

# **Exhibit 4**

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

CLEANUP AND ABATEMENT ORDER NO. 89-49

GREYHOUND LINES, INCORPORATED  
GREYHOUND MAINTENANCE CENTER  
539 FIRST AVENUE, SAN DIEGO  
PARCEL NO. 535-072-03-00  
BLOCK 92, LOTS C THRU J  
SAN DIEGO COUNTY

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

1. Greyhound Lines, Inc. (hereinafter Greyhound) owns and operates a bus maintenance center at 539 First Avenue. The site is within the San Diego Mesa Hydrographic Subunit (8.2) of the Coronado Hydrographic Unit (8.0).
2. On September 9, 1987, the Regional Board sent a letter to Greyhound requesting information regarding past practices associated with the subject site.
3. By letter dated September 21, 1987, Greyhound informed the Regional Board that five tanks currently exist at the facility. They include:
  - One small, abandoned steel waste oil tank,
  - Two 10,000 gallon steel diesel tanks,
  - One 8,000 gallon steel motor oil tank, and
  - One 1,000 gallon steel waste oil tank.
4. The site is a part of the Marina Redevelopment Project in the center city area of the City of San Diego. The project is being administered by the Redevelopment Agency of the City of San Diego. The Centre City Development Corporation, Inc. (CCDC) is a nonprofit corporation established by the City of San Diego to administer downtown redevelopment projects, including the Marina Redevelopment Project.
5. In 1987, CCDC discovered a subsurface hydrocarbon plume near the intersection of Market Street and First Avenue. The subsurface plume is composed of petroleum hydrocarbon with a carbon chain which ranges from gasoline to diesel and appears to be an accumulation of several coalescing sources. A 3.0 foot thickness of petroleum hydrocarbon was measured in a ground-water monitoring well adjacent to the eastern boundary of the subject property. The subject site is on the southern margin of this hydrocarbon plume.
6. By letter dated November 12, 1987, Regional Board staff requested Greyhound to conduct a subsurface investigation to ascertain whether or not fuel has been discharged into the environment.
7. In response to our letter of November 12, 1987, Regional Board staff received, and subsequently approved, a workplan from Applied GeoSystems for Greyhound. According to the workplan, the small waste oil tank mentioned in Greyhound's September 21, 1987 letter, appears to be a 5,000 gallon tank, presumably constructed of steel.

8. Regional Board staff subsequently received a technical subsurface investigation report summary, dated February 12, 1988, and additional information submitted by letter, dated February 23, 1988, from Greyhound. This information was inadequate to determine whether the tank system had discharged fuel to the subsurface.
9. By letter dated April 1, 1988, Regional Board staff requested Greyhound to conduct a new subsurface investigation.
10. Greyhound submitted the requested technical report prepared by Kleinfelder, Inc. dated December 21, 1988. Regional Board staff requested additional information by letter dated March 24, 1989. Greyhound has submitted a portion of the requested information in a letter dated May 3, 1989.
11. The following pertinent information has been provided to date:
  - a. The two 10,000 steel fuel tanks and the 5,000 gallon waste oil tank (abandoned about 1975) were installed in 1953 and are now 36 years old. The tanks apparently do not have secondary containment nor are they equipped with cathodic protection.
  - b. From 1953 to 1967, the 10,000 gallon tanks held leaded gasoline. From 1967 to 1973, they held diesel No. 1-D. From 1974 to Present, they have held diesel No. 2-D.
  - c. The two 10,000 gallon steel tanks are believed to extend to a depth of 12 feet. To date, however, no soil samples, above the 15-foot horizon, have been analyzed for petroleum hydrocarbons.
  - d. The Kleinfelder report indicated that a maximum organic vapor meter reading of >1,000 occurred at the 10-foot sampling point, however no soil sample analysis was performed. It appears that there is soil contamination which occurs above the historic high ground-water level (16-18 feet below ground surface), and occurs within 10 feet of the 10,000 gallon tanks.
  - e. Monitoring wells drilled near the 10,000 gallon tanks detected 4 to 5 feet of floating hydrocarbon product. The floating product beneath the facility contains the same petroleum hydrocarbon constituents which have historically been stored on site in the 10,000 gallon tanks.
  - f. Results of precision tests conducted by Greyhound in 1987 and 1988 indicate that the 4 active tanks are leaking small amounts of product.
  - g. No information has been provided by Greyhound regarding whether the abandoned waste oil tank still contains waste oil.
  - h. No information has been provided regarding whether the product lines and associated piping have been precision tested.
  - i. Significant soil and ground-water contamination exists beneath the site at the 15 to 20 feet depth. Soil above the 15 foot level has not been adequately assessed.

