



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Acting Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
<http://www.waterboards.ca.gov/sanfranciscobay>

Edmund G. Brown, Jr.
Governor

*Certified Mail No.
Return Receipt Requested*

July 1, 2011
Geotracker ID No. 01S0645 (LMM)

Union Oil Company of California
c/o Chevron Environmental Management Company
Superfund & Property Management Business Unit
Attn.: Mr. Michael Mailloux
6001 Bollinger Canyon Road, K-2052
San Ramon, CA 94583
Also sent via email to: MMailoux@chevron.com

Cert Nos.
7009-1410-0002-4300-7583
7009-1410-0002-4300-7590
7009-1410-0002-4300-7606
7009-1410-0002-4300-7613

Atlantic Richfield Company, c/o BP
Attn.: Mr. Jon B. Armstrong
Contracts Manager, Remediation Management
WL1, 28.160D
Westlake Park Boulevard
Houston, TX 77079
Also sent via email to: Jon.Armstrong@bp.com

**Subject: Administrative Civil Liability Complaint No. R2-2011-0043
for Failure to Timely Submit an Acceptable Remedial Action Plan, 401 and 411
High Street, Oakland, California, Alameda County**

Dear Sirs:

Enclosed is Administrative Civil Liability Complaint No. R2-2011-0043 (Complaint), which proposes to assess an administrative civil liability (ACL) against Union Oil Company and Atlantic Richfield Company (the Dischargers) in the amount of \$154,307. This proposed liability is based on allegations that the Dischargers failed to timely submit an acceptable draft Remedial Action Plan (DRAP) acceptable to the Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board") in violation of Provision C.3.j of Site Cleanup Requirements (SCR) Order No. 90-133, as amended by SCR Order No. R2-2006-0084.. The Dischargers submitted an acceptable DRAP more than two years late. The administrative civil liability is imposed under the authority of CWC Section 13350(e)(1).

The Dischargers can respond to the Complaint by appearing before the Regional Water Board at a public hearing to contest the matter or by signing a waiver to pursue other options.

1. The Complaint can be contested before the Regional Water Board at the following meeting:

Date/Time: September 14, 2011, commencing at 9:00 a.m.
Place: First Floor Auditorium, Elihu Harris State Building

1515 Clay Street, Oakland

At this meeting, the Regional Water Board will consider whether to impose administrative civil liability (as proposed in the Complaint or for a different amount), decline the administrative civil liability, or refer the matter to the Attorney General for judicial enforcement at a public hearing.

Please refer to the enclosed Public Notice and Hearing Procedure for the Complaint and the ACL Fact Sheet for additional information about the Regional Water Board's process, hearing procedure, and important deadlines (for submitting comments or evidence, obtaining designated party status, waiving or postponing a hearing, making objections or rebuttals to evidence, etc.).

2. The public hearing that has been scheduled (above) can be waived to pursue one of the following options:
 - a. Pay the liability as proposed in the Complaint;
 - b. Request more time and postpone the date of the public hearing; or
 - c. Promptly engage in settlement discussions with the Regional Water Board Prosecution Team during which the Dischargers can raise settlement options, including supplemental environmental projects (SEPs) and enhanced compliance projects that meet the State Water Resources Control Board's requirements for such projects.

The enclosed Waiver describes these options in further detail. To pursue one of these options, **the Waiver must be signed, dated, and received by Sandia Potter of the Regional Water Board Advisory Team with a copy to the Prosecution Team contact listed below no later than 5:00 p.m. on August 1, 2011. It is at the discretion of the Regional Water Board Advisory Team to either accept or deny a waiver request.**

For more information about SEPs and the project selection and proposal approval process, or for assistance with selecting a candidate project for an SEP, please contact Athena Honore of the San Francisco Estuary Partnership (SFEP) at (510) 622-2325 or via email to ahonore@waterboards.ca.gov. To see examples of current and completed projects, visit SFEP's website: www.sfestuary.org/projects/detail.php?projectID=38.

If you wish to communicate directly with the Prosecution Team regarding the Complaint, please contact Laurent Meillier at (510) 622-3277 or via email to LMeillier@waterboards.ca.gov. Please refer to the letterhead for our mailing address and fax number.

Sincerely,

Dyan C. Whyte
Assistant Executive Officer

Enclosures: ACL Complaint No. R2-2011-0043
Waiver Form for ACL Complaint No. R2-2011-0043
Public Notice and Hearing Procedure for ACL Complaint No. R2-2011-0043
Administrative Civil Liability Fact Sheet

Cc (via certified mail):

Union Oil Company of California
Attn. The Prentice-Hall Corporation System, Inc.
Agent for Service of Process
2730 Gateway Oaks Dr., Suite 100
Sacramento, CA 95833

Atlantic Richfield Company
Attn. C T Corporation System
Agent for Service of Process
818 W. Seventh St.
Los Angeles, CA 90017

Cc (all copies via email):

Regional Water Board Lyris Enforcement email list
Regional Water Board Advisory Team
Regional Water Board Prosecution Team

Richard Koch 411 High Street Annuity
Trust and Nancy Koch 411 High Street
Annuity Trust
Attn: Richard Koch
1350 Bayshore Highway, Suite 600
Burlingame, CA 94010
dkoch@bbkcapitalcorp.com

Jon A. Rosso
Bureau Veritas North America, Inc.
2430 Camino Ramon, Suite 122
San Ramon, CA 94583
Jon.Rosso@us.bureauveritas.com

Brad Koch
Ridge Reef Properties, Inc.
Four Embarcadero Center, Suite 3100
San Francisco, CA 94111
BKoch@ridgereefproperties.com

Jeff Hamerling
Archer Norris
2033 North Main Street, Suite 800
Walnut Creek, CA 94596
JHamerling@archernorris.com

Hollis Phillips
Arcadis U.S., Inc.
100 Montgomery St., Suite 300
San Francisco, CA 94104
Hollis.Phillips@arcadis-us.com

Cc (cont., via email):

Nathan Block
BP HSSE Legal

Union Oil Company of California
Atlantic Richfield Company
ACL Complaint No. R2-2011-0043

Page 4 of 4

WL1, 16.163
501 Westlake Park Boulevard
Houston, TX 77079
Nathan.Block@bp.com

Robert P. Doty
Cox, Castle, & Nicholson
555 California St., 10th Floor
San Francisco, CA 94104
rdoty@coxcastle.com

Oakland High Street Partners, LP
Attn: Brian R. Caster and Tom Kearney
4607 Mission Gorge Place
San Diego, CA 92120
brcaster@castergrp.com
tkearney@castergrp.com

Robert Horwath
URS Corporation
1333 Broadway, Suite 800
Oakland, CA 94612
Robert_Horwath@URSCorp.com

Donna Drogos
Alameda County Environmental Health
1131 Harbor Bay Parkway
Alameda, CA 94502
Donna.Drogos@acgov.org

Leroy Griffin
Oakland City Fire Department
Fire Prevention Bureau,
Hazardous Materials Unit
250 Frank H. Ogawa Plaza #3341
Oakland, CA 94612
LGriffin@oaklandnet.com



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Acting Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
510.622.2300 • Fax 510.622.2460
www.waterboards.ca.gov/sanfranciscobay

Edmund G. Brown, Jr.
Governor

HEARING PROCEDURE FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R2-2011-0043
ISSUED TO
UNION OIL COMPANY OF CALIFORNIA
ATLANTIC RICHFIELD COMPANY
401 HIGH STREET, OAKLAND
411 HIGH STREET OAKLAND
ALAMEDA COUNTY

HEARING SCHEDULED FOR SEPTEMBER 14, 2011

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) has issued an Administrative Civil Liability Complaint (Complaint) pursuant to California Water Code section 13323 against Union Oil Company of California and Atlantic Richfield Company. (collectively Dischargers) alleging that they have violated Site Cleanup Requirements (SCR) Order No. 90-133, as amended by SCR Order No. R2-2006-0084 by failing to timely submit a draft Remedial Action Plan (DRAP) pursuant to Provision C.3.j. The SCR Order No. 90-133, as amended by SCR Order No. R2-2006-0084, is a cleanup and abatement order issued pursuant to California Water Code Section 13304 that required the Dischargers to submit a DRAP, acceptable to the Executive Officer, by October 17, 2007, a deadline that was later extended to May 15, 2008. The Dischargers submitted an acceptable DRAP more than two years after the May 15, 2008 deadline. The Complaint proposes that a civil liability in the amount of \$154,307 be imposed as authorized by Water Code section 13350(e)(1).

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the Complaint. At the hearing, the Regional Water Board will consider whether to issue an administrative civil liability (ACL) order assessing the liability proposed in the Complaint, or a higher or lower amount, reject the proposed liability, or refer the matter to the Attorney General for judicial enforcement. An agenda for the Regional Water Board meeting where the hearing will be held will be issued at least ten days before the meeting and posted on the Regional Water Board's web site (<http://www.waterboards.ca.gov/sanfranciscobay/>).

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been pre-approved by the Regional Water Board Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Water Board may be found at Title 23 of the California Code of Regulations (CCR), Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to the hearing.

