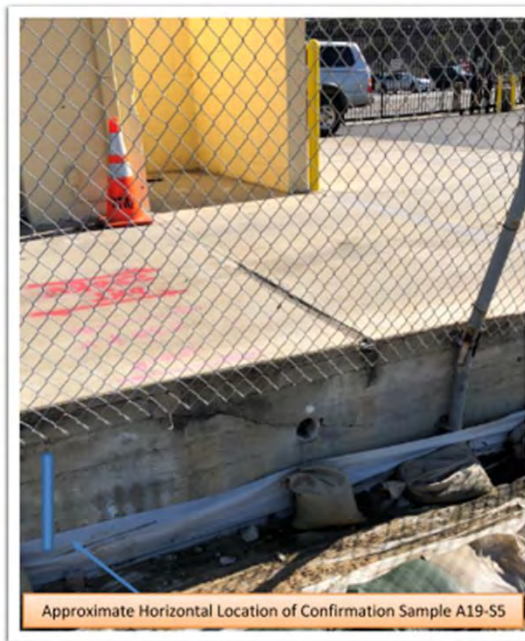
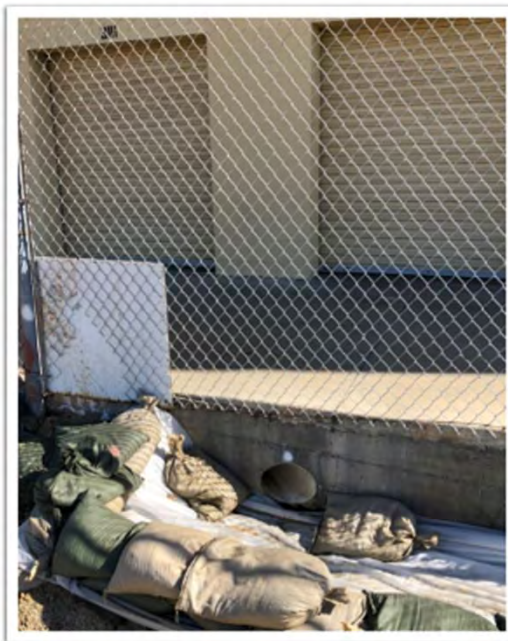
Page 4, Issue 6: In the first paragraph, the referenced site assessments also indicate a third scenario that is not mentioned: that volatile chemicals in the subsurface have actually migrated from the Site to the Adjacent Site. On this topic, Regional Board staff should reconsider what degree of contamination migrated from the Site to the Adjacent Site, whether from runoff or migration of contaminants in the subsurface or through groundwater. This scenario should be specifically discussed in the Draft CAO, whether in this section or another.

B.16

Page 5, Issue 6.a: This paragraph and others should detail the environmentally-significant historical grade difference between the Site (higher) and the Adjacent Site (lower), as vividly illustrated in these photographs:

Regional Board Case #1292 Update

E-Z Storage Property – Drain Outlets Empty to Panama Site



8

As a result of this grade difference, the Adjacent Site received a significant proportion of runoff from the Site. In these photos, the higher Site is towards the back, while the lower Adjacent Site is in the foreground.

B.16.1

As also shown in the photos above, a retaining wall separating the two sites *clearly showing this elevation difference* was present prior to recent construction. This retaining wall was on the Site-

B.16.1 side of the concrete storm channel (or swale) and would have blocked any surface flow from the Adjacent Site to the Site.

Last, this photo shows one of the drains that discharge from the Site to the Adjacent Site.

As stated in the Alta Environmental's December 20, 2019 Response to Documents:

B.16.2 "This storm channel was just adjacent to the change in grade between the E-Z Storage Investigation Area and the Panama Street Site [Adjacent Site]. Understanding the topography in this area prior to recent construction activities is important to understanding the relationship between the two properties. Prior to the recent grade work conducted on the Panama Street Site, the greatest elevation difference, approximately 2.5 feet, was located in the vicinity of boring B122. Beginning near boring B130, the elevation difference began to taper off to the southwest. This elevation difference, which has existed since at least the time of the E-Z Storage property development in the mid-1980s, is evidenced by a topographical design survey conducted by a third party, prior to the implementation of soil remediation activities conducted on the Panama Street Site. Appendix A presents a copy of the survey."³

Thus, stormwater and any other runoff from the Site flowed from pipes into the swale on the Adjacent Site and could not have flowed from the Adjacent Site to the Site. This is strong evidence of the Site's likely contribution to conditions at the swale dividing the two sites where contamination has been found.