12. From available data, it appears that a discharge of hydrocarbon fuel to the environment has occurred, and is still occurring, in the vicinity of the Greyhound maintenance center tanks and that the discharge has reached the historic water table.
13. The *Comprehensive Water Quality Control Plan Report, San Diego Basin (9)* (Basin Plan) was adopted by this Regional Board on March 17, 1975; approved by the State Water Resources Control Board on March 20, 1975; and updated by the Regional Board on February 27, 1978; March 23, 1981; January 24 and October 3, 1983; August 27, 1984; and December 16, 1985. The updates were subsequently approved by the State Board.
14. The Basin Plan established no beneficial uses for surface or ground waters in the San Diego Mesa Hydrographic Subunit.
15. The Basin Plan established the following beneficial uses for San Diego Bay:
  - a. Industrial Service Supply
  - b. Navigation
  - c. Water Contact Recreation
  - d. Non-Contact Water Recreation
  - e. Ocean Commercial And Sport Fishing
  - f. Saline Water Habitat
  - g. Preservation of Rare and Endangered Species
  - h. Marine Habitat
  - i. Fish Migration
  - j. Shellfish Harvesting
16. The quality of the ground water of the San Diego Mesa Hydrographic Subunit and of the San Diego Bay water is subject to the provisions of the State Water Resources Control Board's Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California*. This policy is incorporated in the Basin Plan. Under the terms and conditions for Resolution No. 68-16, the existing (predischarge) quality of ground water in the San Diego Mesa Hydrographic Subunit and the surface water of San Diego Bay must be maintained unless it is demonstrated that a decrease in water quality (1) will be consistent with maximum benefit to the people of the state, (2) will not unreasonably affect beneficial uses, and (3) will not result in water quality less than that prescribed in the Basin Plan or other adopted policies.
17. The Basin Plan contains the following prohibition:

"Dumping or deposition of oil, garbage, trash or other solid municipal, industrial or agricultural waste into natural or excavated sites below historic water levels or deposition of soluble industrial wastes at any site is prohibited, unless such site has been specifically approved by the Regional Board for that purpose."

The subject site has not been specifically approved by the Regional Board for the above purpose.

18. Section 13304(a) of the California Water Code states the following:

"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, cause 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 such waste or abate the effects thereof or, in the case of threatened pollution or nuisance, take other necessary remedial action."

19. Greyhound has caused or permitted petroleum hydrocarbons to be discharged or deposited on the site where such wastes have been and probably will be discharged into the ground water. The on-going discharge of petroleum hydrocarbons to the ground water has resulted in pollution of the ground water and threatens to pollute waters of San Diego Bay for beneficial uses listed in Finding No. 15. Additionally, the on-going discharge violates Resolution 68-16 because the Regional Board finds that the decrease in ground-water quality is not consistent with the maximum benefit to the people of the state.

20. These discharges have polluted and threaten to further pollute ground water of the basin and threaten to pollute surface water of San Diego Bay.

21. Regional Board files indicate that the ground water has a total dissolved solids (TDS) concentration that ranges from 1,085 to 3,080 parts per million (ppm) and, under the federal definition, qualifies as a potential underground source of drinking water. The United States Environmental Protection Agency's (EPA) definition of an "underground source of drinking water" is found in Title 40, Code of Federal Regulations (40 CFR), Section 146.3, and states the following:

"Underground source of drinking water (USDW) means an aquifer or its portion:

- (1) (i) Which supplies any public water system; or  
(ii) Which contains a sufficient quantity of ground water to supply a public water system; and
  - (a) Currently supplies drinking water for human consumption;  
or
  - (b) Contains fewer than 10,000 mg/l total dissolved solids;  
and
- (2) Which is not an exempted aquifer."

As defined under 40 CFR Section 141.2(e) a "public water system" means:

1. "a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year."

Presently, the ground water is not being used as a drinking water source. However, some time in the future this water source may be utilized. The discharge of petroleum hydrocarbons degrades the existing water quality and renders it unusable for drinking water unless the ground water is treated.

22. The ground water beneath the site is in continuity with waters of the bay. The petroleum hydrocarbon concentrations are hazardous to marine life and may impact other beneficial uses of San Diego Bay, as described in Finding No. 15, if allowed to migrate to the bay.
23. Greyhound has demonstrated negligence in the discharge of petroleum hydrocarbons to the environment as follows:
  - a. Single-walled steel tank construction which is subject to corrosion,
  - b. No cathodic protective coating of the tanks,
  - c. No early warning site monitoring to detect any discharges,
  - d. No tank over-spill protection, and
  - e. The lack of thorough and adequate tank tests, given the age (36 years old) of the steel tanks.
24. Greyhound installed the underground fuel tanks at the site. The existence of soil and ground-water contamination at the site indicates that the tanks and/or associated piping has leaked. Petroleum hydrocarbon from the tanks has been and are being discharged to the ground water. These discharges constitute a continuing public nuisance in violation of Civil Code Section 3490. The discharges also violated Health and Safety Code Section 5411 and California Water Code Section 13304(a).
25. Civil Code Section 3490 prohibits the creation or continuation of a public nuisance. The courts have held that water pollution constitutes a public nuisance. In addition, Health and Safety Code Section 5411 prohibits the discharge of waste which will result in pollution, contamination, or nuisance. The past and on-going subsurface discharge of petroleum hydrocarbons has resulted in pollution and in threatened pollution.
26. For reasons explained above, the Regional Board finds that Greyhound has discharged and is discharging petroleum hydrocarbons at the site in violation of Section 13304(a) of the California Water Code.
27. Regional Board considers this property one of several properties which have contributed to the ground-water plume for which Cleanup and Abatement Orders will be issued to collectively mitigate the contamination.
28. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et. seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED, that pursuant to Section 13304 of the California Water Code, Greyhound Lines, Inc. (hereinafter the discharger) shall comply with the following directives:

1. The discharger shall conduct a subsurface investigation and submit the results in a report to this office, no later than August 31, 1989, which characterizes the vertical and horizontal extent of petroleum hydrocarbon contamination in the soil and ground water (both free product and dissolved) resulting from the unauthorized release from the maintenance center at the subject site. The report shall contain the following information:

use  
identify  
Site  
Baseline

- a. A site map showing the location of all borings and monitoring wells.
- b. Provide a true and accurate map which depicts all past and present tank locations and all associated piping and any underground utilities that might act as conduits along which petroleum hydrocarbons could migrate.

