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7 Attorneys for Petitioners  
Thad Smith, James Turner, and Ronald Patrick, All in Their  
Capacity as Co-Trustees of The James W. Patrick Trust  
8

9 **STATE OF CALIFORNIA**  
10 **STATE WATER RESOURCES CONTROL BOARD**

11 THAD SMITH, JAMES TURNER, AND  
12 RONALD PATRICK, Co-Trustees of THE  
JAMES W. PATRICK TRUST,

13 Petitioners,

14 In the matter of CLEANUP AND ABATEMENT  
15 ORDER NO. R4-2010-0044 OF THE  
CALIFORNIA REGIONAL WATER QUALITY  
16 BOARD - LOS ANGELES REGION: SCP Case  
No. 0909; SCP ID NO. 204CA00  
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CASE NO.: SCP Case No. 0909; SCP ID No.  
204CA000

**PETITION FOR REVIEW AND  
REQUEST FOR STAY; REQUEST FOR  
EVIDENTIARY HEARING;  
DECLARATION OF THIERRY R.  
MONTOYA**

*[Water Code § 13320; 23 Cal. Code of Regs.  
§§ 2050, 2052, 2053]*

21 Petitioners Thad Smith, James Turner, and Ronald Patrick (collectively "Petitioners"), all in  
22 their capacity as co-trustees of the James W. Patrick Trust ("The Patrick Trust" or "Trust") hereby  
23 submit the Petition for Review and respectfully request that the State Water Resources Control  
24 Board ("SWRCB") review Cleanup and Abatement Order No. R4-2010-0044, issued by the  
25 California Regional Water Quality Board, Los Angeles Region ("Regional Board") on July 30, 2010,  
26 with respect to the liability of The Patrick Trust as dischargers and a "primary responsible party"  
27 ("PRPs") pursuant to *Water Code* § 13304.

28 Petitioners further request a stay of Cleanup and Abatement Order No. Order R4-2010-0044

1 as to the Trust pending this appeal. Petitioners further request an evidentiary hearing before the  
2 SWRCB to allow Petitioners an opportunity to offer testimony and additional evidence in support  
3 the Petition.  
4

5 **I. PETITION FOR REVIEW**

6 **A. Names And Address Of Petitioners**

7 Petitioners include Thad Smith, James Turner, and Ronald Patrick, as co-trustees of The  
8 Patrick Trust. Petitioners may be contacted through counsel identified above: Adorno Yoss  
9 Alvarado & Smith, 1 MacArthur Place, Suite 200, Santa Ana, California 92707; Attention: Thierry  
10 R. Montoya, Esq.

11 **B. The Regional Board's Action For Which Review By The State Water Board Is**  
12 **Requested**

13 Petitioners request review of Cleanup and Abatement Order No. R4-2010-0044 ("Order No.  
14 R4-0044") issued by the Regional Board to The Patrick Trust. A copy of Order No. R4-0044 is  
15 attached as Exhibit A. The Regional Board orders that all dischargers cleanup and abate waste  
16 emanating from 14650 Firestone Boulevard, La Mirada, California ("Subject Property") pursuant to  
17 *Water Code* § 13304.

18 **C. The Date Of The Regional Board's Action**

19 The Regional Board's action subject to review is dated July 30, 2010.

20 **D. Reasoning In Support Of The Regional Board's Improper Action**

21 The Regional Board is precluded from recovering reimbursement costs related to  
22 environmental remediation because the statutory time to file a claim against The Patrick Trust has  
23 expired under California law. Additionally, there is a lack of substantial evidence to support a  
24 finding that Petitioners are responsible parties for the discharge of waste substances on the Subject  
25 Property in violation of *Water Code* § 13304. It is alleged that Mr. James Patrick was the owner of  
26 Tect, Inc. Shareholders own shares in a corporation. There is no proof that Mr. Patrick was a  
27 shareholder and owned one-hundred percent (100%) of Tect, Inc. shares or proof that he was the  
28 owner of Tect, Inc. Neither is Mr. Patrick personally liable for improper conduct of the corporation

1 without sufficient evidence to disregard Tect, Inc. as a distinct and separate legal entity from its  
2 shareholders, such as alleged by the Regional Board. A lack of any evidence to support the  
3 application of alter ego liability principles precludes Mr. Patrick's personal liability for corporate  
4 acts.

5 Moreover, The Patrick Trust cannot be held liable for the conduct of Tect, Inc. because  
6 liability does not extend to James Patrick's probate estate, which has zero assets and under California  
7 Law prohibits liability because of the failure to file any timely Creditor's Claim or any Creditor's  
8 Claim. The California Regional Water Quality Board - Los Angeles Region (hereinafter from time  
9 to time as "public entity") and/or any other responsible party and responsible parties in this matter,  
10 failed to file a timely Creditor's Claim or any Creditor's Claim, which is required under California  
11 Law. Order No. R4-0044 is an unavailing attempt to expand the asset pool to identify responsible  
12 parties without adequately exploring well-settled California law, which stands to protect James  
13 Patrick personally and his surviving assets, from liability arising from Tect, Inc.'s wrongful conduct.

14 **E. The Petitioners Are Aggrieved**

15 Petitioners are aggrieved because Order No. R4-0044 wrongfully identifies Petitioners as  
16 responsible parties. Petitioners never owned the Subject Property. Nor did Petitioners, individually,  
17 cause the disposal of waste substances as alleged. Additionally, Order No. R4-0044 imposes  
18 excessive and unnecessary financial burden on Petitioners despite a lack of substantive evidence  
19 demonstrating personal liability of James Patrick and/or The Patrick Trust.

20 **F. Requested Action By The State Board**

21 Petitioners respectfully request that the SWRCB review Order No. R4-0044, issued by the  
22 Regional Board on July 30, 2010, with respect to the liability of The Patrick Trust as dischargers and  
23 PRPs pursuant to *Water Code* § 13320, 23 *Cal. Code of Regs.* §§ 648 *et seq.* and 2050 *et seq.*, and  
24 *Government Code* § 11400 *et seq.* Petitioners further respectfully request that the SWRCB and the  
25 Regional Board withdraw and remove Petitioners as PRPs under Order No. R4-0044, or be rescinded  
26 in its entirety. Petitioners also request a stay of Order No. Order R4-0044 pending this appeal.

27 Petitioners further respectfully request an evidentiary hearing before the SWRCB pursuant to  
28 23 *Cal. Code of Regs.* § 2052 to allow Petitioners an opportunity to offer testimony and additional

1 evidence in support of the Petition, as discussed in Section G, *infra*.

2 **G. Statement of Points And Authorities In Support Of Review**

3 **1. Prefatory Statement**

4 The Regional Board erroneously identifies James Patrick, individually, and The Patrick Trust  
5 as dischargers and primary responsible parties because of James Patrick's purported "relationship to  
6 either Tect, Inc. or Western Chemical, who are both primary responsible parties." More specifically,  
7 the Regional Board names James Patrick as a PRP because of his alleged ownership of Tect, Inc.  
8 The Patrick Trust is named as a PRP on the grounds that it is a surviving asset of James Patrick.  
9 Order No. R4-0044 is an unsubstantiated attempt to expand the asset pool to include parties without  
10 substantial evidence.

11 **2. Relevant Factual Background**

12 It is alleged that Tect, Inc. operated a chemical and solvent reclaiming and manufacturing  
13 operation on the Subject Property from approximately 1963 to 1970. The Regional Board  
14 memoranda alleges that Tect, Inc. was founded and owned by Mr. James Patrick and that neither Mr.  
15 James Patrick nor Tect, Inc. owned the Subject Property at any time. The discharge of waste  
16 substances is alleged to have occurred in November 1973 after Tect, Inc. was no longer on the  
17 Subject Property. Also, Tect, Inc. is owned by shareholders and not by an individual. The Regional  
18 Board proffers no evidence to support its allegations that Mr. James Patrick was a shareholder or  
19 owner of Tect, Inc.

20 On or about October 2, 2008, Soco West, Inc. ("Soco West") petitioned the SWRCB for  
21 review of an order to Submit Technical Documents, to Complete Off-Site Subsurface Investigation,  
22 to Complete Off-Site Indoor Air Surveys and to Cleanup and Abate On-Site Subsurface  
23 Contamination ("Soco Order") issued on September 3, 2008.<sup>1</sup> Soco West requested, among others,  
24 that Tect, Inc. and James Patrick be identified as responsible parties on the grounds that Tect, Inc.  
25 caused contamination of the Subject Property and an additional site in New Jersey.

26 \_\_\_\_\_  
27 <sup>1</sup> Soco West requested that the SWRCB hold its petition in abeyance pursuant to 23 *Cal. Code of Regs.* § 2050.5.  
28 Because the time period for formal disposition is tolled during the abeyance, Petitioners address Soco West's assertions  
herein.

1 On or about July 30, 2010, Petitioners submitted a response to the SWRCB and the Regional  
2 Board providing that The Patrick Trust did not cause any release or migration of contamination  
3 therefore should not be identified as a responsible party. The SWRCB denied this Petition to the  
4 Board's "draft" order on November 3, 2009, with the limitation on the Trust's ability to bring another  
5 petition. Petitioner argued, in part, that the *Probate Code* bars this action and that Tect, Inc. issues  
6 do not extend to The Patrick Trust because there was no evidence to support that James Patrick  
7 personally caused the contamination of the Subject Property. Additionally, Petitioner asserted that  
8 the New Jersey and Alacer Corp.'s operations were not relevant to the remediation efforts.

9 The Regional Board agreed that the New Jersey operation afforded no probative value as to  
10 whether Tect, Inc. or James Patrick was accountable for the discharge of waste substances and  
11 declined to hold Alacer Corp. responsible as a PRP. Moreover, the Regional Board failed to provide  
12 any evidence to support Mr. James Patrick's privity to Tect, Inc., as an officer, owner, or otherwise.  
13 Instead, the Regional Board made no decision as to the balance of Petitioners' assertions, instead, the  
14 Regional Board merely stated, "comment noted."

15 Nevertheless, the Regional Board's Order No. R4-0044 identifying Tect, Inc., James Patrick,  
16 and The Patrick Trust as dischargers and PRPs under *Water Code* § 13304. Petitioners submit this  
17 Petition on the grounds that Order No. R4-0044 is arbitrary and capricious because liability does not  
18 extend to The Patrick Trust.

19 **3. The Regional Board's Failure To Timely File Any Creditor's**  
20 **Claim Against The James W. Patrick Estate Or The Patrick Trust**  
21 **Precludes Recovery Under Order No. R4-0044**

22 The Regional Board's failure to assert a timely Creditor's Claim and/or any Creditor's Claim  
23 against The Patrick Trust necessarily precludes its recovery for environmental remediation costs  
24 through Order No. R4-0044. *Probate Code* § 9200 requires a public entity to file a creditor claim  
25 against a decedent's estate within the creditor claim period specified in *Probate Code* § 9100, unless  
26  
27  
28

1 the entity is one of the public entities listed in *Probate Code* §9201.<sup>2</sup> The Regional Board is not  
2 exempted from the creditor claim requirements set forth above.

3 The Regional Board failed to file a timely claim against the Patrick Estate thereby barring it  
4 from pursuing the Estate and the Trustees under *Dobler v. Arluk Medical Center Industrial Group,*  
5 *Inc.* (2001) 89 Cal.App.4th 530, 536-539; *Probate Code* §19001(a); and *Code of Civil Procedure*  
6 §366.2.<sup>3</sup> *Dobler, supra*, affirms the reasoning in support of the short limitation period noted herein.  
7 "Although restrictive, these short limitation periods protect a decedent's heirs, beneficiaries and  
8 devisees from unknown and unfiled claims. They also enable the expeditious administration of  
9 probate estates." *Dobler, supra*, 89 Cal.App.4th at 536. The brief limitations period set forth in  
10 *Probate Code* § 9100 for filing claims is expressly designed to expedite the distribution of estate  
11 assets by requiring creditors, such as the Regional Board, to promptly assert their claims against a  
12 decedent, The Patrick Trust and the Trustees in this instance.

13 "A properly filed claim in the probate proceeding is crucial for another reason as well. A  
14

15 <sup>2</sup> *Probate Code* §9200 states: "(a) Except as provided in this chapter, a claim by a public entity shall be filed within the  
16 time otherwise provided in this part. A claim not so filed is barred, including any lien imposed for the claim. (b) As used  
17 in this chapter, 'public entity' has the meaning provided in Section 811.2 of the Government Code, and includes an  
18 officer authorized to act on behalf of the public entity."

19 *Probate Code* §9100 states: "(a) A creditor shall file a claim before the expiration of the later of the following times: (1)  
20 Four months after the date letters are first issued to a general personal representative. (2) Sixty days after the date notice  
21 of administration is mailed or personally delivered to the creditor. Nothing in this paragraph extends the time provided  
22 in Section 366.2 of the Code of Civil Procedure. (b) A reference in another statute to the time for filing a claim means  
23 the time provided in paragraph (1) of subdivision (a). (c) Nothing in this section shall be interpreted to extend or toll any  
24 other statute of limitations or to revive a claim that is barred by any statute of limitations. The reference in this  
25 subdivision to a 'statute of limitations' includes Section 366.2 of the Code of Civil Procedure."

26 *Probate Code* §9201 states: "Notwithstanding any other statute, if a claim of a public entity arises under a law, act, or  
27 code listing in subdivision (b): (1) The public entity may provide a form to be used for the written notice or request to  
28 the public entity required by this chapter. Where appropriate, the form may require the decedent's social security  
number, if known. (2) The claim is barred only after written notice or request to the public entity and expiration of the  
period provided in the applicable section. If no written notice or request is made, the claim is enforceable by the  
remedies, and is barred at the time, otherwise provided in the law, act, or code..."