The procedures and deadlines herein may be amended by the Advisory Team at its discretion. **Any objections to this Hearing Procedure must be received by the Sandia Potter by July 11, 2011, or they will be waived.**

Hearing Participants

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons generally may not submit evidence, cross-examine witnesses, or be subject to cross-examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Water Board, its staff or others, at the discretion of the Regional Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) The Regional Water Board Prosecution Team
- (2) Union Oil Company of California and Atlantic Richfield Company., collectively referred to as the Dischargers

Union Oil Company of California
c/o Chevron Environmental Management Company
Superfund & Property Management Business Unit
Attn.: Mr. Michael Mailloux
6001 Bollinger Canyon Road, K-2052
San Ramon, CA 94583
MMailloux@chevron.com

Atlantic Richfield Company
c/o BP
Attn.: Mr. Jon B. Armstrong
Contracts Manager, Remediation Management
WL1, 28.160D
Westlake Park Boulevard
Houston, TX 77079
Jon.Armstrong@bp.com

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party (who have not been designated as parties above) must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on July 11, 2011 to Sandia Potter. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on July 18, 2011. The parties will be notified by 5 p.m. on July 21, 2011 in writing whether the request has been granted or denied.

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Regional Water Board (Prosecution Team) have been separated from those who will provide advice to the Regional Water Board (Advisory Team). Members of the Advisory Team and the Prosecution Team are:

Advisory Team:

Bruce Wolfe, Executive Officer, BWolfe@waterboards.ca.gov, 510-622-2314

Yuri Won, Senior Staff Counsel, YWon@waterboards.ca.gov, 510-2491

Sandia Potter, Technical Staff, SPpotter@waterboards.ca.gov, 510-622-2426

Address: California Regional Water Board, San Francisco Bay Region, 1515 Clay Street,
Suite 1400, Oakland, CA 94612

Primary Contact: Sandia Potter

Prosecution Team:

Dyan C Whyte, Assistant Executive Officer, DWhyte@waterboards.ca.gov, 510-622-2441

Ann Carroll, Staff Counsel, ACarroll@waterboards.ca.gov, 916-322-3227

Terry Seward, Division Chief, TSeward@waterboards.ca.gov, 510-622-2416

Keith Lichten, Enforcement Section Leader, KLichten@waterboards.ca.gov, 510-622-2380

Laurent Meillier, Technical Staff, LMeillier@waterboards.ca.gov, 510-622-3277

Address: California Regional Water Board, San Francisco Bay Region, 1515 Clay Street,
Suite 1400, California 94612

Primary Contact: Laurent Meillier

Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Water Board in other, unrelated matters, but they are not advising the Regional Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Regional Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 30 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than August 25, 2011, by 5 p.m. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Regional Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the designated party would like the Regional Water Board to consider. Evidence and exhibits already in the public files of the Regional Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of designated party members, title and/or role, and contact information (email addresses, addresses, and phone numbers).
4. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the qualifications of each expert witness.
5. (Dischargers only) If the Dischargers intend to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Water Board), the Dischargers should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit one hard copy and one electronic copy of the above information not already included in or with the Complaint to the Sandia Potter and other designated parties no later than August 5, 2011, by 5 p.m.

The remaining designated parties shall submit one hard copy and one electronic copy of the above information to the Sandia Potter and other designated parties no later than August 15, 2011, by 5 p.m.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit one hard copy and one electronic copy to the Sandia Potter and the other designated parties no later than August 25, 2011, by 5 p.m. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team to Sandia Potter and each designated party no later than August 1, 2011 by 5 p.m. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

For all submissions, the Advisory Team may require additional hard copies for those submittals that are either lengthy or difficult and expensive to reproduce.

In accordance with Title 23, CCR, Section 648.4, the Regional Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Regional Water Board and will not be included in the administrative record for

this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Sandia Potter and all other designated parties no later than August 25, 2011, by 5 p.m. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Water Board's office. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional Water Board Chair. Many of these documents are also posted on the Regional Water Board's web site. Although the web page is updated regularly, to assure access to the latest information, you may contact Laurent Meillier.

Questions

Questions concerning this proceeding may be addressed to Sandia Potter.

IMPORTANT DEADLINES

Note: the Regional Water Board is required to provide a hearing within 90 days of issuance of the Complaint (Water Code Section 13323). The Advisory Team will generally adhere to this schedule unless the Dischargers waive that requirement.

These deadlines apply to all cases upon issuance of the Complaint whether or not the 90-day hearing requirement is waived.

July 1, 2011	Prosecution Team issues the Complaint to Dischargers
July 11, 2011	Deadline for objections, if any, to this Hearing Procedure
July 11, 2011	Deadline for requests for designated party status
July 18, 2011	Deadline for oppositions to requests for designated party status
July 21, 2011	Advisory Team issues decision on requests for designated party status, if any
August 1, 2011	Dischargers' deadline for waiving right to hearing
August 1, 2011	Interested persons deadline for submission of written non-evidentiary policy statements

These deadlines apply to cases scheduled to be heard by the Regional Water Board (actual dates are subject to change if the 90-day hearing requirement is waived).

August 5, 2011	Prosecution Team's deadline for all information required under "Submission of Evidence and Policy Statements"
August 15, 2011	Remaining designated parties' deadline for all information required under "Submission of Evidence and Policy Statements"
August 25, 2011	All designated parties' deadline for rebuttal information, evidentiary objections, and requests for additional time, if any
September 14, 2011	Regional Water Board Hearing

WAIVER FORM
ACL COMPLAINT NO. R2-2011-0043

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Union Oil Company of California (UNOCAL) and/or Atlantic Richfield Company (ARCO)(collectively “Dischargers”) in connection with Administrative Civil Liability (ACL) Complaint No. R2-2011-0043 (hereinafter the “Complaint”). I am informed that California Water Code section 13323, subdivision (b), states that “a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing.”

OPTION 1: PAY THE CIVIL LIABILITY

(Check here if the Dischargers waive the hearing requirement and will pay the civil liability in full.)

- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board.
- b. I certify that the Dischargers will remit payment for the proposed civil liability in the full amount of **\$154,307** check that references “ACL Complaint No. R2-2011-0043” made payable to the “San Francisco Bay Regional Water Quality Control Board.” Payment must be received by the Regional Water Board by **August 1, 2011**, or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Regional Water Board Prosecution Team) during this comment period, the Regional Water Board’s Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board or its Executive Officer, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Dischargers having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

OPTION 2: REQUEST A TIME EXTENSION

(Check here if the Dischargers waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)

I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board within 90 days after service of the Complaint. By checking this box, the Dischargers request that the Regional Water Board delay the hearing and/or hearing deadlines so that the Dischargers may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board Advisory Team to approve the extension.

WAIVER FORM
ACL COMPLAINT NO. R2-2011-0043

OPTION 3: ENGAGE IN SETTLEMENT DISCUSSIONS

(Check here if the Dischargers waive the 90-day hearing requirement in order to engage in settlement discussions.)

I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Dischargers will contact the Regional Water Board Prosecution Team within five business days of submittal of this waiver to request that the Prosecution Team engage in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Dischargers request that the Regional Water Board Advisory Team delay the hearing so that the Dischargers and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1." In these discussions, the Dischargers can raise settlement options, including supplemental environmental projects and enhanced compliance projects that meet the State Water Resources Control Board's requirements for such projects, see:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf and
[http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.p
df.](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf)

(Print Name and Title)

(Signature)

(Date)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

NOTICE OF PENDING ENFORCEMENT ACTION
UNION OIL COMPANY OF CALIFORNIA
ATLANTIC RICHFIELD COMPANY

The California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) Prosecution Team issued a Complaint for Administrative Civil Liability (ACL) on July 1, 2011. The Complaint alleges that Union Oil Company of California and Atlantic Richfield Company (collectively Dischargers) violated Site Cleanup Requirements (SCR) Order No. 90-133, as amended by SCR Order No. R2-2006-0084 (Order) by not timely submitting a draft Remedial Action Plan (DRAP) acceptable to the Water Board's Executive Officer pursuant to Order Provision C.3.j. The Order is a cleanup and abatement order issued pursuant to California Water Code Section 13304 that required the Dischargers to submit a DRAP, acceptable to the Executive Officer, by October 17, 2007, a deadline later extended to May 15, 2008. The Dischargers submitted an acceptable DRAP more than two years after the May 15, 2008 deadline. The Water Board Prosecution Team proposes that the Dischargers pay \$154,307.

The Complaint and related documents, including the procedure for Water Board hearings (with deadlines for submitting comments), are available at http://www.waterboards.ca.gov/sanfranciscobay/public_notices/pending_enforcement.shtml. The Prosecution Team may amend and re-notice the Complaint in response to comments from the Discharger or the public.

The Water Board will hold a hearing on September 14, 2011, to consider adoption of the ACL and/or referral of the matter to the Attorney General, unless the Dischargers waive their right to a hearing within 90 days. The 90-day hearing requirement may be waived to pay the ACL as proposed, extend deadlines, or pursue settlement, which may include a supplemental environmental project.

For additional information and updates, please contact Laurent Meillier at (510) 622-3277 or via email to LMeillier@waterboards.ca.gov or check the Water Board website link cited above.

