



Alan C. Lloyd, Ph.D.  
Secretary for  
Environmental  
Protection

# California Regional Water Quality Control Board San Diego Region



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Governor

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<http://www.waterboards/sandiego>

August 23, 2005

Bulen Family Trust  
C/O Mr. John Hurtz  
Stepstone Real Estate  
1660 Union Street 4<sup>th</sup> Floor  
San Diego, California 92101

In reply refer to:  
SMC:02-0031.05:walsl

**CERTIFIED MAIL Return Receipt Requested**  
Registration Number: 7004 1160 0007 0950 0958

Dear Sirs:

**SUBJECT: CLEANUP AND ABATEMENT ORDER NO. R9-2005-0017 FOR  
DISCHARGES OF WASTE FROM 1378 EAST GRAND AVENUE IN  
ESCONDIDO, CALIFORNIA**

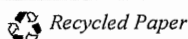
Enclosed is Cleanup and Abatement Order (CAO) No. R9-2005-0017. This CAO addresses discharges of waste both to land and ground water from the site currently occupied by Lovett's One Hour Dry Cleaners at 1378 East Grand Avenue in Escondido, California. The CAO is issued pursuant to California Water Code (CWC) Section 13304 and directs the Bulen Family Trust to cleanup and abate the effects of the waste discharges described in the CAO findings.

Please note the directives contained in the CAO. Failure to comply with the directives may subject you to further enforcement actions by the Regional Board, including administrative or judicial proceedings for the assessment of civil liability in amounts of up to \$5,000 per day; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

Pursuant to CWC Section 13304, the California Regional Water Quality Control Board, San Diego Region (Regional Board) is entitled to reimbursement for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this CAO. Attached is an explanation of the SWRCB Reimbursement Process for Regulatory Oversight with billing cost sheet and acknowledgement letter.

You may contest the issuance of this CAO by requesting a public hearing on the matter before the Regional Board. You may request that a public hearing be scheduled on this matter at the **November 9, 2005** Regional Board meeting by submitting a written request to the attention of Mr. John Anderson, Senior Engineering Geologist, at the following address no later than 5:00 pm on Monday, October 17, 2005.

*California Environmental Protection Agency*



Mr. John Anderson, PG  
Senior Engineering Geologist  
Site Mitigation and Cleanup Unit  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, California 92123- 4340

Be aware that a request for a hearing does not stay any of the directives in the CAO. I strongly urge a complete and prompt response to each directive in CAO No. R9-2005-0017. If you have any questions regarding this matter, please contact either of the following staff:

Mr. John Anderson, PG  
Senior Engineering Geologist  
Site Mitigation and Cleanup Unit  
Phone: (858) 467-2975  
e-mail: JAnderson@waterboards.ca.gov

Ms. Laurie Walsh  
Water Resource Control Engineer  
Site Mitigation and Cleanup Unit  
Phone: (858) 467-2970  
e-mail: LWalsh@waterboards.ca.gov

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,

  
JOHN H. ROBERTUS  
Executive Officer

JHR:DTB:jpa:law: CAO R9 2005 0017cv ltr.DOC

Enclosures: (1) Cleanup and Abatement Order No. R9-2005-0017  
(2) Cleanup and Abatement Order No. R9-2005-0017 Technical Analysis  
(3) Spills, Leaks, Investigations, and Cleanup Program Cost Recovery Documents

CC:

Mr. Gary Erbeck, Director - County of San Diego Department of Environmental Health  
PO Box 129261, San Diego, CA 92112-9261  
Mr. Robert G. Russell, Jr., Procopio Cory Hargreaves & Savitch LLP 530 B Street, Suite 2100  
San Diego, California 92101-4469  
Mr. Khosrou Tahbaz, Lovett's One Hour Cleaners, 1378 E. Grand Avenue Escondido,  
California, 92027

*California Environmental Protection Agency*

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

CLEANUP AND ABATEMENT ORDER NO. R9-2005-0017

BULEN FAMILY TRUST

LOVETT'S ONE HOUR DRY CLEANERS  
1378 EAST GRAND AVENUE  
ESCONDIDO, CALIFORNIA  
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

*JURISDICTION*

1. **DISCHARGE OF SOLVENT WASTE.** From 1973 until the present, a dry cleaner facility, currently doing business as Lovett's One Hour Dry Cleaners, has operated at 1378 East Grand Avenue in Escondido, California (Site) on land leased from the Bulen Family Trust. Historically, previous operators of the dry cleaning facility (collectively referred to as Lovett's) caused or permitted waste from its dry cleaning operations, including tetrachloroethylene (PCE) and trichloroethylene (TCE), to be discharged to ground water underlying the Site and to be deposited in soil at the Site from which waste has been and probably will be discharged to ground water. Waste from Lovett's Dry Cleaning operations has caused and threatens to cause conditions of pollution, contamination, and nuisance by exceeding applicable water quality objectives for chlorinated solvent chemical waste constituents.
2. **PERSONS RESPONSIBLE.** Mr. Khosrou Tahbaz currently operates Lovetts and has since 1999. Evidence shows that the release occurred prior to 1999. Unidentified persons who were operators of the dry cleaning facility prior to 1999 may also be associated with the discharge. The Bulen Family Trust has been the fee title owner of the Site since 1963 and leased the Site to Mr. Tahbaz and other dry cleaning operators. The Bulen Family Trust is referred to as "Discharger" in this Cleanup and Abatement Order.

