Appendix E

COMMENTS RECEIVED

APPENDIX C

WRITTEN COMMENTS RECEIVED DURING PUBLIC REVIEW FOR ITEMS 7 AND 8

May 8, 2013 Board Meeting

Amendment of Cleanup and Abatement Order 98-004 and R2-2003-0028, Adoption of Time Schedule Order for that Amendment, and Rescission of Order No. 92-105 for Dischargers at Leona Heights Sulfur Mine, Alameda County

Comments on the Tentative Orders (TO) are presented in the following order:

1. Adrienne DeBisschop
2. Ocean Industries, Inc. (and subsidiaries)
3. Alcoa Inc. (for subsidiaries)
4. Peter Mundy
5. California Department of Fish and Wildlife
6. US Army Corps of Engineers
7. Water Board's Advisory Team

Adrienne DeBisschop

March 27, 2013

Lindsay Whalin
Regional Water Quality Control Board
1515 Clay St., Suite 1400
Oakland, Calif. 94612

Re: Leona Heights Sulfur Mine

Dear Ms. Whalin;

My parents moved to 5024 Leona St. in 1935, the year I was born. As a child I visited the mine area a lot. In the 1940's the water came out the adit of the mine. My mother did not like me playing in the water as my shoes became stained with the sulfur.

We would sometimes take the path on the right side of the mine entrance up the hill. At the top behind the tailings there was a large pool of water. We would explore the small cave above that area.

My question to you is if the tailings are sealed, wont there still be water with sulfur in it coming out from the old mine entrance.

Sincerely,

Adrienne DeBisschop

Adrienne DeBisschop
2763 Madera Ave.
Oakland, Calif. 94619

Ocean Industries, Inc. (and subsidiaries)

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April 5, 2013

File No.
8650.16

VIA E-MAIL AND CERTIFIED MAIL

Lindsay Whalin
California Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Tentative Orders Amending Cleanup and Abatement Order and Setting Time Schedule for Compliance for Leona Heights Sulfur Mine, Oakland, Alameda County

Dear Ms. Whalin:

Lewis Brisbois Bisgaard & Smith LLP, as counsel for Ocean Industries, Inc., Ridgemont Development, Inc., Watt Housing Corporation, Watt Industries Oakland and Watt Residential, Inc. (hereinafter collectively referred to as "Ocean" for purposes of convenience), submit the following comments/objections to the Tentative Order re Amendment of Cleanup and Abatement Order 98-004 and Rescission of Waste Discharge Requirements (Order No 92-105) and the related Time Schedule Order Prescribing Administrative Civil Liability for the property located at the end of McDonell Avenue, Oakland, Alameda County and more commonly known as the former Leona Heights Sulfur Mine.

I. TENTATIVE ORDER FOR AMENDMENT OF CLEANUP AND ABATEMENT ORDER NO. 98-004 AND RECISSION OF WASTE DISCHARGE REQUIREMENTS (ORDER NO. 92-105)

Before proceeding to its specific comments/objections regarding the actual orders at issue, Ocean generally notes the following regarding the Findings section of the Tentative Order:

A. Pursuant to the definition of "Dischargers" set forth in California Water Code Section 13304, Ocean should not be named as a Discharger in the Tentative Orders. Specifically, Section 13304(a) states:

> 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, causes 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 water of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the affects of the waste, or in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.

Ocean did not at any time operate the Leona Heights Sulfur Mine or own the property where the mine is located until more than 50 years after mine operations had ended. There is no information that Ocean caused or contributed to waste being discharged into the waters of the state as it at no time had any involvement in the mining operations that were conducted at the site and never placed or moved the mine tailings at the property.

During its period of its ownership, Ocean contemplated residential development on other portions of the parcel on which the mine is located. Throughout its ownership of the property, Ocean's activities at most could be characterized as passive.

Ocean sold the property to the current owner (Dr. Colin Mbanugo) in 2001 in "as is" condition with full disclosure of all site conditions. Pursuant to the terms of sale, the current property owner agreed to be responsible for property maintenance on a going forward basis.

Separate and apart from contractual obligations imposed on the current property owner to address site conditions, the current owner is responsible for and in the best position to take appropriate action for the property he owns. There is no information to suggest that Ocean discharged wastes into the waters of the state when it owned the property. After selling the property to the current property owner, Ocean has not "permitted" waste to be discharged into the waters of the state as only the current property owner can take corrective action under the circumstances. Moreover, since the sale of the subject property to Dr. Mbanugo, Ocean has not had the ability to control any discharge of wastes emanating from the property.

Pursuant to the factors identified by Section 13304, Ocean should not be included in the Tentative Order. While Ocean is in the chain of title for the subject property, numerous other individuals and entities are also included within the chain of title, many of whom are inexplicably not included within the Tentative Order. There is no information to suggest that Ocean was aware that mining waste could or would be discharged from the subject property into waters of the state which it owned for a limited number of years decades after the mine operations ceased in the late 1920s. Ocean's unrealized intention to build residences on other portions of the property should not subject it to "Discharger" status under Water Code Section 13304. It is requested that Ocean be removed from the Tentative Order for the reasons set forth above.

B. At Paragraph 2.b) ("Clarify Cleanup Requirements"), the Tentative Order states that "[t]he Dischargers must obtain all permits required to comply with this Order." As Ocean is not the current property owner, it does not have appropriate standing to obtain permits that would affect conditions on property that it does not possess, control or own. Moreover, it has no legal right to bind the property in any respect. Finally, Ocean has no legal right to access the property or commit to improvements that affect the property.

C. At Paragraph 2.c) ("Incorporate Requirements for Creek Restoration"), the Tentative Order states that "Relocation and restoration of the Leona Creek streambed is a necessary element of the mine remediation project." As set forth in more detail below, Ocean has concerns whether relocation of the streambed is a necessary element of the remediation project. In fact, Ocean is concerned that relocation of the streambed may well result in a failure to achieve an environmentally sound solution to the current conditions that exist on the property and may in fact exacerbate those conditions.

D. At Paragraph 2.d) ("Name Additional Dischargers"), the Tentative Order asserts that "Ocean Industries, Inc. has participated in the formulation of the remedial action plan that this CAO Amendment requires the Dischargers to execute." That is not accurate. The current property owner has submitted all remedial plans pursuant to an agreement he entered into with Ocean and Alcoa. While Ocean and Alcoa have deposited funds into an escrow account to pay for certain activities as specified by the agreement, the current property owner has been solely responsible for formulating all aspects of the remedial action plan he has submitted following execution of the agreement with Ocean and Alcoa. Moreover, the "remedial action plan that this CAO Amendment requires the Dischargers to execute" bears little resemblance to the restoration plans submitted by LFR on behalf of Ocean prior to the sale of the property to Dr. Mbanugo - particularly to the extent it calls for a relocation of the streambed which has added substantially to the cost of the proposed project.