<sup>3</sup> *Probate Code* §19001(a) states: "Upon the death of a settlor, the property of the deceased settlor that was subject to the  
power of revocation at the time of the settlor's death is subject to the claims of creditors of the deceased settlor's estate  
and to the expenses of administration of the estate to the extent that the deceased settlor's estate is inadequate to satisfy  
those claims and expenses."

*Code of Civil Procedure* §366.2 states: "(a) If a person against whom an action may be brought on a liability of the  
person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of  
the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the  
date of death, and the limitations period that would have been applicable does not apply."

1 timely filed claim is a condition precedent to filing an action against a decedent's estate." *Id.* at 536.  
2 As in *Dobler*, the creditor fulfilled the condition precedent by timely filing a claim, and, accordingly,  
3 was permitted to collect its money judgment from the trust corpus. *Id.* at 544-45. On the other hand,  
4 however, the Regional Board never filed a claim against The Patrick Trust since James Patrick's  
5 2003 death therefore waiving its rights against either the Patrick Estate and/or the Trustees.

6 In response to Soco West's petition for review of the Soco Order, Petitioners responded that  
7 state law governing decedent estates are not preempted by CERCLA federal law, and should apply  
8 to this *Water Code* action as well. More specifically, the enforceability of limitation periods of  
9 creditor claims applies in the context of environmental remediation cases. In *Witco Corp. v.*  
10 *Beekhuis* (3d Cir. 1994) 38 F.3d 682, the court held that timely compliance with Delaware's  
11 creditors' claims statute was a condition precedent to the satisfaction of judgment from trust assets.  
12 In *Witco*, the court ruled that the plaintiff's CERCLA action against a personal representative was cut  
13 off by his failure to file a timely claim under Delaware's creditors' claims statute. The fact that the  
14 plaintiff's action was timely under CERCLA's statute of limitations did not obviate plaintiff's  
15 obligation to have first complied with the state creditor statute. The Court specifically rejected  
16 plaintiff's argument that CERCLA preempted state statutes governing the administration of  
17 decedent's estates; affirming Congress' intent as not encompassing any intention to unsettle estates.  
18 *Witco, supra*, 38 F.3d at 688-91.

19 The court held as follows:

20 "Nothing in the language of CERCLA suggests that Congress intended to  
21 preempt state law governing claims against decedents' estates. Section 9613(f) of  
22 CERCLA authorizes contribution actions against "any ... person who is liable or  
23 potentially liable under Section 9607(a)...." 42 U.S.C. § 9613(f) (1988). Section  
24 9607(a) in turn, delineates four classes of responsible parties upon whom liability is  
25 imposed: (1) the current owners or operators of a contaminated property, (2) owners  
26 or operators of the property at the time of hazardous waste disposal, (3) persons who  
27 arrange for disposal or treatment of hazardous substances at the property, and (4)  
28 persons who accepted hazardous substances for transport to the property. 42 U.S.C. §  
9607(a) (1988). CERCLA does not contain any provision that imposes liability  
directly upon the estates of those four classes of responsible parties. In light of the  
traditional reluctance of Congress to preempt state laws which are of significant  
importance to the states and traditionally within their province, we decline to read  
into the CERCLA statute the congressional intent to except CERCLA claims from  
state probate laws and procedures." [*Id.* at 689].

1 This rationale applies to this action as well as the *Probate Code* should bar a state recovery  
2 action. Soco West's assertion that Petitioners should be considered primary responsible parties is  
3 premised on unavailing precedent. First, in *Freudenberg-NOK General Partnership v.*  
4 *Thomopoulos*, C.A. No. C91-207-L, 1991 U.S. Dist. LEXIS 19421 (D.N.H. Dec. 9, 1991), the court  
5 merely provides a cursory analysis in reaching its decision that CERCLA preempted the New  
6 Hampshire non-claim statute. No reasoning was provided for the court's decision other than the  
7 principle that CERCLA should be given broad and liberal construction. However, *Witco, supra*,  
8 provides a detailed analysis to support that CERCLA does not preempt state law concerning the  
9 distribution of decedent estates. Similarly, CERCLA should not preempt the *Water Code* in this  
10 case.

11 Second, in *Soo Line Railroad Co. v. B.J. Carney & Co.*, 797 F. Supp 1472 (D. Minn. 1992),  
12 the court determined that CERCLA preempted the state non-claim statute by relying on the  
13 precedent established by *Thomopolous, supra*. Moreover, the court noted that its decision was based  
14 on the estate's failure to provide any authority in support of its position. *Soo Line, supra*, 1472 F.  
15 Supp. 1472, 1485. In the present case, however, *Witco* probatively demonstrates that CERCLA is  
16 not intended to preempt state law as proposed by Soco West.

17 Third, *Steege Corp. v. Ravenal*, 830 F.Supp. 42 (D. Mass. 1993) is not applicable. In *Steege*,  
18 the court held that the Rhode Island non-claim statute was preempted by the CERCLA contribution  
19 statute of limitations because the contribution claims were "governed by Federal law". The Court in  
20 *Steege*, however, overlooked the fact that 42 U.S.C. § 9613(f) also states that contribution claims are  
21 to be brought in accordance with the *Federal Rules of Civil Procedure* which provide that state law  
22 determines an individual's capacity to be sued. *See* Fed R. Civ. P. 17(b). In addition, the case is  
23 factually distinguishable in that the defendant executors were at one time owners of the site in  
24 question and in that capacity could be subject to CERCLA liability. Therefore, *Steege* is  
25 distinguishable and affords no substantive insight to the case at bar.

26 Accordingly, the statute of limitations applicable to decedent estates is applicable herein. As  
27 the Supreme Court of California specifically noted in *Collection Bureau of San Jose v. Rumsey*  
28 ("*Rumsey*") (2000) 24 Cal.4th 301, in recognition of the recommendations of the California Law



1 Commission reports, the legislative intent in enacting section 353, now 366.2, was to protect  
2 decedents' estates from stale claims of creditors and imposed strong public policies of expeditious  
3 estate administration and security of title for distributees and is consistent with the concept that a  
4 creditor has some obligation to keep informed of the status of the debtor. The one-year statute of  
5 limitations of 366.2 is intended to apply to any action on a debt of the decedent including one against  
6 a trustee. *Rumsey, supra*, 24 Cal.4th at 308; *Levine v. Levine* (2002) 102 Cal.App.4th 1256, 1264.

7 The amendments of former section 353, now 366.2 were enacted with the clear  
8 understanding and intent that they would apply to any action on the debt of a decedent, regardless of  
9 whom the action was brought against. *Rumsey, supra*, 24 Cal.4th at 308. Similarly, precedent  
10 affirms that the one-year limitation period of 366.2 applies to claims against a decedent's trust.  
11 *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 256; *Estate of Yool* (2007) 151 Cal.App.4th 867,  
12 876; *Levine, supra*, 102 Cal.App.4th at 1261-1262; *Dobler, supra*, 89 Cal.App.4th at 535-536. The  
13 Regional Board's claim against Petitioners certainly falls within the ambit of "...liability [arising]  
14 from contract, tort, or otherwise." *Code of Civil Procedure* § 366.2(a). Section 366.2 applies to all  
15 claims which relate to a relationship between the alleged creditor/decedent and one asserting that  
16 claim where the asserted wrongful conduct has occurred, inclusive of claims brought against a  
17 trustee. *Estate of Yool, supra*, 151 Cal.App.4th at 872-873; Recommendation Relating to Notice of  
18 Creditors in Estate Administration 20 Cal. Law Revision Com. Rep. (1990) p. 515.

19 Despite issuing Order R4-0044, the Regional Board failed to opine on the merits of  
20 Petitioner's objections to being identified as a PRP. The Regional Board took no affirmative  
21 position as to the application of preemption principles in CERCLA actions as analyzed in *Witco,*  
22 *supra*, and applicable to this *Water Code* action. Instead, The Regional Board merely noted  
23 "comment noted" in response to Petitioner's assertion that The Regional Board's claim was time  
24 barred. Petitioners' request for stay is appropriate as The Regional Board's failure to deny  
25 Petitioners' assertions implies its appreciation of the merits of such.

26 As such, *Witco, supra*, and *Dobler, supra*, provide sufficient support that CERCLA does not  
27 preempt state law regarding distribution of decedent estates, and should be applied to bar this state  
28 action as well. The precedent confirms that adherence with the strictures of *Probate Code* §§ 9100

1 and 19100, and the one-year limitations period of *Code of Civil Procedure* §366.2, applies to actions  
2 based exclusively on the liability of a deceased testator or settler filed by third party "potentially  
3 responsible parties" against trustees, as is presently the case. *See* CEB, *California Trust*  
4 *Administration*, §6.12-Environmental Issues in Trust Administration. The Regional Board is  
5 therefore barred from recovering costs associated with environmental remediation because it failed  
6 to file a timely claim against The Patrick Trust under *Probate Code* §19001(a) and *Code of Civil*  
7 *Procedure* § 366.2.

8 Furthermore, the Regional Board and/or any person or entity was not only required to follow  
9 *Probate Code* § 9100, it also was required to bring their specific causes of action within the time  
10 provided by the applicable statute of limitations, *Code of Civil Procedure* § 366.2. Again, the  
11 section provides in relevant part:

12 “(a) If a person against whom an action may be brought on a liability of the  
13 person, whether arising in contract, tort, or otherwise, and whether accrued or not  
14 accrued, dies before the expiration of the applicable limitations period, and the cause  
15 of action survives, an action may be commenced within one year after the date of  
16 death, and the limitations period that would otherwise have been applicable does not  
17 apply.”

18 (b) The *limitations period provided in this section for commencement of action*  
19 *shall not be tolled or extended for any reason*, except as provided in any of the  
20 following, [dealing with holidays or instances in which creditor’s claims have been  
21 filed against an estate or trust].  
(Emphasis added.)

22 The Law Revision Commission Comments to this section add:  
23 *This section applies a one-year statute of limitations on all actions against a decedent*  
24 *on which the statute of limitations otherwise applicable has not run at the time of*  
25 *death. This one-year limitation period applies regardless of whether the statute*  
26 *otherwise applicable would have expired before or after the one-year period.*

27 . . . . [¶] . . . . The one-year limitation of Section 366.2 applies in any action on a  
28 liability of the decedent, whether against a personal representative . . . or against  
another person, such as a distributee . . . a person who takes the decedent’s property  
and is liable for the decedent’s debts . . . or a trustee. . . .  
(Emphasis added.)

29 *Code of Civil Procedure* § 366.2 has been discussed in a number of decisions. Courts have  
30 concluded that if a cause of action exists while a decedent is alive, regardless of whether the cause of  
31 action has accrued for statute of limitations purposes, "the decedent's death triggers the [one-year]  
32 limitations period prescribed by the statute." *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509,

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1 554; *see Farb v. Superior Court* (2009) 174 Cal.App.4th 678.

2 A very recent pronouncement on the parameters of *Code of Civil Procedure* § 366.2 was  
3 made by the Court of Appeal on November 17, 2009 in *Stoltenberg v. Newman* (2009) 179  
4 Cal.App.4th 287. In *Stoltenberg* the defendants successfully contended that because a trustor and  
5 trustee, Harry Newman, Jr. ("Newman"), had died on October 19, 2001, a lawsuit filed in 2004  
6 against a successor trustee of the Trust due to Newman's alleged breaches of fiduciary duties was  
7 barred by § 366.2. Citing the Law Revision Commission Comments referenced above, the court  
8 concluded its discussion by holding that summary judgment should have been granted in favor of the  
9 successor trustee because:

10 It appears that whatever its form, the substance of the claims in this case is for the personal  
11 misconduct of the settlor/trustee on behalf of and for the benefit of the trust that was completed  
12 entirely before the settlor/trustee died, and for which the settlor/trustee could have been held  
13 personally liable. The action is one that could have been "brought on a liability of the person"  
14 (§ 366.2(a)), and is based 'on a debt of the decedent' " [quoting *Collection Bureau of San Jose v.*  
15 *Rumsey* (2000) 24 Cal.4th 301, 308] even though brought against the successor trustee. The  
16 successor trustee is the named party defendant only to pursue trust assets for the acts of Newman.  
17 Section 366.2 was intended to impose a time limit on such claims, "regardless of whom the action  
18 was brought against. . . ." (*Rumsey, supra*, 24 Cal.4th at 308.) Accordingly, the claims against  
19 Newman Trust are barred by section 366.2." *Id.* at 296-297.

20 The rule of *Stoltenberg* is supported by all other applicable authority. This was a case in  
21 which a limited partnership had formerly owned a shopping mall. The limited partners brought an  
22 action against numerous defendants for breach of fiduciary duty and an accounting, alleging that in  
23 order to obtain the limited partners' consent to refinancing the shopping mall, which ultimately led  
24 to a distress sale of the shopping mall, defendants concealed vital information from the limited  
25 partners. One of the defendants was the trustee of a Trust and who was also the general partner of  
26 the limited partnership. After the Trustee in her individual capacity, and other former owners were  
27 dismissed as parties in Superior Court, Los Angeles, County, Case No. BC322141, because the Hon.  
28 Terry A. Green, J., granted summary judgment to the trust and other defendants, the limited partners

1 appealed.