*SOLVENT WASTE DISCHARGES*

3. **WASTE DISCHARGES.** Dry cleaning operations at the Site include the use of Tetrachloroethylene (PCE) and Trichloroethylene (TCE) as solvents in the dry cleaning process. Site investigations have found elevated PCE and TCE concentrations in soil at 55,000 ug/kg (PCE) at 14 feet below ground surface (bgs) and 260,000 ug/kg (TCE) at 2 feet bgs. Site investigations have also found TCE, PCE, and their associated chemical breakdown products, *cis*-1,2-dichloroethylene (*c*-DCE), *trans*-1,2-dichloroethylene (*t*-DCE) in ground water underlying the Site in concentrations in excess of applicable *Water Quality Control Plan for the San Diego Basin* (Basin Plan) water quality objectives. Chlorinated solvent waste concentrations remain elevated at the Site because to date no cleanup or abatement actions have been undertaken by the Discharger(s).
4. **BASIN PLAN PROHIBITION VIOLATION:** The discharge of chlorinated solvent waste constituents from the Lovett's Dry Cleaners is a violation of Waste Discharge

Prohibition No. 1 of the Water Quality Control Plan for the San Diego Region (9) (Basin Plan). Prohibition No. 1 states "The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited."

5. **SITE INVESTIGATION.** The Discharger(s) have failed to complete site investigations needed to delineate the vertical and horizontal extent of waste from dry cleaning operations in soil and ground water. The Discharger must establish the vertical and horizontal extent of chlorinated solvent waste (PCE, TCE & their degradation products) and any other waste constituents with sufficient detail to identify affected or threatened waters of the state and provide the basis for decisions regarding subsequent cleanup and abatement actions, if any are determined by the Regional Board to be necessary.
6. **CLEANUP AND ABATEMENT ACTIONS.** Efforts to assess the impacts to soil and ground water from this release of waste occurred between 1998 and 2004 and included drilling 18 soil borings and installing 5 ground water monitoring wells. Soil vapor samples were also collected. Soil containing chlorinated solvent waste has not been removed from the Site and no treatment of ground water to reduce in situ dissolved concentrations of chlorinated solvent waste has occurred.

#### *STATUTORY AND REGULATORY FINDINGS*

7. **LEGAL AND REGULATORY AUTHORITY.** This Cleanup and Abatement Order is based on (1) Section 13267 and Chapter 5, Enforcement and Implementation commencing with Section 13300 of the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000); (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board and the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the Regional Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board policies, including State Water Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies.
8. **CEQA EXEMPTION.** This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.

#### *ORDER DIRECTIVES*

**IT IS HEREBY ORDERED**, pursuant to Sections 13267 and 13304 of the California Water Code, The Bulen Family Trust (hereinafter the "Discharger") shall comply with the following Directives:

## A. CLEANUP AND ABATE DISCHARGES

1. ***Duty to Comply.*** The Discharger(s) shall take all corrective actions<sup>1</sup> necessary to:
  - a. Investigate, cleanup, and abate discharges of chlorinated solvent chemicals (hereinafter waste constituents) at the Site and;
  - b. Achieve compliance with site-specific cleanup levels as prescribed by the Regional Board; and
  - c. Terminate any on-going illicit waste discharges at the Site.

## B. SITE INVESTIGATION AND CHARACTERIZATION

1. ***Site Investigation and Characterization Workplan.*** The Discharger shall develop and submit to the Regional Board by **December 9, 2005**, a workplan designed to guide the collection of additional information to produce a complete Site Investigation and Characterization Report described in Directive B.4. The work plan shall contain, but not be limited to, the following:
  - a. ***Conceptual Site Model (CSM).*** The workplan shall contain a conceptual site model (CSM) based on available data on the occurrence of waste constituents in the soil, and ground water, identifying physical location(s) and chemical characteristics of the waste source(s), transport mechanisms, point of exposures, exposure routes, and receptors. The Discharger shall refine the CSM as site characterization data becomes available and submit updated versions of the CSM to the Regional Board.
  - b. ***Extent of Waste Characterization.*** The workplan shall characterize the lateral and vertical extent of waste constituents in soil and ground water to background<sup>2</sup> levels. Include cross sections showing vertical and horizontal extent of waste concentrations in soil, source(s), lithology, water table, well locations, sample locations, and sample results.
  - c. ***Geological Characterization.*** The workplan shall characterize site geology using vertical cross sections that identify soil types, aquifer heterogeneities, and preferential pathways to pollutant migration.
  - d. ***Hydrogeological Characterization.*** The workplan shall provide documentation of the rate(s) and direction(s) of local ground water flow, in both the horizontal and vertical direction for all water bearing units potentially affected by the waste constituents from the Site.

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<sup>1</sup> Corrective Actions include the following phases of cleanup and abatement described in Directives B through E of this Cleanup and Abatement order: (1) Site Investigation and Characterization phase; (2) Feasibility Study phase; (3) Remedial Action Plan phase; and (4) Remedial Action Completion Report phase.

<sup>2</sup> "Background" means the concentrations or measures of constituents or indicator parameters in water or soil that have not been affected by waste constituents from the Site.

