



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

April 30, 2015

Michael Carter, President
Dole Food Company, Inc.
c/o Patrick W. Dennis, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197

Barclay Hollander Corporation
c/o Corporation Service Company
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

SUBJECT: REVISED CLEANUP AND ABATEMENT ORDER PURSUANT TO CALIFORNIA WATER CODE SECTION 13304, CLEANUP AND ABATEMENT ORDER NO. R4-2011-0046

SITE: FORMER KAST PROPERTY TANK FARM LOCATED SOUTHEAST OF THE INTERSECTION OF MARBELLA AVENUE AND EAST 244TH STREET, CARSON, CALIFORNIA (SCP NO. 1230, SITE ID NO. 2040330, CAO NO. R4-2011-0046) (Site)

Dear Mr. Carter:

The Regional Water Quality Control Board, Los Angeles Region (Regional Board), is the state regulatory agency responsible for overseeing the investigation and cleanup of sites in Los Angeles and Ventura Counties pursuant to the Porter-Cologne Water Quality Control Act and other applicable laws and regulations.

Procedural History:

The Regional Board issued Cleanup and Abatement Order R4-2011-0046 (2011 CAO) to Shell Oil Company (Shell) on March 11, 2011. The 2011 CAO required, among other tasks, that Shell continue its investigation of the Site, conduct pilot tests, conduct a human health risk assessment, and prepare and submit for Regional Board approval a proposed remedial action plan (RAP).

On October 31, 2013, Paula Rasmussen, Assistant Executive Officer of the Regional Board, who manages the Site Cleanup Program, issued a public notice providing the opportunity for interested persons to comment on proposed revisions to the 2011 CAO (Draft Revised CAO). The proposed revisions identified Barclay Hollander Corporation (BHC) as a responsible party. After receiving written comments in January 2014, Shell and BHC were provided an additional opportunity to respond to the comments received. BHC submitted extensive comments and evidence regarding the Draft Revised CAO to the Regional Board on both January 21, 2014 and June 30, 2014.

In response to comments received, the Regional Board Site Cleanup Program Staff modified the Draft Revised CAO. On December 8, 2014, the Regional Board Site Cleanup Program Staff sent a memorandum recommending that the Regional Board adopt the Draft Revised CAO which identifies BHC as a responsible party. Included with this memorandum, the Site Cleanup Program Staff provided a document responding to the comments received (Response to Comments), copies of comments received from BHC and Shell, and other documents in the administrative record for the proceeding.

Current Adjudicatory Proceeding:

I am the Chief Deputy Executive Officer of the Regional Board and am the decisionmaker in this proceeding, acting on behalf of the Regional Board through delegation by the Board of its authority to issue orders pursuant to Water Code sections 13304 and 13267. Dr. Eric Wu, Ph.D., P.E. (Senior Water Resources Control Engineer), Mr. Peter Rafferty, P.G., C.Hg. (Engineering Geologist), and Ms. Nicole Kuenzi (Staff Counsel), are staff members of the advisory team assisting me. Neither I, nor any member of the advisory team, has participated in or received any *ex parte* communications regarding substantive or controversial procedural issues within the scope of this proceeding with or from the Site Cleanup Program Staff or other parties or interested persons, during the pendency of this proceeding.

After receipt of the December 8, 2014 memorandum from the Site Cleanup Program Staff, the Regional Board received several procedural requests related to the Board's consideration of the Draft Revised CAO. On January 9, 2015, the Regional Board provided an additional week for the parties and interested persons to respond to the various pending procedural requests. The Regional Board responded to the procedural requests on February 27, 2015. The Board requested additional information from the Site Cleanup Program Staff and allowed all parties and interested persons an additional comment period on new evidence accepted into the record. That comment period expired on April 2, 2015, after a one week extension requested by the Site Cleanup Program Staff.