E. Based on the considerations set forth in these comments, Ocean respectfully requests that the May 8, 2013 hearing before the Regional Water Quality Control Board be

deferred so as to provide additional time to consider alternative remedial approaches to improve water quality at the subject site, which Ocean believes could more expeditiously result in a more effective resolution. Ocean requests that the hearing be deferred to the Regional Board's meeting in July, 2013.

With the above as a foundation for this response, Ocean's specific comments/objections to the Tentative Order are as follows:

Page 2, Paragraph 2.a) "Modify Compliance Dates":

The compliance dates set forth in the Tentative Order are impossible to achieve. There is a significant amount of planning and design work that needs to be accomplished - even with the proposed remediation plan presented by the current property owner. The design and/or work plans need to be revised to address, among other things, waste rock isolation, waste rock pile stability and creek restoration.

Dr. Mbanugo's environmental consultant, Dr. Peter Mundy, has stated that meeting the milestone dates set forth in the Tentative Order will be impossible to achieve and that construction of the currently proposed remediation plan will take 142 days. Given that information, Ocean respectfully submits that the milestone deadlines set forth in the Tentative Order be changed in recognition that construction of the proposed project cannot begin until the Spring of 2014.

Ocean further submits:

- To achieve 100% design, a site topographic map with finer contour intervals (on the order of 1 ft or 2 ft) is needed; the natural creek location has to be determined; and site surface water and groundwater flow conditions (such as creek flow rates under various storm events, depth to groundwater table and general groundwater flow direction) have to be well understood.

- A site drainage and hydraulic study has yet to be performed for both existing conditions and proposed post-remediation and restoration conditions.

- The impact of the proposed work plan to both groundwater and surface water quality has not been evaluated and properly assessed. For example, the buttresses with engineered fill of the waste rock seem to increase the chance for interaction of waste rock and water.

- The re-routing or alteration of the creek channel location and the alteration of the streambed profile may well be contradictory to the project goal of creek restoration.

- The extensive planting plan over the proposed sloped cap of waste pile may pose stability problems for the cap system by raising the loading on the cap top soil layer and the center of gravity for the top soil layer with the plants.

- Alternatives that have less impact to both surface water quality and groundwater quality should be evaluated.

Permitting time is out of the control of Ocean. Without a complete design, the permitting agencies may not be able to issue permits - certainly not within the time frame set forth in the Tentative Order. Furthermore, some of the permits that have been issued to the current property owner have expired and it will be necessary to re-apply for those permits. Again, when those permits will be applied for and issued is something over which Ocean has no control.

Page 2, Paragraph 2.b) "Clarify Cleanup Requirements":

While Ocean agrees that permits are necessary to ensure completion of the necessary site work, the Tentative Order should impose the responsibility for obtaining applicable permits from all involved regulatory agencies on the current property owner. Ocean does not own the subject property and as such has no ability to obtain permits for a remedial action plan overseen and developed by the current property owner. Moreover, to the extent that decisions need to be made as conditions for obtaining permits or issues posed by the work itself on the subject property or adjoining properties, such decisions are solely within the authority of the current property owner. Accordingly, the Tentative Order should be modified to reflect that only the current property owner is obligated to obtain all permits required by regulatory agencies with jurisdiction over various aspects of the project. It is fundamentally unfair to hold Ocean to compliance dates related to obtaining permits that are outside of its control. It is even more unfair to subject Ocean to administrative civil liability for the failure of the current property owner to meet the milestone deadlines set forth in the Tentative Order.

There are uncertainties inherent in the obtaining of permits such as those necessary to implement any remedial action plan at the site. Ocean is informed that the current property owner has been in negotiations with relevant permitting agencies with respect to the site for five years. Despite that length of time, all necessary permits have not been obtained and there is no certainty as to when they will be. There is clearly no way that anyone, including the current property owner - much less Ocean - can guarantee that all of the relevant permitting agencies will issue the necessary permits within the milestone deadlines set forth in the Tentative Order.

As previously noted, Ocean has significant concerns about the rerouting or alteration of the current streambed. Indeed, such rerouting or alteration may not be

necessary and could be counterproductive. Leaving the streambed in its current location may be the best solution to the current problem - and certainly will be more cost effective. Rather than move the location of the streambed 40 to 50 feet to the south, it could be left in its current location with the tailings isolated from the streambed. This could be accomplished by removing the mine tailings in the streambed and along the banks and placing them outside of the channel area. The areas away from the channel would then be graded (smooth highs and lows) and covered in numerous layers of plastic, topsoil and vegetation. The material removed would be replaced with outside rock/soil placed to duplicate or mirror the former stream topography and profile (slope).

Obtaining permits for a remediation plan that does not call for relocating the streambed with all of its attendant environmental insults may be more achievable than what is presently proposed. This is particularly true with respect to obtaining the Section 404 Permit from the US ACE.

Ocean is informed that the Section 404 permitting process likely will take time well outside of the current milestone deadlines set forth in the Tentative Order. Please refer to the Section 404 permitting website at http://water.epa.gov/type/oceb/habitat/cwa404.cfm#how.

Page 2, Paragraph 2.c) "Incorporate Requirements for Creek Restoration":

The corrective action contemplated by the Tentative Order should only be to address potential threats to the environment resulting from mining waste discharges. Relocation of the Leona Creek streambed should not be a required component of the Tentative Order as it may not be necessary and if possible, should be avoided. The main guiding principle of "restoration" should be to minimize alteration and impacts. With less alteration, the permitting process is easier, the project costs are lower and the time to complete implementation of the project will be shorter.

The approved summary design report states that the pre-mining channel location is unknown, that it is believed to be 40 to 50 feet south of the current location and that it will be identified during the channel rerouting excavation. This contradicts the location statement contained in the previous LFR design report, which stated that "the central channel lies roughly in the central trough of the canyon and likely follows the natural drainage path."

There are investigative means (which will cost a lot less than large scale excavation) to determine or confirm the pre-mining streambed location, such as small perpendicular trenches or borings transverse to the current channel. Without the precise creek location, the design cannot be precise, the restoration does not have a clear target and the 100% design plan can not be achieved.

The proposed relocation of the channel may not be feasible to construct or work effectively. The proposed plan requires excavating approximately 10 to 15 feet deep to allow for relocation of the channel. If bedrock is encountered prior to reaching the required depth, channel excavation will be difficult and explosives may need to be used to reach desired depths. Another problem with this relocation design is that the relocation design works against itself. The proposed relocation design calls for straightening the channel. This will increase the overall slope of the channel, thus requiring extensive energy dissipation. The relocation design increases energy which is then dissipated by the use of step pools, which will only be effective in low flow conditions. In high flow conditions, (for example, a 100-year flood), the step pools will become ineffective because the pool storage will fill rapidly and become an ineffective flow area. Filled pools will accelerate flow by providing segments of equivalent smooth channel bottom for effective flow.