- e. *Ground Water Monitoring Well Installation.* The workplan shall describe (1) the location of existing monitoring wells; and (2) the proposed location of additional monitoring wells needed to characterize the types of waste constituents present, the concentrations of waste constituents and their lateral and vertical extent in ground water to background concentrations. Methods for purging and sampling monitoring wells must be capable of providing representative samples of ground water for detecting the waste constituents of concern. The workplan shall also describe the schedule for installation of any additional ground water, soil pore liquid, soil pore gas, or surface water monitoring devices necessary to comply with this Cleanup and Abatement Order.
  - f. *Presumptive Remedies.* Presumptive remedies shall be considered during the development of the workplan so that data needed for selection and design of remedial alternatives may be collected during site characterization.
  - g. *Field Methodologies.* The work plan shall describe the field methodologies for drilling, soil sampling, ground and surface water sampling, and other activities.
  - h. *Report Completion Schedule.* The workplan shall include a schedule for completion of all activities and submission of a final Site Investigation and Characterization Report described in Directive B.4.
2. *Workplan Modification.* The Discharger shall modify the workplan as requested by the Regional Board.
  3. *Workplan Implementation.* The Discharger shall begin implementation of the workplan sixty (60) days after submission of the workplan, unless otherwise directed in writing by the Regional Board. The Discharger shall comply with any conditions set by the Regional Board, including mitigation of adverse consequences from cleanup activities.
  4. *Site Investigation and Characterization Report.* The Discharger shall prepare and submit a Site Investigation and Characterization Report (Report) to the Regional Board by **April 10, 2006** describing the results of the site investigation and characterization study required under Directive B.1 of this Cleanup and Abatement Order. The Report shall contain a complete analysis of the source, nature, and extent of the waste to background concentrations; and a complete geological and hydrogeological characterization of the Site with sufficient detail to provide the basis for decisions regarding feasible and effective cleanup and abatement technologies and development of preferred cleanup and abatement alternatives.

### C. FEASIBILITY STUDY

1. *Feasibility Study (FS).* The Discharger shall, using information in the Site Investigation and Characterization Report (Report), prepare a FS. The Discharger shall submit the FS to the Regional Board by **June 9, 2006**. The FS shall evaluate cleanup and abatement alternatives that:

- a. *Achieve Source Control.* The FS shall evaluate alternatives that result in effective control of the source(s) of soluble and dense non aqueous phase liquids (DNAPLs) groundwater pollutants, and control of conditions that contribute to the migration of pollutants.
  - b. *Consider Appropriate Cleanup and Abatement Methods.* The FS shall consider the following cleanup and abatement methods or combinations thereof in the development of Site remediation alternatives.
    - i Source removal and/or isolation;
    - ii In-place treatment of soil or water;
    - iii Excavation or extraction of soil, water, or gas for on-site or off-site treatment,
    - iv Excavation or extraction of soil, water, or gas for appropriate recycling, re-use, or disposal; or
    - v Any other appropriate cleanup and abatement measure capable of attaining the cleanup levels prescribed in Directive C.1.c.
  - c. *Attain Applicable Cleanup Levels.* The FS shall evaluate remedial alternatives, including the cost and effectiveness of each alternative, for the remediation of the waste constituents to attain a range of applicable soil and ground water cleanup levels between background water quality conditions and alternative cleanup levels derived by applying the conditions set forth in Title 23, Chapter 15, Article 5, Section 2550.4. Alternate cleanup levels shall not unreasonably affect present and anticipated beneficial uses of waters and not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Board.
2. *Recommended Remedial Alternative.* The FS shall present a recommended alternative for the cleanup or remediation of the waste constituents.

#### D. REMEDIAL ACTION PLAN

1. *Remedial Action Plan (RAP.)* The Discharger shall submit a RAP to the Regional Board by **August 9, 2006**. The RAP shall contain the following information:
  - a. *Implementation Activities.* A detailed description of all activities planned to implement the recommended alternative for remediation of the waste constituents described in the final FS and a schedule for their completion; and
  - b. *Monitoring Activities.* A monitoring program to demonstrate the effectiveness of the RAP. The monitoring program shall be effective in determining compliance with the cleanup levels and in determining the success of the remedial action.

2. **Remedial Action Plan (RAP) Implementation.** The Discharger shall begin implementation of the RAP by **October 9, 2006**, unless otherwise directed in writing by the Regional Board. Before beginning RAP implementation activities, the Discharger shall:
  - a. Notify the Regional Board of its intention to begin cleanup; and
  - b. Comply with any conditions set by the Regional Board, including mitigation of adverse consequences from cleanup activities.
3. **Remedial Action Zone.** The Discharger shall implement remedial action measures that ensure the waste constituents achieve their respective cleanup levels at all monitoring points and throughout the zone affected by the waste constituents, including any portions thereof that extend beyond the Site property boundary.
4. **Implementation Schedule.** Implementation of the RAP shall be completed on a schedule to be established by the Regional Board in a subsequent amendment to this CAO.
5. **Monitoring and Evaluation.** The Discharger shall monitor, evaluate, and report the results of RAP implementation on a quarterly basis.
6. **Modify or Suspend Cleanup Activities.** The Discharger shall modify or suspend cleanup activities when directed to do so by the Regional Board.

#### E. REMEDIAL ACTION COMPLETION REPORT

1. **Remedial Action Completion Report.** The Discharger shall submit a final Remedial Action Completion Report by **December 11, 2006**, verifying completion of the cleanup and abatement actions taken at the Site. The report shall provide a demonstration, based on a sound technical analysis, that cleanup levels for all waste constituents are attained at all monitoring points and throughout the zone affected by the waste constituents, including any portions thereof that extend beyond the Site boundary.
2. **Regional Board Concurrence.** Upon concurrence with the findings of the Remedial Action Completion Report that cleanup and abatement actions are complete and that compliance with this Cleanup and Abatement Order is achieved, the Regional Board will inform the Discharger and other interested persons in writing that no further remedial work is required at the Site at this time. This written notice shall constitute Regional Board concurrence with the completed remedial actions.