On April 22, 2015, the Regional Board received a request from BHC urging the Board to defer any determination regarding the Tentative Revised CAO until after the depositions of certain members of the Site Cleanup Program Staff are completed in the case of *Adelino Acosta, et al. v. Shell Oil Company et al.*, Los Angeles County Superior Court, Case No. NC053643. In its letter of February 27, 2015, the Regional Board noted pending subpoenas for the depositions of Site Cleanup Program Staff members, and indicated that the Board would consider a request to accept those deposition transcripts into the evidentiary record for this proceeding should the depositions occur. The timing of the depositions, if they were to go forward, was not known at that time. As of its April 22 letter, BHC states that one deposition is currently scheduled for May 6-7, and another is to be scheduled sometime thereafter. Given that these depositions have not yet occurred, may be further postponed, and substantial additional time would be necessary to obtain certified transcripts and allow parties and interested persons a reasonable time to review and respond to the testimony, the Regional Board declines to postpone its decision regarding the Tentative Revised CAO.

Adoption of Revised Cleanup and Abatement Order No. R4-2011-0046:

The Regional Board has considered the evidence in the administrative record for this proceeding. Based on the weight of that evidence, the Regional Board concurs with the findings and rationale expressed in the Response to Comments issued by the Site Cleanup Program Staff on December 8, 2014, and adopts the Revised Cleanup and Abatement Order No. R4-

2011-0046, attached. Modifications to the December 8 Draft Revised CAO circulated by the Site Cleanup Program Staff are shown in wave underline and ~~double-strikethrough~~. These modifications are in response to comments on the Draft Revised CAO received by the Regional Board.

The modifications to the Draft Revised CAO include a finding by the Regional Board that BHC's activities at the Site not only violated Health and Safety Code section 5411, but also violated Fish and Game Code section 5650 and Los Angeles County Code section 20.36.010.¹ Fish and Game Code section 5650, as adopted in 1957, states, "It is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this State any of the following: (a) Any petroleum, acid, coal or oil tar, aniline, asphalt, bitumen, or residuary product of petroleum, or carbonaceous material or substance...." Los Angeles County Code section 20.36.010, as adopted in 1952, prohibits the "discharge or deposit or caus[ing] or suffer[ing] to be discharged or deposited at any time or allow[ing] the continued existence of a deposit of any material which may create a public nuisance, or menace to the public health or safety, or which may pollute underground or surface waters, or which may cause damage to any storm-drain channel or public or private property." BHC's activities in breaking up concrete reservoirs, ripping the reservoir floors, and moving soil at the Site permitted petroleum and related products to pass into, or placed where it could pass into, waters of the State. The activities also discharged and deposited, and allowed the continued existence of a deposit of, petroleum hydrocarbons that created a public nuisance, a menace to the public health and safety, pollution of underground waters, and damage to private property.

Revised Cleanup and Abatement Order No. R4-2011-0046 is issued pursuant to the authority of the Regional Board set forth in sections 13304 and 13267 of the California Water Code. Pursuant to California Water Code section 13350 and 13268, failure to comply with any of the requirements contained in this Order may result in the assessment of administrative civil liability of up to \$5,000 per day in which the violation occurs. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning. The Regional Board may also request that the Attorney General seek judicial civil liabilities, or injunctive relief and/or request the United States Attorney, appropriate county District Attorney, or City Attorney seek criminal prosecution.

Any person aggrieved by this action of the Regional Board may petition the State Water Resources Control Board (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 or will be provided upon request.

¹ See footnote 15 of Revised Cleanup and Abatement Order No. R4-2011-0046.

If you have any questions regarding the information in this letter, please contact Ms. Nicole Kuenzi at (916) 322-4142 (nicole.kuenzi@waterboards.ca.gov).

If you have any questions regarding Revised Cleanup and Abatement Order No. R4-2011-0046, please contact the project manager, Dr. Teklewold Ayalew, at (213) 576-6739 (tayalew@waterboards.ca.gov), or Ms. Thizar Tintut-Williams, Site Cleanup Unit III Chief, at (213) 576-6723 (twilliams@waterboards.ca.gov).