Administrative Civil Liability Fact Sheet

The California Regional Water Quality Control Boards (Regional Water Boards) have the authority to impose administrative civil liabilities for a variety of violations under California Water Code (CWC) Section 13323. This document generally describes the process that the Regional Water Boards follow in imposing administrative civil liabilities.

The first step is the issuance of an administrative civil liability complaint by the authorized Regional Water Board's Executive Officer or Assistant Executive Officer. The complaint describes the violations that are alleged to have been committed, the CWC provisions authorizing the imposition of liability, and the evidence that supports the allegations. **Any person who receives a complaint must respond timely as directed, or risk the Regional Water Board imposing the administrative civil liability by default.** The complaint is accompanied by a letter of transmittal, a Waiver Form, and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to complaint proceedings are the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Prosecution Team and the person or entity named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Water Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit non-evidentiary policy statements. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Water Board (composed of up to nine board members appointed by the Governor) or before a panel of three Board members. The Board members who will hear the evidence and rule on the matter act as judges. They are assisted by an Advisory Team, which provides advice on technical and legal issues. The Advisory Team is comprised of Regional Water Board staff and management. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the Prosecution Team nor the Discharger or his/her representatives are permitted to communicate with the Board members or the Advisory Team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Procedure.

Complaint Resolution options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; and (5) hearing. Each of these options is described below.

Withdrawal: may result if the Discharger provides information to the Prosecution Team that clearly demonstrates that a fundamental error exists in the information set forth in the complaint.

Withdrawal and reissuance: may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver: may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement: results when the parties negotiate a resolution of the complaint. A settlement can include such things as a payment schedule, or a partial payment and suspension of the remainder pending implementation by the Discharger of identified activities, such as making improvements beyond those already required that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project. Qualifying criteria for Compliance Projects and SEPs are contained in the State Water Resources Control Board's (State Water Board) Enforcement Policy, which is available at the State Water Board's website at: http://www.waterboards.ca.gov/plans_policies/. Settlements are generally subject to public notice and comment, and are conditioned upon approval by the Regional Water Board or its authorized staff management. Settlements are typically memorialized by the adoption of an uncontested order for administrative civil liability.

Hearing: if the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Form included in this package. The hearing will be conducted under rules set forth in the Hearing Procedure. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other designated parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide non-evidentiary policy statements, but may generally not submit evidence or testimony. At the end of the presentations by the parties, the Board members will deliberate to decide the outcome. The Regional Water Board may issue an order requiring payment of the full amount recommended in the complaint, may issue an order requiring payment of a reduced amount, may order the payment of a higher amount, decide not to impose an assessment, or may refer the matter to the Attorney General's Office for further enforcement.

Factors that must be considered by the Regional Water Board

Except for Mandatory Minimum Penalties under CWC Section 13385 (i) and (h), the Regional Water Board is required to consider several factors specified in the CWC, including nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any resulting from the violations, and other matters as justice may require (CWC sections 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Procedure) and at the hearing, the Discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay, it must provide reliable

documentation to establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules
2. Members of household, including relationship, age, employment and income
3. Current living expenses
4. Bank account statements
5. Investment statements
6. Retirement account statements
7. Life insurance policies
8. Vehicle ownership documentation
9. Real property ownership documentation
10. Credit card and line of credit statements
11. Mortgage loan statements
12. Other debt documentation

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals signed and dated
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - IRS Form 1120 for C Corporations
 - IRS Form 1120 S for S Corporations
 - IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows the IRS to provide the Regional Water Board with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns.
3. The following information can be substituted if income tax returns cannot be made available:
 - Audited Financial Statements for last three years
 - A list of major accounts receivable with names and amounts
 - A list of major accounts payable with names and amounts
 - A list of equipment acquisition cost and year purchased
 - Ownership in other companies and percent of ownership for the last three years
 - Income from other companies and amounts for the last three years

For a municipality, county, or district:

1. Type of entity:
 - City/Town/Village
 - County
 - Municipality with enterprise fund
 - Independent or publicly owned utility

2. The following 1990 and 2000 US Census data:
 - Population
 - Number of persons age 18 and above
 - Number of persons age 65 and above
 - Number of individuals below 125% of poverty level
 - Median home value
 - Median household income
3. Current or most recent estimates of:
 - Population
 - Median home value
 - Median household income
 - Market value of taxable property
 - Property tax collection rate
4. Unreserved general fund ending balance
5. Total principal and interest payments for all governmental funds
6. Total revenues for all governmental funds
7. Direct net debt
8. Overall net debt
9. General obligation debt rating
10. General obligation debt level
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding its financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public. Consequently, **please take care in submitting any documents that include private information**, such as social security numbers, home addresses, home telephone numbers, account numbers and/or drivers' license numbers. Such private information must be "redacted" (i.e., obscured or crossed out) prior to submittal of the documents.

Petitions

If the Regional Water Board issues an order requiring payment, the Discharger may challenge that order by filing a petition for review with the State Water Board pursuant to CWC Section 13320. More information on the petition process is available at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml

An order of the State Water Board resolving the petition for review of the Regional Water Board's order for administrative civil liability can be challenged by filing a petition for writ of mandate in the superior court pursuant to CWC Section 13330.

Once an order for administrative civil liability becomes final, the Regional Water Board or State Water Board may seek a judgment of the superior court under CWC Section 13328, if necessary, in order to collect payment of the administrative civil liability amount.

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

COMPLAINT NO. R2-2011-0043

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
ATLANTIC RICHFIELD COMPANY
AND
UNION OIL COMPANY OF CALIFORNIA
401 & 411 HIGH STREET
OAKLAND, ALAMEDA COUNTY

This Complaint is issued under the authority of California Water Code (CWC) section 13323 to Atlantic Richfield Company (ARCO) and Union Oil Company of California (UNOCAL) (collectively Dischargers) to assess administrative civil liability pursuant to CWC section 13350(e). The Complaint alleges that the Dischargers failed to timely submit a draft Remedial Action Plan (dRAP) acceptable to the Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region ("Regional Water Board") in violation of Provision C.3.j of Site Cleanup Requirements (SCR) Order No. 90-133, as amended by SCR Order No. R2-2006-0084.

The Assistant Executive Officer of the Regional Water Board hereby gives notice that:

1. ARCO and UNOCAL are named as primary responsible parties in SCR Order No. 90-133, and its subsequent amendments, issued pursuant to CWC section 13304 to address contamination at the properties located at 401 and 411 High Street, Oakland, Alameda County, California (Site).¹ BP, P.L.C. (BP) is the parent company of ARCO; and UNOCAL is a wholly owned subsidiary of Chevron Corporation (Chevron).
2. The Dischargers are alleged to have violated provisions of the law for which the Regional Water Board may impose administrative civil liability pursuant to CWC section 13350(e). This Complaint proposes \$154,307 in administrative civil liabilities, including \$24,000 in staff costs consistent with the State Water Resources Control Board's Enforcement Policy, against the Dischargers based on the considerations described herein.
3. Unless waived, the Regional Water Board will hold a hearing on this matter on September 14, 2011, in the Elihu M. Harris State Building, First Floor Auditorium,

¹ SCR Order No. 90-133 also named Foster Chemical Company as a primary responsible party. Foster Chemical Company was not named as a party to this Complaint based on Enforcement Staff's belief that Foster Chemical Company is no longer a viable legal entity, and that there is insufficient information to determine the true identity of Foster Chemical Company. Nothing in this Order shall be construed to limit the rights of ARCO or UNOCAL to seek contribution and/or indemnity from Foster Chemical Company and/or any other party they believe may be responsible for a share of cleanup costs and/or this administrative civil liability.

1515 Clay Street, Oakland, California, 94612. The attached Hearing Procedure provides important information on how those proceedings will be conducted and deadlines by which parties must take specific actions and/or submit information.

STATEMENT OF PROHIBITIONS AND REQUIREMENTS APPLICABLE TO DISCHARGERS

4. Pursuant to CWC section 13304, any person 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 Water 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.
5. On September 19, 1990, the Regional Water Board adopted SCR Order No. 90-133, which ordered the Dischargers, pursuant to CWC section 13304, to cleanup and abate petroleum contamination in groundwater at 301, 401, and 411 High Street in Oakland.² A true and correct copy of SCR Order No. 90-133 is attached to this Complaint as Exhibit A.
6. On December 13, 2006, the Regional Water Board adopted SCR Order No. R2-2006-0084, which amended SCR Order No. 90-133. In pertinent part, SCR Order No. R2-2006-0084 added Provision C.3.j, which required the Dischargers to submit a dRAP, acceptable to the Executive Officer of the Regional Water Board, by October 15, 2007. A true and correct copy of SCR Order No. R2-2006-0084 is attached to this Complaint as Exhibit B.
7. By letters dated October 15, 2007, the Regional Water Board extended the dRAP deadline to May 15, 2008. True and correct copies of the October 15, 2007 letters are attached to this Complaint as Exhibit C.

ALLEGED VIOLATIONS OF PROHIBITIONS AND REQUIREMENT APPLICABLE TO THE DISCHARGERS

8. The Dischargers failed to submit a dRAP, acceptable to the Executive Officer of the Regional Water Board, by May 15, 2008, in violation of Provision C.3.j of SCR Order No. 90-133, as amended.