N/A c. Answers to the following questions:

- (1). Why was the 5,000 gallon waste oil tank abandoned? N/A  
Has this tank ever been precision tested for tightness? Was the tank abandoned with waste oil still in the tank? Is there waste oil presently in the tank?
- (2). Why did the 1976 plot plan state that the diesel fuel tanks will be abandoned? N/A
- (3). Has the piping and associated product lines ever precision tested for tightness? Were product lines ever repaired or replaced? N/A
- (4). How long does Greyhound retain repair and product inventory reconciliation records? 3 yrs

N/A d. The water levels and fuel product thicknesses in all wells on or immediately adjacent to the property (to the nearest 0.01 foot). N/A

de

- e. A site map showing the contours and/or boundary of the soil contamination. *found under tanks or piping that is due to tanker spills / overfills*
- f. A site map showing the hydrologic contours and the boundary of the free product plume and the dissolved product ground-water contamination.

include

g. All soil samples should be analyzed for the following:

- (1). Benzene, Toluene, Ethylbenzene, and total Xylenes (using EPA method 8020),
- (2). Total Petroleum Hydrocarbons [using EPA method 418.1 and California Department of Health Services (CDOHS) method],
- (3). Organic Lead (using CDOHS method),
- (4). Polynuclear Aromatic Hydrocarbons (using EPA method 8100).

N/A h. All ground-water samples should be analyzed for the following:

- (1). Benzene, Toluene, Ethylbenzene, and total Xylenes (using EPA method 8020)
- (2). Total Petroleum Hydrocarbons (using CDOHS method)
- (3). Total Lead (using EPA method 7421)
- (4). Polynuclear Aromatic Hydrocarbons (using EPA method 8100).

2. The discharger shall submit a remedial action strategy proposal, no later than October 16, 1989, which addresses the removal and/or treatment of the soil contamination.
3. The discharger shall submit a remedial action strategy proposal, no later than November 30, 1989, which addresses the removal of any free product and the removal and/or treatment of the ground-water contamination.

4. The discharger shall take:

- a. Effective remedial action to immobilize and remove any free product plume.
- b. Effective remedial action to immobilize and clean up petroleum hydrocarbon dissolved in the ground water to the following levels:

*when?*

<u>Constituent</u>	<u>Cleanup Level</u>
Benzene	40 ppb
Toluene	5,000 ppb
Ethylbenzene	430 ppb
Total Xylenes	1,750 ppb

- c. Effective remedial action to remove and/or treat all soil contamination to a level which would prevent leaching of petroleum hydrocarbons to the ground water which would cause contamination in the ground water to exceed the cleanup levels stated in Directive 4(b) above.
5. The discharger shall submit monitoring reports to this office on a quarterly basis until, in the opinion of the Regional Board Executive Officer, the site has been cleaned up. The monitoring reports shall describe the progress made in the cleanup operations and shall demonstrate that the petroleum hydrocarbons discharged from the maintenance center has been and remains immobilized. The quarterly monitoring reports shall include, but not be limited to, the following information:
- a. A map of the site with hydrologic contours showing the ground-water flow pattern and the locations of all wells.
  - b. A map of the site showing the boundary of the free petroleum hydrocarbon product plume (if any).
  - c. The water levels and product thickness (if any) in all of the wells (to the nearest 0.01 foot).
  - d. A description of the remedial actions employed by the discharger.

The quarterly monitoring reports shall be submitted to this office in accordance with the following schedule:

<u>Reporting Period</u>	<u>Due Date</u>
June, July, August	<u>September 30</u>
September, October, November	<u>December 30</u>
December, January, February	<u>March 30</u>
March, April, May	<u>June 30</u>

6. The discharger shall dispose of all ground water and/or soil polluted with petroleum hydrocarbons in accordance with all applicable local, state, or federal laws and regulations.



7. After the discharger demonstrates to the Regional Board Executive Officer's satisfaction that the final cleanup levels have been achieved throughout the soil and ground-water contamination zones, the discharger shall continue to monitor the ground water and submit quarterly monitoring reports in accordance with Directive No. 5 of this Order for a period of one year. If at any time during this post-cleanup monitoring the data indicate that the final cleanup levels have not been maintained, the discharger shall immediately resume appropriate remedial cleanup actions. If the final cleanup levels have not been exceeded for the year of monitoring, then no further monitoring will be required.

Ordered by: \_\_\_\_\_

*Ladin H. Delaney*  
Ladin H. Delaney  
Executive Officer

Dated: May 19, 1989

JPA

# **Exhibit 5**

1                   BEFORE THE COURT-APPOINTED REFEREE  
2           IN RE THE HOME INSURANCE COMPANY IN LIQUIDATION  
3                   DISPUTED CLAIMS DOCKET  
4

5       In Re Liquidator Number:       22008-HICIL-35  
6       Proof of Claim Number:       EMTL 705271-01  
7       Claimant Name:               VIAD Corp  
8       Claimant Number:  
9       Policy or Contract Number:   HEC 9557416  
10                                   HEC 9304783  
11                                   HEC 4344748  
12       Insured or Reinsured Name:   VIAD (predecessor The  
13                                   Greyhound Corporation/  
14                                   Transportation Leasing  
15                                   Company)  
16       Date of loss:

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25

DEPOSITION OF KENNETH RIES

Phoenix, Arizona  
January 12, 2009

BY:   SANDRA L. MUNTER, RPR/CSR  
Certified Reporter 50348

ORIGINAL

1 at the Greyhound site. So that was an initial  
2 finding that we came to.