Ocean believes that achieving long-term stability for the corrective actions may not require relocation of the channel and should not compromise water quality. Alternatives with less impact to the environment should be evaluated and implemented prior to the Regional Board considering the Tentative Order. It is for that reason, among others, that Ocean requests that the hearing on the Tentative Order be appropriately deferred until less impactful, and potentially more effective remedies, can be fully considered.

Page 2, Paragraph 2.d) "Name Additional Dischargers": As set forth above, Ocean has not participated in the formulation of the remedial action plan that this CAO Amendment requires to be performed.

Page 2, Paragraph 3 "Applicability and Extension of Existing Orders": Ocean objects to any characterization that it is a "part[y] legally responsible for environmental remediation at the site" for the reasons set forth above.

Ocean notes that the current property owner is in violation of an outstanding CAO (R2-2003-0028) and has been ordered to pay $200,000 for his failure to comply with reporting obligations. Ocean is informed that the Regional Board has not taken steps to collect the referenced amount.

Replacement of Paragraph B.2 of prior orders regarding Remedial Measures.

The Tentative Order incorrectly quotes a version of paragraph B.2 from the 1998 CAO that was amended in its entirety by Order No R2-2003-0028. The Order should quote the correct text, as amended in 2003.

Page 4, Paragraph 2.I.a. "Remedial Design Plan":

Compliance Date of July 1, 2013.

Pursuant to Ocean's consultation with various technical experts, Ocean has been advised that it will not be possible to prepare a 100% remedial design plan by July 1, 2013. Ocean submits that due to the extremely limited time from its receipt of the Tentative Order and the date on which comments were due, it did not have sufficient opportunity to explore an alternative remedial approach which could result in an improvement in water quality and restoration of the creek at lower cost. Ocean submits that additional time to evaluate the potential alternative approach may well lead to an attainable solution with less potential deleterious impacts to the environment.

Based on the limited information now available to Ocean, the previously approved plans may well need to be revised and resubmitted. The relocation of the channel may well need to be abandoned and the regrading plan may have to be revised. The buttress design for stabilizing the waste piles should be re-evaluated to minimize impact to water quality. Additional stabilization measures may be needed with any modification of the buttress design. The gas permeable layer of geo-textile placed right under the HDPE membrane may need to be eliminated due to a lack of opportunity for gas production in waste rock piles which have been in place for many decades.

To be able to complete the 100% design, the following work may well be necessary: A more refined topographic map, a detailed hydrology/hydraulics report for existing conditions and proposed post-remediation condition, a reassessment of the stability of the waste piles, an impact evaluation of the proposed stability measures to groundwater and surface water, and confirmation of the natural channel location.

The July 1, 2013 compliance date is not achievable. Ocean submits that a compliance date of November 1, 2013 would be more appropriate.

Page 4, Paragraph 2.b. "Creek Restoration Design Plan":

Compliance Date of July 15, 2013.

Ocean incorporates herein by reference its comments above concerning the Remedial Design Plan as being equally applicable to the Creek Restoration Design Plan. A July 15, 2013 compliance date is non-attainable under the circumstances. As with the Remedial Design Plan, Ocean submits that additional time is necessary to explore a potential alternative remedial approach which could well be more effective and attainable under the circumstances when compared to the proposed design plan.

The tentatively approved conceptual cascade and step-pool design for creek restoration is not "creek restoration" but is instead creek alteration. Real creek restoration should minimize altering channel alignment and streambed profile (elevations). The step-pool and cascade conceptual design should be fully and carefully re-evaluated. The existing channel at the site does not have regular step-pools and cascades. The step-pools will look unnatural, will obviously be man-made and could prove detrimental to the environment. The proposed re-routing will shorten the length of the channel, increase the overall channel slope and will accelerate creek flow during high flow conditions due to ineffective storage in the step-pools.

Accordingly, the creek "alteration" design plan currently under consideration may well need to be abandoned and a new "restoration" design plan prepared. Any such restoration plan should be based on the creek hydrology and hydraulics that minimize the changes in flow characteristics and channel roughness. The proposed post-restoration channel should have similar flow characteristics and roughness as the pre-restoration channel.

The July 15, 2013 compliance date is insufficient to complete the proposed work. Ocean submits that a compliance date of November 15, 2013 would be more appropriate.

Page 5, Paragraph 2.II "Applications for Permit":

Compliance Date of July 15, 2013.

Based on Ocean's consultations with technical experts, none of them believe that a July 15, 2013 compliance date is attainable under the circumstances. While the current property owner's project manager applied for certain permits in the past, new permits will likely be necessary due to the passage of time since such efforts were last pursued. Moreover, as the various permit applications or approvals require necessary interaction between the numerous involved agencies in various respects, the process can and will be likely delayed through no fault of Ocean, thereby making the July 15, 2013 compliance date unrealistic.

The submittal of all permit applications must be after the design work has been completed.

It is respectfully submitted that a re-design of the currently proposed remediation plan be adopted to achieve a more cost effective and less environmentally disruptive solution to the current conditions at the site. Additional time will be necessary to fully develop and evaluate such an alternative plan.

The July 15, 2013 compliance date is not attainable. Ocean submits that a compliance date of December 1, 2013 would be more appropriate. To the extent possible,

all existing engineering, project design, and studies (submitted in support of the existing tentative plan) would be used in the development of an alternative remedy.

Page 6, Paragraph 2.III "Implement Mine Remediation and Creek Restorations Designs":

Compliance Date of September 15, 2013.

As with the above compliance dates, the September 15, 2013 date is unrealistic and non-attainable under the circumstances. Notwithstanding the time necessary for obtaining permits from all of the necessary regulatory agencies involved with this project, commencing extensive excavation and grading work immediately prior to the rainy season could well lead to negative impacts for the environment. It is clear the construction phase of the project cannot be completed before the rainy season commences in 2013. Under the circumstances, commencement of the actual construction work after the rainy season concludes in the Spring of 2014 should be the preferred approach to implementing the mine remediation and creek restoration.

Permit approval time is not under the control of Ocean. Without permits, the project cannot be implemented. The compliance date should be a specified reasonable time period after the necessary permits are acquired. As the timeframe for construction should occur in the "dry season" (May-October), and in light of the foregoing comments concerning design criteria and permit applications, it is highly unlikely that this project could commence or be completed in the 2013 "dry season." Ocean submits that a reasonable compliance date would be 120 days after acquisition of the necessary permits assuming enough time to begin and complete the construction during the "dry season" months of 2014.

Page 6, Paragraph 3. "Monitoring and Maintenance Plans":

Compliance Date of August 15, 2013.

The compliance date is not attainable under the circumstances as described above. To submit a proper monitoring and maintenance plan, the requirements of the final permits must be addressed. Suggested Compliance Date: 30 days after acquisition of all final permits (prior to implementation).

II. TIME SCHEDULE ORDER PRESCRIBING ADMINISTRATIVE CIVIL LIABILITY

Page 1, Paragraph 1. "Purpose of the Order":

"Cleanup of the site has not been initiated."