2 In support of *Stoltenberg, supra*, is *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, in which  
3 a trustor died in November 2003 and the successor trustee Claire thereafter disclosed to her brother,  
4 Kent, her intention to pay herself from trust assets for care she had provided the trustor during the  
5 final four years of the trustor's life. *Id.*, at p. 253. Claire filed an accounting in which she described  
6 assets of the trust and requested an order permitting her to pay herself \$200,000 for such care ,  
7 whereupon Kent filed objections to the report and challenged the proposed payment to Claire as  
8 untimely under § 366.2. *Ibid.* Claire contended her claim was not an "action" encompassed by  
9 § 366.2, but the Court of Appeal held otherwise, observing that "any claim first asserted outside the  
10 limitations period, whether submitted to the trustee or filed in court, is barred." *Id.*, at p. 256, n.3.

11 The Court of Appeal further stated:

12 [T]here is no question the one-year limitation period applies to Claire's claim against  
13 the Trust. As we stated in *Dobler v. Arluk Medical Center Industrial Group, Inc.*  
14 (2001) 89 Cal.App.4th 530, 535-536 [107 Cal.Rptr.2d 478], "This uniform one-year  
15 statute of limitations applies to actions on all claims against the decedent which  
16 survive the decedent's death." [Citations omitted.] *Ibid.*

17 Although Claire argued she had "effectively complied" with the statute by presenting a claim  
18 "in her mind" to herself within the statutory period, and thereby tolled the statutory one-year period,  
19 such an assertion was nonsense: there was "no reason to believe a trustee's presentation of his or her  
20 claim should differ from that of any other creditor." (*Id.*, at p. 257.)

21 The one-year limitations period of §366.2 also governs when the claimant sues beneficiaries  
22 of a trust after the death of the trustor.

23 In *Embree v. Embree* (2004) 125 Cal.App.4th 487, the court considered the circumstances of  
24 Alvin Embree ("Alvin"), who had entered into a marital settlement agreement with his former wife,  
25 Joanne Embree ("Joanne"), which was approved as an order of the court and obligated Alvin to pay  
26 monthly spousal support until Joanne remarried or Alvin died, and which further provided that if he  
27 predeceased her, a trust or annuity would be established to provide her with an amount equal to the  
28 spousal support payments for as long as she lived. *Id.*, at p. 490. Instead, after Alvin died, all of his  
known property was distributed pursuant to the terms of his revocable living trust without a new  
trust or annuity being created for the benefit of Joanne. *Ibid.*

1 Joanne attempted to enforce her claim for a lifetime annuity against the beneficiaries of  
2 Alvin's living trust, and the trial court held it was time-barred, a holding affirmed by the Court of  
3 Appeal. *Ibid.* Alvin had died on May 15, 2001, his estate was not probated, and the trustee of his  
4 revocable living trust did not file any notice to creditors under *Probate Code* § 19100. *Id.*, at 491.  
5 On December 23, 2002, Joanne filed a lawsuit against the beneficiaries of the trust which Alvin had  
6 established before his death. The Court of Appeal held that Joanne was required to file her claim  
7 against the beneficiaries within one year of Alvin's death, and that her failure to do so barred her  
8 action under § 366.2. *Id.*, at pp. 493, 496-497. The Court then discussed the fact that no equitable  
9 estoppel was suggested given the facts before the trial court, but further held that § 366.2 barred any  
10 tolling principle "except under specifically enumerated circumstances," i.e., those circumstances  
11 listed in the statute itself, which were not present. *Id.*, at pp. 496-497.

12 Similarly, in *Levine v. Levine* (2002) 102 Cal.App.4th 1256, the decedent, Allan Levine  
13 ("Allan"), died on September 28, 1999. *Id.*, p. 1258. When he was alive, Allan had established  
14 investment accounts in his grandchildren's names pursuant to the Uniform Transfers to Minors Act,  
15 Probate Code section 3900 *et seq.*, but he then withdrew the money from those funds approximately  
16 four years before his death. More than a year after his death, the grandchildren filed a complaint  
17 against his widow, Karen Levine ("Karen"), in her capacity as beneficiary of the family trust which  
18 held title to the bulk of Allan's estate. Karen successfully demurred pursuant to the limitations  
19 provisions of § 366.2. The plaintiffs next filed an amended complaint and named Karen in her  
20 capacity as a trustee, but that complaint, too, was dismissed based upon the previous ruling on the  
21 grounds that the grandchildren's action was barred by limitations. On appeal, the grandchildren  
22 asserted that the tolling provisions of *Code of Civil Procedure* § 352 prevented the statute from  
23 running until the grandchildren reached the age of majority, but the Court of Appeal disagreed. *Ibid.*

24 The Court of Appeal held:

25 The language is clear that the one-year statute applies to all debts of the decedent  
26 regardless of whom the claims are brought against. **The one-year provision is not**  
27 **subject to delayed discovery or tolling due to minority or incapacity.** Since the  
28 claims were filed too late, the trial court did not err in sustaining the demurrer or  
dismissing the claims. [*Id.*, at p. 1265 (emphasis added)].

1                                   4.     The Regional Board Properly Determined That Alacer  
2   Corporation Is An Independent Entity From Tect, Inc. Despite  
3   Being Wholly Owned By The Patrick Trust

4             On the one hand, the Regional Board properly determined that Alacer Corp. should not be  
5 identified as a responsible party. On the other hand, the Regional Board erroneously determined that  
6 The Patrick Trust should be identified as a responsible party, as a surviving asset of James Patrick.  
7 However, the Patrick Trust wholly owns Alacer Corp. therefore Order R4-0044 acts as a subterfuge  
8 to recover *indirectly* through The Patrick Trust when *direct* recovery is proscribed. Just like Alacer  
9 Corp. is not a responsible party as an independent entity of Tect, Inc., so too is The Patrick Trust  
10 separate and distinct from Tect, Inc. The Patrick Trust, as discussed *infra*, has never caused nor  
11 been engaged in the corporate conduct of Tect, Inc. Such an inconsistency must be abated and The  
12 Patrick Trust must be withdrawn as a primary responsible party.

13                                   5.     Neither James Patrick Nor The Patrick Trust Are Personally  
14   Liable For Wrongful Conduct By Tect, Inc. Under Corporate  
15   Principles

16             Moreover, any and all liability caused by Tect, Inc. does not *de facto* extend to James Patrick,  
17 personally, and his surviving assets without sufficient facts to establish that Tect, Inc., on the one  
18 hand, and James Patrick, on the other hand, should be considered one in the same under alter ego  
19 liability principles. It is well-settled California law that a corporation is generally considered a legal  
20 entity *separate and distinct* from its stockholders, officers, and directors. *Miller v. McColgan* (1941)  
21 17 Cal.2d 432, 436; *Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1108. However, a corporate identity  
22 may be disregarded where an abuse of the corporate privilege justifies holding the equitable  
23 ownership of a corporation liable for the actions of the corporation. *Sonora Diamond Corp. v.*  
24 *Superior Court* (2000) 83 Cal.App.4th 523, 538.

25             Under the alter ego doctrine, the law declares that the individual and the corporation are the  
26 same entity. Where a corporation is used by an individual to perpetrate a fraud, circumvent a statute,  
27 or accomplish some other wrongful or inequitable purpose, a court may disregard the fiction of  
28 corporate entity and treat the acts as if they were conducted by the persons controlling the

1 corporation. *McClellan v. Northridge Park Townhome Owners Association, Inc.* (2001) 89  
2 Cal.app.4th 746, 752-53.

3 Under the Porter-Cologne Water Quality Control Act ("Porter-Cologne Act") (*Water Code*  
4 §§ 13000 *et seq.*), a person may be ordered to cleanup a site or to compensate the regional board for  
5 cleanup costs it incurs if the following two requirements are met: (1) the person must have caused or  
6 permitted waste to be discharged where it is or probably will be discharged in the waters of the State;  
7 and (2) the discharge must create or threaten to create a condition of pollution or nuisance. *Water*  
8 *Code* § 13050(d). Liability extends to owners of the property and tenants who participate in  
9 discharge of waste substances. *See People v. New Penn Mines, Inc.* (1963) 212 Cal.App.2d 667,  
10 672-74. Here, however, the Regional Board does not provide any evidence to support that James  
11 Patrick, individually, actively participated in the discharge of waste water as alleged in Order No.  
12 R4-0044 and the Soco West petition. The Trust has alleged that it runs Alacer Corp, and that it has  
13 nothing to do with the Subject Property or its contamination.

14 In the present case, the Regional Board fails to offer a scintilla of evidence to support that  
15 James Patrick or The Patrick Trust should be held personally accountable for the alleged actions by  
16 Tect, Inc. The application of alter ego liability is an extreme remedy with a high factual threshold  
17 standard. Before the acts and obligations of a corporation can be legally recognized as those of an  
18 individual, and vice versa, the following circumstances must be present: (1) there must be such a  
19 unity of interest and ownership between the corporation and its equitable owner or the individual  
20 controlling it that the individuality or separateness of the person and corporation has ceased, so that  
21 their separate personalities no longer in reality exist; and (2) there must be an inequitable result if  
22 acts in question are treated as those of the corporation alone. *Baize v. Eastridge Companies* (2006)  
23 142 Cal.App.4th 293, 302.

24 No one dispositive characteristic requires that alter ego liability principles be applied.  
25 Instead, the court may consider, *inter alia*, commingling of funds and other assets, unauthorized  
26 diversion of corporate funds for personal use, personal liability for corporate debts, concealment and  
27 misrepresentation of the identity of responsible ownership, or the use of a corporation as a  
28 subterfuge of illegal transactions. *See Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210

1 Cal.App.2d 825, 838. On the other hand, the lack of such evidence supports maintaining the  
2 corporation as separate and distinct from its members, including its owner. *See T W M Homes, Inc.*  
3 *v. Atherwood Realty & Inv. Co.* (1963) 214 Cal.App.2d 826.

4 The Regional Board offers no evidence to establish a sufficient link between Tect, Inc. and  
5 James Patrick other than his alleged previous ownership of the corporation. Moreover, the Regional  
6 Board now seeks to extend liability to include The Patrick Trust merely because it is a surviving  
7 asset of James Patrick. These grounds are unavailing.

8 To the extent that ownership is established as alleged, which Petitioner do not concede, mere  
9 ownership of the corporation does not *de facto* establish liability of James Patrick for the conduct of  
10 the corporation. Instead, the facts must establish a sufficient nexus between James Patrick and Tect,  
11 Inc. to disregard the corporation as a distinct and separate legal entity. As raised in Petitioners' June  
12 1, 2010 letter, *supra*, there is a lack of substantial evidence to establish that James Patrick  
13 individually caused the discharge of waste substances.

14 Further, The Patrick Trust cannot be held liable under *Water Code* § 13304 merely because it  
15 is a surviving asset of James Patrick. The lack of substantial evidence to hold James Patrick  
16 accountable for the acts of Tect, Inc. necessarily precludes any recovery for cleanup costs from The  
17 Patrick Trust. The Patrick Trust is comprised only of shares of Alacer Corporation. However, the  
18 Regional Board determined that Alacer Corporation should not be identified as a responsible party  
19 because it is an independent entity from Tect, Inc. despite being owned by the trust corpus.  
20 Similarly, the Regional Board should withdraw James Patrick and The Patrick Trust as responsible  
21 parties because the law considers both parties as separate and distinct from Tect, Inc. Accordingly,  
22 so too are James Patrick and The Patrick Trust wholly independent from Tect, Inc. and the  
23 repercussions for its alleged wrongful conduct.

24 Accordingly, there is a lack of substantial evidence to support that Petitioners are  
25 responsible parties under *Water Code* § 13304 because liability does not extend to James Patrick  
26 personally or his surviving assets absent sufficient facts to support that James Patrick and Tect, Inc.  
27 are one in the same under alter ego liability principles.



1           **H. List Of Persons Other Than Petitioners Known By The Regional Board To Have**  
2           **An Interest In The Subject Matter Of The Petition**

3           A copy of the list of interested persons, obtained from the Regional Board, is attached hereto  
4 as Exhibit B.

5           **I. Statement of Service Of Petition**

6           A copy of this Petition has been delivered to the executive officer of the Regional Board for  
7 the Los Angeles region.

8           **J. Request To The Regional Board For Preparation Of The Administrative Record**

9           By copy of this Petition to the executive officer of the Regional Board, Petitioners hereby  
10 request the preparation of the administrative record herein. Petitioners reserve the right to submit  
11 supplemental evidence and to request a hearing for the purpose of considering additional evidence  
12 not previously presented to the Regional Board as permitted under 23 *Cal. Code of Regs.* § 2050.6.

13           **II. REQUEST FOR STAY**

14           In accordance with 23 *Cal. Code of Regs.* § 2053(a), Petitioners request a stay of Order No.  
15 R4-0044 as it applies to Petitioners. Petitioners have attached to this Petitioner Exhibit C, the  
16 declaration of Thierry R. Montoya setting forth proof that: (1) substantial harm to Petitioners will  
17 result if a stay is not granted; (2) no substantial harm to other interested persons or to the public  
18 interest will result if the stay is granted; and (3) there are substantial questions of fact and law  
19 regarding the propriety of Order No. R4-0044.