## F. PROVISIONS

1. **Waste Management.** The Discharger shall properly manage, store, treat, and dispose of contaminated soils and ground water in accordance with applicable federal, state, and local laws and regulations. The storage, handling, treatment, or disposal of soil containing waste constituents and polluted groundwater shall not create conditions of pollution, contamination or nuisance as defined in California Water Code section 13050(m). The Discharger shall, obtain, or apply for coverage under waste discharge requirements or a conditional waiver of waste discharge requirements for any discharge of the waste to (a) land for treatment, storage, or disposal or (b) waters of the state.
2. **Request to Provide Information.** The Discharger may present characterization data, preliminary interpretations, and conclusions as they become available, rather than waiting until a final report is prepared. This type of on-going reporting can facilitate a consensus being reached between the Discharger and the Regional Board and may result in overall reduction of the time necessary for regulatory approval.
3. **Waste Constituent Analysis.** Unless otherwise permitted by the Regional Board, all analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services. Specific methods of analysis must be identified. If the Discharger proposes to use methods or test procedures other than those included in the most current version of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846" (U.S. Environmental Protection Agency) or 40 CFR 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants; Procedures for Detection and Quantification", the exact methodology must be submitted for review and must be approved by the Regional Board prior to use. The director of the laboratory whose name appears on the certification shall supervise all analytical work in his/her laboratory and shall sign all reports submitted to the Regional Board.
4. **Duty to Operate and Maintain.** The Discharger shall, at all times, properly operate and maintain all facilities and systems of treatment, control, storage, disposal, and monitoring (and related appurtenances) which are installed or used by the Discharger to achieve compliance with this Cleanup and Abatement Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities, which are installed by the Discharger only when the operation is necessary to achieve compliance the conditions of this Cleanup and Abatement Order.
5. **Duty to Use Qualified Professionals.** The Discharger(s) shall provide documentation that plans and reports required under this Cleanup and Abatement Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code Sections 6735, 7835 and 7835.1 require that engineering and geologic evaluations and judgments be performed by or under the direction of registered professionals. The Discharger(s) shall include a statement of qualifications and registration numbers, if applicable, of the responsible lead professionals in all

plans and reports required under this Cleanup and Abatement Order. The lead professional shall sign and affix their registration stamp, as applicable, to the report, plan, or document.

6. ***Electronic and Paper Media Reporting Requirements.*** The Discharger shall submit both electronic and paper copies of all reports required under this Cleanup and Abatement Order including workplans, technical reports, and monitoring reports. The Discharger shall comply with electronic reporting requirements of CCR Title 23, Division 3, Section 3893, including the provision requiring that complete copies of all reports be submitted in PDF format, and include the signed transmittal letter and professional certification.
7. ***Signatory Requirements.*** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Discharger(s) or by a duly authorized representative of the Discharger(s).
  - a. ***Duly Authorized Representative.*** A person is a duly authorized representative only if:
    - i The authorization is made in writing by the Discharger;
    - ii The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and
    - iii The written authorization is submitted to the Regional Board.
  - b. ***Changes to Authorization.*** If an authorization under paragraph (a) of this provision is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (a) of this provision must be submitted to the Regional Board prior to or together with any reports or information to be signed by an authorized representative.
  - c. ***Certification Statement.*** Any person signing a document under Provision 7 of this Cleanup and Abatement Order shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate 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."

8. **Report Submittals.** All monitoring and technical reports required under this Cleanup and Abatement Order shall be submitted to:

Executive Officer  
California Regional Water Quality Control Board  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340  
Attn: Site Mitigation and Cleanup Unit

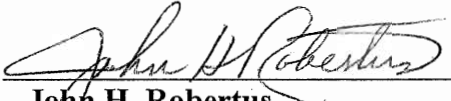
9. **Duty to Submit Other Information.** When the Discharger becomes aware that it failed to submit any relevant facts in any report required under this Cleanup and Abatement Order, or submitted incorrect information in any such report, the Discharger shall promptly submit such facts or information to the Regional Board.
10. **Identify Documents Using Code Number.** In order to assist the Regional Board in the processing of correspondence and reports submitted in compliance with this Cleanup and Abatement Order, the Discharger shall include the following code number in the header or subject line portion of all correspondence or reports submitted to the Regional Board: **SMC: 20-0031.05.**

## G. NOTIFICATIONS

1. **Cost Recovery.** The Discharger shall reimburse the State of California for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Cleanup and Abatement Order, according to billing statements prepared from time to time by the State Water Resources Control Board. If the Discharger is enrolled in a reimbursement program managed by the State Water Resources Control Board for the discharge addressed by this Cleanup and Abatement Order, reimbursement shall be made pursuant to the procedures established in that program. Any disputes raised by the Discharger over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.
2. **Enforcement Discretion.** The Regional Board reserves its right to take any enforcement action authorized by law for violations of the terms and conditions of this Cleanup and Abatement Order.
3. **Enforcement Notification.** The Porter-Cologne Water Quality Control Act commencing with Chapter 5, Enforcement and Implementation, Section 13308, provides that if there is a threatened or continuing violation of a cleanup and abatement order the Regional Board may issue a Time Schedule Order prescribing a civil penalty in an amount not to exceed \$10,000 per day for each day compliance is not achieved in accordance with that time schedule. Section 13350 provides that any person may be assessed administrative civil liability by the Regional Board for

violating a cleanup and abatement order in an amount not to exceed \$5,000 for each day the violation occurs. Alternatively the court may impose civil liability in an amount not to exceed \$15,000 for each day the violation occurs. Section 13383 provides that any person may be assessed administrative civil liability by the Regional Board for violating a cleanup and abatement order for an activity subject to regulation under Division 7, Chapter 5.5 of the California Water Code, in an amount not to exceed the sum of both of the following: (1) \$10,000 for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed \$10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. Alternatively the civil liability may be imposed by the court in an amount not to exceed the sum of both of the following: (1) \$25,000 for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed \$25 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

*I, John H. Robertus, Executive Officer, do hereby certify the forgoing is a full, true, and correct copy of a Cleanup and Abatement Order issued on August 23, 2005*

  
\_\_\_\_\_  
**John H. Robertus**  
**Executive Officer**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

**SAN DIEGO REGION**

**TECHNICAL ANALYSIS  
FOR  
CLEANUP AND ABATEMENT ORDER NO. R9-2005-0017**

**BULEN FAMILY TRUST**

**LOVETT'S ONE-HOUR DRY CLEANERS  
1378 EAST GRAND AVENUE  
ESCONDIDO, CALIFORNIA**

**SAN DIEGO COUNTY**

**August 23, 2005**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340

Phone • (858) 467-2952 Fax • (858) 571-6972

<http://www.waterboards.ca.gov/sandiego>.