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS:

9. On May 15, 2008, UNOCAL submitted a dRAP for the property located at 401 High Street, Oakland, California (401 dRAP), and ARCO submitted a dRAP for the property

² SCR Order No. 98-041 amended SCR Order No. 90-133 to remove the 301 High Street, Oakland, California property.

located on 411 High Street, Oakland, California, (411 dRAP) to the Regional Water Board. The Executive Officer, by and through his authorized delegee, determined both the 401 dRAP and the 411 dRAP to be unacceptable. Subsequent to that determination, Regional Water Board staff met with the Dischargers on July 29, 2008 to discuss the reasons the Executive Officer found the 401 dRAP and the 411 dRAP to be unacceptable.

10. On December 15, 2008, Regional Water Board staff issued a Notice of Violation (NOV) to the Dischargers that provided notice that the 401 dRAP and 411 dRAP submitted on May 15, 2008 were unacceptable for the following reasons:
 - a) The Dischargers' position that the Site's groundwater is non-potable is not defensible, given the groundwater's drinking water beneficial use designation in the Basin Plan.
 - b) The Dischargers did not include benzene as a chemical of concern (COC) in groundwater. Staff found there was no justification for the exclusion of benzene based on an incomplete exposure pathway, when the listing of other COCs clearly indicated that this pathway was complete.
 - c) The risk assessment modeling factor for benzene did not appropriately reflect site conditions. The Dischargers' choice of soil vapor extraction coupled with air sparging did not consider the potential impact of the large volume of air (required for its effectiveness) on the lateral and vertical migration of contamination in groundwater.

The Dischargers objected to the December 15, 2008, NOV via a letter dated February 9, 2009.

11. On June 16, 2009, in another letter to the Dischargers, Regional Water Board staff affirmed that the 401 dRAP and 411 dRAP submitted on May 15, 2008 remained unacceptable to the Executive Officer. The 401 dRAP and 411 dRAP did not reflect the drinking water beneficial use designation at the Site, and the proposed cleanup goals did not factor in estuarine ecological receptors that may be impacted by contaminated groundwater discharging from the Site. Further, given the presence of high contaminant concentrations at the Site and ongoing offsite contaminant migration, Staff found that long-term monitoring/monitored natural attenuation was not a viable option when more aggressive remedial actions could be feasibly implemented. The Dischargers submitted a revised 401 dRAP and a revised 411 dRAP for the Site on January 8, 2010.
12. On August 19, 2010, ARCO submitted to the Regional Water Board a dRAP acceptable to the Executive Officer for the property located on 411 High Street, Oakland, California. On October 28, 2010, UNOCAL submitted to the Regional Water Board a dRAP acceptable to the Executive Officer for the property located at 401 High Street, Oakland, California—896 days late.
13. Paragraphs 9 through 12 above describe the formal communications between the Dischargers and Regional Water Board Staff. From May 15, 2008, through October 28, 2010, Regional Water Board staff also had numerous informal communications with the Dischargers by means of meetings, phone calls, and email exchanges to explain and clarify the bases for the unacceptability of the May 15, 2008 and January 8, 2010, 401

and 411 dRAPs. It is estimated that Staff incurred more than 368 hours of staff time attempting to obtain a dRAP for the Site, acceptable to the Executive Officer, from the Dischargers.

WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED DUE TO NONCOMPLIANCE WITH PROVISION C.3.j OF SCR ORDER NO. 90-133, AS AMENDED BY SCR ORDER NO. R2-2006-0084.

14. Pursuant to CWC section 13350(a)(1), any person who violates a cleanup and abatement order issued by the Regional Water Board, shall be civilly liable under CWC section 13350(e). CWC section 13350(e)(1) states that civil liability may be imposed administratively by the Regional Water Board in an amount not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

15. On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Officer of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13327. The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The specific required factors in CWC section 13327 are the nature, circumstances, extent, and gravity of the violations or violations, whether the discharge is susceptible to cleanup or abatement, and the degree of toxicity of the discharge. With respect to the violator, the required factors are the ability to pay, the effect on the violator's ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of the violation, the degree of culpability, economic benefit or saving, if any, resulting from the violation, and other matters that justice may require.

The Enforcement Policy sets forth an approach to determine liability using a methodology that considers the following: the potential harm to beneficial uses; the physical, chemical, biological or thermal characteristics of the discharge; the discharge's susceptibility to cleanup; the violation's deviation from requirements; the Discharger's culpability; cleanup and the Discharger's cooperation; the history of violations; the Discharger's ability to pay; other factors as justice may require; and economic benefit from the avoidance or delay of implementing requirements. These factors address the statute-required factors and are used to calculate penalties consistent with both the CWC and the Enforcement Policy.

16. Regional Water Board Enforcement staff used the Enforcement Policy methodology to calculate the proposed administrative civil liability, which is described in detail in Attachment D. Attachment D is incorporated by this reference as if fully set forth herein.

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY THAT MAY BE IMPOSED

17. Because the Dischargers failed to submit a sufficient dRAP for the Site until 896 days after the deadline for doing so, pursuant to CWC section 13350(e)(1), the total maximum administrative civil liability that may be imposed for the violation alleged in this Complaint is \$4,480,000.

PROPOSED CIVIL LIABILITY

18. Based on the consideration of the above facts and the Enforcement Policy methodology, the Assistant Executive Officer of the Regional Water Board proposes that an administrative civil liability be imposed in the amount of \$154,307. Of this amount, \$130,307 is for the estimated economic benefit plus 10 percent the Dischargers received and \$24,000 is for recovery of staff costs. The Enforcement Policy requires that the proposed liability amount be, at a minimum, 10 percent higher than the economic benefit received as a result of the alleged violations. Therefore, it is appropriate to propose the "minimum" liability required by the Enforcement Policy plus staff costs.
19. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including, but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this complaint through completion of the hearing.
20. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with section 15321 of Title 14, California Code of Regulations.

Dyan C. Whyte
Assistant Executive Officer

July 1, 2011
Date

Attachment A: SCR Order No. 90-133
Attachment B: SCR Order No. R2-2006-0084
Attachment C: October 15, 2007 letters
Attachment D: Specific Factors Considered to Determine Administrative Civil Liability

ATTACHMENT A

SITE CLEANUP REQUIREMENTS ORDER NO. 90-133

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. 90-133

SITE CLEANUP REQUIREMENTS FOR:

UNOCAL COMPANY

ARCO CORPORATION

FOSTER CHEMICAL COMPANY

THE KOCH TRUST

For Properties at:
301 401, AND 411 HIGH STREET AND 3675 ALAMEDA AVENUE,
OAKLAND, ALAMEDA COUNTY

FINDINGS

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter called the Board) finds that:

1. SITE DESCRIPTION Unocal Company, Unocal Chemicals Division, Arco Corporation (Arco); Foster Chemical Company; and the Koch Trust hereinafter referred to as the Dischargers own, owned or operated businesses at High Street (the Site) in Oakland, Alameda County. The Site regulated by this Order is located adjacent to the Oakland Inner Harbor which is contiguous with the San Francisco Bay (See Site Map, Appendix B). Unocal owns and currently operates a bulk chemical distribution facility at 401 High Street. Arco owned property at 301, 401 and 411 High Street where they operated a bulk petroleum facility. Arco and Unocal held a joint interest in American Mineral Spirits Company, Western (AMSCO-W) which also operated a bulk chemical plant at the Site. Arco leased all of the 401 and a portion of the 411 property to AMSCO-W. AMSCO-W in-turn leased a portion of its property to Foster Chemical Company which operated a solvent storage and distribution facility.

The property at 301 and 411 High Street is currently owned by the Koch Trust (Koch) and occupied by Big B Lumberteria, a retail lumber business. North of the High Street properties is a property owned by The Learner Company, located at 3675 Alameda Avenue. Since 1950, Learner has owned and operated a scrap metal operation at this

location. In recent years the Learner property has been vacant and awaiting redevelopment. A 1,000 gallon underground diesel tank was removed from the eastern part of the property in 1988. The Learner property currently has no known storage tanks.

The Unocal property has eight above-ground storage tanks and 46 below-ground storage tanks which hold a variety of petroleum-derived products. Product is off-loaded from truck trailers and rail cars on-site using flexible hoses and pumps.

During ownership and occupancy by ARCO's predecessor, Richfield, four large above-ground and eight underground tanks were located on the 411 High Street property. Prior to Richfield's sale of the property to William Belfrey, the above-ground tanks were removed and the underground tanks were abandoned without proper closure (tanks have not been closed in accordance with Subchapter 16, Title 23, California Code of Regulations). Belfrey then immediately sold the 411 High Street property to the Koch Trust.

2. REGULATORY STATUS Unocal is a discharger because of their ownership and operation of the chemical handling and storage facility at 401 High Street and their former involvement with operations at the 411 High Street property where releases of pollutants have occurred. Unocal knew or should have known of the existence of the discharges and they had ability to prevent the discharges. Pollutants discharged have affected the groundwater beneath the property at the Site and toluene has migrated off the 401 High Street (Unocal) property onto the Learner property. On April 20, 1988, Unocal was issued NPDES permit No. 88-067 permitting the discharge of treated groundwater from the on-site shallow zone at 401 High Street into the Oakland Inner Harbor. In addition to 401, at one time Unocal, then Union Oil Company, through its subsidiary American Mineral Spirits Company, Western (AMSCO-W), leased portions of the 411 High Street property where releases of pollutants are believed to have occurred.