1 **III. CONCLUSION**

2 Based on the foregoing, Petitioners respectfully submit that the issuance of Cleanup and  
3 Abatement Order No. R4-2010-0044 was improper, inappropriate, unlawful, and not supported by  
4 substantial evidence, and, accordingly, withdraw and remove Petitioners as responsible parties under  
5 *Water Code* § 13304. Petitioners respectfully request that the SWRCB grant this petition for review  
6 of the Regional Board's action in issuing Order No. R4-2010-0044. Petitioners further respectfully  
7 request that a stay be issued pending this appeal and an evidentiary hearing before the SWRCB.  
8

9 Respectfully submitted,

10 DATED: August 25, 2010

ADORNO YOSS ALVARADO & SMITH  
A Professional Corporation

11  
12  
13 By: Thierry R. Montoya  
14 THIERRY R. MONTOYA  
15 LOWELL M. ZETA  
16 Attorneys for Petitioners  
17 Thad Smith, James Turner, and Ronald Patrick,  
18 All in Their Capacity as Co-Trustees of the James  
19 W. Patrick Trust  
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EXHIBIT A

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

CLEANUP AND ABATEMENT ORDER NO. R4-2010-0044  
REQUIRING

MONTRI AND CHIRAVAN KEYURANGGUL;  
PJK PROPERTIES, LLC;  
GERALDINE FRANK;  
HARLAND EAKENS;  
FAITHE TRUST;  
TECT, INC.;  
JAY PATRICK;  
PATRICK TRUST;  
WESTERN CHEMICAL; AND  
SOCO WEST, INC.

TO ASSESS, CLEANUP, AND ABATE  
WASTE DISCHARGED TO WATERS OF THE STATE  
(PURSUANT TO CALIFORNIA WATER CODE SECTION 13304<sup>1</sup>)  
AT 14650 FIRESTONE BOULEVARD  
LA MIRADA, CALIFORNIA 90638  
(SITE CLEANUP PROGRAM CASE NO. 0909)

*You are legally obligated to respond to this Order. Please read this carefully.*

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) finds that:

**BACKGROUND**

1. **Dischargers**<sup>2</sup>: Montri and Chirivan Keyuranggul; PJK Properties, LLC; Geraldine Frank, Harland Eakens; the Faithe Trust; Tect, Inc.; Jay Patrick; the Patrick Trust; Western Chemical; and Soco West, Inc. (hereinafter called Dischargers) are Responsible Parties (RPs) due to their: (a) current or past ownership of the property located at 14650 Firestone Boulevard in La Mirada, California (the Site), (b) prior operation of a business at the Site, and/or (c) being a surviving asset of other RPs.

---

<sup>1</sup> 13304 (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.

<sup>2</sup> Joe Valles, Augustina Valles, Elmer Teel, Fern Teel, Donald Frank, David Faithe, Sally Faithe, and Betty Eakens were named as dischargers and Responsible Parties in draft Cleanup and Abatement Order R4-2009-0049 due to their past ownership of the Site. They are not named here because they are believed by the Regional Board to be deceased and their estates are believed to be closed.

*Primary Responsible Parties*

Specifically, the following Dischargers are named as Primary Responsible Parties due to past operations of solvent reclamation, solvent recycling, and/or solvent manufacturing businesses at the Site:

- Tect, Inc.
- Western Chemical

The following Dischargers are named as ~~Primary Responsible Parties due to their relationship to either Tect, Inc. or Western Chemical, who are both Primary Responsible Parties:~~

- James Warren Patrick<sup>3</sup>
- ~~Patrick Trust<sup>4</sup>~~
- Soco West, Inc.<sup>5</sup>

The following Dischargers are named as Primary Responsible Parties due to their ownership of the Site during the tenancies of either Tect, Inc. or Western Chemical:

- Geraldine Frank
- Harland Eakens

*Secondary Responsible Parties*

The following Dischargers are named as Secondary Responsible Parties due to either current ownership of the Site and/or ownership of the Site following the tenancy of Tect, Inc. and Western Chemical:

- Montri and Chirivan Keyuranggul
- PJK Properties, LLC
- The Faithe Trust

The 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 a condition of pollution or nuisance.

*Obligations of Responsible Parties*

Primary Responsible Parties, as identified herein, have primary responsibility for fulfilling the obligations imposed by this Cleanup and Abatement Order and any future orders that may be issued by the Regional Board.

Secondary Responsible Parties, as identified herein, have responsibility for fulfilling the obligations imposed by this Cleanup and Abatement Order in the event that the Primary Responsible Parties fail to fulfill their obligations. Those Secondary Responsible Parties who are currently property owners and/or tenants of the Site must also provide necessary and

<sup>3</sup> James Warren Patrick is named as a Primary Responsible Party due to his ownership of Tect, Inc.

<sup>4</sup> The Patrick Trust is named as a Primary Responsible Party because it is a surviving asset of Mr. Patrick.

<sup>5</sup> Soco West, Inc. is named as a successor to Western Chemical.

reasonable access to the Site by the Primary Responsible Parties and their representatives, to Regional Board staff for assessment and/or remediation activities, and for any infrastructure that may be necessary for assessment and/or remediation activities.

2. **Location:** The Site is located at 14650 Firestone Boulevard, La Mirada, California. Attachment A, Figure 1, Site Location Map, attached hereto and incorporated herein by reference, depicts the location of the Site. Additionally, Figure 2 of Attachment A, also attached hereto and incorporated herein, is a Site Vicinity Map depicting the building occupying the Site and the surrounding area. The Site lies between Firestone Boulevard and Union Pacific Railroad tracks, south of Interstate-5. Coyote Creek is located approximately 850 feet east of the Site; it drains into the San Gabriel River, which discharges into the Pacific Ocean at Alamitos Bay.
3. **Groundwater Basin:** The Site is located within the Los Angeles Coastal Plain (Central Basin) which, at the Site vicinity, is underlain by the eastern limb of the Norwalk Syncline. Subsurface materials are comprised of alluvial sediments, including the Lakewood and San Pedro formations. Beneath the Site location, from surface to depth, the Lakewood formation includes the Artesia and Gage aquifers and the San Pedro formation which includes the Hollydale, Jefferson, Lynwood, and Silverado aquifers (Note: the Hollydale and Jefferson aquifers are discontinuous within the Site area and it is unknown whether they directly underlie the Site). As set forth in the *Water Quality Control Plan* for the Los Angeles Region (Basin Plan), which was adopted on June 13, 1994, the Regional Board has designated beneficial uses for groundwater (among which include municipal and domestic drinking water supplies) in the Central Basin and has established water quality objectives for the protection of these beneficial uses.
4. **Water Quality in the Basin:** Water Quality Objectives (WQOs) listed in the Basin Plan include numeric WQOs [e.g., state drinking water maximum contaminant levels (MCLs)], and narrative WQOs, including the narrative toxicity objective and the narrative taste and odor objective for surface and groundwater. The MCLs for volatile organic compounds (VOCs) in drinking water by the State of California Department of Public Health (DPH) and the United States Environmental Protection Agency (USEPA) are 5 µg/L for PCE, 5 µg/L for TCE, and 6 µg/L for 1,1-DCE, among others. The detected VOCs levels in the groundwater beneath the Site and its vicinity have significantly exceeded the MCLs, thus impairing the beneficial uses of the groundwater.
5. As detailed in the findings below, the Dischargers' activities at the Site have caused the release of waste resulting in soil, soil vapor, and groundwater contamination and discharge to the waters of the state.

#### SITE HISTORY

6. **Site Description and Activities:** The Site is currently owned by PJK Properties, LLC. It includes one parcel encompassing approximately 0.33 acre. The Site has a 1-story building that is currently occupied by All-Tex Inks Corporation, a silkscreen inks and supply company.

##### *Site Ownership Timeline:*

The historical Site ownership is summarized in the following outline:

- a. Prior to May 1960

- i. Owned by Casper Ferrando Valles
  1. Unknown acquisition date
- b. May 1960
  - i. Sold to Joe Valles
    1. Augustina Valles, Elmer and Fern Teel, Donald and Geraldine Frank, and Harland and Betty Eakens took ownership upon Mr. Joe Valles' death on an unknown date
- c. February 23, 1973
  - i. David Faithe and Sally Faithe took 100 percent ownership of the Site
- d. May 12, 1997
  - i. Property transferred to David Faithe and Sally Faithe, Co-Trustees of the Faithe Family Trust (Faithe Trust)
- e. October 6, 1998
  - i. Faithe Trust transferred ownership to Mr. Montri Keyuranggul and Mrs. Chiravan Keyuranggul
- f. October 9, 2008
  - i. The Keyurangguls quitclaimed the property to PJK Properties, LLC
    1. PJK Properties, LLC's principals are Mr. Montri Keyuranggul and Mrs. Chiravan Keyuranggul

#### *Site Operations Timeline*

Historical Site operations are summarized in the following outline:

- a. Approximately 1963 to early 1970s
    - i. Tect, Inc. operated a solvent reclaiming and manufacturing operation
      1. Tect, Inc. filed bankruptcy in 1972
        - a. Tect, Inc.'s founder Jay Patrick created Alacer Corporation, a viable entity today
  - b. 1972 to 1979
    - i. Western Chemical purchased some of Tect, Inc.'s assets in 1972
    - ii. Western Chemical operated a solvent recycling and reclamation plant onsite
    - iii. November 8, 1973, "Notice of Violation and Order to Comply" letter issued by the County of Los Angeles, Dept. of County Engineer to Western Chemical for an unauthorized release of waste materials
  - c. 1979 to 1998
    - i. Various tenants including a machine shop and diaper service
  - d. 1998 to present
    - i. All-Tex Inks Corporation operates as a silk-screening inks and supply business onsite
7. **Chemical Usage:** During their operations at the Site, Tect, Inc. and Western Chemical handled various solvents for reclamation, recycling, and/or manufacturing purposes. These

chemicals reportedly included at least methylene chloride, tetrachloroethylene (PCE), trichloroethylene (TCE), and 1,1,1-trichloroethane (1,1,1-TCA).

#### EVIDENCE OF CONTAMINATION AND BASIS FOR ORDER

8. **Waste Releases:** According to a November 8, 1973, *Notice of Violation and Order to Comply* letter issued by the County of Los Angeles, Department of County Engineer (DCE) to Western Chemical (whose successor is Soco West, Inc.), a waste water discharge was observed in a pond located between the south end of an onsite building and a railroad track located south of the Site. This discharge was determined to be an unauthorized release of waste materials.

Subsequently, site investigation work has been performed on behalf of Soco West, Inc. to delineate the extent of subsurface contaminants. The investigation work demonstrates that the highest concentrations of volatile organic compound contaminants in soil, soil vapor, and groundwater are located at the south end of the onsite building, at approximately the same location where the November 8, 1973, waste water discharge was observed. Site investigation activities are summarized in the following reports, all of which were submitted by JPR Technical Consultants, Inc. on behalf of Soco West, Inc.:

- *Interim Report, Off-Site Soil and Groundwater Investigation, Former Western Chemical Facility, 14650 Firestone Boulevard, La Mirada, California, June 1, 2008;*
- *Membrane Interface Probe and Additional Soil and Groundwater Investigation Report, Former Western Chemical Facility, 14650 E. Firestone Boulevard, La Mirada, California, February 15, 2007;*
- *Update Report, Off-Site Soil and Groundwater Investigation, Former Western Chemical Facility, 14650 E. Firestone Boulevard, La Mirada, California, October 30, 2008;*
- *Update Report, Off-Site Soil and Groundwater Investigation, Former Western Chemical Facility, 14650 E. Firestone Boulevard, La Mirada, California, April 15, 2009;* and
- *Quarterly Monitoring Report, Fourth Quarter 2009, Former Western Chemical Facility, 14650 E. Firestone Boulevard, La Mirada, California, January 15, 2010.*

Investigations offsite are in progress. A summary of contaminants detected to date are provided in the following subsections<sup>6</sup>. The data in these subsections are compiled from the above-listed reports and from other technical reports within Regional Board files. The above-listed reports are a subset of reports submitted to the Regional Board on behalf of Soco West, Inc. from 2000 to present.

#### ***Soil Matrix Data***

Following the 1973 release, and beginning in 2000, several rounds of environmental investigation have occurred at and around the Site. According to *Membrane Interface Probe and Additional Soil and Groundwater Investigation Report, Former Western Chemical Facility* (dated February 16, 2007, written by JPR Technical Services, Inc.), *Update Report, Off-Site Soil and Groundwater Investigation, Former Western Chemical Facility* (dated April 15, 2009, written by JPR Technical Services, Inc.), and Appendix A in *Interim Remedial Action Plan, Former Western Chemical Facility* (dated October 30, 2008, written by JPR

<sup>6</sup> Since work is ongoing, the status of investigation work may have changed since the preparation of this document. Except as noted as being more recent, the conditions described herein are believed to be current as of approximately September 2009.