Ocean and Alcoa entered into an agreement with the current property owner to provide $795,000 towards the obtaining of necessary permits and applications and the construction of an approved remedy for conditions at the site. The subject agreement provides that Ocean and Alcoa shall pay $150,000 into an escrow account from which Dr. Mbanugo's consultants can draw to pay for the permitting work. When it became clear that additional money would be necessary to obtain the necessary permits, Ocean and Alcoa agreed to make additional funds available so that the work could proceed - even though they had no legal obligation to do so. To date, Ocean and Alcoa have contributed $515,000 into the escrow account. (Of the $515,000, over $120,000 remains in the escrow account.)

It is correct to state that "cleanup of the site has not been initiated" - if that means construction of the remedy has not begun. It is incorrect to conclude that substantial efforts have not been undertaken to reach a point where construction can begin. Moreover, all of that work has been paid for by Ocean and Alcoa. Ocean is informed that the current property owner has not expended any of his own money towards the work undertaken by his consultants. Rather, those consultants have been paid through the escrow funded by Ocean and Alcoa.

"The Dischargers will be subject to civil liability prescribed in this Order should they fail to complete any task of Order No. R2-2013-XXXX, as listed below."

As set forth earlier, it is fundamentally unfair to subject Ocean to civil liability should the current property owner fail to complete the tasks set forth in the Tentative Order. Not only does Ocean have no ability to obtain permits for work to be done on the current property owner's property, the undisputed facts are that Ocean (and Alcoa) have funded all of the work that has been undertaken to date. To subject Ocean to civil liability up to $10,000 a day for failure to meet milestone deadlines related to pre-construction work over which it has no control (but has paid for - with Alcoa) is just wrong. Should the Tentative Order be issued, it would punish Ocean (and Alcoa) for doing "the right thing" - even though both strenuously object to their being included in any of the orders related to the site as dischargers.

Page 2, Paragraph 3. "Parties Responsible for Discharge":

As indicated above, Ocean should not be named in the Order as it is not a "Discharger" as that term is defined in Water Code Section 13304. Ocean incorporates herein by reference all of the comments/objections set forth above as to why it is not a "Discharger."

"All of the Dischargers knew of the discharge and [had] the ability to control it."

The use of the bracketed language is telling. When it comes to Ocean, it is clear that it does not currently have "the ability to control it." That control rests with the current property owner (who has owned the site for well over a decade).

Page 3, Paragraph 5. "History of Non-Compliance":

This paragraph inaccurately depicts the circumstances under which deadlines were missed by the current property owner pursuant to Order No. R2-2003-0028. As was well-known to the staff and legal counsel for the Regional Water Quality Control Board, Ocean, Alcoa and the current property owner entered into an agreement whereby Ocean and Alcoa deposited funds into an escrow account for the current property owner's implementation of the corrective action. The agreement provided that the current property owner would perform the corrective action and would be responsible for costs above the financial commitments which Alcoa and Ocean had agreed to fund. Ocean and Alcoa have significantly exceeded financial responsibilities imposed on them pursuant to that agreement by depositing funds for the current property owner's design work and permitting applications. Any "non-compliance" is solely the responsibility of the current property owner, not Ocean.

Page 3, Paragraph 6. "Justification for this Order":

Based on the circumstances, a Time Schedule Order equally subjecting Ocean, Alcoa and the current property owner to civil penalties for failing to achieve prescribed compliance dates is not an effective means for achieving the desired improvement in water quality from the mine tailings discharges at the site. As noted above, Ocean (and Alcoa) have already significantly exceeded their contractual obligations with the current property owner, who himself has been solely responsible for non-compliance with previous orders and deadlines. Notwithstanding the substantial financial commitments previously expended by Ocean (and Alcoa), the current property owner has for an extended period of time not moved this matter forward through no fault of Ocean (or Alcoa.)

Subjecting Ocean to fines of up to $10,000 a day for tasks over which it has no control in no way fosters compliance. (Water Code Section 13308(b).) Indeed, the mere possibility of such fines leaves Ocean with little choice but to assert its legal position that it is not a "Discharger" under Water Code Section 13304 and at the same time seek a stay of any enforcement action against it pending a decision on Ocean's legal position. The possibility of draconian penalties and fines forces Ocean to change its focus from working towards solving the environmental problems at the site to challenging its inclusion in the Tentative Order as a "Discharger."

It is requested that the Tentative Order should be modified to impose the compliance dates (and the possibility of civil liability) solely on the current property owner -

the only person who has failed to meet his obligations to the Board (and to Ocean and Alcoa). By adopting this modification, Ocean (and Alcoa) can continue to work cooperatively with the Regional Board and its staff in seeking a cost effective solution to the current conditions at the site.

Rather than issuing a Time Schedule Order against Ocean, Ocean submits that the Regional Water Quality Control Board should enforce the previously-imposed but not effectuated penalties of $200,000 against the current property owner. Subjecting Ocean to penalties for the current property owner's unwillingness to comply with previous orders and deadlines reinforces and encourages the current property owner's intransigence and failure to move this matter forward.

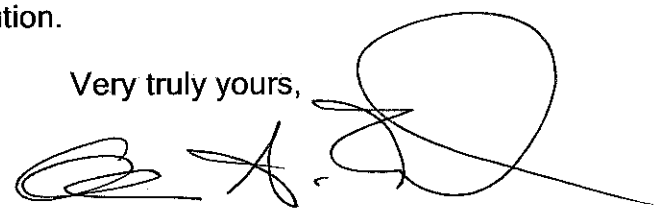
Pages 5 and 6, Paragraph A. "Tasks":

As set forth above, the compliance dates included in this Order cannot be satisfied under the circumstances and should be deferred as requested. Ocean's comments on the Tentative Order amending CAO 98-0024 are incorporated herein as Ocean's comments on this Tentative Order.

III. CONCLUSION

Ocean respectfully requests that the foregoing comments be considered and implemented on the two Tentative Orders prior to final adoption by the Regional Water Quality Control Board. Moreover, as Ocean has not had sufficient opportunity to investigate alternative approaches to resolving this matter consistent with the comments expressed above, it requests that the public hearing before the Regional Board be continued from May 8, 2013 for approximately 60 days to the Board's regular meeting date in July 2013. Ocean believes that being provided with additional time to evaluate a potential alternative approach using the modified compliance dates set forth above could very well result in a more effective solution.