Arco is a Discharger because of its past ownership of, and involvement in, all the parcels on High Street which are the subject of this Order. Arco knew or should have known of the existence of the discharge(s) and had some measure of control over the property. Arco has also been named as a discharger in this Order because they operated and were a party to chemical handling operations at the Site. Specifically, Arco, as Richfield Oil Company, operated a bulk petroleum and chemical handling and storage facility at 301 and 411 High Street. Arco owned the 411 property during

Foster Chemical's tenancy of that property and there is evidence that during that time, chemical pollutants were discharged to the soil and groundwater and that those chemicals eventually migrated onto the Learner Property.

Arco has also been named because they were half-owners of AMSCO-W which operated a bulk chemical plant at 401 High Street. AMSCO-W leased a portion of the 411 property from Arco; thus Arco may have had some operational responsibilities at the Site. Releases of pollutants are believed to have occurred at this location on the 411 property.

Provisions of this Order (Section C. 3.) are applied to both Unocal and Arco in cases where both companies were involved in ownership or operations of the northern portion of the 411 High Street property.

Foster Chemical Company is a discharger because of their occupancy at the 411 high Street parcel where they operated a chemical storage and handling facility where discharges are believed to have occurred.

Koch Investments Company is a discharger with secondary liability because, as the current owner, they are ultimately liable for existing pollution on, and emanating from, the 301 and 411 High Street property. There is currently no evidence that Koch itself discharged pollutants at their property. Koch would be required to meet the Specifications, Prohibitions and Provisions of this Order should Arco fail to act in accord with this Order. In addition sections of this Order may be modified and reissued if Koch fails to grant reasonable site access for investigation and remediation of pollution at the Site.

Mr. Frank Peckett has not been named as a discharger in this Order. If subsequent investigations disclose that the discharge of waste was caused or permitted by Mr. Peckett, then the Board will consider amending this Order to include him as a discharger.

The Learner Company has not been named as a Discharger at this time because, given currently available sampling data, groundwater pollution on their property does not appear to have originated there, but instead has migrated on-site from the 401 and 411 properties. It is recognized that timely compliance with some provisions of this Order depend on reasonable site access being granted to the Learner property. If subsequent investigations disclose that the discharge of waste did originate on the Learner property, or if Learner fails to grant reasonable site access for soil and groundwater investigation and remediation, then the

Board will consider amending this Order to include Learner as a discharger.

3. SITE HISTORY The Koch Trust has owned property at 301 High Street and 411 High Street since 1975. The Koch property (as managed by the Koch Investments Company) is currently occupied by Big B Lumberteria which is leasing the property and operating a retail lumber business.

ARCO: Arco's predecessor Richfield Oil Company owned the 301, 401 and 411 properties from 1946 through 1975. From 1946 through 1967 Richfield operated a bulk petroleum distribution facility on the 411 property. In addition, Richfield was a 50% owner in American Mineral Spirits Company-Western (AMSCO-W) from 1954 through 1969. AMSCO-W leased the 401 property from Richfield where it operated a bulk chemical facility. In 1969 Richfield sold their 50% interest in AMSCO-W to Unocal. From 1946 through 1975, Richfield also occupied the 301 property although there exact usage of the parcel is not known at this time. In 1975 Arco sold both the 301 and 411 parcels to Mr. William Balfrey who immediately sold them to the Koch Trust.

UNOCAL: In 1965 Union Oil Company bought Pure Oil Company which held 50% interest in AMSCO-W; thus Union became a 50% partner with Richfield of AMSCO-W. Two years later, in 1967 AMSCO-W negotiated 68 foot wide strip of land along the northern end of the 411 property; thus AMSCO-W became lease holder of all of the 401 and a portion of the 411 property. In 1969 Union bought Richfield's share of AMSCO-W and became sole owner.

AMSCO-W: American Mineral Spirits Company, Western (AMSCO-W) was a corporation formed when AMSCO, a nation-wide chemical distributor, and Richfield formed a joint venture. AMSCO-Western was lease holder at the Site from 1955 until 1975. In 1961 AMSCO, parent corporation of AMSCO-W, was bought by Pure Oil Company which was subsequently purchased by Union Oil in 1965; thus Union was a half-owner with Richfield. In 1969 Union bought Richfield's half of the AMSCO-W stock and became sole owner and shortly thereafter AMSCO changed its name to the Union Chemicals Division of Unocal. In addition to leasing the 401 property from Richfield, from 1967 until 1975 AMSCO-W leased the northern portion of the 411 property from Richfield and in-turn subleased it to Earl Foster and Frank Peckett, dba Foster Chemical. In 1975 the leases for 401 and the 411 terminated and control of the property, including the buildings constructed for Foster Chemical at 411 High Street reverted to Arco.

Foster Chemical Company: Foster Chemical Company is a

discharger because it subleased the northern portion of the 411 property from AMSCO-W where discharges of pollutants to soil and groundwater are believed to have occurred. From 1967 through 1975 AMSCO-W leased the northern portion of the property from Richfield who was the owner of the property. AMSCO-W in-turn subleased that part of the 411 property first to Earl Foster and then, in 1972, to Frank Peckett, dba Foster Chemical Company.

Mr. Frank Peckett: Mr. Peckett was owner of Foster Chemical Company. In 1972 he assumed the lease that Foster held with AMSCO-W for a portion of the 411 property where discharges of pollutants to soil and groundwater are believed to have occurred.

Documented Releases:

A major spill was reported at this site in June of 1983 when 23,300 gallons of toluene was spilled during rail car off-loading at the Unocal tank farm. Unocal estimated that there were between 3,600 and 4,000 gallons of toluene in a undissolved fraction ("free") in the subsurface. Unocal installed four recovery wells on their own property and on the Learner property in an effort to recover free product only. To respond to the release, Unocal also constructed and continues to operate an interceptor trench in order to remove and treat groundwater in the "A Zone". Residual toluene currently remains in the soil and groundwater at this site.

4. **HYDROGEOLOGY** Subsurface investigations have identified three water-bearing zones beneath the site. The upper zone ("A Zone") consists of discontinuous sandy deposits, occurring from about 2 feet to 8 feet below the ground surface (bgs). These deposits are underlain by 4 to 8 feet of clayey silts and silty clays. The "A Zone" contains water seasonally (vadose) some of which maybe isolated from lower units by clayey soils (perched) and is presumed to flow generally to the west into the Oakland Inner Harbor.

The deep zone ("B Zone") consists of sandy deposits from approximately 10 feet to 15 feet bgs over silty clay and clayey silt deposits from 15 to 25 feet bgs. On the Learner property the "B Zone" appears to be continuous but "tapers out" toward at the north end of the property. Groundwater flow in the "B Zone" is largely in a westerly direction toward the Oakland Inner Harbor, based upon water level measurements from on-site monitoring wells. Based upon a 1989 tidal study, the "B Zone" is presumed to be in hydraulic communication with the Oakland Inner Harbor.

The lower zone ("C Zone") consists of patches of fine and coarse sands and small gravels and is found at a depth of 40

to 52 feet. "C Zone" data was collected from only three wells (W-7, W-23, W-24). No additional borings or wells have yet been made to these depths. The depth to groundwater in two of the wells was approximately 40 feet below the ground surface. The "C Zone" is above the Merritt Sand formation, which is a good quality regional aquifer that breaches land surface on Alameda Island (across the Oakland Inner Harbor). Based on regional drainage patterns the direction of groundwater flow in the "C Zone" is presumed to be westerly extending under the Inner Harbor Channel toward Alameda Island.

5. ADJACENT SITES The Unocal (401 High Street), former Arco (Koch) (411 and 301 High Street) and Learner properties (3675 Alameda Avenue) comprise the Site. The Site is located in Alameda County and is bordered by a retail tire company to the north, Alameda Avenue to the northeast, warehouse properties to the east, High Street to the south and the Oakland Estuary to the west (See location map, Appendix B). No subsurface investigations have been conducted at adjacent sites.

6. SUBSURFACE INVESTIGATIONS

UNOCAL:

A March 1983 report, entitled "Subsurface Site Investigations", submitted by Unocal to the Board, showed soil and groundwater on the Unocal property to contain various solvent chemicals and petroleum constituents. Since 1983, Unocal has conducted extensive soil and ground investigations both on- and off-site to characterize the scope of the toluene spill. Surface investigations were conducted on the Unocal property beginning in 1983, and included the following activities: installation of 12 groundwater monitoring wells, drilling of three soil borings, subsurface sampling and analyses, and aquifer testing. In September of 1989 Unocal installed three additional wells on their property and took samples from four existing wells. Dissolved VOCs have been detected in groundwater monitoring wells on-site since 1983.