Technical Services, Inc.), the following 46 contaminants were detected in soil at the following maximum concentrations:

Table 1

Contaminant	Maximum Concentration Detected (Onsite) ( $\mu\text{g}/\text{kg}^1$ )	USEPA RSL <sup>2</sup> Risk-based SSL <sup>3</sup> ( $\mu\text{g}/\text{kg}$ )	USEPA RSL <sup>2</sup> MCL-based SSL <sup>3</sup> ( $\mu\text{g}/\text{kg}$ )
Acetone	16,000	4,400	---
Benzene	280	0.23	2.8
Bromochloromethane	460	---	---
Bromomethane	750	2.2	---
2-Butanone	13,000	1,500	---
n-Butylbenzene	1.6	---	---
sec-Butylbenzene	1	---	---
Carbon Disulfide	620	270	---
Carbon Tetrachloride	7.9	0.079	2
Chlorobenzene	3.5	68	75
Chloroethane	2.1	6,000	---
Chloroform	1,600	0.055	---
4-Chlorotoluene	0.19	---	---
1,2-Dichlorobenzene	110	400	660
1,3-Dichlorobenzene	0.69	---	---
1,4-Dichlorobenzene	170	0.46	81
1,1-Dichloroethane (1,1-DCA)	3,900	0.7	---
1,2-Dichloroethane (1,2-DCA)	160	0.044	1.5
1,1-Dichloroethene (1,1-DCE)	38,000	120	2.6
<i>cis</i> 1,2-Dichloroethene ( <i>cis</i> 1,2-DCE)	10,000	110	21
1,2-Dichloropropane	0.46	0.13	1.7
1,4-Dioxane	57,000	1.2	---
Ethylbenzene	1,100	1.9	890
Isopropylbenzene	350	1,300	---
Methyl t-Butyl Ether (MTBE)	15	2.7	---
Methylene Chloride	89,000	1.2	1.3
4-Methyl-2-Pentanone	3	440	---
Naphthalene	3.6	0.55	---
n-Propylbenzene	0.47	---	---
Styrene	0.28	2,000	120
1,1,1,2-Tetrachloroethane	25	0.21	---
PCE	4,800,000	0.052	2.4
Tetrahydrofuran (THF)	1,040	---	---

Contaminant	Maximum Concentration Detected (Onsite) ( $\mu\text{g}/\text{kg}^1$ )	USEPA RSL <sup>2</sup> Risk-based SSL <sup>3</sup> ( $\mu\text{g}/\text{kg}$ )	USEPA RSL <sup>2</sup> MCL-based SSL <sup>3</sup> ( $\mu\text{g}/\text{kg}$ )
Toluene	2,200	1,700	760
1,1,1-TCA	630,000	3,300	72
1,1,2-Trichloroethane (1,1,2-TCA)	590	0.082	1.7
1,1,2-Trichloro-1,2,2-Trifluoroethane (Freon 113)	12,000	150,000	---
<i>trans</i> -1,2-DCE	32	34	32
TCE	690,000	0.61	1.9
Trichlorofluoromethane (TCFM)	3.7	840	---
1,2,3-Trichloropropane	1,100	0.0044	---
1,2,4-Trimethylbenzene	410	24	---
1,3,5-Trimethylbenzene	0.57	20	---
Vinyl Chloride	210	0.0056	0.7
<i>o</i> -Xylene	1,300	1,600	---
<i>p/m</i> -Xylene	4,100	1,600	---

<sup>1</sup>  $\mu\text{g}/\text{kg}$  - micrograms per kilogram

<sup>2</sup> RSL - Regional Screening Levels (RSLs) for Chemical Contaminants at Superfund Sites. RSL Table Update April 2009.

<sup>3</sup> SSL - Soil Screening Levels (SSLs) use a dilution attenuation factor (DAF) of one.

--- No MCL value exists.

Detected values that exceed United States Environmental Protection Agency (USEPA) SSLs are in bold.

In addition to these 46 contaminants, Table 2 lists additional contaminants that have been detected at least once, but which have been detected infrequently, and are not included in Table 1.

Table 2

Contaminant	Maximum Concentration Detected ( $\mu\text{g}/\text{kg}$ )	Detection Frequency (detections / analyses completed)	Date Sampled	Sample Identification
Dichlorodifluoromethane	0.44 J	1 / 216	9/6/2006	B20-19
Dieldrin	2.9 J	1 / 4	4/3/2007	DPE1-15
Diethyl Phthalate	0.35 J	1 / 4	4/3/2007	DPE3-15
Bis(2-Ethylhexyl) Phthalate	0.48 J	3 / 4	4/3/2007	DPE1-15
4,4'-DDD	4.1 J	1 / 4	4/3/2007	DPE1-2
4,4'-DDE	5.5	1 / 4	4/3/2007	DPE1-2
Aroclor 1254	430	1 / 4	4/4/2007	DPE3-15

J - Estimated value above the method detection limit, but below the reporting limit.

*Groundwater Data*

Soil and groundwater investigation began in July 2000. Groundwater monitoring and sampling at the Site began in April 2001 using three groundwater monitoring wells. The groundwater monitoring program has recently been expanded to include 12 groundwater monitoring wells. Based upon a review of *Quarterly Monitoring Report, Third Quarter 2009* (dated October 15, 2009, written by JPR Technical Services, Inc.); *Interim Report, Off-Site Soil and Groundwater Investigation, Former Western Chemical Facility* (dated June 1, 2008, written by JPR Technical Services, Inc.); *Membrane Interface Probe and Additional Soil and Groundwater Investigation Report, Former Western Chemical Facility* (dated February 16, 2007, written by JPR Technical Services, Inc.; and Appendix A in the *Interim Remedial Action Plan, Former Western Chemical Facility* (dated October 30, 2008, written by JPR Technical Services, Inc.) the following 27 contaminants have been detected in groundwater samples at the indicated maximum concentrations since 2000:

Table 3

Contaminant	Revised Maximum Concentration Detected (Onsite) ( $\mu\text{g/L}$ ) <sup>1</sup>	Maximum Contaminant Level (MCL) ( $\mu\text{g/L}$ )
Acetone	14,000	---
<b>Benzene</b>	<b>1,700</b>	<b>1</b>
2-Butanone	23,000	---
<b>Carbon Tetrachloride</b>	<b>70</b>	<b>0.5</b>
<b>Chloroform</b>	<b>4,300</b>	<b>80</b>
<b>1,1-DCA</b>	<b>9,000</b>	<b>5</b>
<b>1,2-DCA</b>	<b>4,200</b>	<b>0.5</b>
<b>1,1-DCE</b>	<b>89,000</b>	<b>6</b>
<i>cis 1,2-DCE</i>	<b>32,000</b>	<b>6</b>
<i>trans 1,2 -DCE</i>	<b>110 J</b>	<b>10</b>
1,4-Dioxane	730,000	---
<b>Ethylbenzene</b>	<b>350</b>	<b>300</b>
<b>Freon 113</b>	<b>7,500</b>	<b>1,200</b>
Isopropylbenzene	11	---
<b>Methylene Chloride</b>	<b>370,000</b>	<b>5</b>
<b>MTBE</b>	<b>41</b>	<b>13 (primary MCL) 5 (secondary MCL)</b>
<b>PCE</b>	<b>240,000</b>	<b>5</b>
<b>1,1,1-TCA</b>	<b>270,000</b>	<b>200</b>
<b>1,1,2-TCA</b>	<b>2,900</b>	<b>5</b>
<b>TCE</b>	<b>580,000</b>	<b>5</b>
<b>TCFM</b>	<b>2,100</b>	<b>150</b>
THF	11,000	---
<b>Toluene</b>	<b>2,500</b>	<b>150</b>
1,2,3-Trichloropropane	28	---
<b>Vinyl Chloride</b>	<b>28,000</b>	<b>0.5</b>
<i>o</i> -Xylene	490	1,750 (total xylenes)
<i>p/m</i> -Xylene	1000	

<sup>1</sup> - micrograms per liter ( $\mu\text{g/L}$ )

<sup>2</sup> - State maximum contaminant level (MCL)  
J - Estimated value above the method detection limit, but below the reporting limit.  
--- No MCL value exists.  
Detected values that exceed MCLs are in bold.

Table 4 lists additional contaminants that have been detected at least once, detected infrequently, and are not included in Table 3. Those contaminants that were also detected along with their maximum concentrations and detection frequency are as follows:

Table 4

Contaminant	Maximum Concentration Detected (ug/kg)	Detection Frequency (detections / analyses completed)	Date Sampled	Sample Identification
1,1,1,2-Tetrachloroethane	110	2 / 108	9/6/2006	B21-W
1,1-Dichloropropene	1200 J	2 / 107	8/16/2007	MW-3
1,2,4-Trimethylbenzene	400 J	4 / 108	3/30/2007	MW-2
1,2-Dichlorobenzene	19 J	5 / 110	9/7/2006	B15-W
1,2-Dichloropropane	13	1 / 123	9/6/2006	B21-W
1,3,5-Trimethylbenzene	32	2 / 108	9/6/2006	B21-W
4-Methyl-2-Pentanone	110	1 / 121	9/6/2006	B21-W
Bromochloromethane	37	3 / 108	9/6/2006	B21-W
Bromodichloromethane	1.8 J	1 / 124	9/6/2006	B21-W
Butyl Benzyl Phthalate	4.4 J	1 / 3	3/30/2007	MW-3
Carbon Disulfide	100 J	3 / 123	5/1/2008	MW-1
Chlorobenzene	12	1 / 123	9/6/2006	B21-W
Chloroethane	0.8 J	1 / 123	9/6/2006	B20-W
Chloromethane	250 J	1 / 123	7/31/2008	MW-1
Naphthalene	10 J	2 / 111	9/6/2006	B21-W
n-Butylbenzene	4.7 J	1 / 107	9/6/2006	B21-W
n-Propylbenzene	15	1 / 107	9/6/2006	B21-W
Isophorone	7.4 J	1 / 3	3/30/2007	MW-3
Isopropylbenzene	11	1 / 107	9/6/2006	B21-W
p-Isopropyltoluene	4.5 J	1 / 107	9/6/2006	B21-W
Sec-Butylbenzene	3.4 J	1 / 107	9/6/2006	B21-W

J - Estimated value above the method detection limit, but below the reporting limit.

The Membrane Interface Probe and Additional Soil and Groundwater Investigation Report, Former Western Chemical Facility report concluded that the highest concentrations of contaminants are in the southern one-third of the property at depths of approximately 7, 10 to 14, and 19 feet below the ground surface (bgs). It further states that there is a general decline in concentrations from 19 to 25 feet bgs and that a continuous basal clay bed exists at 23 to 25 feet bgs. Assessment activities have not yet been performed significantly into the basal clay to determine its thickness. In addition, assessment has not been performed below the basal clay to determine if groundwater beneath it has been impacted by contaminants.

#### *Indoor Vapor Intrusion*

An indoor air quality (IAQ) survey was performed at the Site in February 2007 which was documented in *Indoor Air Survey, Onsite Building, Former Western Chemical Facility*, dated

April 2007, which was prepared by Dr. C.E. Schmidt and Ms. Teri L. Copeland. This work proceeded after verbal approvals from Regional Board staff were granted to implement the work described in *Workplan for Onsite Indoor Air Survey, Onsite Building, Former Western Chemical Facility*, dated February 2007, prepared by Dr. C.E. Schmidt, Ph.D. and Teri L. Copeland, D.A.B.T. Results for the initial IAQ report and subsequent surveys (2008 and 2009) indicate the following maximum concentrations, along with most current concentrations (2009) of 21 VOCs that were detected in at least one sample in ambient indoor air above their respective reporting limits:

Table 5

Contaminant	Revised Maximum Concentrations Detected, Onsite Ambient Air ( $\mu\text{g}/\text{m}^3$ )	Maximum Concentrations Detected, Onsite Ambient Air-July 2009 ( $\mu\text{g}/\text{m}^3$ )	Indoor Air Commercial/Industrial Land Use CHHSL <sup>1</sup> ( $\mu\text{g}/\text{m}^3$ )	USEPA RSL <sup>2</sup> Industrial Air ( $\mu\text{g}/\text{m}^3$ )
Acetone	330	230	---	140,000
<b>Benzene</b>	<b>11.84</b>	<b>3</b>	<b>0.141</b>	<b>1.6</b>
2-Butanone	12	6.2 J	---	22,000
Chloromethane	5.2	5.2 J	---	390
<b>1,2-DCA</b>	<b>0.44 J</b>	<b>&lt;3</b>	<b>0.195</b>	<b>0.47</b>
<b>Dichloromethane (Methylene Chloride)</b>	<b>1,500</b>	<b>140</b>	---	<b>26</b>
<b>1,4-Dioxane</b>	<b>0.76 (0.88J)</b>	<b>&lt;54</b>	---	<b>1.6</b>
Ethylbenzene	10.97	5.2	---	4.9
4-Ethyltoluene	11.41	7.2	---	---
Hexane	14.53	6 J	---	---
<b>1,1,2,2-Tetrachloroethane</b>	<b>0.9J</b>	<b>&lt;10</b>	---	<b>0.21</b>
<b>PCE</b>	<b>34.93</b>	<b>&lt;5.1</b>	<b>0.693</b>	<b>2.1</b>
THF	5.79	1.3 J	---	---
Toluene	66.14	34	438	22,000
<b>TCE</b>	<b>46</b>	<b>22</b>	<b>2.04</b>	<b>6.1</b>
1,2,4-Trimethylbenzene	20	20	---	31
1,3,5-Trimethylbenzene	7.6	7.6	---	26
<b>1,1,2-TCA</b>	<b>2.65J</b>	<b>&lt;4.1</b>	---	<b>0.77</b>
<b>Vinyl Chloride</b>	<b>1.69J</b>	<b>&lt;1.9</b>	<b>0.0524</b>	<b>2.8</b>
m- & p-Xylene	35.84	19	1,020	3,100
o-Xylene	12.41	7.1		

<sup>1</sup> CHHSL = California Human Health Screening Levels

<sup>2</sup> RSL = Regional Screening Levels published by USEPA, April 2009

J Estimated value above the method detection limit, but below the reporting limit.

--- No value is available.

Detected values that exceed CHHSLs or RSLs are in bold.

Of the VOCs detected during the IAQ, three were contaminants detected within a shallow soil vapor extraction (SVE) system [a.k.a. "Slab Isolation System" (SIS)] currently operated beneath the building slab to reduce indoor vapor intrusion of contaminants from the subsurface. The three contaminants were PCE, TCE, and dichloromethane (methylene chloride). Of these, neither PCE nor TCE were used within the building on the date the IAQ

surveys were performed. As a result, the report concluded that "the detection of PCE and TCE, both of which were present in the subsurface at elevated concentrations, in indoor air at concentrations higher than outdoor air qualitatively supports the potential of a subsurface, vapor intrusion pathway at the site."