3 In 1989 Greyhound Lines, a company that  
4 currently owned Greyhound Lines with no connection  
5 to Viad, actually became the owner of site in  
6 1987. And in 1989 they removed all of their tanks  
7 at the site to upgrade them to a new double-walled  
8 underground storage tank for diesel fuel and a  
9 couple of above-ground tanks.

10 And so we excavated the property and  
11 the arrangement was that the tank removals and  
12 replacement was the obligation of Greyhound Lines,  
13 says the owner of the site and operator of the bus  
14 system. And Viad Corp was held responsible for  
15 any contamination resulting that was found on the  
16 site. That was the agreement, actually in the  
17 sale agreement in 1987, that would there be any  
18 contamination found, then that would be the  
19 responsibility of Viad.

20 So when the tanks were removed, we paid  
21 for the excavation of contaminated soil that was  
22 found when we removed the tanks. What we found  
23 was that there was evidence of overfilling and  
24 spillage of the underground tanks.

25 Q Did you find evidence of leakage?

1           A       There was some piping that was  
2       discovered that was abandoned. And, by inference,  
3       we concluded that the piping was installed in  
4       1954, from historical records, and had been  
5       abandoned in 1973, when apparently new piping had  
6       been installed.

7                     That piping had some corrosion holes in  
8       the piping. And in addition to the apparent  
9       overfills and spillage that there was some leakage  
10      from this piping system that was apparently in use  
11      from '54 to '73.

12          Q       With respect to leakage from the piping  
13      system, were you able to determine when that  
14      began?

15          A       No.

16          Q       Were you able to determine when it  
17      occurred?

18          A       Well, a reasonable assumption would be  
19      if you installed piping in '54, it wouldn't be  
20      corroded. So it would be unlikely to have been a  
21      source of any releases in the earlier years.

22                     But with time, corrosion occurs. And  
23      so it would be probably toward the end of that  
24      period, where the leakage would have been more  
25      prevalent.

1           Q       Were any reports prepared that  
2       attempted to fix the time period in which this  
3       leakage occurred?

4           A       No, because there was no need to at the  
5       time and nor is it really possible to make that  
6       determination, to the best of my understanding.

7           Q       And you mentioned that you came to the  
8       conclusion that there were some overfills?

9           A       Uh-huh.

10          Q       What do you mean by that?

11          A       When the tank receives a delivery of  
12       fuel from a visiting fuel tank truck, and they  
13       fill the tank. There's been occasions throughout  
14       Greyhound's experience in all of its, virtually  
15       all of its locations where occasionally they have  
16       filled the tank to beyond its capacity, and the  
17       fuel overflows and actually spills out.

18          Q       Sort of like if I fill my car up with  
19       gas and I keep pumping and it shoots out?

20          A       Exactly right.

21          Q       Did you reach the conclusion that these  
22       overfills occurred at each of the underground  
23       storage tanks on the site?

24          A       Yes.

25          Q       And were you able to find any evidence

1 as to when these overfills occurred?

2 A No.

3 Q Did you ever look for any  
4 contemporaneous records that would document that a  
5 report was made that there was an overfill or  
6 anything like that?

7 A No. The problem with that is that  
8 Greyhound Lines didn't keep their daily records  
9 for more than a few years, so any historical  
10 records would have been destroyed years ago.

11 Q When you say Greyhound Lines, that  
12 would have been your company until nineteen --

13 A Yeah, until 1987, right.

14 Q So when you say that the records were  
15 destroyed --

16 A That was the company practice to  
17 destroy daily operating records of underground  
18 storage tanks. There's usually only about a year  
19 of retention.

20 Q When you became aware in 1986 that the  
21 City of San Diego had found contamination in the  
22 vicinity of the San Diego site, did you have any  
23 involvement in the decision whether to advise  
24 Viad's insurance carriers about this event?

25 A We had an insurance department, and my

1 recollection was that yes, they were notified.

2 Q "They" being the insurance department?

3 A Yes.

4 Q Do you know if the insurance department  
5 notified any insurance companies?

6 A Not really all that aware of what  
7 practices they followed. I'm not involved in the  
8 insurance part of it.

9 Q You didn't see any letters from the  
10 '80s from Viad to insurance companies about  
11 contamination?

12 A I don't recall any.

13 Q Okay. In Paragraph 2b of Exhibit 1, it  
14 also indicates that -- Well, before I move on, let  
15 me ask:

16 Is there any other facts and opinions  
17 relating to the San Diego site that you expect to  
18 testify about that we haven't talked about so far?

19 A That's a pretty broad question. I  
20 don't know.

21 Q Okay. Is there anything I'm missing  
22 that you think you're likely to testify about?

23 A I don't know.

24 Q Okay.

25 MR. SIMMONS: I'll object to the



1 continue to contaminate five more feet of depth of  
2 the water. This is where the heaviest  
3 concentration of fuel was found.

4 And in these areas, there was  
5 sufficient fuel in that soil that when you  
6 installed the well and then let the water rise in  
7 a well to the true water table level, any fuel  
8 that would be there that would be migratable  
9 through the soils would actually collect in the  
10 well and form a layer in the well. And that's  
11 called free product. And there were wells that  
12 had four feet of free product in the wells due to  
13 this condition.