To request copies of Cleanup and Abatement Order R9-2005-0017, *please* contact Laurie Walsh, Water Resource Control Engineer at (858) 467-2970, [L.Walsh@waterboards.ca.gov](mailto:L.Walsh@waterboards.ca.gov).

Final documents also are available at: <http://www.waterboards.ca.gov/sandiego>.

**STATE OF CALIFORNIA**

ARNOLD SCHWARZENEGGER, Governor

ALAN C. LLOYD, Ph. D., Agency Secretary, California Environmental Protection Agency



**California Regional Water Quality Control Board  
San Diego Region**

John Minan, <i>Chair</i>	Water Quality
Jennifer Kraus	Industrial Water Use
Richard Wright	County Government
Janet Keller	Recreation, Fish or Wildlife
Alan Barrett	Water Supply
Susan Ritschel	Municipal Government
Eric Anderson	Irrigated Agriculture
Daniel Johnson	Water Quality
Vacancy	Public

John H. Robertus, *Executive Officer*  
Arthur L. Coe, *Assistant Executive Officer*

**This report was prepared under the direction of**

David T. Barker, **PE**, *Chief, Water Resource Protection Branch*  
John Anderson, **PG**, *Senior Engineering Geologist*

**by**

Laurie Walsh, *Water Resource Control Engineer*

## I. INTRODUCTION

This technical analysis provides the rationale and factual evidence supporting the findings of Cleanup and Abatement Order (CAO) R9-2005-0017, *Bulen Family Trust, Lovett's One Hour Dry Cleaners, 1387 East Grand Avenue, Escondido, California, San Diego County*. CAO R9-2005-0017 was issued to address the cleanup and abatement of a chlorinated hydrocarbon waste release (tetrachloroethylene (PCE) and trichloroethylene (TCE)) to soil and ground water from the Lovett's One Hour Dry Cleaners facility. Efforts to assess the impacts to soil and ground water from this release of waste occurred between 1998 and 2004 and included drilling 18 soil borings and installing 5 ground water monitoring wells. Soil vapor samples were also collected. Soil containing chlorinated solvent waste has not been removed from the Site and no treatment of ground water to reduce in-situ dissolved concentrations of chlorinated hydrocarbons has occurred.

## II. BACKGROUND

Lovett's One Hour Dry Cleaner is located at 1378 East Grand Avenue in Escondido (the Site) on property owned by the Bulen Family Trust, since 1963. The parcel encompasses approximately 1,800 square feet. The Site has operated as a dry cleaner facility since the early 1970s, but it was not until 1994, during activities to upgrade the dry cleaning machine(s) that stained soil was identified and an environmental investigation was initiated. In 1998, Vertex Engineering Services, Inc. conducted a Phase I Environmental Assessment for General Electric Capital Real Estate. Vertex recommended that a subsurface investigation be conducted to determine the nature and extent of the discharge from the dry cleaners. Vertex conducted a Limited Subsurface Investigation in September 1998 at the direction of General Electric Capital Real Estate. The investigation revealed that several chlorinated solvent chemical compounds typically associated with dry cleaning operations, including tetrachloroethylene (PCE) and trichloroethylene (TCE), were detected in soil samples collected from the Site.

PCE and TCE were released into the subsurface soil sometime between 1973 and 1994. The exact cause of the release is unknown. The United States Environmental Protection Agency (USEPA) classifies PCE and TCE as probable human carcinogens. Efforts to assess the impacts to soil and ground water from this release of waste occurred between 1998 and 2004 under the regulatory oversight of the County of San Diego Department of Environmental Health (DEH). Assessment included drilling 18 soil borings and installing 5 ground water monitoring wells. Soil vapor samples were also collected. Soil containing chlorinated solvent waste has not been removed from the Site and no treatment of ground water to reduce in situ dissolved concentrations of chlorinated hydrocarbons has occurred. By letter dated August 6, 2004 the DEH issued a no further remedial action determination and a case closure summary for this Site based on information provided to them by the Dischargers' consultant, PIC Environmental Services (PIC). The DEH concurred with PIC that the extent of soil and groundwater contamination has been adequately defined, that the plume of contaminated groundwater is stable and does not threaten the beneficial use of water resources, and that residual subsurface contamination does not pose an existing threat to human health.



The Regional Board reviewed the Case Closure Summary and supporting technical information and determined that the proposed levels of waste constituent concentrations left in place are not protective of ground water quality and beneficial uses. Further assessment and cleanup and abatement is necessary to protect ground water quality and beneficial uses as required under Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*)<sup>1</sup>.

### III. BASIS FOR FINDINGS

1. **DISCHARGE OF SOLVENT WASTE.** From 1973 until the present, a dry cleaner facility, currently doing business as Lovett's One Hour Dry Cleaners, has operated at 1378 East Grand Avenue in Escondido, California (Site) on land leased from the Bulen Family Trust. Historically, previous operators of the dry cleaning facility (collectively referred to as Lovett's) caused or permitted waste from its dry cleaning operations, including tetrachloroethylene (PCE) and trichloroethylene (TCE), to be discharged to ground water underlying the Site and to be deposited in soil at the Site from which waste has been and probably will be discharged to ground water. Waste from Lovett's Dry Cleaning operations has caused and threatens to cause conditions of pollution, contamination, and nuisance by exceeding applicable water quality objectives for chlorinated solvent chemical waste constituents.