Very truly yours,



Christopher P. Bisgaard of
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April 5, 2013

By E-Mail and Certified Mail
Return Receipt Requested

San Francisco Bay Water Quality Control Board
Attn: Lindsay Whalin
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Tentative Orders Amending the Cleanup and Abatement Order and Instituting a Time Schedule for Compliance for Leona Heights Sulfur Mine, Oakland, Alameda County

Dear Ms. Whalin:

This law firm represents Alcoa Inc. and its subsidiaries, Alcoa Constructions Systems, Inc. ("ACS"), Challenge Developments, Inc. ("CDI") and Alcoa Properties, Inc.,("API") in the above-referenced matter. Alcoa Inc. is not named as a discharger in the Tentative Orders, due to a 1993 ruling by the State Water Resources Control Board ("State Board") removing Alcoa Inc. from a prior order involving this site. For ease of reference ACS, CDI and API may be referred to herein as "Alcoa Subsidiaries." There were two Tentative Orders that were issued for comment concurrently, on March 6, 2013, so these comments address both Tentative Orders.

1. TENTATIVE ORDER FOR AMENDMENT OF CLEANUP AND ABATEMENT ORDER NO. 98-004 AND RECISSION OF WASTE DISCHARGE REQUIREMENTS (ORDER NO. 92-105)

1.a. Alcoa Subsidiaries are not Dischargers as defined in Water Code Section 13304 and are, therefore, not properly named on this Tentative Order. The Tentative Order correctly states that the State Board found insufficient evidence to hold Alcoa Inc. liable as the alter ego of CDI or ACS, but states that the State Board upheld the inclusion of CDI and ACS as dischargers. However, the State Board was reviewing specific contentions made by CDI and ACS.[1]

[1] Note that API was not named on the original Order, but was added to subsequent orders, presumably in response to a footnote in Order WQ 93-9 noting that CDI was dissolved in 1990 but that if any assets of a dissolved corporation were distributed to the shareholders, in that case allegedly API, an action could be brought against the shareholders and suggesting that the Regional Water Board consider whether it was appropriate to add API to the Order.

Specifically, CDI has argued that it could not be considered a discharger because its ownership interest in the site predated the Board's regulations on mining wastes. That argument was rejected. See *State Board Order No. WQ 93-9.* Likewise, ACS had contended that all liability for the site was vested in the current property owner when the current property owner acquired the site and that liability incurred by a partnership flowing from land ownership is retained by the partnership, not the partners. These arguments were likewise rejected by the State Board. *Id.*

Critically, the State Board was not presented with the fundamental question of whether either ACS or CDI could be named as dischargers under Water Code Section 13304 when they did not operate or have any involvement with, or connection to, the former mining operations at the property; did not own the property on which the mine was located until decades after the mining operations had ceased; did not cause or contribute to the tailings pile at the property; did not cause or contribute to the discharge; only held title to the larger parcel on which the abandoned mine was located; and no longer own the property. Section 13304 states:

> 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, causes 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 the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.
>
> *California Water Code Section 13304(a).*

None of the Alcoa Subsidiaries had anything to do with the mining operations or placing the mine tailings where they are located at the surface. They did not cause or permit waste to be discharged or deposited where it is, or may be, discharged into the waters of the state. The Alcoa Subsidiaries are apparently named for no reason other than they were on the chain of title for the property, not because they satisfy the criteria for a discharger in Section 13304. Applying the definition in Section 13304(a), the Alcoa Subsidiaries are simply not dischargers, and they should be removed from the Tentative Order. In their place, the Tentative Order should name the parties who operated the mine and/or their successors. They are the true parties here responsible for this corrective action.

1.b. Paragraph 2.b), Clarify Cleanup Requirements: The Tentative Order should make clear that the current property owner is responsible for obtaining the permits from regulatory agencies with jurisdiction over various aspects of the project. The Alcoa Subsidiaries do not disagree that permits will be necessary in order to complete the work, but the Alcoa Subsidiaries are not responsible for obtaining, or for that matter are in no position to obtain, permits for a

project that is the responsibility of and overseen by the current property owner, or for property that they do not own and do not have authority over to make the sort of binding commitments on use of the property that will likely be required as part of obtaining those permits or mitigating the impacts of the work. This clarification should state that the current property owner is solely responsible for obtaining any permits needed to complete the work at the site.

1.c. Paragraph 2.c) Incorporate Requirements for Creek Restoration. This Order should not require relocation as well as restoration of the Leona Creek streambed. The original design for the corrective action did not include relocation of the streambed, only restoration. The only legitimate objective of this Tentative Order should be to take corrective action to address the discharge resulting from the mining wastes and should not require relocation of the streambed as a part of compliance with this Tentative Order, if the desired results can be obtained without relocation.

1.d. Replacement of Paragraph B.2 of prior orders regarding the Remedial Design Plan. The Tentative Order incorrectly quotes a version of paragraph B.2 from the 1998 CAO that was amended in its entirety by Order No R2-2003-0028. The Order should quote the correct text, as amended in 2003.

1.e. Remedial Design Plan Compliance Date of July 1, 2013. The Alcoa Subsidiaries have consulted with various technical experts, including the current project manager employed by the current property owner, in-house technical experts and other technical consultants, and all agree without qualification that it is impossible to finalize 100% a remedial design plan by July 1, 2013.

1.f. Creek Restoration Design Plan Compliance Date of July 15, 2013. The comments above for the Remedial Design Plan are equally applicable to the Creek Restoration Design Plan. A compliance date of July 15, 2013 is not achievable under the best of circumstances.

1.g. Applications for Permit by July 15, 2013: Many of these permits were apparently applied for previously by the property owner's project manager but new applications will be required due to the lapse of time since the applications. Some of these applications or regulatory reviews are tied to other applications or permit approvals, i.e., the need to consult with an agency regarding protected species concerns, further delaying the process. A compliance date of July 15, 2013 is simply not realistic or achievable.

1.h. Implement Mine Remediation and Creek Restorations Designs by September 15, 2013: As with the above compliance dates, this date is not realistic or achievable. This would presume that all of the necessary permits could be obtained in two months, which is not in line with the past experience on this project, nor to our knowledge and experience, in line with the general timeline for other projects of this type in the region. Furthermore, even if the permits

could be obtained by this time, there is no benefit to starting a project that involves extensive excavation and grading at the end of the calendar time period during which such activities are allowed, as work will have to cease shortly after it begins, leaving the site in a potentially worse situation with more tailings exposed through that subsequent rainy season. It is much preferable to start in the spring, at the start of when such activities are allowed, so that the project can be completed before the next rainy season commences.

1.i. Monitoring and Maintenance Plans by August 15, 2013. The date by which Monitoring and Maintenance Plans should be revised so as to be synchronized with the other dates of this schedule, after the design is finalized and approved and before construction is complete. In addition, there is no reason to address groundwater monitoring at a site where the issues and concerns relate to surface water.

2. TIME SCHEDULE ORDER PRESCRIBING ADMINISTRATIVE CIVIL LIABILITY

2.a. Parties Responsible for Discharge. As discussed above for the Tentative Order on Amendment of CAO 98-004, the Alcoa Subsidiaries are not "Dischargers" as defined in Water Code Section 13304 and should not be named on this Order. The Regional Water Board has presented no evidence that the Alcoa Subsidiaries caused or permitted the discharge or knew of the discharge and had the ability to control it. They are listed as Dischargers merely because they were prior owners of the property, or successors in interest to prior owners of the property.