Two more-recent indoor air quality surveys were performed at the Site which indicated a generally downward trend in the concentrations of VOCs present in ambient indoor breathing space at the Site. These results are documented in two reports written by JPR Technical Services, Inc., *Engineering Controls Evaluation, Former Western Chemical Facility* (dated October 30, 2008); and *Semi-Annual Indoor Air Sampling, Former Western Chemical Facility* (dated September 25, 2009).

Table 6 lists additional contaminants that have been detected at least once, detected infrequently, and are not included in Table 5. Those contaminants that were also detected along with their maximum concentrations and detection frequency are as follows:

Table 6

Contaminant	Maximum Concentration Detected ( $\mu\text{g}/\text{m}^3$ )	Detection Frequency (detections / analyses completed)	Date Sampled	Sample Identification
1,1,2-Trichloro-1,2,2-Trifluoroethane	1.18 J	1 / 30	2/7/2007	AAI-06-01
1,1-Dichloroethene	2.76 J	4 / 30	2/7/2007	AAI-06-01
1,2-Dichlorobenzene	1.76 J	1 / 30	2/8/2007	AAI-05-02
1,3-Dichlorobenzene	0.79 J	3 / 30	2/7/2007	AAI-04-01
1,4-Dichlorobenzene	2.25 J	4 / 30	2/8/2007	AAI-05-02
Benzyl Chloride	15 J	6 / 18	7/16/2009	AAI-03-1
Chlorobenzene	0.5 J	1 / 30	2/8/2007	AAI-05-2
Chloroethane	1.19 J	6 / 30	2/7/2007	AAI-05-2
Chloromethane	5.2 J	28 / 30	7/16/2009	AAI-03-1
Dichlorodifluoromethane	6.3	17 / 30	7/16/2009	AAI-06-1
Ethanol	81	18 / 18	8/14/2008	AAI-06-1
Ethyl Acetate	9.4 J	2 / 18	8/15/2008	AAI-06-2
4-Methyl-2-pentanone	1.09 J	8 / 30	2/8/2007	AAI-05-2
Styrene	3.13 J	5 / 30	2/8/2007	AAI-02-2
Trichlorofluoromethane	2.26 J	12 / 30	2/7/2007	AAI-06-1
Vinyl Acetate	94	15 / 18	7/16/2009	AAI-05-1

J Estimated value above the method detection limit, but below the reporting limit.

A slab isolation system (SIS) is currently being operated at the Site. The SIS is a vapor extraction system that is connected to wells with shallow screen intervals within the vadose zone and directly beneath the Site's building foundation. The SIS is designed and operated to reduce indoor vapor intrusion from the subsurface. Based upon results presented in the *Quarterly Monitoring Report, Third Quarter 2009, Former Western Chemical Facility*, dated October 15, 2009, prepared by JPR Technical Services, Inc., 27 contaminants were reported in soil gas vapor samples collected at the influent of the SIS. These samples represent composite values of influent concentrations from multiple wells connected to the SIS. Table

7 presents the maximum and most current concentrations of the 27 contaminants that were detected since the SIS began operating in 2005:

Table 7

Contaminant	Maximum Concentration Detected ( $\mu\text{g/L}$ )	Maximum Concentration Detected ( $\mu\text{g/m}^3$ )	Maximum Concentration Detected-3rd Qtr 2009 ( $\mu\text{g/L}$ )	Maximum Concentration Detected-3rd Qtr 2009 ( $\mu\text{g/m}^3$ )	Shallow Soil Gas Commercial/Industrial Land Use CHHSL <sup>1</sup> ( $\mu\text{g/m}^3$ )
Acetone	32	32,000	5.9	5,900	---
<b>Benzene</b>	<b>2.6</b>	<b>2,600</b>	<b>0.19J</b>	<b>190J</b>	122
2-Butanone	1.11	1,100J	0.25J	250J	---
Carbon Disulfide	19	19,000	2	2,000	---
<b>Carbon Tetrachloride</b>	<b>0.16</b>	<b>160</b>	<b>0.025J</b>	<b>25J</b>	<b>84.6</b>
Chloroform	4.5	4,500	0.04J	41	---
1,1-DCA	11	11,000	1.40	1,400	---
1,1-DCE	400	400,000	12	12,000	---
<b>1,2-DCA</b>	<b>8.8</b>	<b>8,800</b>	<b>0.2J</b>	<b>200J</b>	<b>167</b>
<i>cis</i> 1,2-DCE	4.7	4,700	4.7	4,700	44,400
<i>trans</i> 1,2-Dichloroethene ( <i>trans</i> 1,2 - DCE)	2.5	2,500	0.013J	13J	88,700
1,4-Dioxane	7.6	7,600	<0.58	<580	---
Ethylbenzene	0.54	540	0.037	37	---
4-Ethyl-toluene	0.06	60	<0.039	<39	---
MTBE	10	10,000	<0.12	<120	13,400
Methylene Chloride (Dichloromethane)	140	140,000	1.1J	1,100J	---
<b>PCE</b>	<b>7,100</b>	<b>7,100,000</b>	<b>180</b>	<b>180,000</b>	<b>603</b>
THF	3.2	3,200	<0.047	<47	---
Toluene	10	10,000	1.40	1,400	378,000
1,1,1-TCA	1,200	1,200,000	50	50,000	2,790,000
1,1,2-TCA	6.6	6,600	0.28J	280J	---
<b>TCE</b>	<b>4,400</b>	<b>4,400,000</b>	<b>150</b>	<b>150,000</b>	<b>1,770</b>
TCFM	0.32	320	0.035J	35J	---
1,1,2-Trichloro-1,2,2-Trifluoroethane (Freon 113)	230	230,000	8.6	8,600	---
1,2,4-Trimethylbenzene	0.64J	640J	<0.079	<79	---
<b>Vinyl Chloride</b>	<b>2.2</b>	<b>2,200</b>	<b>2.2</b>	<b>2,200</b>	<b>44.8</b>
<i>o</i> -Xylene	0.53	530	0.19	190	879,000
<i>p/m</i> -Xylene	1.7	1,700	0.074	74	887,000

<sup>1</sup> CHHSL = California Human Health Screening Levels  
 J Estimated value above the method detection limit, but below the reporting limit.  
 --- No value is available.  
 Detected values that exceed CHHSLs are in bold.

Table 8 lists additional contaminants that have been detected at least once, detected infrequently, and are not included in Table 7. Those contaminants that were also detected along with their maximum concentrations and detection frequency are as follows:

Table 8

Contaminant	Maximum Concentration Detected ( $\mu\text{g}/\text{m}^3$ )	Detection Frequency (detections / analyses completed)	Date Sampled	Sample Identification
1,2,4-Trichlorobenzene	870 J	1 / 47	12/26/2006	SIS Influent
1,3,5-Trimethylbenzene	33 J	4 / 47	8/16/2007	SIS Influent
4-Methyl-2-Pentanone	5.1 J	2 / 47	4/23/2009	SIS Influent
Bromodichloromethane	1,400	1 / 47	8/26/2006	SIS Influent
Chlorobenzene	5.6	1 / 47	6/18/2009	SIS Influent
Chloroethane	4.2	1 / 47	6/18/2009	SIS Influent
Chloromethane	1.1 J	1 / 47	6/18/2009	SIS Influent
Cyclohexane	280	4 / 4	6/20/2007	SIS Influent
Dichlorodifluoromethane	5.5	1 / 47	6/18/2009	SIS Influent
Ethanol	2,500	5 / 9	3/13/2009	SIS Influent
Ethyl Acetate	29 J	1 / 6	6/18/2009	SIS Influent
Ethylbenzene	540	10 / 47	1/28/2009	SIS Influent
Heptane	200 J	3 / 4	6/20/2007	SIS Influent
Hexachloro-1,3-Butadiene	5,000	3 / 47	12/26/2006	SIS Influent
Hexane	400 J	4 / 8	5/21/2009	SIS Influent
Isopropanol	210	1 / 4	9/26/2007	SIS Influent
Styrene	960 J	10 / 47	7/24/2007	SIS Influent
Tert-Butyl-Alcohol	930	3 / 9	1/28/2009	SIS Influent
Trichlorofluoromethane	320	11 / 47	6/20/2007	SIS Influent
Vinyl Acetate	53	1 / 47	9/29/2006	SIS Influent

J Estimated value above the method detection limit, but below the reporting limit.

### Soil Vapor Remediation

Except for the operation of the SIS, remediation efforts have not been implemented. The impact of the SIS is limited to the approximate footprint of the Site building within the shallow vadose zone beneath the Site.

- Regulatory Status:** Prior to issuance of this Cleanup and Abatement Order (CAO), there were two active Orders associated with this Site, dated September 3, 2008, and September 11, 2008. In addition, modifications to these orders were made in correspondence dated between November 13, 2008, and July 7, 2010. These Orders with modifications required investigation reports, an evaluation of engineering controls, indoor air sampling work plans and reports, work plans and reports for the assessment of soil, groundwater, and soil vapor, work plans and reports for the installation of additional groundwater monitoring wells, and electronic submittals of data to the GeoTracker geographic information system. There have been no documented regulatory violations associated with these Orders.
- Sources of Information:** The sources for the evidence summarized above include but are not limited to: reports and other documentation in Regional Board files, telephone calls and e-mail communication between responsible party attorneys and consultants, and Site visits.



### CONCLUSIONS

11. **Pollution of Waters of the State:** The Dischargers have caused or permitted, or threatens to cause or permit, waste to be discharged 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.
12. Regional Board staff will consider cleanup goals in accordance with the following State Policies:
  - a. *"Antidegradation Policy"* (State Board Resolution No 68-16) which requires attainment of background levels of water quality, or the highest level of water quality that is reasonable in the event that background levels cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the State, not unreasonably affect present and anticipated beneficial uses of water, and not result in an exceedance of water quality objectives in the Basin Plan.
  - b. *"Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304"* (State Board Resolution No. 92-49) which sets forth criteria to consider for those cases of pollution wherein restoration of water quality to background levels may not be reasonable.
13. Pursuant to section 13304 of the California Water Code, the Regional Board may seek reimbursement for all reasonable costs to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action.
14. This action is being taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15308.

**THEREFORE, IT IS HEREBY ORDERED**, pursuant to section 13304 of the California Water Code, that Dischargers shall cleanup and abate waste emanating from 14650 Firestone Boulevard, La Mirada, California in accordance with the following requirements:

1. **Develop and Update a Site Conceptual Model:** The Site Conceptual Model (SCM) should include a written presentation with graphic illustrations of the release scenario and the dynamic distribution of wastes from the Site and vicinity. The SCM shall be constructed based upon actual data collected from the Site and any other nearby sites that add to the accuracy of the SCM.
  - a. The SCM shall be updated as new information becomes available. Updates to the SCM should be included in all future technical reports submitted.
2. **Complete Delineation of Contamination:** Completely delineate the extent of soil, soil vapor, and groundwater contamination caused by the release of VOCs and any other contaminants of concern from the Site.
  - a. The delineation shall be completed both vertically and laterally. Groundwater and soil assessment for shallow zones (above the "basal clay") has been ongoing under Regional Board-approved work plans.
    - i. After sufficient interim remedial action has occurred in the shallow zone (see Item #3

such that the potential for downward migration of contaminants would be minimized. The deeper zones shall be delineated to determine the extent of contamination into these zones, if any.

- b. If ongoing reinterpretation of new assessment data derived from the tasks performed suggest that modification or expansion of the tasks proposed in the Work Plan is necessary for complete assessment, one or more Work Plan addendums shall be submitted to the Regional Board to provide for full assessment.
3. **Conduct Remedial Action:** Initiate a phased cleanup and abatement program with the cleanup of any remaining soil, soil vapor, and groundwater contamination and the abatement of threatened beneficial uses of water and pollution sources as highest priority. Specifically, you shall:
- a. Perform interim remedial action to remediate the vadose zone and shallow aquifer onsite and near the site where the highest concentrations of contaminants are detected.
  - b. Develop a comprehensive Remedial Action Plan (RAP) for all remaining shallow-zone contamination originating from the Site and submit it for Regional Board review and approval. The RAP shall include, at a minimum:
    - i. A program for preventing the continuing spread of existing contaminant plumes in groundwater;
    - ii. Proposed cleanup goals with a protocol and schedule to reach them. The cleanup goals shall be based on:
      1. Soil cleanup levels set forth in the Regional Board's *Interim Site Assessment and Cleanup Guidebook, May 1996*.
      2. Human health protection levels set forth in the current *USEPA Soil Screening Levels*.
      3. Protection from vapor intrusion and protection of indoor air quality based on the California Environmental Protection Agency's January 2005 (or later version) *Use of Human Health Screening Levels (CHHSLs) in Evaluation of Contaminated Properties*. Soil vapor sampling requirements are stated in the Department of Toxic Substances Control (DTSC) and Regional Board January 2003 *Advisory - Active Soil Gas Investigations*, and the DTSC February 2005 (or latest version) *Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion to Indoor Air*.
      4. Groundwater cleanup goals shall consider California's MCLs, Notification Levels for drinking water as established by the State Department of Public Health, Ocean Plan, or the California Toxic Rules, affected water resources, and current and anticipated future land uses.
    - iii. Submit quarterly remediation progress reports to this Regional Board. The quarterly remediation progress reports shall document all performance data associated with operating systems. Remediation progress reports shall be submitted according to the following schedule:

Monitoring Quarter	Monitoring Period	Report Due Date
First Quarter	January - March	April 15
Second Quarter	April - June	July 15
Third Quarter	July - September	October 15
Fourth Quarter	October - December	January 15

- c. Develop a comprehensive RAP for deeper-zone contamination originating from the Site, if future assessment indicates that this is necessary, and submit it for Regional Board review and approval. The RAP shall include the same minimum requirements specified in Item 3b.
4. **Conduct Groundwater Monitoring:** Continue the existing quarterly groundwater monitoring program.
- a. New wells shall be installed in order to complete the groundwater monitoring well network. The intention of these wells is to monitor plume movement and to evaluate remediation progress. Submit proposed well location and construction specifications for Regional Board consideration.
- b. As new wells are installed they are to be incorporated into the groundwater monitoring program. The quarterly groundwater monitoring reports shall be submitted according to the following schedule with the next report due by **October 15, 2010**.

