

## The Environmental Corner

*By: Steve Henshaw*



## The Road Goes On Forever And The Trial Never Ends

By: John C. Bird, P.G., Vice President of EnviroForensics

The City of Modesto, California, began monitoring ground water in September 1984 to test 25 percent of its municipal water supply, as required by California Assembly Bill 1803. Of the 24 wells tested, 12 wells were found to be contaminated. Municipal Supply Well #11 was found to be contaminated with 16.7 parts per billion (ppb) of perchloroethylene (PCE); the State Maximum Contamination Level is 5 ppb. The well was taken out of service. The City obtains all its drinking water from wells. An estimated 142,000 people obtain drinking water from Modesto municipal wells within 3 miles of the site. The California Department of Health Services (CDHS) and the Stanislaus County Environmental Health Department have identified Halford's Cleaners, which is less than 0.5 mile upgradient of Municipal Supply Well #11, as a likely source of the PCE contamination. These agencies found up to 176,000

ppb of PCE in soil at Halford's where a buried storage tank was being excavated and determined that Halford's discharge to the sewer was contaminated. CDHS also found 84.6 ppb of PCE in a private well adjacent to Halford's. Not long after, the United States Environmental Protection Agency (US EPA) took over the investigation and cleanup under the Superfund Program. This individual site is currently being remediated under US EPA control. The Halford's

Cleaners site was just the tip of the iceberg in Modesto.

In early 1990's, the RWQCB conducted a regional study of the City of Modesto area using a passive soil gas sampling program. The results were published in a report entitled, "Dry Cleaner – A Major Source of PCE in Ground Water," dated March 27, 1992. The investigation led to additional studies around the current

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### *As Seen In...*

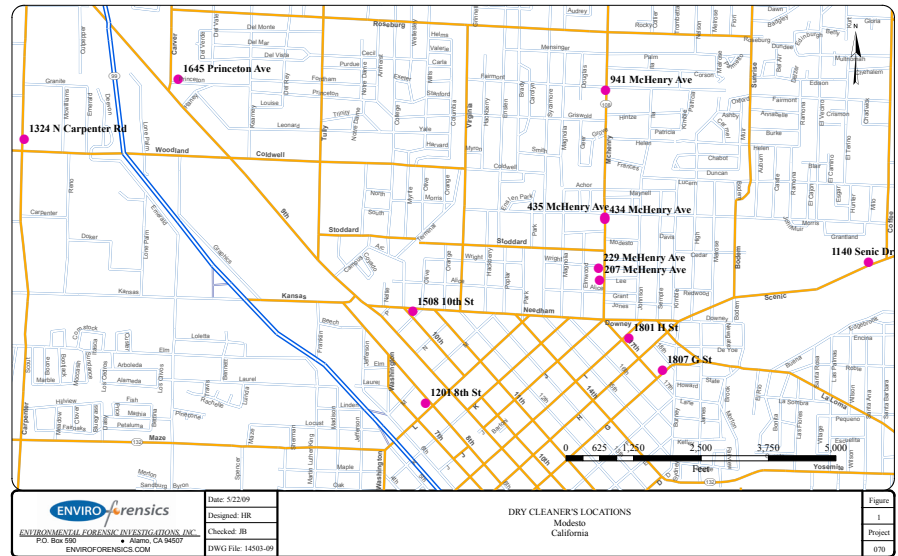
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and former dry cleaner locations. In addition, the California Department of Toxic Substances Control (DTSC) and California Regional Water Quality Control Board (RWQCB) are currently overseeing and investigating 14 other dry cleaners within the City of Modesto.

In 1998, the City of Modesto decided to sue the former cleaners, equipment manufactures, and chemical suppliers in order to restore the City's quality of groundwater supply. The Modesto Redevelopment Agency was allowed to join the lawsuit, arguing that the soil pollution stopped downtown development projects, costing the city because of missed opportunities. During the next seven years, the City and the Modesto Redevelopment Agency fought to name the chemical suppliers as potential responsible parties in eyes of the court under State law. Finally, after numerous appeals, they were allowed to go to jury trial against the chemical suppliers. In 2006, the City of Modesto was awarded over \$3 million in damages for cleanup costs and over \$75 million in punitive damages from Dow Chemical and R.R. Street & Co. (the punitive damage amount was later reduced to just over \$5 million). This award and other settlements have netted the City a combined \$37 million for cleanup at the various sites with the City; although the City has estimated the entire cleanup cost to be over \$100 million to remove the PCE from the City's groundwater.

On May 18th, a State Court jury awarded \$18.3 million to the City of Modesto in their 11 year old lawsuit against dry cleaning chemical manufactures, suppliers and equipment manufactures. The City of Modesto had sued Dow Chemical, PPG Industries, Goss-Jewett, R.R. Street & Co. and others for a threat of ground-



water contamination at four dry cleaner sites in the City of Modesto. According to the City of Modesto, several municipal supply wells had been impacted with PCE, a chemical widely used by the dry cleaning industry. The City alleged back in 1998, among other things, that the defendants made a defective product and they failed to warn the dry cleaners about the threat to groundwater from letting PCE discharge into the City's sewer system. The jury trail lasted 5 months and is apparently not over yet. Both sides in the case do not appear to be completely happy with the jury's decision.

On the face of the jury's decision, it appears that the defendants have prevailed in this case. You're probably asking how the City of Modesto could be awarded \$18.3 million; and the defendants have prevailed? Well, according to a press release from Attorney John Thomas, representing R.R. Street & Co., the defendants will seek to apply the money that the City of Modesto has already been awarded during the first case against the compensatory damages from this trial. Although the City disagrees with the offsets proposed

by the defendants and will seek to apply previous settlement dollars to specific contamination sites within the City. The award was specific to the contamination from Elwood Cleaners on McHenry Avenue.

According to an attorney representing the defendant, Goss-Jewett, Goss-Jewett and R.R. Street & Co. had not been found liable for this phase of the proceedings; although an appeal is probably in the works already. According to the City's outside lawyer, Duane Miller, the City plans to appeal the Judges pre-trial ruling that barred the City from pursuing damages for contamination of property such as the City's sanitary sewer system, the streets, and surrounding soils that wouldn't endanger the drinking water. It's not clear how much money the City and the defendants have spent in the two trials in this matter; although it's safe to say more than they each expected.

Additionally, another round of claims is scheduled to be tried this summer. So after 11 years of litigation, the trial goes on. Who wins and who will win the next round is up to interpretation.