14 So the results of our assessment was  
15 essentially that the soil was contaminated,  
16 virtually all the soil in the site was  
17 contaminated to some degree. And it got very,  
18 very heavy. And there was this, what we call a  
19 smear zone from 22 to 27 feet, where the water  
20 table would fluctuate up and down and would cause  
21 that fuel to concentrate in that layer of soils  
22 quite deep.

23 And this is typical of how sites look  
24 when you have fuel spills. This is a kind of  
25 conditions that are normal.

1           Q       Did the fuel products that emanated  
2       from the San Diego site migrate off site?

3           A       To a minor extent. We were not  
4       ultimately required to do any remediation of any  
5       of the surrounding streets that surrounded our  
6       property.

7                   When we did the remediation, we  
8       actually installed sheathing at the barrier of the  
9       property lines downward to effect the excavation  
10      of soils. And there was soils on the other side  
11      of the sheathing that we did not access because it  
12      was a barrier, physical barrier. The purpose of  
13      the barrier was to keep the street from caving  
14      into the hole.

15                  And so there was some remaining minor  
16      contamination, which the regulators agreed should  
17      be left in place because it was not practical to  
18      excavate the streets.

19           Q       The next subject in Paragraph 2b  
20      indicates that you would be expected to testify by  
21      affidavit concerning the interrelationship between  
22      the extent and type of the contamination.

23                  What do you know about that subject?

24           A       The issue of a site being contaminated  
25      is one of damage to the ground water. And as

1                   He said, "Certainly," which indicated  
2           to him that this was the best permanent solution.  
3           And from purely a technical point of view, it is.  
4           It's the most effective way of cleaning up a  
5           property to improve the groundwater quality. And  
6           so that's what we ultimately wound up doing.

7           Q       Did Viad ever end up in court against  
8           the State regulating authorities concerning the  
9           San Diego site?

10          A       No.

11          Q       There was no court judgments involved  
12       here?

13          A       No.

14                   MR. SIMMONS: Objection; calls for a  
15       legal conclusion as to what is a judgment.

16          Q       (By Mr. O'Connor) The next subject in  
17       Paragraph 2b indicates that you may testify  
18       concerning the remediation methodology.

19                   What do you know about that subject?

20          A       Well, I just spoke about that.

21          Q       I thought you might have.

22          A       That's the remediation that we  
23       performed was excavation of the contained soil and  
24       pumping out of the contaminated groundwater, once  
25       the soil was removed so that the site was left

1 with very, very little remaining soil or  
2 groundwater contamination.

3 Q The last subject in Paragraph 2b  
4 indicates that you may testify concerning  
5 supervision of the remediation contractors.

6 What do you know about that?

7 A The firm that I had, well, that I had  
8 Viad retain is a company called ERC. They are the  
9 primary consultant that managed the project, the  
10 overall managed of the project.

11 Specifically, with respect to  
12 assessment, they were the party that did all the  
13 assessment work for us, along with another  
14 consultant, GeoMatrix, which was for the group of  
15 parties that we were also involved with.

16 But when it came to the actual  
17 remediation of the site by excavation, what I had  
18 them do was to write specifications for the  
19 project, then they obtained bids from various  
20 subcontractors to do the excavating, the hauling,  
21 the soil, which had to go to treatment and then  
22 ultimately to a landfill for disposal, then the  
23 purchasing of clean soil and the shipping of that  
24 to the site, the backfilling.

25 That was all done by subcontractors who

1 existing on a site that had no prior fuel  
2 activity.

3 Q Okay. So then you also talk about when  
4 do you think is the other outside date in which  
5 there would be a conclusion of the greatest extent  
6 of the contamination?

7 A 1973.

8 Q Could you explain why, within a  
9 reasonable degree of probability?

10 A The best evidence is that the  
11 contamination on the site is, number one, diesel  
12 and gasoline. And what we were able to learn from  
13 prior Greyhound Lines operations on site is that  
14 those were the two fuels that were in use during  
15 that time period. And in 1973, Greyhound Lines  
16 switched over to No. 2 diesel, which is almost  
17 absent from the site.

18 Q All right. So is it fair to say, then,  
19 that the cause from spillage logically would be  
20 during the duration that Greyhound Lines used the  
21 facility?

22 MR. O'CONNOR: Objection to form.

23 THE WITNESS: Yeah.

24 Q (By Mr. Simmons) Is there any reason  
25 that, as an expert, that you would believe that it

1 would have occurred all prior to, let's say, for  
2 example -- the beginning time period of the  
3 insurance policies in question, I believe, is  
4 somewhere around 1966.

5 Is there some reason to suggest that  
6 all of it happened before the insurance policies  
7 went into effect by Home?

8 A Well, experience has taught me that  
9 spillage occurs randomly, so you can't define the  
10 time period for spillages or overfills. But with  
11 respect to any leakage that would have occurred,  
12 it would have occurred more so toward the end of  
13 that period than the beginning because corrosion  
14 holes take time to develop.

15 Q All right. What would be your opinion,  
16 then, taking into consideration that these Home  
17 insurance policies went from at least 1966 through  
18 1972, Mr. Ries, would these insurance policies be  
19 impacted as a result of the fact that there was,  
20 within your opinion, spillage and/or leakage  
21 during the time period from 1966 through '72?

22 MR. O'CONNOR: Objection to form.

23 Q (By Mr. Simmons) Go ahead.

24 A Yes.

25 Q Could you go ahead and explain why you

1 would -- and I realize that you've somewhat  
2 explained it, but would you further explain why  
3 you believe that there would be spillage between  
4 the time periods from '66 to '72 and also leakage  
5 from '66 to '72.