Sincerely,



Deborah J. Smith

Chief Deputy Executive Officer, Los Angeles Regional Water Board

Enclosures: Revised Cleanup and Abatement Order No. R4-2011-0046
Revised Cleanup and Abatement Order No. R4-2011-0046 (strike through
version showing modifications)

Cc:

Mr. Samuel Unger
Executive Officer
sunger@waterboards.ca.gov

Mr. Robert Bowcock
Integrated Resource Management, Inc.
bbowcock@irmwater.com

Patrick Dennis, Esq.
Gibson Dunn & Crutcher LLP
PDennis@gibsondunn.com

Frances McChesney, Esq.
Senior Staff Counsel
Fmcchesney@waterboards.ca.gov

Krista Hernandez, Esq.
Gibson Dunn & Crutcher LLP
khernandez@gibsondunn.com

Michael Leslie, Esq.
Caldwell Leslie & Proctor, PC
leslie@caldwell-leslie.com

Deanne Miller, Esq.
Morgan, Lewis & Bockius LLP
dmlmiller@morganlewis.com

Interested parties e-mail list maintained by the Regional Board:

Bellomo, Angelo (LOS ANGELES COUNTY) <abellomo@ph.lacounty.gov>;
'Alan.Caldwell@shell.com';
'barb.post@sbcglobal.net';
'bbowcock@irmwater.com';
'BC7@fire.lacounty.gov';
'bjones@fire.lacounty.gov';
'caumais@girardikeese.com';
'chris.manzini@edelman.com';
'crangan@ph.lacounty.gov';
'derrick.mims@asm.ca.gov';
'ed.platt@shell.com';
'eramirez@ph.lacounty.gov';
'eric.boyd@mail.house.gov';
'jdear@carson.ca.us';
Carlisle, Jim@OEHHA <Jim.Carlisle@oehha.ca.gov>;
'kim.lesniak@shell.com';
'kkatona@bos.lacounty.gov';
'ktruong@carson.ca.us';
'leslie@caldwell-leslie.com';
'lisa@cerrell.com';
'markridley-thomas@bos.lacounty.gov';
'MarkGrivetti (mgravetti@geosyntec.com) (mgravetti@geosyntec.com)';
'rclark@fire.lacounty.gov';
'rcustance@geosyntec.com';
'Robbie Ettinger (rettinger@geosyntec.com) (rettinger@geosyntec.com)';
Romero, Robert@DTSC <Robert.Romero@dtsc.ca.gov>;
'rtahara@bos.lacounty.gov';
'rvasquez@ph.lacounty.gov';
'snourish@fire.lacounty.gov';
Arano, Wendy@DTSC <Wendy.Arano@dtsc.ca.gov>;
'wuroff@fire.lacounty.gov';

'zaft@caldwell-leslie.com';
'Christian Osterberg (christian.osterberg@urs.com)';
'heather.benfield@tetrattech.com';
'javier.weckmann@tetrattech.com';
'Nancy MeilahnFowler (nancy.meilahn.fowler@urs.com)';
'Rebecca Frend (rebecca.frend@urs.com)';
'Roy Patterson (roy.patterson@urs.com)';
Romero, Robert@DTSC <Robert.Romero@dtsc.ca.gov>;
Unger, Samuel@Waterboards <Samuel.Unger@waterboards.ca.gov>;
Rasmussen, Paula@Waterboards <Paula.Rasmussen@waterboards.ca.gov>;
Heath, Arthur@Waterboards <Arthur.Heath@waterboards.ca.gov>;
Williams, Thizar@Waterboards <Thizar.Williams@waterboards.ca.gov>;
Kapahi, Gita@Waterboards <Gita.Kapahi@waterboards.ca.gov>;
Fordyce, Jennifer@Waterboards <Jennifer.Fordyce@waterboards.ca.gov>;
McChesney, Frances@Waterboards <Frances.McChesney@waterboards.ca.gov>;
'eric.boyd@mail.house.gov';
'henry.connelly@mail.house.gov';
Lauffer, Michael@Waterboards <michael.lauffer@waterboards.ca.gov>;
'crangan@ph.lacounty.gov';
'Kim.Clark@fire.lacounty.gov';
'deBoer, Krista (KdeBoer@gibsondunn.com)';
Lagudis, Susana@Waterboards <Susana.Lagudis@Waterboards.ca.gov>;
'pdennis@gibsondunn.com';
'rhernand@carson.ca.us';
'nhernandez@gibsondunn.com';
Doug Weimer (douglas.weimer@shell.com) (douglas.weimer@shell.com);
Ayalew, Teklewold@Waterboards <Teklewold.Ayalew@waterboards.ca.gov>