Volatile organic compounds have been found in groundwater. Compounds detected in groundwater include tetrachloroethylene (PCE), trichloroethylene (TCE), 1,1,1-trichloroethane (1,1,1,-TCA), 1,1,-dichloroethane (1,1-DCA), trichloroethane (1,1,2-TCA), 1,2,-dichloroethane (1,2,-DCA), trans-1,2-dichloroethylene (1,2-DCE), 1,1-dichloroethylene (1,1-DCE), dichloromethane (methylene chloride), chloromethane, Freon 113, vinyl chloride, benzene, ethylbenzene, acetone, toluene, methylethylketone (MEK) and isopropanol. Semi-volatile compounds detected in groundwater include fluoranthene, isophorone, naphthalene,

phenanthrene, pyrene, phenol and pentachlorophenol.

Toluene found in soil and groundwater on-site is believed to be largely derived from the 1983 toluene spill. The sources of additional chemicals will be determined during site closure activities.

ARCO (KOCH):

Arco has not conducted any soil or groundwater investigations on the property it owned at 301, 401 and 411 High Street. In 1983, Unocal installed a pair of monitoring wells along the southeastern portion of the Koch property where Arco had operated their facility (W-13, W-13A). Sampling of these wells showed the presence of organic chemicals. In 1988, Unocal installed three temporary monitoring wells, submitted four soil samples, and conducted subsurface sampling and analyses. Again the results of sampling these wells indicate that there are chemicals present in the soil and groundwater on the 411 property.

Compounds detected in groundwater include PCA 1,1,1,-TCA, 1,1-DCA, 1,1,2-TCA, 1,2,-DCA, DCE, chloromethane, vinyl chloride methylene chloride, benzene, ethylbenzene, acetone, toluene, MEK.

LEARNER:

In 1983 Unocal conducted an investigation of chemicals on its own property and the adjacent Learner property which included the following activities: installation of ten temporary groundwater monitoring/extraction wells and the drilling of nine soil borings in an effort towards recovery of free toluene in the soil on the Learner property.

In 1988 and 1989, Unocal installed nine temporary monitoring wells, 75 soil borings and 16 monitoring wells, conducted subsurface sampling and analyses, aquifer testing, a soil gas survey, and soil gas venting (Vapor Extraction System) performance testing. The results of these investigations indicate that there are chemicals present in the soil and groundwater on the Learner property.

Compounds detected in groundwater include PCE, TCE, 1,1,1-TCA, 1,1-DCA, 1,1,2-TCA, 1,2-DCA, DCE, chloromethane, vinyl chloride methylene chloride, benzene, ethylbenzene, acetone, toluene, and MEK. The toluene present on the Learner property is derived from the 1983 toluene spill and other up-gradient sources. The chlorinated chemical compounds appear to be primarily derived from the Arco property at 411 High Street.

7. GROUNDWATER PLUMES

The groundwater containing toluene beneath the Unocal site has migrated off-site onto the Learner property. Groundwater containing chlorinated VOCs detected on the Learner property is believed to be the result of migration from the 411 High Street property. The exact source(s) of the chlorinated compounds found on the Unocal property has not yet been determined.

The Board encourages the Dischargers and Responsible Parties to cooperate in joint investigations and the remedial measures for the entire plume area.

8. INTERIM REMEDIAL ACTIONS Interim remedial actions have been taken by Unocal including construction and operation of an interceptor trench which runs along the western shoreline of the Unocal property. The trench is designed to remove groundwater from the "A Zone". Groundwater is treated using activated carbon and discharged to the Oakland Inner Harbor under NPDES Permit No. 0029297. Additional remedial actions are needed to address "B Zone" and "C Zone" pollution. A report entitled Groundwater Investigations and Remedial Investigations submitted to the Board by Unocal in October of 1989 proposed, in concept, a vapor extraction system to be installed on the southern portion of the Learner property. This system would be designed to primarily remediate toluene in shallow soils. Additionally, Unocal has discussed installation of four to six groundwater extraction wells along the shoreline of the Site. Unocal has reported that two versions of a groundwater extraction system are currently under design.
9. SCOPE OF THIS ORDER This Order contains tasks for completion of groundwater characterization at the Site; implementation and evaluation of interim remedial actions for on-site and off-site soil and groundwater pollution, and evaluation and implementation of final cleanup actions. These tasks are necessary to alleviate the threat to surface and groundwater posed by the migration of chemicals and to provide a substantive technical basis for designing and evaluating the effectiveness of final cleanup alternatives.
10. The Board adopted a revised Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) on December 17, 1986. The Basin Plan contains water quality objectives and beneficial uses for the central San Francisco Bay and contiguous surface and groundwaters.
11. The "A" "B" and "C" Zones currently have no existing use. The potential beneficial uses of the "B" Zone, and possibly the "C" Zone groundwater underlying and adjacent to the facility include:

- a. Industrial process water supply
 - b. Industrial service water supply
 - c. Municipal and Domestic water supply
 - d. Agricultural water supply
12. The existing and potential beneficial uses of the Central Bay and Oakland Estuary include:
- a. Contact and non-contact water recreation
 - b. Wildlife habitat
 - c. Preservation of rare and endangered species
 - d. Estuarine habitat
 - e. Fish spawning and migration
 - f. Industrial process and service supply
 - g. Shell fishing
 - h. Navigation
 - i. Ocean commercial and sport fishing
13. The Dischargers have caused or permitted, and threaten to cause or permit waste to be discharged or deposited where it is or probably will be discharged to waters of the State and create or threaten to create a condition of pollution or nuisance.
14. This action is an Order to enforce the laws and regulations administered by the Board. This action is categorically exempt from the provisions of the CEQA pursuant to Section 15321 of the Resources Agency Guidelines.
15. The Board has notified the Dischargers, responsible parties and interested agencies and persons of its intent under California Water Code Section 13304 to prescribe Site Cleanup Requirements for the discharge and has provided them with the opportunity for a public hearing and an opportunity to submit their written views and recommendations.
16. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED, pursuant to Section 13304 of the California Water Code, that the Dischargers shall cleanup and abate the effects described in the above findings as follows:

A. SPECIFICATIONS

1. Remediation Activities: The Dischargers shall conduct site investigation, monitoring and remediation activities as needed to define the current local hydrogeologic conditions, to define the lateral and vertical extent of soil and groundwater pollution, and to remediate soil and groundwater pollution. Should

is considered as an alternative, the feasibility of water reuse, re-injection, and disposal to the sanitary sewer must be evaluated. Based on the Regional Board Resolution 88-160, the Dischargers shall optimize, with a goal of 100%, the reclamation or reuse of groundwater extracted as a result of cleanup activities. The Dischargers shall not be found in violation of this Order if documented factors beyond the Dischargers' control prevent the Dischargers from attaining this goal, provided the Dischargers have made a good faith effort to attain this goal. If reuse or re-injection is part of a proposed alternative, an application for Waste Discharge Requirements may be required. If discharge to waters of the State is part of a proposed alternative, an application for an NPDES permit must be completed and submitted, and must include the evaluation of the feasibility of water reuse, re-injection, and disposal to the sanitary sewer.

B. PROHIBITIONS

1. The discharge of wastes or hazardous materials in a manner which will degrade water quality or adversely affect the beneficial uses of the waters of the State is prohibited.
2. Further significant migration of pollutants through subsurface transport to waters of the State is prohibited.
3. Activities associated with the subsurface investigation and cleanup which will cause significant adverse migration of pollutants are prohibited.

C. PROVISIONS The Dischargers shall comply with the Prohibitions and Specifications above, in accordance with the following time schedule and tasks:

1. UNOCAL, TASKS AND COMPLETION DATES.

- a. TASK: SUBMIT SAMPLING AND ANALYSIS, AND QUALITY ASSURANCE PROJECT PLANS.

Submit Sampling and Analysis, and Quality Assurance Project Plans for projected on and off-site sampling, acceptable to the Executive Officer.

COMPLETION DATE: September 20, 1990

- b. TASK: SUBMIT A GROUNDWATER MONITORING PLAN.

Submit a groundwater monitoring plan, acceptable to the Executive Officer, that addresses monitoring of groundwater from wells representative of conditions found in the Zones A and B at the site. The plan shall include monitoring of groundwater in areas where toluene and other chemicals that originated from the Unocal facility have thus far been detected. This monitoring plan may be modified based upon results of additional pollution investigations.

COMPLETION DATE: September 20, 1990

c. ON-PROPERTY (401 High Street) TASKS:

(i) SUBMIT A SITE REMEDIATION PLAN ADDRESSING REMEDIATION OF GROUNDWATER POLLUTION FOUND ON UNOCAL PROPERTY.

Submit a Site Remediation Plan acceptable to the Executive Officer that fully describes remedial actions to be taken to control, abate and/or remove pollution found in groundwater in Zones A and B on the Unocal property. The plan shall include a discussion of all existing data, a review of the effectiveness of existing interim remedial measures and preliminary plans of proposed extraction and treatment systems and a comprehensive schedule for implementation of remedial action(s).

COMPLETION DATE: October 1, 1990

(ii) IMPLEMENTATION OF REMEDIAL ACTIONS: ZONE B GROUNDWATER.

Submit a technical report acceptable to the Executive Officer documenting that remedial actions for the "B Zone" have been implemented.

COMPLETION DATE: Seven months after the Executive Officer's written approval of the site remediation plan pursuant to Section C. 1. c. (i), above.

(iii) SUBMIT A WORK PLAN FOR SOILS INVESTIGATION.