6 MR. O'CONNOR: Objection to form.

7 THE WITNESS: In those time periods,  
8 the occasional spillage and overfilling of tanks  
9 was common. And there was probably little  
10 understanding by operators that the spillage that  
11 they were experiencing would have any deleterious  
12 effects on anything. They wouldn't make any  
13 connection, so they would, these would just happen  
14 in the normal course of business from time to  
15 time.

16 Q (By Mr. Simmons) Is it fair to say that  
17 these would not be expected to be intentional  
18 spillages?

19 A Certainly not because --

20 MR. O'CONNOR: Objection; form.

21 THE WITNESS: -- the fuel represents  
22 purchased value that the company has, and to spill  
23 any gallons is a waste of money. But minor  
24 spillage, I know from experience, is common and  
25 was very common in that time period, more so than

# **Exhibit 6**



1                   BEFORE THE COURT-APPOINTED REFEREE  
2           IN RE THE HOME INSURANCE COMPANY IN LIQUIDATION  
3                   DISPUTED CLAIMS DOCKET  
4

5       In Re Liquidator Number:       22008-HICIL-35  
6       Proof of Claim Number:       EMTL 705271-01  
7       Claimant Name:               VIAD Corp  
8       Claimant Number:  
9       Policy or Contract Number:   HEC 9557416  
10                                       HEC 9304783  
11                                       HEC 4344748  
12       Insured or Reinsured Name:   VIAD (predecessor The  
13                                       Greyhound Corporation/  
14                                       Transportation Leasing  
15                                       Company)

16       Date of loss:

17

18

19

20

21                   DEPOSITION OF DEBORAH J. DEPAOLI, ESQ.

22

23

24                   Phoenix, Arizona  
25                   January 12, 2009

26

27

28

29       BY:   SANDRA L. MUNTER, RPR/CSR

30       Certified Reporter 50348

31

ORIGINAL

1       about \$315,000 for our claim.

2               They rejected a number of our  
3       submissions. There was still a number of our  
4       submissions that were pending. Some were deemed  
5       ineligible, and through this process we discovered  
6       more claims that we should have made. So under my  
7       direction we filed, in 2006, reimbursement number  
8       two.

9               It was rejected due to some  
10       formalities, so we refiled reimbursement number  
11       two under my signature in December of 2007,  
12       sending voluminous boxes of documents and invoices  
13       and canceled checks, which we had to reconcile  
14       with each other in order to submit our claim.

15            Q       You were not with Viad at the time that  
16       it entered into the remediation agreement for this  
17       site, were you?

18            A       I was not. I am aware of the  
19       remediation agreement, however, though, because I  
20       was involved in 2000. I was here, so I was aware  
21       of the remediation project.

22            Q       But you weren't involved on a firsthand  
23       basis with the decisions whether to enter into  
24       that agreement?

25            A       No. Only aware of them through my

1 review of records.

2 Q When did Viad first give notice to the  
3 Home Insurance Company concerning environmental  
4 remediation at the San Diego site?

5 A To my knowledge, it was in as part of  
6 submitting a proof of claim.

7 Q That would have been in 2003?

8 A I think it was in 2004 that we  
9 submitted the proof of claim.

10 Q Were you involved in any discussions  
11 prior to that where the decision was made not to  
12 give notice to the Home?

13 A I'm aware of discussions, as working  
14 with the insurance department that in the late  
15 '90s, we submitted claims with and gave notices of  
16 claims to Home Insurance.

17 Those claims were essentially denied or  
18 denied by very long form letters that gave all the  
19 reasons why they weren't going to cover the  
20 matter. We sent, and I'm aware of this, we sent a  
21 number of documents to them. I'm also aware that  
22 we gave them history on, corporate history, as  
23 well as history of the site.

24 And in response to that, a couple years  
25 later, we got basically a form letter that

1 outlined all the reasons why there wasn't  
2 coverage.

3 Q To go back to my question, you weren't  
4 involved in any of those things because you  
5 weren't even at the company yet?

6 A No. I'm aware of them.

7 Q You've just seen documents?

8 A I've seen documents, yes. And I've  
9 talked to people in the insurance department.

10 Q You've seen documents and you've been  
11 told things by other people?

12 A Yes.

13 Q Isn't it true that with respect to  
14 these other sites, the reservation of rights  
15 letter asked for additional information from Viad?

16 A What is true and what I do know from  
17 talking to people in the insurance department, as  
18 well as the litigation department, is that we sent  
19 a lot of documents to Home Insurance.

20 And our response back was basically,  
21 "We don't have sufficient information." There  
22 wasn't a delineation of what they needed. And  
23 when they first responded to us, they didn't have  
24 their own policies, so we had to supply Home  
25 Insurance with the policy.

1 THE WITNESS: Yeah. We can certainly  
2 go to the corporate secretary's department and  
3 find that out very quickly on a break.

4 MR. SIMMONS: I think we dealt with all  
5 of this in our briefs, didn't we? Didn't you take  
6 the position they were headquartered in New York?

7 MR. O'CONNOR: I don't think anyone has  
8 disputed they were headquartered in New York until  
9 I saw Paragraph 7 of the affidavit, which I was  
10 surprised to see Delaware because --

11 Instead of me testifying...

12 Q (By Mr. O'Connor) You're not aware of  
13 Greyhound having a physical headquarters in the  
14 State of Delaware, are you?