2.b. History of Non-compliance. This history of non-compliance fails to accurately reflect the roles of the various parties in complying with Order No. R2-2003-0028. As the Regional Water Board is well aware, Alcoa, Ocean and the current property owner voluntarily entered into an agreement whereby Alcoa and Ocean agreed to deposit funds into an escrow account for use towards the corrective action. Alcoa did this to avoid protracted litigation over the liability of its Alcoa Subsidiaries for the site, believing that money spent on this matter would be better served going towards site remediation than litigation. The current property owner agreed to perform the corrective action and be responsible for costs above and beyond what Alcoa and Ocean had committed to provide. Alcoa and Ocean have more than upheld their responsibilities under that agreement, depositing funds as agreed and even advancing additional funds towards the design and permitting activities than originally agreed upon. Alcoa and Ocean have now provided significant funds without seeing significant progress.

2.c. Justification for this Order. The Alcoa Subsidiaries strongly oppose a Time Schedule Order that puts them at risk of civil penalty for failing to achieve compliance with the scheduled tasks by the prescribed compliance dates. Putting aside that the Alcoa Subsidiaries are not proper parties to the Order (for reasons discussed above), they are not the current property owner and as such, have no meaningful ability even to assure compliance with the terms and deadlines of the Order. Instead, they must necessarily rely upon the actions and commitment of

the current property owner, whose track record is one of disregarding prior Board Orders and reneging on contractual commitments. It is simply unjust to levy civil penalties against the Alcoa Subsidiaries for the recalcitrant actions of the current property owner.

The Alcoa Subsidiaries could not legally access the property without the permission of the current property owner and could not obtain some of the permits without commitments regarding use of the property or mitigating measures to be taken that only the property owner can authorize.

We also note that the current property owner has previously been assessed a $200,000 civil penalty for failure to comply with previous orders and missing deadlines. Imposition of this civil penalty did not persuade the property owner to comply with the previous orders, most likely because the penalty was never paid. To the best of our knowledge, the Regional Water Board has not taken action to collect this already-imposed penalty. Before issuing a Time Schedule Order on the basis that the prior Orders have not been complied with, the Regional Water Board should take steps to complete the enforcement action it has started regarding the prior noncompliance(s). If, instead, the Regional Water Board responds to the property owner's intransigence by shifting the focus to the Alcoa Subsidiaries (and Ocean) and making all of the parties equally at risk for penalties for failing to achieve future compliance deadlines, it is only rewarding and reinforcing the current property owner's lack of cooperation.

The Tentative Order, as drafted, would present the Alcoa Subsidiaries with the choice between two unacceptable outcomes, either face the prospect of being assessed civil penalties if the current property owner fails to comply with the deadlines as they have failed to comply with prior deadlines, or attempt to wrest control of the project away from the property owner and somehow complete a project in a hostile relationship with the owner. Instead, the Time Schedule Order should be revised to address the real issue and state that the current property owner has the obligation to meet any compliance dates the Board ultimately sets.

2.d. Tasks. As noted above, these compliance dates are unreasonable and unachievable. The comments on the Tentative Order Amending CAO 98-004 are incorporated by reference in these comments on this Tentative Order.

In conclusion, the Alcoa Subsidiaries respectfully submit these comments on the two Tentative Orders and requests that they be revised prior to final adoption by the Regional Water Board. In addition, the Alcoa Subsidiaries request that the hearing of these Tentative Orders by the Regional Water Board be deferred to a later regular meeting in July 2013. The Alcoa Subsidiaries have not had sufficient opportunity to obtain the current status from the property owner's project manager or to fully explore alternative approaches to achieving the desired outcome. Providing additional time could allow identification and evaluation of alternatives that will be more achievable and still satisfy the Regional Water Board's objectives, although not on the compliance schedule set forth in the Tentative Orders.

Sincerely,

John R. Epperson

JRE

Peter Mundy

Peters & Ross

Geotechnical & Geoenvironmental

Consultants

April 5, 2013
Project No. 05436.001

Lindsay Whalin, MS, PG
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

RE: 2013 Tentative Order - Leona Heights Sulfur Mine Corrective Action
Oakland, California

Dear Ms. Whalin:

This letter provides our comment regarding the Tentative Order we discussed at the March 21, 2013 CAO Amendment Package meeting.

III. Implement Mine Remediation and Creek Restoration Designs

Please see the attached project schedule. As we discussed, Fish and Wildlife, the Board, and the City of Oakland require that all grading, especially in and around a creek, be done during the dry season (April 15 to October 15). The attached project schedule, with a March 30 start date, was intentionally developed to accomplish this goal. Once the permits and associated conditions of the permits are in place, the project team will work toward early implementation of the design as appropriate.

If you have any questions, please contact the undersigned.

Very truly yours,

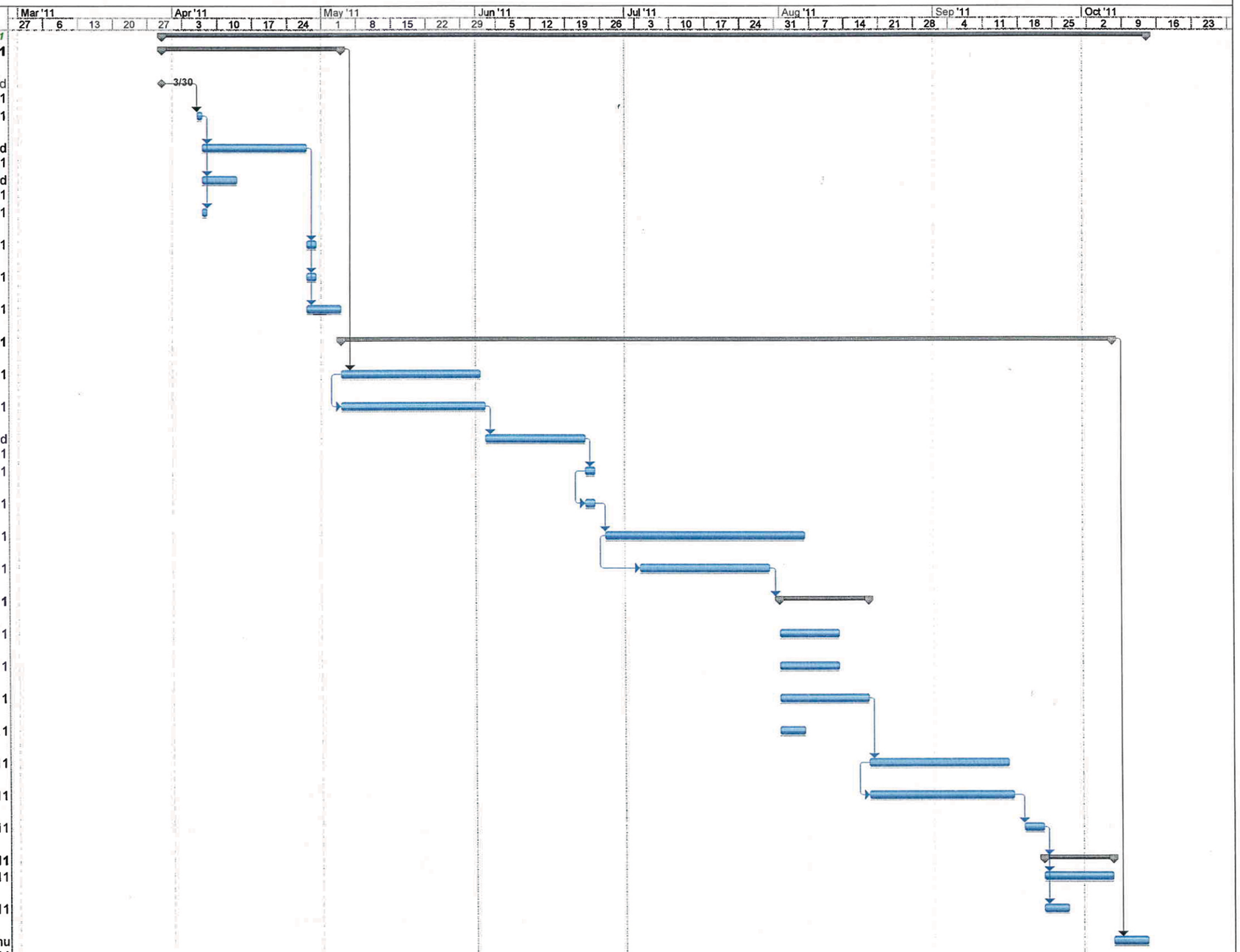
Peter K. Mundy, P.E., G.E.
G.E. No. 2217