Submit a report acceptable to the Executive Officer that describes how Unocal plans to sample soils at the Unocal property as part of Unocal's proposed site closure. The plan shall include a

discussion of sampling methods, number and location of soil samples, techniques and analytical methods for soils under and surrounding all tanks.

COMPLETION DATE: December 1, 1990.

(iv) SUBMIT A REPORT OF SOILS INVESTIGATION.

Submit a report acceptable to the Executive Officer describing chemicals present in soil on the Unocal property. This report shall include all analytical data, chain of custody and documentation of testing using applicable EPA methods or equivalent methods.

COMPLETION DATE: Four months after the Executive Officer's written approval of a work plan submitted pursuant to C.1.c.(iii).

(v) SUBMIT A REPORT ON THE EFFECTIVENESS OF FINAL REMEDIAL ACTION: GROUNDWATER AND SOILS.

Submit a technical report acceptable to the Executive Officer which evaluates the effectiveness of the interim remedial actions for the soil and groundwater emanating from the Unocal property. This report should document implementation of any additional measures necessary to fully contain the groundwater.

COMPLETION DATE: February 1, 1992.

(vi) SUBMIT AN INVESTIGATION ADDRESSING THE LATERAL AND VERTICAL EXTENT OF POLLUTION IN "C ZONE" GROUNDWATER AND LOWER DEPTHS IF NECESSARY.

Submit a technical report acceptable to the Executive Officer which describes an investigation of pollutants which exist in the "C Zone" and below the "C Zone". This investigation shall include, but need not be limited to, sampling of existing "C Zone" wells (W7, W23, and W24) for volatile organic compounds, total dissolved solids (TDS) and determination of water level elevations on a quarterly basis as well as completion of additional soil borings as necessary to properly define "C Zone" hydrogeology.

COMPLETION DATE: August 1, 1991

2. ARCO, TASKS AND COMPLETION DATES.

- a. TASK: SUBMIT A REPORT LAND USE HISTORY FOR THE 301, 401 AND 411 HIGH STREET PROPERTIES.

Submit a detailed report of land use history which, at a minimum, include the following: (i) exact dates of ownership; (ii) detailed scale maps of subject properties showing property boundaries and all above and below-ground structures; (iii) Complete list of lessees and (iv) the nature and extent of land use for each occupant.

COMPLETION DATE: October 19, 1990.

- b. COMPLETE SOIL AND GROUNDWATER POLLUTION INVESTIGATION FOR 301 HIGH STREET.

Submit a technical report acceptable to the Executive Officer containing the results of a hydrogeologic investigation to determine the existence of soil and groundwater pollution in the "A Zones" and "B Zones" on the 301 High Street property. This report shall at a minimum include soil and groundwater sampling and analysis and an evaluation of on-property contamination. The report shall fully describe the location of pollutants, pollutant source areas and the hydraulic properties of affected water-bearing zones. The report shall also contain a groundwater monitoring program, including sampling and analysis and quality assurance plans.

COMPLETION DATE: December 21, 1990.

3. ARCO, UNOCAL, AND FOSTER, TASKS AND COMPLETION DATES.

- a. TASK: WORK PLAN FOR SOIL AND GROUNDWATER POLLUTION CHARACTERIZATION AT 411 HIGH STREET.

Submit a work plan acceptable to the Executive Officer which describes proposed hydrogeologic investigation necessary to determine the lateral and vertical extent of soil and groundwater pollution in the "A Zone" and the "B Zone" for the 411 High Street property. This plan shall include investigation of the entire 411 property north to the Learner property and west to Unocal. This

plan shall include a complete schedule for implementation and remediation. Unocal's responsibility under this Task pertains to pollutants at or emanating from the northern portion of the 411 High Street property where Foster Chemical Company was located.

COMPLETION DATE: November 15, 1990

b. TASK: COMPLETE SOIL AND GROUNDWATER POLLUTION CHARACTERIZATION.

Submit a technical report acceptable to the Executive Officer containing the results of a hydrogeologic investigation to determine the lateral and vertical extent of soil and groundwater pollution in the "A Zones" and "B Zones" on the entire 411 High Street property and areas affected by releases from this property. This report shall at a minimum include soil and groundwater sampling and analysis and an evaluation of contamination found both on and off the 411 High Street property. The report shall fully describe the location of pollutants, pollutant source areas, including underground tanks, and the hydraulic properties of affected water-bearing zones. The report shall also contain a groundwater monitoring program, including sampling and analysis and quality assurance plans. Unocal's responsibility under this Task pertains to pollutants at or emanating from the northern portion of the 411 High Street property where Foster Chemical Company was located.

COMPLETION DATE: Four months after written approval by the Executive Officer of the work plan submitted for Section C.3.a., 1990.

c. TASK: SUBMIT A REMEDIAL ACTION FEASIBILITY STUDY.

Submit a technical report acceptable to the Executive Officer which contains a detailed evaluation of all remedial alternatives in order to select interim remedial actions for soil and groundwater pollution existing on the 411 property or off-property as a result of migration from the 411 property. The report will include a detailed screening of technical alternatives for soil and groundwater pollution remediation. The study shall include an assessment of 1) potential effectiveness, 2) technical and administrative

feasibility, and 3) projected costs of remedial action. The study shall include a rationale for both the alternatives selected for screening and a detailed explanation of the alternatives selected. Innovative and emerging technologies shall be included in the technology screening but may be addressed separately from other technologies. The study shall contain recommendations for implementation, and a plan and schedule for implementation of the proposed interim remedial actions. Unocal's responsibility under this Task pertains to pollutants at or emanating from the northern portion of the 411 High Street property where Foster Chemical Company was located.

COMPLETION DATE: Two months after written approval by the Executive Officer of the report submitted in Section C.3.b.

- d. TASK: IMPLEMENTATION OF INTERIM REMEDIAL ACTION IN AFFECTED GROUNDWATER ZONES.

Submit a technical report acceptable to the Executive Officer documenting implementation of interim remedial actions for the water-bearing zones at the Site that have been affected by pollutants that have emanated from points on the 411 property. Unocal's responsibility under this Task pertains to pollutants at or emanating from the northern portion of the 411 High Street property where Foster Chemical Company was located.

COMPLETION DATE: Six months after written approval by the Executive Officer of the report submitted in Section C.3.c.

- e. TASK: SUBMIT A WORK PLAN TO ADDRESS COMMINGLED GROUNDWATER PLUME(S).

Submit a technical report acceptable to the Executive Officer which contains a work plan for investigations and remedial actions for the pollutant plume(s) resulting from discharge by Arco or its tenants and present on Arco, Learner or Unocal properties. This report shall also inform the Executive Officer of the status of coordination in these investigations and remedial actions.

COMPLETION DATE: April 1, 1991

f. TASK: COMPLETE FULL PLUME CHARACTERIZATION.

Submit a report which details the lateral and vertical extent of soil and groundwater pollution for pollutants that have emanated from the former Arco property at 411 High Street.

COMPLETION DATE: May 1, 1991.

4. If the dischargers are delayed, interrupted or prevented from meeting any of the completion dates specified in this Order, the dischargers shall promptly notify the Executive Officer prior to the due date.
5. The Dischargers shall submit to the Regional Board acceptable reports on compliance with the requirements of this Order, and acceptable activity monitoring reports that contain descriptions and results of work performed. These reports are to be submitted according to a program prescribed by the Regional Board and outlined below.
 - a. ON A QUARTERLY BASIS, technical reports on status of compliance with this Order shall be submitted by each Discharger to the Board, commencing on January 15, 1991. Each quarterly status report shall cover the previous calendar quarter and shall include, but are not limited to, the following:
 - i. Summary of work completed since submittal of the previous report, and work projected to be completed by the time of the next report.
 - ii. Identification of any obstacles which may threaten compliance with the schedule of this Order and what actions are being taken to overcome these obstacles.
 - b. ALSO, ON A QUARTERLY BASIS, technical reports on soil and groundwater monitoring shall be submitted by each Discharger to the Board, commencing on January 15, 1991, and covering the previous calendar quarter. Each quarterly monitoring report shall include, but need not be limited to, the following information:
 - i. Results of quarterly free product measurements and water quality sampling analyses for all on-site wells.