15 A I am not.

16 MR. SIMMONS: It's a typo.

17 THE WITNESS: Yeah.

18 MR. SIMMONS: Typo. Sorry.

19 MR. O'CONNOR: I thought that might be  
20 right.

21 MR. SIMMONS: We'll correct that.

22 THE WITNESS: Yeah. That should be New  
23 York.

24 MR. SIMMONS: That's just a typo.

25

1           Q     (By Mr. O'Connor) You'll forgive me.  
2     There was one more thing that I wanted to ask you  
3     about in your affidavit. I've got to find it  
4     again.

5                     Let's turn to Page 4, Paragraph 14.  
6     The first sentence says the abatement order was a  
7     judgment that required Viad to remediate the  
8     property and, as such, Viad entered in a  
9     remediation agreement with the California Regional  
10    Water Quality Control board to clean up this site.

11                    What's the basis for your conclusion  
12    that the abatement order was a judgment?

13           A     By what we do and why we treat it. I  
14    mean, from a practical standpoint, we treat  
15    abatement orders as judgments, something you have  
16    to follow.

17                    From a legal perspective, they are  
18    judgments. They are an order that you have to  
19    comply with. If you do not comply with it by the  
20    time specified in the order, you will immediately  
21    start incurring penalties. So it is an order and  
22    a final judgment that you have to act upon.

23           Q     There's no judge involved?

24           A     There is no judge involved.

25           Q     And there's no court involved?

1           A       No court involved. There is statutory  
2 regulations that govern it. And based on those,  
3 the state regulators basically become the judge.  
4 They are the body, the governing body that tells  
5 you what you must do.

6           Q       But you're not claiming to be an expert  
7 on how California laws treat judgments, are you?

8           A       I'm not claiming to be a expert on  
9 California law. I do have experience dealing with  
10 abatement orders and knowledge of abatement  
11 orders. And they are something you have to treat  
12 as if they are a judgment. You have to treat them  
13 as if they are something final that you have to  
14 act upon, otherwise, you will incur penalties.

15          Q       You can go to court to challenge an  
16 abatement order, can't you?

17          A       You can appeal the abatement order,  
18 yes. That's why it's a judgment until you appeal  
19 it.

20          Q       You can take it to a court?

21          A       You can appeal an order, yes.

22          Q       You can appeal an order to where?

23          A       To the courts.

24          Q       You're not aware of any court order  
25 that relates to the San Diego site?

1 A I am aware of the abatement order --

2 Q That's it?

3 A -- directing Viad to remediate.

4 Q Okay.

5 A That is the only thing I'm aware of.

6 MR. O'CONNOR: Ms. DePaoli, I have no  
7 further questions. Thank you.

8 THE WITNESS: Okay. Thank you.

9 MR. SIMMONS: All right.

10

11 EXAMINATION

12 BY MR. SIMMONS:

13 Q Ms. DePaoli, I want to ask you a few  
14 questions and follow up with some of the things  
15 that Mr. O'Connor asked you about.

16 And first and foremost, the policies  
17 that we have that are the subject matter of this  
18 claim to Home in liquidation, these are policies  
19 that I understand are owned by Viad now?

20 A Yes.

21 Q And Viad believes that it is entitled  
22 to coverage under those policies?

23 A Yes. Viad does believe it's entitled  
24 to coverage.

25 Q And one of the things that generated



1     this was, as I understand it, the experts, for a  
2     period of ten years, did not believe that the cost  
3     of this remediation would be significant enough to  
4     implicate insurance; is that right?

5             MR. O'CONNOR:  Objection to form.

6             MR. SIMMONS:  I'll rephrase the  
7     question.

8             Q     (By Mr. Simmons) Was there a period of  
9     time in which there was any belief that the cost  
10    of remediation would be low enough so that  
11    insurance would not be implicated?

12            MR. O'CONNOR:  Objection to form.

13            THE WITNESS:  Yes.  It wasn't until  
14    1999, when the director of the Regional Water  
15    Quality Control Board directed Viad to do an  
16    excavation, which is a dig and haul, of the soil  
17    to remediate the groundwater contamination.

18            It wasn't until that time that we  
19    realized the cost would well exceed what would be  
20    reimbursed under the Underground Storage Tank  
21    Reimbursement Fund of the State of California.

22            Q     (By Mr. Simmons) All right.  And was  
23    there this period of time that, when the dig and  
24    haul was not required in order to remediate the  
25    groundwater, that the cost was such that because

# **Exhibit 7**

## Case Closure Summary

UNDERGROUND STORAGE TANK (UST) PROGRAM

### I. CASE INFORMATION

DATE: April 23, 2003

Site Name: Greyhound Lines, Inc. and Transportation Leasing Co. (Greyhound)		
Site Address: 539 1 <sup>st</sup> Ave., San Diego, CA		
Responsible Party Name: Viad Corporation		RP Phone Number: 602-207-5722
Responsible Party Address: 1850 North Central Ave., Phoenix, AZ 85077		
Current Land Use: condominium, shops, parking garage		
RWQCB File Number: 50-1561	Local Case Number:	RWQCB Staff: SJP
Basin Number: 8.20	Basin Uses: Ground water – nonbeneficial      Surface water – IND, REC 1, REC 2, COMM, BIOL, WILD, RARE, MAR, MIGR, SHELL	