Copy: Dr. Collin Mbanugo.

114 Hopeco Road, Pleasant Hill, CA 94523 Phone: (925) 942-3629 Fax: (925) 665-1700 Email: PetersRoss@aol.com

Environmental Restoration, Leona Heights Project Site, Oakland, CA
Project Schedule

ID	Task Name	Duration	Start	Finish
1	*Total Estimated Project Duration*	*142 days*	*Wed 3/30/11*	*Thu 10/13/11*
2	**1. Mobilization Activities**	**26 days**	**Wed 3/30/11**	**Wed 5/4/11**
3	Workplan Approval	0 days	Wed 3/30/11	Wed 3/30/11
4	Kickoff Meeting	1 day	Wed 4/6/11	Wed 4/6/11
5	Permitting and USA Notification	15 days	Thu 4/7/11	Wed 4/27/11
6	Haul Road and Staging Area Preparation	5 days	Thu 4/7/11	Wed 4/13/11
7	Signage, Fencing and Traffic Control	1 day	Thu 4/7/11	Thu 4/7/11
8	Noise Reduction Barrier Installation	2 days	Thu 4/28/11	Fri 4/29/11
9	Pre-Construction BMP Implementation	2 days	Thu 4/28/11	Fri 4/29/11
10	Tree Protection and Removal	5 days	Thu 4/28/11	Wed 5/4/11
11	**2. Site Activities**	**111 days**	**Thu 5/5/11**	**Thu 10/6/11**
12	Soil Excavation	20 days	Thu 5/5/11	Wed 6/1/11
13	Perform chemical and geophysical testing on in-place soil	21 days	Thu 5/5/11	Thu 6/2/11
14	Soil Buttressing	14 days	Fri 6/3/11	Wed 6/22/11
15	Adit Closure and Drain Protection	2 days	Thu 6/23/11	Fri 6/24/11
16	Subsurface Drainage Installation	2 days	Thu 6/23/11	Fri 6/24/11
17	Mine Tailings Grading	30 days	Mon 6/27/11	Fri 8/5/11
18	Channel Realignment	20 days	Mon 7/4/11	Fri 7/29/11
19	**Install geosynthetic materials**	**14 days**	**Mon 8/1/11**	**Thu 8/18/11**
20	geotextiles	10 days	Mon 8/1/11	Fri 8/12/11
21	geosynthetic clay liner	10 days	Mon 8/1/11	Fri 8/12/11
22	high density polyethylene membrane	14 days	Mon 8/1/11	Thu 8/18/11
23	geo-composite drainage net	5 days	Mon 8/1/11	Fri 8/5/11
24	Final Grading	20 days	Fri 8/19/11	Thu 9/15/11
25	Perform chemical and geophysical testing on imported soil	21 days	Fri 8/19/11	Fri 9/16/11
26	Place riprap	4 days	Mon 9/19/11	Thu 9/22/11
27	**Revegetation**	**10 days**	**Fri 9/23/11**	**Thu 10/6/11**
28	Import, place and compact vegetative soil layer	10 days	Fri 9/23/11	Thu 10/6/11
29	Waste Handling and Disposal	3 days	Fri 9/23/11	Tue 9/27/11
30	**3. Demobilization**	5 days	Fri 10/7/11	Thu 10/13/11



Project: Leona Heights-20100921
Date: Tue 9/21/10

Task | Progress | Summary | External Tasks | Deadline
Split | Milestone | Project Summary | External Milestone

Bolded Green and Highlighted Items: Upcoming Events

California Department of Fish and Wildlife

From: Grefsrud, Marcia@Wildlife
To: Whalin, Lindsay@Waterboards
Subject: RE: CDFW support for Leona CAO amendment
Date: Friday, April 05, 2013 4:39:04 PM

Hi Lindsay,
CDFW does not have any issues over the amendment, but is concerned about CEQA and the requirement for the Dischargers to obtain an Incidental Take Permit based on a categorical exemption.

Marcia

From: Lindsay@Waterboards Whalin [mailto:Lindsay.Whalin@waterboards.ca.gov]
Sent: Friday, April 05, 2013 3:55 PM
To: Grefsrud, Marcia@Wildlife
Subject: CDFW support for Leona CAO amendment

Marcia,
I received your March 28, 2013 letter, providing comments on the Tentative Amendment of the 1998 Cleanup and Abatement Order for the Leona Heights Sulfur Mine. We have discussed your support of the amendment over the phone, but it would be helpful to have on record. Please confirm, by replying to this email, that California Department of Fish and Wildlife supports the amendment.

