

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Cleet Carlton)
MEETING DATE: July 13, 2011

ITEM: 7

SUBJECT: **Union Oil Company of California (aka Unocal), Atlantic Richfield Company, Richard Koch 411 High Street Annuity Trust, Nancy Koch 411 High Street Annuity Trust, and Oakland High Street Partners, LP, for the properties at 401 and 411 High Street, Oakland, Alameda County – Revised Final Site Cleanup Requirements**

CHRONOLOGY: September 1990 – Site Cleanup Requirements (SCR) adopted
March 1993, May 1998, and December 2006 – SCR amended

DISCUSSION: The Revised Tentative Order (Appendix A) would require the dischargers to implement revised cleanup plans at two adjacent properties polluted by former bulk fuel terminals.

This site consists of two adjoining properties in Oakland: 401 and 411 High Street. Bulk fuel terminals operated at 401 High Street from 1946 to 1991 and at 411 High Street from 1946 to 1975. Unocal owned and operated one terminal at 401 High Street. ARCO owned and operated terminals at both properties. The properties are still used for industrial purposes but with different landowners. The Board has historically regulated these two properties under a single cleanup order, due to the overlapping operations and due to the inter-mingling of pollutants originating at the two properties.

Investigations conducted as early as 1983 identified petroleum contamination in soil, groundwater, and soil gas beneath the site. The extent of the pollution in soil gas and groundwater is generally defined. The main chemicals identified include gasoline, diesel, benzene, and toluene. Concentrations of these chemicals remain high despite prior cleanup efforts pursuant to Board-adopted cleanup orders.

In response to staff directives, Unocal and ARCO submitted revised cleanup plans to address the remaining petroleum contamination. At the 401 High Street property, Unocal proposes an in-situ cleanup method (enhanced bio-remediation). At the 411 High Street property, ARCO proposes two cleanup methods (dual-phase extraction and enhanced bio-remediation), with the final choice depending on the results of pending pilot tests. ARCO also proposes further assessment to see if cleanup is needed on an adjacent property at 441/445 High Street. While these revised cleanup plans are acceptable, in a separate action, the Board's

enforcement team has recently initiated enforcement for their late submittal and delays in cleanup.

The Revised Tentative Order would approve the two revised cleanup plans, set cleanup standards, and require cleanup plan implementation. The Order would name the past owners/operators as primarily-responsible dischargers and the current landowners as secondarily-responsible dischargers.

We circulated the original tentative order for public comment in April. In response to concerns expressed by ARCO about the risk management tasks, staff discussed possible changes to these tasks in early May. We received comments on the tentative order and possible changes from the Koch family trusts, Unocal, and ARCO (Appendix B). The comments raise two key issues:

(1) Should the cleanup order allocate cleanup tasks between the two primarily-responsible dischargers (Unocal for 401 High Street and ARCO for 411 High Street)? Unocal/ARCO argue that task allocation is appropriate, given their separate operations on the two properties. The Kochs argue that task allocation is inappropriate, given that ARCO operated on both properties, the petroleum contamination originating from the two properties is significantly intermingled, and prior Board orders have generally not allocated tasks. We conclude that task allocation is inappropriate, and have modified the tentative order accordingly.

(2) Should the Board's approval of the proposed risk management measures hinge on the landowner's prior concurrence with those proposals? The Kochs argue that landowner concurrence is essential, since risk management measures can potentially harm the value and future use of the property. Unocal/ARCO argue that the landowner can unreasonably withhold concurrence and put Unocal/ARCO into violation of the cleanup order. We conclude that landowner concurrence is not necessary or appropriate. However, we appreciate the Kochs' concern and have revised the tentative order to focus this task on the active-cleanup phase and clarify the criteria for Board approval of the risk management proposal.

We have prepared a response to comments (Appendix C) and made corresponding changes in the tentative order.

RECOMMENDATION: Adopt the Revised Tentative Order

File No. 01S0645 (CFC)

APPENDICES: A – Revised Tentative Order
B – Correspondence
C – Response to Comments
D – Location Map