#### **Basis for Finding No. 1**

- September 18, 1998 Limited Subsurface Investigation prepared by Vertex
- February 26, 2004 PIC Environmental Services Groundwater Monitoring Report.
- May 18, 2004 PIC Environmental Services Request for Case Closure/No Further Action Report.
- Water Quality Control Plan for the San Diego Basin (Basin Plan)

The Site is located in the Escondido Hydrologic Subarea (HSA) (904.62); ground water in the Escondido HSA is designated as having existing beneficial uses for municipal and domestic water supply (MUN)<sup>2, 3</sup>, agricultural supply water (AGR), and industrial service

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<sup>1</sup> SWRCB Resolution No. 92-49 establishes the basis for determining cleanup levels of waters of the State and soils that impact waters of the State. Pursuant to Resolution 92-49, section III.G., dischargers are required to clean up and abate the effects of discharges "in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored, . . ." Alternative cleanup levels less stringent than background must 1) be consistent with maximum benefit to the people of the state, 2) not unreasonably affect present and anticipated beneficial uses of waters of the State and 3) not result in water quality less than prescribed in the Water Quality Control Plan for the San Diego Basin (Basin Plan).

<sup>2</sup> See Water Quality Control Plan for the San Diego Basin (Basin Plan), Page 2-3. The Basin Plan defines MUN as "[u]ses of water for community, military, or individual water supply systems including, but not limited to, drinking water supply."

<sup>3</sup> Basin Plan, footnote 1, supra. Table 2-5 at 2-54.

supply (IND). The Basin Plan contains numeric water quality objectives<sup>4</sup> for chemical constituents to protect ground waters designated for MUN. The numeric objectives are derived from primary maximum contaminant levels (MCLs)<sup>5</sup> established by the Department of Health Services (Department) in Title 22 of the California Code of Regulations.<sup>6</sup> In general, the Department establishes MCLs to ensure the safety of public drinking water supplies at the point of use, i.e. at the tap.

Elevated PCE and TCE concentrations are present in soil at 55,000 ug/kg (PCE) at 14 feet below ground surface (bgs) and 260,000 ug/kg (TCE) at 2 feet bgs. PCE, TCE, and their associated chemical breakdown products, *cis*-1,2-dichloroethylene (*c*-DCE), *trans*-1,2-dichloroethylene (*t*-DCE) are present in the ground water at the Site in concentrations above the applicable Basin Plan water quality objectives:

Waste Constituent	Ground Water Concentration (ug/l)	Basin Plan Water Quality Objective (ug/l)
Tetrachloroethylene (PCE)	14,000	5
Trichloroethylene (TCE)	1,100	5
Cis-1,2-Dichloroethylene ( <i>c</i> -DCE)	3,700	6
Trans-1,2-Dichloroethylene ( <i>t</i> -DCE)	44	10

The types and levels of waste constituents found in the soil and ground water are associated with dry cleaning facility waste discharges. Dry cleaning operations at the Site included the use of PCE and TCE as solvents in the dry cleaning process. Based on the foregoing, the discharge of waste at the Site has caused the presence of waste constituents in the ground water in concentrations in excess of applicable public health protective water quality

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<sup>4</sup> “Water quality objectives” are defined in Water Code section 13050(h) as “the limits or levels water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.”

<sup>5</sup> MCLs, maximum contaminant levels, are public health-protective drinking water standards to be met by public water systems. MCLs take into account not only chemicals' health risks but also factors such as their detectability and treatability, as well as the costs of treatment. Primary MCLs can be found in Title 22 California Code of Regulations (CCR) sections 64431 - 64444. Secondary MCLs address the taste, odor, or appearance of drinking water, and are found in 22 CCR section 64449.

<sup>6</sup> Basin Plan, footnote 1, supra. Page 3-10 and Table 3-6 at 3-11. The Basin Plan provides that “Water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels specified in California Code of Regulations, Title 22, Table 64444-A of Section 64444 (Organic Chemicals) which is incorporated by reference into this plan. This incorporation by reference is prospective including future changes to the incorporated provisions as the changes take effect. (See Table 3-6.)”

objectives and has therefore created a condition of pollution<sup>7</sup> and contamination<sup>8</sup> in waters of the State.

The discharge of waste at the Site has also created or threatens to create a condition of nuisance<sup>9</sup> in waters of the State. The presence of waste constituents in ground water in concentrations in excess of applicable public health protective water quality objectives is potentially injurious to the public health<sup>10</sup>. The interference and complications with the use of ground water for drinking water purposes arising from the presence of waste constituents in concentrations well in excess of applicable water quality objectives, can be considered an obstruction to the free use of property as provided in Water Code Section 13050(m).

2. **PERSONS RESPONSIBLE.** Mr. Khosrou Tahbaz currently operates Lovetts and has since 1999. Evidence shows that the release occurred prior to 1999. Unidentified persons who were operators of the dry cleaning facility prior to 1999 may also be associated with the discharge. The Bulen Family Trust has been the fee title owner of the Site since 1963 and leased the Site to Mr. Tahbaz and other dry cleaning operators. The Bulen Family Trust is referred to as “Discharger” in this Cleanup and Abatement Order.