B.17
B.17.1 **Page 5, Issue 6.a:** The quoted 15 mg/kg concentration in boring GW3 was from Environ's split sample for a prior owner of the Adjacent Site, but Teledyne's sample result was 2.96 mg/kg. In addition, the reference in this section to MW18 is misplaced, as MW18 did not exist during the time period discussed.

B.18 **Page 5, Issue 6.c:** This paragraph discusses the E-Z Storage Additional Investigation Report from 2018, but should also address Alta Environmental's March 29, 2019 "Additional Offsite Assessment and Well Installation Report."⁴ While the shallowest samples collected during the 2018 investigation are limited to 2.5 ft bgs, the 2019 investigation report identifies samples collected from 0.5, 1.0 and 1.5 feet bgs. These even shallower surface samples show elevated contaminant concentrations which provide further evidence of a surficial release on the E-Z Storage property.

³ Available at https://geotracker.waterboards.ca.gov/profile_report?global_id=T10000004824.

⁴ Available at https://geotracker.waterboards.ca.gov/esi/uploads/geo_report/5284680306/T10000004824.PDF.

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B.19
B.19.1 | **Page 6 (top), Issue 6.d (continued from Page 5):** Quarterly groundwater activities at the Site began in February 2019, not January 2019. The first groundwater monitoring events for the Site and the Adjacent Site are actually discussed in other quarterly reports not cited here as part of background discussions. The 1Q2022 report is not the only instance. The second sentence of 6.d should therefore be clarified. The PCE concentration referenced in the last sentence (56,100 µg/L) is from the 4Q2021 groundwater monitoring event, so this last sentence should also be clarified.

B.20 | **Page 8, Issue 13:** Please specify which of the “Required Actions” the cost estimate is meant to cover.

B.21 | **Page 15, Issue 6:** Should the Draft CAO come into force, Teledyne proposes that the Regional Board follow NV5’s long-standing recommendations as to a reduction in groundwater parameters and constituents to monitor pertaining to the Adjacent Site. These parameters and constituents should be monitored on a semi-annual rather than quarterly basis and they should be the same for both the Site and the Adjacent Site.

B.22 | **Attachment A:** Many of the figures included in Attachment A are from older assessment reports and do not include all data available for the Site. For example, Borings B129 through B134 and MW17 through MW19 are missing. These figures should be updated to reflect the most recent data from the Site.

B.23 | Thank you for the opportunity to submit these comments. While Teledyne appreciates the opportunity to provide input, it must necessarily reserve all rights moving forward. We especially urge you to closely consider whether prior parties operating at the Site should be further investigated, as required by regulation, prior to agendaing the Draft CAO for Regional Board consideration. We also urge Regional Board staff to evaluate further the likely contribution by E-Z Storage to contamination on the Adjacent Site.

Very truly yours,



Dana P. Palmer

cc: Melanie Cibik, Esq., Senior Vice President, General Counsel, Chief Compliance Officer and Secretary, Teledyne Technologies Incorporated
Paul Sassalos, Esq., Associate General Counsel, Teledyne Technologies Incorporated
Michael Shearer, Senior Director, Environment, Health and Safety, Teledyne Technologies Incorporated

[carbon copies continued next page]

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Ms. Jillian Ly
December 15, 2022
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Andrew Aguirre, Manager, Environment, Health and Safety, Teledyne Technologies
Incorporated
Jonathan Barkman, Project Manager, NV5
Michael Cassidy, Principal Geologist, Group Delta

EXHIBIT “B”

**DECLARATION OF JAMES E. GREENHUT IN SUPPORT OF REQUEST FOR STAY
OF ENFORCEMENT—E-Z STORAGE-MARINA 2 PETITION RE LOS ANGELES
RWQCB CLEANUP AND ABATEMENT ORDER NO. R-4-2024-0132**

I, James E. Greenhut, declare as follows:

1. I am the Manager of E-Z Storage-Marina 2 L.P. (“Marina-2”), one of the alleged Dischargers named in the above-referenced Order (the “Order”).
2. I am making this Declaration in support of Marina-2’s request for a stay of enforcement of the Order.
3. The facts stated herein are personally known to me and if called as a witness in a hearing I would testify thereto under oath.
4. The Order (page 8, paragraph 13) estimates the cost of submitting initial reports at a range of \$700,000 to \$1,300,000: “This Order requires investigation and submittal of work plans. Based upon Los Angeles Water Board staff experience with similar investigations, the approximate cost of these reports is in the range of \$700,00 to \$1,300,000”.
5. Another alleged Discharger, Teledyne Technologies, Inc. (“Teledyne”), is also named in the Order. Therefore, Marina-2 may be able to share this expense with Teledyne.
6. However, even assuming Marina-2 could share this expense with Teledyne, to meet the expense Marina-2 would have to use its reserves. In this regard, please note my understanding is that the above-referenced estimate in the Order does not include the expense of actual remediation of either the soil or the groundwater. Funding this obligation by Marina-2 would deplete a substantial portion of the reserves (which as of the time of making this Declaration total \$2,495,000).
7. Maintaining adequate reserves is crucial for the long-term health and stability of Marina-2, ensuring as such maintenance does that the entity can weather unexpected challenges without financial disruption.
8. The property at issue, 12901 Culver Boulevard in Los Angeles, is about 40 years old; and the inability to maintain our reserves will likely lead to deferred maintenance, deteriorating the property’s condition and value. Our financial position does not allow for obtaining additional loans.
9. Additionally, the failure to maintain the property will in my judgment (a) lead to tenant dissatisfaction (Marina-2 uses the property as a customer storage facility) which in turn (b) will lead to higher vacancy rates and reduced rental income as tenants seek better maintained properties.

10. I have reviewed Marina-2's Petition challenging the Order; based on such review, I confirm that I agree there are other entities not named in the Order which should be named and which should share in the above-referenced expense of complying with the Order. Based on the information developed by the investigations done by both Marina-2's and Teledyne's consultants, it is apparent to me that others should be sharing in this expense.
11. A stay of enforcement would, without prejudicing Marina-2, allow the RWQCB to investigate naming these other entities to ensure that all responsible Dischargers share in responsibility for compliance with the Order.

I declare under penalty of perjury under the laws of the State of California that the above stated facts are true and correct and that this Declaration was executed on August 20th at Encino, California.


JAMES E. GREENHUT

EXHIBIT “C”

**DECLARATION OF STEPHEN T. HOLZER IN SUPPORT OF REQUEST FOR STAY
OF ENFORCEMENT—E-Z STORAGE-MARINA 2 PETITION RE LOS ANGELES
RWQCB CLEANUP AND ABATEMENT ORDER NO. R-4-2024-0132**

I, Stephen T. Holzer, declare as follows:

1. I am an attorney at law, licensed by the State of California. I am employed by the law firm of Lewitt Hackman Shapiro Marshall & Harlan, counsel to Petitioner E-Z Storage Marina-2 (“Marina-2”).
2. I am making this declaration in support of Marina-2’s request for a stay of enforcement of the Order.
3. The facts stated herein are personally known to me and if called as a witness in a hearing I would testify thereto under oath.
4. If a stay of enforcement of the Order to Marina-2 is granted, there will be no substantial harm to other interested persons. I am informed and believe, based on public documents I have seen, that Teledyne Technologies, Inc. is already performing groundwater monitoring of the downgradient area from the 12901 Culver Boulevard, Los Angeles property at issue; and staying enforcement of the Order as to Marina-2 will thus not constitute substantial harm to Teledyne. In any event, as long as Teledyne continues groundwater monitoring, Marina-2 is not opposed to Teledyne also receiving the benefit of a stay while the State Water Resources Control Board considers the Marina-2 Petition. Additionally, Teledyne’s continued response action concerning downgradient ground water continue to protect the public interest.
5. There are substantial questions of law and fact about the Order, as described in the Petition.

I declare under penalty of perjury under the laws of the State of California that the above stated facts are true and correct and that this Declaration was executed on August 20, 2024 at Encino, California.



STEPHEN T. HOLZER