Best,
Lindsay

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Lindsay Whalin, MS, PG
Engineering Geologist
San Francisco Bay Water Board
(510) 622-2363
1515 Clay St., Ste. 1400
Oakland, Ca 94612

State of California
Department of Fish and Wildlife

Flex your POWER

Memorandum

Date: March 28, 2013

To: Ms. Lindsay Whalen
San Francisco Bay Regional
Water Quality Control Board
1515 Clay Street, Suite 400
Oakland, CA 94612

From: Scott Wilson, Acting Regional Manager
California Department of Fish and Wildlife – Bay Delta Region, 7329 Silverado Trail, Napa, California 94558

Subject: Tentative Order Amending the Cleanup and Abatement Order (CAO) and Instituting a Time Schedule for Compliance for Leona Heights Sulfur Mine, City of Oakland, Alameda County

California Department of Fish and Wildlife (CDFW) personnel have reviewed the Tentative Order to Amend the Cleanup and Abatement Order (No. 98-004) and Rescission of Waste Discharge Requirements (No. 92-105) for the property located at the end of McDonnell Avenue in the City of Oakland, Alameda County. The amendment modifies compliance dates, clarifies cleanup requirements, incorporates requirements of creek restoration, names additional dischargers, and rescinds previous Waste Discharge requirements.

Item 4 of the Tentative Order states the action is "Categorically Exempt from provisions of the California Environmental Quality Act (CEQA). (California Code of Regulations, Title 14, Section 15321). Please be advised that a categorical exemption does not provide an environmental analysis of potential impacts necessary to determine if there will be any significant environmental impacts.

The Tentative Order Section II(h) requires the dischargers to submit applications to CDFW for a Lake and Streambed Alteration Agreement (LSAA) and for an Incidental Take Permit (ITP). CDFW must comply with CEQA before issuing an LSAA or an ITP. If there are impacts to state-listed species as a result of project activities then an appropriate CEQA document should be produced which includes mitigation measures to reduce impacts to Alameda whipsnake.

The Leona Heights Sulfur Mine is located in an area that is known to provide habitat for Alameda whipsnake (*Masticophis lateralis euryxanthus*) a state and federally listed threatened species. If project related activities could cause take (as defined in Fish and Game Code Section 86) of a listed species, the project should not be considered exempt under CEQA since this would be a potential significant environmental impact that would require mitigation.

If you have any questions, please contact Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812; or Mr. Craig Weightman, Senior Environmental Scientist, at (707) 944-5577.

US Army Corps of Engineers

From: Brown, Gregory G SPN
To: Whalin, Lindsay@Waterboards
Subject: RE: Draft Changes to CAO Amendment (UNCLASSIFIED)
Date: Monday, April 08, 2013 2:21:53 PM

Classification: UNCLASSIFIED
Caveats: NONE

Lindsay,

The amendment language looks good -- Corps requirements are accurately stated.

Greg Brown
U.S. Army Corps of Engineers
1455 Market St
San Francisco, CA 94103
415-503-6791

From: Whalin, Lindsay@Waterboards [mailto:Lindsay.Whalin@waterboards.ca.gov]
Sent: Friday, April 05, 2013 8:45 AM
To: Brown, Gregory G SPN
Subject: FW: Draft Changes to CAO Amendment
Importance: High

Greg,
Today is the close of the comment period. Can you please confirm the changes to the Order are as we discussed (below)? Our Board will be interested to know if the Corps supports the amendment.
Thanks.
Lindsay

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Lindsay Whalin, MS, PG
Engineering Geologist
San Francisco Bay Water Board
(510) 622-2363
1515 Clay St., Ste. 1400
Oakland, Ca 94612

From: Whalin, Lindsay@Waterboards
Sent: Tuesday, March 19, 2013 4:02 PM
To: 'Gregory.G.Brown@usace.army.mil'
Subject: Draft Changes to CAO Amendment

Greg,
As we discussed over the phone, in response to comments from Marcia, Brian, and Rebecca (CDFW, WB, and the City, respectively); we have drafted changes to the Applications for Permits language in the CAO amendment. I would appreciate if you could take a minute to please confirm the following is accurate and reflects the changes we discussed:

> **Applications for Permits:** The Dischargers shall submit complete and acceptable applications, including all supporting documents and any associated fees, as required for all permits and agency agreements that are required to implement the mine remediation and creek restoration projects. This includes, *but may not be limited to*:
>
> a. A Creek Protection Permit from the City of Oakland;
> b. Encroachment, Grading, and/or Building Permits from the City of Oakland;
> c. A Tree Removal/Protection Plan to the City of Oakland;
> d. A technical memo in support of a CEQA determination to City of Oakland (the lead agency) and other responsible agencies, including the biological justification;
> e. A Section 404 Permit from the US Army Corps of Engineers;
> f. Biological information and technical documents to the US Army Corp of Engineers, to support consultation with US Fish and Wildlife Service regarding the Endangered Species Act;
> g. A Section 401 Water Quality Certification from the San Francisco Bay Water Board's Watershed Management Division; and
> h. A Lake and Streambed Alteration Agreement and the California Department of Fish and Wildlife (formerly Fish and Game), and if appropriate, an Incidental Take Permit.
>
> If an agency requests additional information or documentation, the Dischargers must fully respond to the request within the time allotted by the agency to be in compliance.
>
> COMPLIANCE DATE: July 15, 2013

Thanks so much!

Best,

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Lindsay Whalin, MS, PG
Engineering Geologist
San Francisco Bay Water Board
(510) 622-2363
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Oakland, Ca 94612

Water Board's Advisory Team

From: Wolfe, Bruce@Waterboards
Sent: Wednesday, April 10, 2013 5:31 PM
To: Whyte, Dyan@Waterboards
Cc: Won, Yuri@Waterboards
Subject: Advisory team recommended changes in response to the posting of the Leona Mine tentative orders

On behalf of the Board's advisory team for the Leona Mine tentative orders that have been posted for public comment and scheduled for hearing at the May 8 Board meeting, I recommend that the prosecution team do the following:

- The tentative cleanup and abatement order amendment's title and "hereby ordered" section should recognize that both orders nos. 98-004 and R2-2003-0028 are proposed for amendment, not just 98-004. The misspelling of "recission" in the title should also be fixed.
- R2-2003-0028 is not currently posted on the Board's website. A PDF copy of it should be submitted for posting.
- The tentative cleanup and abatement order defines the SF Bay Regional Water Quality Control Board as "the Water Board" but then proceeds to use both "Water Board", "Regional Board", and "San Francisco Bay Water Board" to refer to the SF Bay Regional Water Quality Control Board. The tentative order should be revised to consistently use one term. Similarly, the tentative time schedule order defines "the Regional Water Board" to refer to the SF Bay Regional Water Quality Control Board, but then proceeds to use both that term and "the Water Board." I recommend that both orders use the same term consistently.
- The tentative cleanup and abatement order uses both "the Discharger" and "the Dischargers", yet these terms are not defined. I recommend that Finding 2.d) be expanded to include a sentence listing all parties that are collectively defined by the orders as the Dischargers and that the order section, in amending Finding 8 of 98-004, clearly state that Ocean Industries is now considered one of the Dischargers.
- Both tentative orders use other terms inconsistently and formatting/punctuation that is not consistent with our Style Guide. I recommend that both tentative orders be fully reviewed before they are submitted for Board consideration. I can point out some of these inconsistencies if that assists in the review.

Thanks!