**Basis for Finding No. 2**

- August 6, 2004 County of San Diego Department of Environmental Health - No Further Action Determination Letter.
- August 14, 2004 Telephone conversation with John Hurtz, Stepstone Real Estate, 1660 Union Street, 4<sup>th</sup> Floor, San Diego, CA 92101.
- October 2004 City of Escondido Business License Division, Request for Business License Information Form.

California Water Code section 13304 authorizes the Regional Board to order any person who “causes or permits” waste to be discharged where it “creates or threatens to create a condition of pollution or nuisance” to clean up or abate the effects of the waste. The State Water Resources Control Board (State Board), in a series of orders dealing with the review of Regional Board decisions on who is responsible for ground water cleanups, has established

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<sup>7</sup> “Pollution” is defined in Water Code section 13050 (1) as “an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses, (B) Facilities which serve these beneficial uses.” Pollution” may include “contamination.”

<sup>8</sup> “Contamination” is defined in Water Code section 13050(k) as an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. “Contamination” includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

<sup>9</sup> Nuisance is defined in Water Code section 13050(m) “... anything which: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the treatment or disposal of wastes.”

<sup>10</sup> The United States Environmental Protection Agency (USEPA) classifies PCE and TCE as probable human carcinogens.

general principles regarding naming responsible parties. These principles can be summarized as follows:

- In general, name all persons who have caused or permitted a discharge (Orders Nos. WQ 85-7 and 86-16).
- “Discharge” is to be construed broadly to include both active discharges and continuing discharges (Order No. WQ 86-2).
- There must be reasonable basis for naming a responsible party (i.e., substantial evidence). It is inappropriate to name persons who are only remotely related to the problem such as suppliers and distributors of gasoline (WQ 85-7, 86-16, 87-1, 89-13, and 90-2).
- Persons who are in current possession, ownership or control of the property should be named, including current landowners and lessees (numerous orders, including WQ 84-6, 86-11, 86-18, 89-1, 89-8, 89-13 and 90-3).

The Regional Board has applied these principles in determining what parties should be named in CAO R9-2005-0017.

It is undisputed that the Bulen Family Trust has owned the Site since 1963 and leased the Site to Mr. Tahbaz in 1999 and prior dry cleaning operators. The Regional Board has discretion to hold landowners accountable for discharges which occur or occurred on the landowner’s property based on three criteria: (1) ownership of the land; (2) knowledge of the activity causing the discharge; and (3) the ability to control the activity. The Bulen Family Trust meets all three of these criteria and should be named in the cleanup and abatement order as a responsible party.

Although the exact cause of the release is unknown, the types and levels of waste constituents found in the soil and ground water can be attributed to a waste release(s) from the Lovett’s One Hour Dry Cleaner facility. Mr. Tahbaz is not currently named on the CAO because evidence in the record does not document his connection to the site in 1994.

3. **WASTE DISCHARGES.** Dry cleaning operations at the Site include the use of Tetrachloroethylene (PCE) and Trichloroethylene (TCE) as solvents in the dry cleaning process. Site investigations have found elevated PCE and TCE concentrations in soil at 55,000 ug/kg (PCE) at 14 feet below ground surface (bgs) and 260,000 ug/kg (TCE) at 2 feet bgs. Site investigations have also found TCE, PCE, and their associated chemical breakdown products, *cis*-1,2-dichloroethylene (*c*-DCE), *trans*-1,2-dichloroethylene (*t*-DCE) in ground water underlying the Site in concentrations in excess of applicable *Water Quality Control Plan for the San Diego Basin* (Basin Plan) water quality objectives. Chlorinated solvent waste concentrations remain elevated at the Site because to date no cleanup or abatement actions have been undertaken by the Discharger(s).

**Basis for Finding No. 3**

- Profile of the Dry Cleaning Industry, EPA Office of Compliance Sector Notebook Project, USEPA, 1995
- September 18, 1998 Limited Subsurface Investigation prepared by Vertex
- February 26, 2004 PIC Environmental Services Groundwater Monitoring Report.
- May 18, 2004 PIC Environmental Services Request for Case Closure/No Further Action Report.
- Water Quality Control Plan for the San Diego Basin (Basin Plan)

In 1994, stained soil was discovered during activities to upgrade the dry cleaning machine. In 1998, a Phase I Assessment was conducted documenting the release of PCE and TCE waste to soil. Additional assessment was conducted documenting a release of PCE and TCE to ground water beneath the Site. These investigations found that elevated PCE and TCE concentrations remain in soil at 55,000 ug/kg (PCE) at 14 feet below ground surface (bgs) and 260,000 ug/kg (TCE) at 2 feet bgs. The investigations also found that TCE, PCE and their associated chemical breakdown products, *cis*-1,2-dichloroethylene (*c*-DCE), *trans*-1,2-dichloroethylene (*t*-DCE) are present in the ground water at the Site in concentrations in excess of applicable *Water Quality Control Plan for the San Diego Basin* (Basin Plan) water quality objectives (see Table below):

Waste Constituent	Ground Water Concentration (ug/l)	Basin Plan Water Quality Objective (ug/l)
Tetrachloroethylene (PCE)	14,000	5
Trichloroethylene (TCE)	1,100	5
Cis-1,2-Dichloroethylene ( <i>c</i> -DCE)	3,700	6
Trans-1,2-Dichloroethylene ( <i>t</i> -DCE)	44	10

4. **BASIN PLAN PROHIBITION VIOLATION:** The discharge of chlorinated solvent waste constituents from the Lovett’s Dry Cleaners is a violation of Waste Discharge Prohibition No. 1 of the Water Quality Control Plan for the San Diego Region (9) (Basin Plan). Prohibition No. 1 states “The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited.”