### II. RELEASE AND SITE CHARACTERIZATION INFORMATION

Description of the unauthorized release (cause, release date, source[s]): An unauthorized release of diesel, gasoline, waste oil and lube oil was discovered when six UST's were removed in 1989. The unauthorized release was most likely from the UST's. It is unknown when the unauthorized release occurred. Free product, 3-4 feet thick initially, has been reduced to 1.24 feet, measured in November 1998.	
Contaminant[s] identified and amount leaked: Leaded and unleaded gasoline, diesel, waste oil, lube oil, heating oil; total amount estimated to range from 19,000 to 39,000 gallons, based on a 1992 study by Robert Hawk and David Huntley of San Diego State University.	
Description of the soil/geology: Subsurface soils are composed of alluvial and terrace deposits of Bay Point Formation, consisting mostly of fine to very fine sands, with intervals of medium sand.	
Is soil contamination completely delineated (to what levels)? Yes, to 27 feet below ground surface.	
Areal extent? Yes, across entire site.	
Vertical extent? Yes, to 27 feet below ground surface.	
Est. Volume of contaminated soil left on site and concentration: Approximately 15,500 cubic yards of TPH impacted soil is on site with a maximum concentration of 11,900 mg/kg TPH as diesel, and 6,900 TPH as gasoline.	
Is groundwater contamination completely delineated (to what levels)? The extent of the free product plume has been completely delineated. The extent of the dissolved plume has been completely delineated by non-detectable measurements (Oct. 1998) of TPH in two downgradient monitoring wells.	
Monitoring wells installed, properly permitted? Yes	Number of monitoring wells: 36
Depth to groundwater: 20 feet	Seasonal or tidal fluctuation: No
Groundwater flow direction: Southwest	Gradient: 0.01 feet/foot
Is groundwater or surface water impacted? Yes, groundwater.	
Is groundwater contamination contained on site? No. Downgradient ground water impacts have been documented in monitoring wells CC-9 and CC-10, located west of the site. However, recent analysis of CC-9 and CC-10 are non-detect for TPH.	

arest receptor (Inland Surface Water, Bay, Drinking Water Wells, etc.): San Diego Bay located approximately 1,200 feet west of the site.

### III. MAXIMUM DOCUMENTED CONTAMINANT CONCENTRATION

Contaminant	Soil (mg/kg) initial	Soil (mg/kg) current	Water (ug/l) initial	Water (ug/l) current
TRPH	35,000	< 35,000*	not analyzed	not analyze
TPH gasoline	44,000	6,900	400,000	99,200
TPH diesel	not analyzed	11,900	not analyzed	103,000
Benzene	12	<12*	15,000	11,700
Toluene	27	<27*	20,000	3,760
Ethylbenzene	15	<15*	2,800	1,840
Xylenes	71	<71*	18,000	10,500

\* Remedial soil excavation was performed in the area corresponding to the initial soil concentration, however, verification soil sampling was not performed for these constituents.

### IV. TREATMENT AND DISPOSAL OF AFFECTED MATERIAL

Material	Amount (include units)	Action (treatment or disposal)	Concentration	Date
Soil	1,260 yd <sup>3</sup>	Disposed at Casmalia	TRPH = 66,000 mg/kg TPHd = 30,000 mg/kg	Oct. 1989
	7,200 yd <sup>3</sup>	Onsite reuse	TPHd < 14,600 mg/kg TPH g < 7,500 mg/kg	Sept. – Nov. 2000
	11,960 yd <sup>3</sup>	Treatment/recycling at Soil Wash	TPHd < 14,600 mg/kg TPH g < 7,500 mg/kg	Sept. – Nov. 2000
	4,285 yd <sup>3</sup>	Disposed at Casmalia	TPH = 44,000	Sept. – Nov. 2000
Groundwater	825 gallons	Disposed at Demmen/Kerdoon	TPHd = 146,000 ug/L TPHg = 97,200 ug/L	July 1998
	1,700 gallons	Disposed at Crosby & Overton	contains free product	Sept.-Oct. 1998
Free Product	148 gallons	Disposed at Demmen/Kerdoon and Crosby & Overton	free product	July 1998 October 1998

Tank(s)	2 x 10,000 gallon gasoline/diesel	Disposed at Pacific Steel	N/A	Sept. 198
	1 x 8,000 gallon lube oil	"		"
	2 x 550 gallon waste oil	"		"
	1 x 550 gallon heating oil	"		Oct. 1989
	1 x 12,000 gallon diesel	Disposed at All Ways Recycling		May 1999
	2 above ground tank (lube/waste oil)	"		"
Piping	Approximately 450 feet	Disposed at Pacific Steel		Sept. 198

## V. CLOSURE

<i>Does completed corrective action protect beneficial uses per the RWQCB Basin Plan? Yes - See attached staff report.</i>		
<i>Should corrective action be reviewed if land use changes? Yes</i>		
<i>Monitoring wells decommissioned? Yes</i>	<i>Number decommissioned: 36</i>	<i>Number retained: 0</i>
<i>Enforcement actions taken: Cleanup and Abatement Orders No. 89-49, and 91-45*</i>		
<i>Enforcement actions rescinded: CAO 89-49 Rescinded by Order No. R9-2003-0169</i>		

\*Greyhound has completed the corrective action required by CAO No. 91-45 for the property at 539 1<sup>st</sup> Ave. No further action is required at this time. However, CAO No. 91-45 will not be rescinded until the other Dischargers named in the Order complete corrective action at their respective properties.

## VI. Signature of Reviewer

Susan Pava 4/23/03 Date  
(Staff Name)

## VII. Signature of Senior Staff

Julie Chan 4/23/03 Date  
(Senior Staff Name)