Monitoring Quarter	Monitoring Period	Report Due Date
First Quarter	January - March	April 15
Second Quarter	April - June	July 15
Third Quarter	July - September	October 15
Fourth Quarter	October - December	January 15

5. **Involvement of the Public:** Encourage public participation. Prepare and submit for review a *Public Participation Plan*, with the goal of providing the stakeholders with:
- a. Information, appropriately targeted to the literacy and translational needs of the community, about contamination investigation and remedial activities; and
- b. Periodic, meaningful opportunities to comment upon and to influence investigation and cleanup activities.
- Public participation activities shall coincide with key decision-making points throughout the process as specified or as directed by the Executive Officer.
6. **Time Schedule:** The Dischargers shall submit all required work plans and reports within the time schedule listed in Attachment B attached hereto and incorporated herein by reference.
7. The Regional 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 CAO;
- b. Access to copy any records that are stored under the conditions of this CAO;

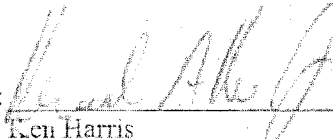
- c. Access to inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this CAO; and
  - d. The right to photograph, sample, and monitor the Site for the purpose of ensuring compliance with this CAO, or as otherwise authorized by the California Water Code.
8. **Contractor/Consultant Qualification:** A California licensed professional civil engineer or geologist, or a certified engineering geologist or hydrogeologist shall conduct or direct the subsurface investigation and cleanup program. All technical documents shall be signed by and stamped with the seal of the above-mentioned qualified professionals that reflects a license expiration date.
  9. This CAO is not intended to permit or allow the Dischargers to cease any work required by any other CAO issued by the Regional Board, nor shall it be used as a reason to stop or redirect any investigation or cleanup or remediation programs ordered by the Regional Board or any other agency. Furthermore, this CAO 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.
  10. The Dischargers shall submit 30-day advance notice to the Regional Board of any planned changes in name, ownership, or control of the Site and shall provide 30-day advance notice of any planned physical changes to the Site that may affect compliance with this CAO. In the event of a change in ownership or operator, the Dischargers also shall provide 30-day advance notice, by letter, to the succeeding owner/operator of the existence of this CAO, and shall submit a copy of this advance notice to the Regional Board.
  11. Abandonment of any groundwater well(s) at the Site must be approved by and reported to the Executive Officer at least 30 days in advance. Any groundwater wells removed must be replaced within a reasonable time, at a location approved by the Executive Officer. With written justification, the Executive Officer may approve of 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.
  12. The Regional Board, through its Executive Officer, may revise this CAO 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 CAO. The authority of the Regional 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 CAO.
  13. Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, 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. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

Former Western Chemical Site  
July 30, 2010

SCP CASE 0909  
Order No. R4-2010-0044

14. Failure to comply with the terms or conditions of this CAO may result in imposition of civil liabilities, imposed either administratively by the Regional Board or judicially by the Superior Court in accordance with sections 13304, 13308, and/or 13350 of the California Water Code, and/or referral to the Attorney General of the State of California.
15. None of the obligations imposed by this CAO 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:



Ken Harris

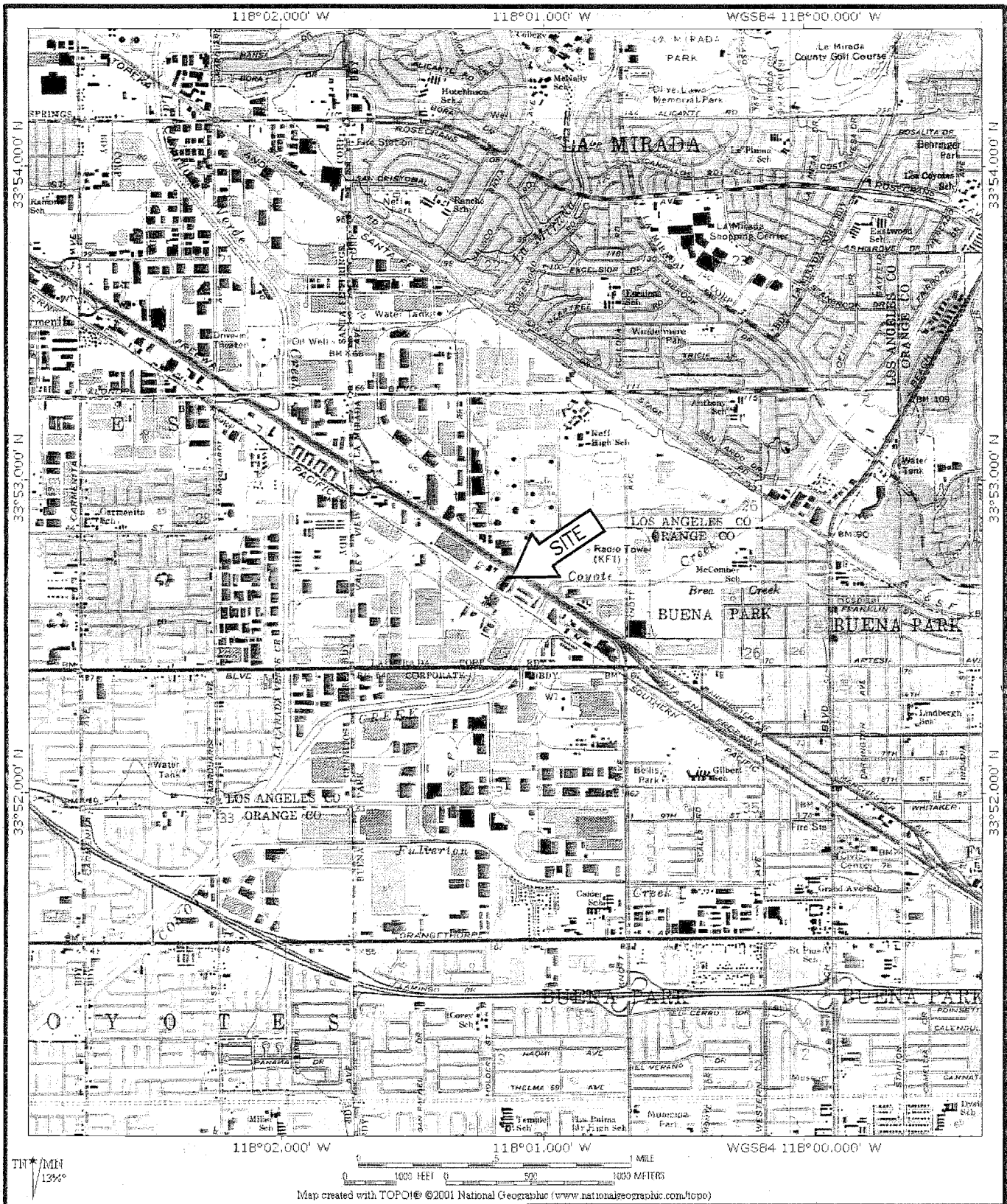
Acting Assistant Executive Officer

Date: July 30, 2010

**Attachment A (Maps)**

**FIGURE 1: SITE LOCATION MAP**

**FIGURE 2: SITE VICINITY MAP**



Map created with TOPO!® ©2001 National Geographic (www.nationalgeographic.com/topo)

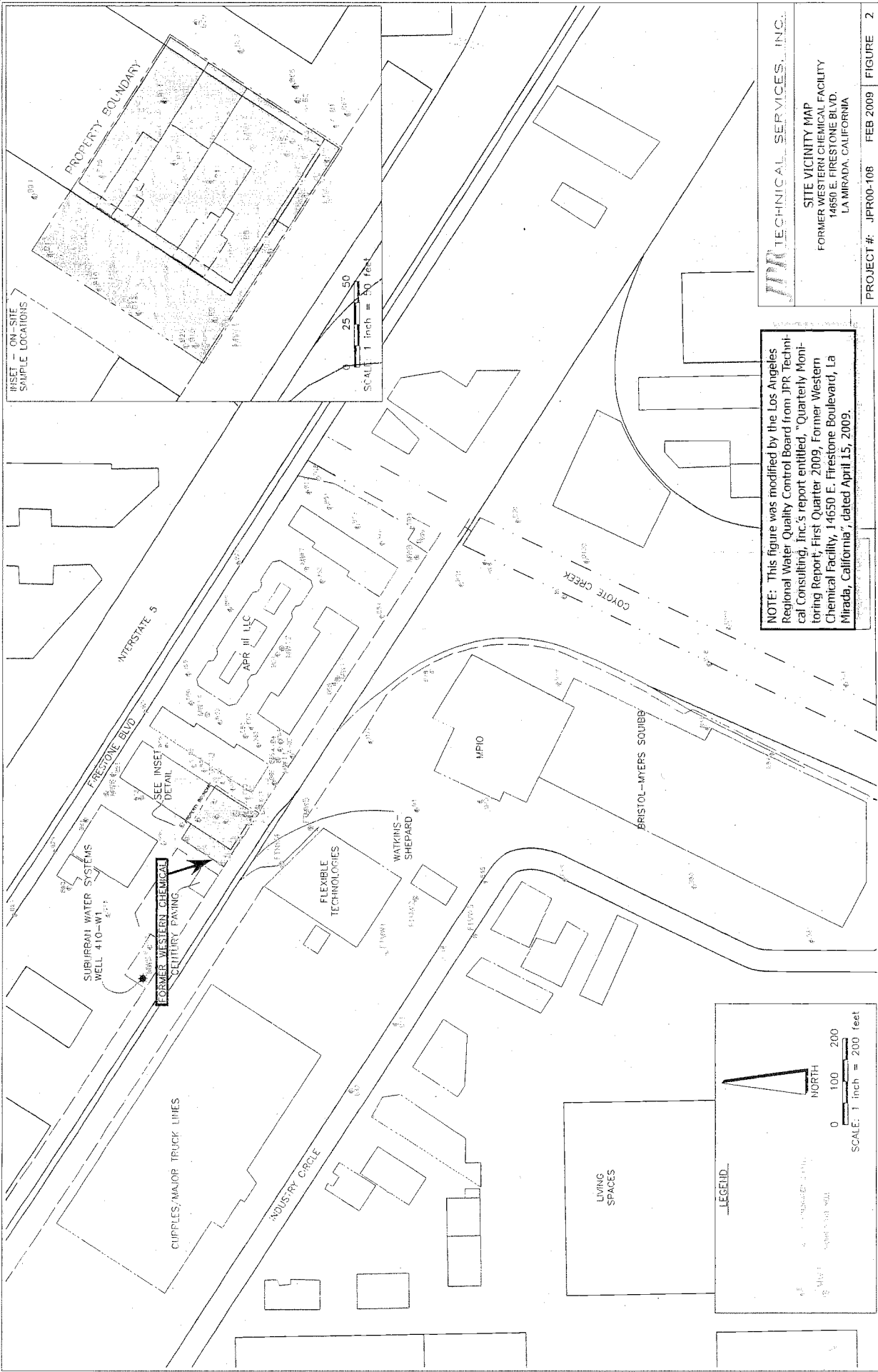
NOTE: This figure was modified by the Los Angeles Regional Water Quality Control Board from JPR Technical Consulting, Inc.'s report entitled, "Quarterly Monitoring Report, First Quarter 2009, Former Western Chemical Facility, 14650 E. Firestone Boulevard, La Mirada, California", dated April 15, 2009.

**JPR** TECHNICAL SERVICES, INC.

SITE LOCATION MAP  
 FORMER WESTERN CHEMICAL FACILITY  
 14650 E. FIRESTONE BLVD.  
 LA MIRADA, CALIFORNIA

PROJECT #: JPR00-108

FIGURE 1



NOTE: This figure was modified by the Los Angeles Regional Water Quality Control Board from JPR Technical Consulting, Inc.'s report entitled, "Quarterly Monitoring Report, First Quarter 2009, Former Western Chemical Facility, 14650 E. Firestone Boulevard, La Mirada, California", dated April 15, 2009.