**Basis for Finding No. 4**

- *Water Quality Control Plan for the San Diego Basin (Basin Plan)* adopted in 1974 pursuant to California Water Code (Water Code) section 13240 and the federal Clean Water Act (CWA) section 303(c) and updated in 1994.

The Basin Plan contains discharge prohibitions that specify certain conditions or areas where the discharge of waste, or certain types of waste is not permitted pursuant to Water Code section 13243. The Basin Plan discharge prohibition No. 1 cited in CAO Finding 4 is contained in Chapter 4 on Page 4-15 of the 1994 Basin Plan. The discharge prohibition is applicable to any person, as defined by Section 13050(c) of the California Water Code, who is a citizen, domiciliary, or political agency or entity of California whose activities in California could affect the quality of waters of the state within the boundaries of the San Diego Region.

See also Basis for Finding No.1.

5. **SITE INVESTIGATION.** The Discharger(s) have failed to complete site investigations needed to delineate the vertical and horizontal extent of waste from dry cleaning operations in soil and ground water. The Dischargers must establish the vertical and horizontal extent of chlorinated hydrocarbon waste (PCE, TCE & their degradation products) and any other waste constituents with sufficient detail to identify affected or threatened waters of the state and provide the basis for decisions regarding subsequent cleanup and abatement actions, if any are determined by the Regional Board to be necessary.

#### **Basis for Finding No. 5**

State Water Resources Control Board Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*<sup>11</sup> provides in Section II.A.1. that the Regional Board shall require the Discharger(s) to determine the nature and extent of the discharge with sufficient detail to provide the basis for decisions regarding subsequent cleanup and abatement actions. Installation of ground water monitoring wells typically occur as an iterative process until ground water monitoring data indicates that waste constituent concentrations are at or near background concentrations or not detectable in ground water. Completion of this iterative process results in an adequate delineation of the plume in the horizontal direction.

The chlorinated hydrocarbon plume at the Site is not adequately defined. Large distances (approximately 450 feet) exist between on-Site wells and the only remaining downgradient off-Site well. Concentrations of PCE decrease within the 450 feet between MW-3 (on Site) and MW-5 (down gradient) however there are no wells to either the north or south of this assumed plume centerline to provide adequate definition of the plume. The Site is located in an industrial area where buildings cover most of the land downgradient from the discharge point. Taking this into account, ground water monitoring wells should be placed around the buildings to define the limits of the plume in the northern and southern directions.

Vertical delineation of the plume at the Site is also incomplete. Existing ground water monitoring wells at the Site are constructed using 15-foot wells screens. Long well screens (>

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<sup>11</sup> SWRCB Resolution No. 92-49 is a state policy that establishes policies and procedures for investigation and cleanup and abatement of discharges under CWC Section 13304. The Resolution includes procedures to investigate the nature and horizontal and vertical extent of a discharge and procedures to determine appropriate cleanup and abatement measures.

10 feet) are not recommended by the County of San Diego Department of Environmental Health in their Site Assessment and Mitigation Manual (SAM) for use during delineation of chlorinated hydrocarbon plumes due to the chemical properties of chlorinated solvents (density heavier than water). Shorter wells (<10 feet) are recommended to minimize the effects of dilution providing a more reliable vertical delineation.

Plume delineation requires a thorough understanding of the characteristics of the aquifer and a complete assessment of the extent of chlorinated solvent waste in soil. Boring locations B3, B5, B7, and B10 are not sufficient to determine the extent of chlorinated hydrocarbons in the vertical direction. Concentrations of PCE in soil at the deepest point in these borings are 55,000 ug/kg, 7,400 ug/kg, 3,500 ug/kg, and 4,880 ug/kg, respectively. PCE concentrations in soil increase with depth in all four of these borings. The Regional Board cannot conclude that delineation of the extent of waste deposited to soil in the vertical direction is complete when high concentrations of chlorinated solvent waste remains in soil at depth.

6. **CLEANUP AND ABATEMENT ACTIONS.** Efforts to assess the impacts to soil and ground water from this release of waste occurred between 1998 and 2004 and included drilling 18 soil borings and installing 5 ground water monitoring wells. Soil vapor samples were also collected. Soil containing chlorinated solvent waste has not been removed from the Site and no treatment of ground water to reduce in situ dissolved concentrations of chlorinated solvent waste has occurred.

**Basis for Finding No. 6**

- September 18, 1998 Limited Subsurface Investigation prepared by Vertex
- February 26, 2004 PIC Environmental Services Groundwater Monitoring Report.
- May 18, 2004 PIC Environmental Services Request for Case Closure/No Further Action Report.

7. **LEGAL AND REGULATORY AUTHORITY.** This Order is based on (1) Section 13267 and Chapter 5, Enforcement and Implementation commencing with Section 13300 of the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000); (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board and the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the Regional Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board policies, including State Water Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies

**Basis for Finding No. 7**

- California Water Code, Porter-Cologne Water Quality Control Act, with additions and amendments effective January 1, 2005.
- Water Quality Control Plan for the San Diego Basin (Basin Plan).

- State Water Resources Control Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality of Waters in California*.
- State Water Resources Control Board Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*)

8. **Finding No. 8: CEQA EXEMPTION:** “This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Article 19, Chapter 3, Division 6, Title 14 of the California Code of Regulations.”

**Basis for Finding No. 8**

See California Code of Regulations Section 15321(a) - Actions by regulatory agencies to enforce or revoke a lease, permit, license certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency. The Regional Board is exempt from going through the CEQA public participation process during issuance of CAO R9-2005-0017 because the standard regulatory process for which the Regional Board conducts with the issuance of every CAO includes sufficient opportunity for public participation and interested party involvement to be considered equivalent to the process outline in CEQA.

This concludes the Technical Analysis Report.