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GOVERNOR

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SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

February 27, 2015

Via E-Mail Only

TO ALL PARTIES AND INTERESTED PERSONS:

Procedural Requests regarding Tentative Revised Cleanup and Abatement Order No. R4-2011-0046, Former Kast Property Tank Farm

The Regional Water Quality Control Board, Los Angeles Region (Regional Board), acting through Ms. Deborah Smith, Chief Deputy Executive Officer, received several procedural requests related to the Board's consideration of the Revised Cleanup and Abatement Order No. R4-2011-0046 for the Former Kast Property Tank Farm (Revised CAO).

Procedural Requests by Barclay Hollander Corporation.

On December 24, 2014, Barclay Hollander Corporation submitted a request to (1) submit additional written evidence for consideration by the Regional Board and inclusion in the administrative record, and (2) schedule a formal evidentiary hearing prior to the Regional Board's determination whether to adopt the Revised CAO. Both requests are denied, with the following exception.

The Regional Board will accept into the administrative record for this matter the deposition of Mr. George Bach dated November 19, 2014, as submitted by Barclay Hollander Corporation to the Regional Board on January 6, 2015.

On October 31, 2013, Site Cleanup Program Staff first circulated a draft Revised CAO that identified Barclay Hollander Corporation as a responsible party. A copy of the Draft Revised CAO and notice of an opportunity to comment on the Draft were provided by Site Cleanup Program Staff to Barclay Hollander by U.S. Mail. After receiving written comments, Shell and Barclay Hollander were provided an additional opportunity to respond to the comments received. Barclay Hollander submitted extensive comments and evidence to the Regional Board on both January 21, 2014 and June 30, 2014. Barclay Hollander now seeks to submit additional evidence into the evidentiary record.

The Regional Board will not accept evidence into the record that was previously available and could have been submitted in a timely matter during the prior noticed comment periods. The Regional Board will therefore not accept reports or other evidence dated prior to the June 30, 2014 comment deadline.

CHARLES STRINGER, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

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The Regional Board will not accept into the record the expert reports by Mr. Jeffrey V. Dagdigian and Mr. Charles R. Faust dated November 14, 2014 and December 22, 2014. A total of two sworn declarations and three technical reports by Mr. Dagdigian and Mr. Faust are already included in the evidentiary record. The reports now offered were prepared after the noticed comment periods in this proceeding, for purposes of litigation. The Regional Board concludes that the additional delay and burden of a technical review and evaluation of these additional reports, at this point in the proceedings, outweighs their probative value. This conclusion is supported by the fact that timely-submitted sworn statements and technical reports by these authors are a part of the record and are being considered by the Board.

The Regional Board will not accept into the record the deposition transcript of Mr. F. Edward Reynolds, Jr. dated July 7, 2014. This deposition appears to concern an expert report written by Mr. Reynolds at the request of the law firm of Girardi & Keese. Because that expert report has not been submitted to the Regional Board and is not a part of the evidentiary record, the deposition testimony regarding the report and the theories underlying the report is not sufficiently probative to justify consideration at this point in the proceedings.

The Regional Board will accept into the administrative record the deposition of Mr. George Bach dated November 19, 2014. In this instance, the probative value of Mr. Bach's testimony, insofar as it contributes to evaluation of his prior testimony already submitted, is outweighed by the additional burden on the parties and the Regional Board. Although all parties to the proceeding shall be allowed time to review and respond to the testimony, it is not of a nature that would require a technical evaluation and response as would the review of a technical expert report.

The request by Barclay Hollander Corporation to schedule a formal evidentiary hearing prior to the Regional Board's determination whether to adopt the Revised CAO is denied. The Regional Board has considered whether an evidentiary hearing would substantially assist in its consideration of the Revised CAO. The Site Cleanup Program Staff offered multiple opportunities for parties and interested persons to submit written testimony and evidence relevant to the Draft Revised CAO. Barclay Hollander has utilized these opportunities and submitted more than 1,000 pages of documentary evidence. The factual questions raised by the Draft Revised CAO are primarily technical and therefore, fit to be addressed through written expert reports and written rebuttal. Some factual questions are raised that relate to events that occurred at the former Kast Property Tank Farm nearly fifty years ago. To the extent that the parties have been able to locate witnesses with first-hand knowledge of these events, written statements – by Mr. Leroy M. Vollmer and Mr. George Bach – are included in the record and will be considered by the Regional Board. These witnesses are very elderly and the Regional Board would hesitate to require their physical attendance at any hearing, particularly given that their oral testimony is likely to duplicate previously submitted written testimony. An oral evidentiary hearing would not likely enhance the evidentiary record, but rather, result in the needless presentation of cumulative evidence.

In light of the particular factual, legal, and policy questions that are raised, the Board has determined that the issues are adequately and thoroughly addressed through the submitted written evidence and testimony, that Barclay Hollander has been provided the opportunity for fair consideration of its claims, and the burden and cost of an oral hearing is not warranted in this instance.

Procedural Requests and Substantive Comments by Mr. Robert Bowcock.

On January 7, 2015, Mr. Robert Bowcock of Integrated Resource Management, Inc. commented on the substance of the Revised CAO and attached documentary evidence to his letter in support of his comments. The Regional Board considers Mr. Bowcock's letter, in part, as a request to submit the additional substantive comments and the attached report by L. Everett & Associates dated January 7, 2015.

Mr. Bowcock's substantive comments and the attached report by L. Everett & Associates are untimely and will not be accepted into the record. Mr. Bowcock has not alleged that he was not appropriately notified of the prior opportunities to submit written comments or provided other justification for the date of these submittals.

Deposition Testimony of Site Cleanup Program Staff.

The Regional Board is aware of pending subpoenas for the depositions of certain staff of the Regional Board who are members of the Site Cleanup Program Staff with respect to this matter. Should these depositions go forward, the Regional Board will consider at a future time and upon the request of any party, whether to accept the deposition transcripts into the evidentiary record.

Opportunity to Comment and Request for Additional Information.

An electronic copy of the transcript of the deposition of Mr. George Bach dated November 19, 2014, is attached with this letter. The Regional Board will consider comments or evidence in rebuttal to the attached document from parties or interested persons that are received by **March 26, 2015, at 5:00 pm.**

The Regional Board requests that the Site Cleanup Program Staff submit the following by **March 13, 2015**, regarding the March 20, 2014 memo from Dr. C.P. Lai to Samuel Unger: (1) a more detailed explanation of the three assumptions on which the finite method analysis was based and (2) full page color copies of the series of contour graphic results.

The Regional Board also requests that the Site Cleanup Program Staff provide the Regional Board with three complete copies of the materials provided to the Regional Board on December 8, 2014, as well as subsequent information that was submitted in response to the December 8th materials, with the exception of evidence rejected by this letter. The Regional Board requests these copies by **March 13, 2015.**

Please send comments by e-mail to nicole.kuenzi@waterboards.ca.gov, and to all parties and interested persons cc'ed on this notice. If you are unable to submit comments by e-mail, comments may be submitted by mail to Nicole Kuenzi, Office of Chief Counsel, State Water Resources Control Board, 1001 I Street, 22nd Floor, Sacramento, CA 95814.

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

Sincerely,



Deborah J. Smith

Chief Deputy Executive Officer, Los Angeles Regional Water Board

Cc:

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