JPR TECHNICAL SERVICES, INC.  
 SITE VICINITY MAP  
 FORMER WESTERN CHEMICAL FACILITY  
 14650 E. FIRESTONE BLVD.  
 LA MIRADA, CALIFORNIA  
 PROJECT #: JPR00-108 FEB 2009 FIGURE 2



## Attachment B: Time Schedule

Directive		Due Date
1	<b>Develop and Update a Site Conceptual Model:</b> Provide updates to the existing Site Conceptual Model in all future technical reports. Updates shall be complete, stand-alone Site Conceptual Models, as opposed to addendums.	Required in all future technical reports

Directive		Due Date
2	<b>Complete Delineation of Contamination</b>	
2a	Delineation of the shallow-zone (above the "basal clay") shall be completed. A report documenting the full extent of VOCs within the shallow-zone soil, soil vapor, and groundwater shall be submitted to this Regional Board.	January 20, 2011
2ai	Delineation of deeper zones (below the "basal clay"). Work plans and reports associated with deeper zone assessment will be required following remediation of the shallow zone.	To Be Determined by the Regional Board
2b	Work Plan Addendums: Iterative additional assessment work plans and associated reports may be needed if near-term assessment work does not accomplish full delineation of the shallow zone. The Regional Board will consider designating new due dates if additional work is needed.	To Be Determined by the Regional Board

Directive		Due Date
3	<b>Conduct Remedial Action</b>	
3a	Submit the final plan for elements of the interim remedial action plan or an alternative interim approach for review by this Regional Board.	September 10, 2010
3b	Develop and submit a full-scale shallow-zone Remedial Action Plan.	January 31, 2011
3c	Submit a deeper zone Remedial Action Plan, if necessary, following deeper zone assessment.	To Be Determined by the Regional Board

Directive		Due Date
4	<b>Conduct Groundwater Monitoring</b>	
4a	Complete installation of offsite groundwater monitoring wells.	Proposed well locations and specifications are due by <b>August 31, 2010</b>  All shallow-zone groundwater monitoring wells shall be installed by <b>December 15, 2010</b>
4b	Groundwater Monitoring Reports  <u>Monitoring Period</u> January to March April to June July to September October to December	Quarterly each year The first report due under this CAO is due <b>October 15, 2010</b>  <u>Report Due Date</u> <b>April 15<sup>th</sup></b> <b>July 15<sup>th</sup></b> <b>October 15<sup>th</sup></b> <b>January 15<sup>th</sup></b>

Directive		Due Date
5	<b>Involvement of the Public:</b> Prepare and submit a <i>Public Participation Plan</i> for Regional Board review.	<b>October 29, 2010</b>

**EXHIBIT B**



# California Regional Water Quality Control Board Los Angeles Region



Linda S. Adams  
Cal/EPA Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013  
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger  
Governor

July 30, 2010

Montri and Chiravan Keyuranggul  
PJK Properties, LLC  
14650 Firestone Boulevard  
La Mirada, CA 90638

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7009 0820 0001 6811 8407

Geraldine Frank  
7121 Western Avenue  
Buena Park, CA 90620-1828

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7009 0820 0001 6811 8391

Harland Eakens  
6811 Riverside Drive  
Redding, CA 96001-5427

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7009 0820 0001 6811 8384

Faithe Trust  
c/o Emil Faithe, Trustee  
8015 La Caverna Ave. NE  
Albuquerque, NM 87122

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7009 0820 0001 6811 8377

Tect, Inc.<sup>1</sup>, James Warren Patrick<sup>2</sup> (aka Jay Patrick), and Patrick Trust  
c/o Edward H. Stone, Esq.  
18201 Von Karman Avenue, Suite 1160  
Irvine, CA 92612

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7009 0820 0001 6811 8360

Mr. Raj Mehta  
Western Chemical<sup>3</sup> and Soco West, Inc.  
100 First Stamford Place, Mail Box #14  
Stamford, CT 06902

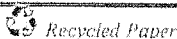
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7009 0820 0001 6811 8414

**CLEANUP AND ABATEMENT ORDER NO. R4-2010-0044 – PURSUANT TO CALIFORNIA WATER CODE SECTION 13304 – ALL-TEX INKS CORPORATION, 14650 EAST FIRESTONE BOULEVARD, LA MIRADA, CALIFORNIA (SCP CASE NO. 0909; SCP ID NO. 204CA00)**

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of Los Angeles County and Ventura County, including the above-referenced site. In accordance with these responsibilities, enclosed is Cleanup and Abatement Order No. R4-2010-0044 (CAO), directing you to assess, monitor, cleanup, and abate the effects of contaminants discharged to the soil and groundwater at 14650 East Firestone Boulevard, La Mirada, California. This Order is prepared pursuant to section 13304 of the California Water Code.

<sup>1</sup> Tect, Inc. is a corporation that was suspended on September 3, 1973.  
<sup>2</sup> Based upon Regional Board records, James Warren Patrick is believed to be deceased.  
<sup>3</sup> Soco West, Inc. is the successor company to Western Chemical.

*California Environmental Protection Agency*



*Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.*

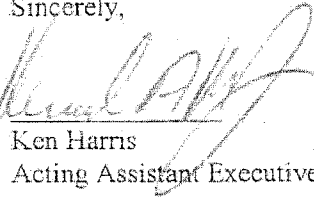
July 30, 2010

A draft of this CAO was provided to you on September 30, 2009, inviting comments. The attached CAO No. R4-2010-0044 contains changes based upon the comments we received. Our responses to comments received are provided in the enclosed table, *Responsiveness Summary – Draft Cleanup and Abatement Order R4-2009-0049*.

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, 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. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**Should you have any questions, please contact Mr. Greg Bishop at (213) 576-6727 or [gbishop@waterboards.ca.gov](mailto:gbishop@waterboards.ca.gov).**

Sincerely,



Ken Harris  
Acting Assistant Executive Officer

Enclosure: *Responsiveness Summary – Draft Cleanup and Abatement Order R4-2009-0049*

Cc: Mr. Mustapha Balkis, County of Orange, OC Public Works, County Property Permits  
Ms. Serena Elliot Benson, Southern California Real Estate Services  
Mr. Gary Boettcher, JPR Technical Services, Inc.  
Mr. Joe Bolton  
Mr. Richard Chiang, Caltrans  
Mr. Jack Cline, Lee & Associates  
Ms. Janet Frentzel, AMB-AMS Operating Partnership, L.P.  
Mr. Ray Jarvis and Mr. Salvador R. Carjabal c/o Gregory D. Trimarche, Brian-Cave, LLP  
Ms. Jantira Keyuranggul, All Tex Inks Corporation  
Mr. Ted Koelsch, JPR Technical Services, Inc.  
Mr. Louis W. Leseburg and Ms. Linda L. Leseburg, Trustees for Leseburg Trust  
Mr. Dennis Loput, The Abbey Company  
Ms. Phuong Ly, Water Replenishment District of Southern California  
Ms. Nancy Matsumoto, Water Replenishment District of Southern California  
Mr. Mike Milhifer, City of La Mirada, Department of Public Works  
Mr. Thierry R. Montoya, Adorno Yoss Alvarado & Smith  
Mr. Marlin Munoz, City of La Mirada, Department of Public Works  
Ms. Summer Nastich, SmithTrager, LLP for Soco West, Inc.  
Mr. Jeff Ogata, State Water Resources Control Board, Office of the Chief Counsel  
Ms. Loretta Pollack, LBA Realty

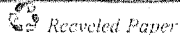
***California Environmental Protection Agency***



Ms. Michele Powers, Alston & Bird LLP  
Mr. Brian E. Qualls, Dowling, Aaron & Keeler, Inc.  
Mr. Jeff Raumin, Environ International Corporation  
Ms. Carol Serlin, Environ International Corporation  
Mr. David L. Shrader, Morgan, Lewis & Bockius LLP  
Ms. Diane R. Smith, SmithTrager, LLP for Soco West, Inc.  
Mr. Mike J. Stiles, Stiles Law Group  
Mr. Harold M. Stuhl, Cupples Company  
Mr. John Svet  
Mr. John Voss

*California Environmental Protection Agency*

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*Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations*

# EXHIBIT C

**DECLARATION OF THIERRY R. MONTOYA**

I, THIERRY R. MONTOYA, declare as follows:

1. I am a Shareholder with the law firm of Adorno Yoss Alvarado & Smith, a Professional Corporation, attorneys of record herein for Petitioners Thad Smith, James Turner, and Ronald Patrick (collectively "Petitioners"), all in their capacity as co-trustees of the James W. Patrick Trust ("The Patrick Trust") in the above-captioned action. I submit this declaration in support of the Petition for Review of Cleanup and Abatement Order No. R4-2010-0044 ("Order R4-0044") and Request for Stay. I have been duly admitted to practice law in the State of California. If called as a witness in this action, I am competent to testify of my own personal knowledge, to the best of my recollection, as to the matters set forth in this Declaration.

2. Petitioners will likely suffer substantial harm if a stay is not granted. Petitioners have been erroneously identified as dischargers and responsible parties under Order R4-0044 issued by the California Regional Water Quality Board, Los Angeles Region ("Regional Board") on July 30, 2010. Neither James Patrick nor The Patrick Trust are liable personally for the liabilities arising out of the alleged wrongful conduct by Tect, Inc. therefore it is improper to burden them with the significant costs and expenses associated with Order R4-0044.

3. Other interested persons and the public interest will not suffer substantial harm. The withdrawal and removal of Petitioners as responsible parties will not eviscerate the Regional Board's efforts to cleanup and abate waste substances on the Subject Property. A stay will further the objectives of *Water Code* § 13304 and 23 *Cal. Code of Regs.* § 2050 because only those parties properly identified as dischargers and responsible parties will be required to comply with Order R4-0044. A stay period will allow a reasonable time for the SWRCB to adequately consider evidence to support that Petitioners are improperly identified. The benefits afforded from protecting Petitioners' interests from substantial and undue harm far outweigh any risk of nominal harm to other interested persons.

4. Substantial questions of fact and law exist regarding the action by the Regional Board. Order R4-0044 identifies Petitioners as dischargers and responsible parties without adequate



1 evidence. James Patrick was the owner of Tect, Inc.; however, he is not personally liable for the  
2 improper conduct of the corporation without sufficient evidence to disregard Tect, Inc. as a distinct  
3 and separate legal entity from its members. A lack of any evidence to support the application of  
4 alter ego liability principles precludes James Patrick's personal liability for corporate acts.  
5 Moreover, The Patrick Trust cannot be held liable for the conduct of Tect, Inc. because liability does  
6 not extend to James Patrick's surviving personal assets. Order No. R4-0044 is an unavailing attempt  
7 to expand the asset pool to identify responsible parties without adequately exploring well-settled  
8 California law, which stands to protect James Patrick personally, and his surviving assets, from  
9 liability arising from Tect, Inc.'s wrongful conduct.

10  
11 I declare under penalty of perjury under the laws of the State of California that the foregoing  
12 is true and correct, and that this declaration is executed on August 25, 2010 at Santa Ana, California.

13  
14   
15 \_\_\_\_\_  
16 THIERRY R. MONTOYA  
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF ORANGE**

3 *In the matter of ALL-TEX INKS CORPORATION, 14650 EAST FIRESTONE BOULEVARD,*  
4 *LA MIRADA, CALIFORNIA (SCP CASE NO. 0909; SCP ID NO. 204CA00)*

5 I am employed in the County of Orange, State of California. I am over the age of 18 years  
6 and not a party to the within action. My business address is **ADORNO YOSS ALVARADO &**  
7 **SMITH, 1 MacArthur Place, Santa Ana, CA 92707.**

8 On August 26, 2010, I served the foregoing document described as **PETITION FOR**  
9 **STATE BOARD REVIEW OF REGIONAL BOARD ACTION AND REQUEST FOR**  
10 **HEARING** on the interested parties in this action.

11  by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s),  
12 addressed as follows:

13 **SEE ATTACHED SERVICE LIST**

14  **BY REGULAR MAIL:** I deposited such envelope in the mail at 1 MacArthur Place, Santa  
15 Ana, California. The envelope was mailed with postage thereon fully prepaid.

16 I am "readily familiar" with the firm's practice of collection and processing correspondence  
17 for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary  
18 course of business. I am aware that on motion of the party served, service is presumed invalid  
19 if postal cancellation date or postage meter date is more than one (1) day after date of deposit  
20 for mailing in affidavit.

21 **BY THE ACT OF FILING OR SERVICE, THAT THE DOCUMENT WAS**  
22 **PRODUCED ON PAPER PURCHASED AS RECYCLED.**

23  **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above  
24 facsimile numbers.

25  **BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or Federal  
26 Express Drop Box located at 1 MacArthur Place, Santa Ana, California 92707. The envelope  
27 was deposited with delivery fees thereon fully prepaid.

28  **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above  
addressee(s).

(State) I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

(Federal) I declare that I am employed in the office of a member of the Bar of this Court, at  
whose direction the service was made.

Executed on August 26, 2010, at Santa Ana, California.

  
YVONNE S. BROMLEY

**SERVICE LIST**

*In the matter of ALL-TEX INKS CORPORATION, 14650 EAST FIRESTONE BOULEVARD, LA  
MIRADA, CALIFORNIA (SCP CASE NO. 0909; SCP ID NO. 204CA00)*

Samuel Unger  
CA Regional Water Quality Control Board  
Los Angeles Region  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013

Geg Bishop  
CA Regional Water Quality Control Board  
Los Angeles Region  
320 W. 4th Street, Suite 200  
Los Angeles, CA 90013

Tel.: (213) 576-6600  
Fax: (213) 576-6640

Montri and Chiravan Keyuranggul  
PJK Properties, LLC  
14650 Firestone Boulevard  
La Mirada, CA 90638

Geraldine Frank  
7121 Western Avenue  
Buena Park, CA 90620-1828

Harland and Betty Eakens  
6811 Riverside Drive  
Redding, CA 96001

Faithe Trust  
c/o Emil Faithe, Trustee  
8015 La Caverna Ave., NE  
Albuquerque, NM 87122

Tect, Inc., James Warren Patrick (aka Jay  
Patrick)  
Patrick Estate, and Patrick Trust  
c/o Edward H. Stone, Esq.  
18201 Von Karman Avenue, Suite 1160  
Irvine, CA 92612

Mr. Raj Mehta  
Western Chemical and Soco West, Inc.  
c/o Smith Trager, LLP  
2222 Martin Street, Suite 255  
Irvine, CA 92612