- ii. Quarterly updated water table and piezometric surface maps, based on the most recent water level measurements for all affected water bearing zones for all on-site and off-site wells.
 - iii. A cumulative tabulation of volume of extracted groundwater, quarterly chemical analysis results for all groundwater extraction wells, and pounds of pollutants removed.
 - iv. A cumulative tabulation of all well construction details, and quarterly water level measurements.
 - v. Results of soil vapor sampling analyses, soil pollution plume maps based on these results, a cumulative tabulation of chemical analysis results for all soil vapor extraction wells, and a cumulative tabulation of pounds of chemicals removed.
- c. ON AN ANNUAL BASIS, technical reports on the progress of compliance with all requirements of this Order shall be submitted to the Board by each Discharger, due on February 15, of each year beginning in 1991, and covering the previous year. Annual reports may include quarterly reports due concurrently. The progress reports shall include, but need not be limited to, progress on the site investigation and remedial actions, and operation of interim and final remedial actions and /or systems.
4. All hydrogeological plans, specifications, reports, and documents shall be signed by or stamped with the seal of a registered geologist or professional engineer, or a certified engineering geologist.
 5. All samples shall be analyzed by State certified laboratories or laboratories accepted by the Board using approved EPA methods for the type of analysis to be performed. All laboratories shall maintain Quality Assurance/Quality Control records for Board review.
 6. The Dischargers shall maintain in good working order, and operate, as efficiently as possible, any facility or control system installed to achieve compliance with the requirements of this Order.
 7. Copies of all correspondence, reports, and documents

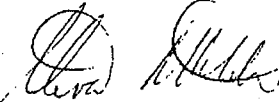
pertaining to compliance with this Order, shall be provided to the following agencies:

- a. Alameda County Flood and Conservation District-Zone 7.
 - b. Alameda County Environmental Health Department, Hazardous Materials Section.
 - c. State Department of Health Services/Toxic Substances Control Division-Region 2, Site Mitigation Section.
8. The Dischargers shall permit the Board or its authorized representative, in accordance with Section 13267(c) of the California Water Code:
- a. Entry upon premises in which any pollution sources exist, or may potentially exist, or in which any required records are kept, which are relevant to this Order.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.
 - c. Inspection of any monitoring equipment or methodology implemented in response to this Order.
 - d. Sampling of any groundwater or soil which is accessible, or may become accessible, as part of any investigation or remedial action program undertaken by the dischargers.
9. The Dischargers shall file a report on any changes in Site occupancy and ownership associated with the facility described in this Order.
10. If any hazardous substance is discharged in or on any waters of the state, or discharged and deposited where it is, or probably will be discharged in or on any waters of the state in quantities required to be reported pursuant to Water Code Sections 13271 and 13272, each Discharger shall report such discharge to this Regional Board, at (415) 464-1255 on weekdays during office hours from 8 a.m. to 5 p.m., and to the Office of Emergency Services at (800) 852-7550 during non-business hours. A written report shall be filed with the Regional Board within five (5) working days and shall contain information relative to: the nature of waste or pollutant, quantity involved, duration of incident, cause of spill, Spill Prevention, Control, and Countermeasure Plan (SPCC) in effect, if any, estimated size of affected area, nature of effect, corrective measures that have been taken or planned,

and a schedule of these activities, and persons/-
agencies notified.

11. The Board will review this Order periodically and may revise the requirements when necessary.

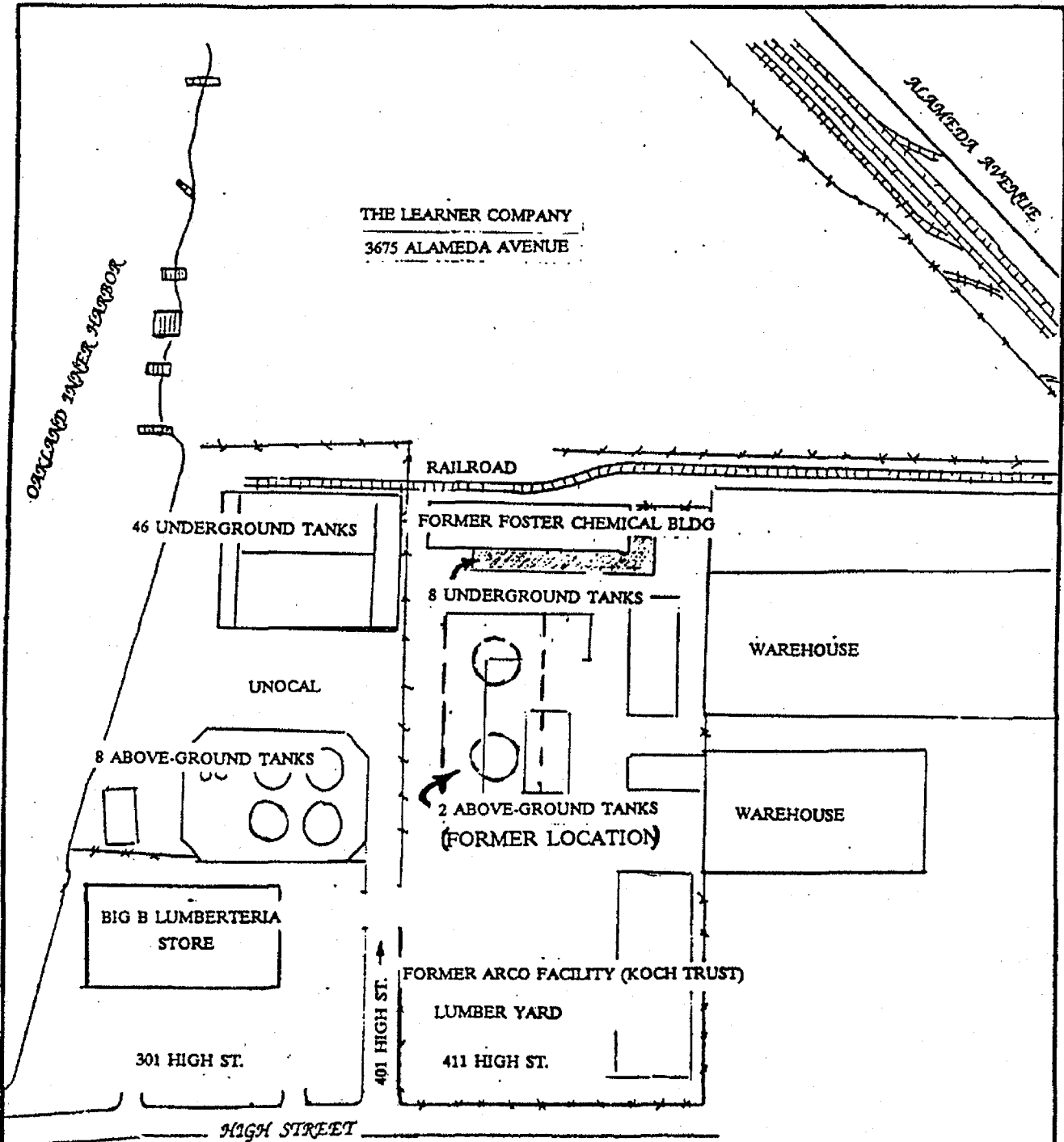
I, Steven R. Ritchie, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 19, 1990.


Steven R. Ritchie
Executive Officer

D. APPENDICES

A. Location Map & Site Map.

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

UNOCAL ARCO LEARNER
 KOCH TRUST

Not To Scale

DRAWN BY TRG | DATE: 5/10/80 | DRWG. NO.

ATTACHMENT B

SITE CLEANUP REQUIREMENTS ORDER NO. R2-2006-0084

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2006-0084

AMENDMENT OF SITE CLEANUP REQUIREMENTS (ORDER NO. 90-133) FOR:

UNION OIL COMPANY OF CALIFORNIA
ATLANTIC RICHFIELD COMPANY
RICHARD KOCH, trustee for THE R&N KOCH TRUSTS
LAS VEGAS II STORAGE, LLC
FOSTER CHEMICAL COMPANY

for the property located at

401 and 411 HIGH STREET
OAKLAND, ALAMEDA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Water Board), finds that:

1. **Water Board Orders:** The Water Board adopted site cleanup requirements for this site on September 19, 1990 (Order No. 90-133). An amendment to the site cleanup requirements was adopted on March 17, 1993 (Order No. 93-025). The rationale for this amendment was to allow additional time for interim groundwater treatment and require the submittal of a five-year status report. A second amendment to the site cleanup requirements was adopted on May 20, 1998 (Order No. 98-041). The rationale of this amendment was to remove the 301 High Street property from the Site Cleanup Requirements. The 401 High Street property is subject to an NPDES General Permit adopted on July 21, 2004 (Order No. R2-2004-0055; NPDES No. CAG912003).
2. **Reason for Amendment:**
 - a. In Orders No. 90-133 and 93-025, two of the named dischargers were referred to as "The Koch Trust" and "ARCO Corporation". Based on discussions with these dischargers, the legally applicable names are "Richard Koch, trustee for the R&N Koch Trusts" and "Atlantic Richfield Company", respectively.
 - b. In 2003, Las Vegas II Storage, LLC purchased the 401 High Street property from Unocal. Therefore, as the current owner of the 401 High Street property, it would be appropriate to name Las Vegas II Storage, LLC as a discharger with secondary liability.

- c. Sections C.1 and C.3 of Order 90-133 included tasks which required the dischargers to submit work plans and technical reports to determine the lateral and vertical extent of soil and groundwater pollution. Subsequent investigations and an evaluation of previous investigations have revealed numerous data gaps which include areas where the concentrations of chemicals in soil, groundwater, and soil gas exceed the appropriate environmental screening levels (ESLs; Water Board, February 2005) for the site. These data gaps need to be addressed to complete a site conceptual model.
- d. Section C.3 of Order 90-133 included tasks which required the dischargers to perform a detailed evaluation of all remedial alternatives in order to select final remedial actions for soil and groundwater pollution (also known as a feasibility study). A feasibility study for the 401 and 411 High Street properties has not been completed.
3. **CEQA:** This action is an amendment of an order to enforce the laws and regulations administered by the Water Board. As such, this action is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15321 of the Resources Agency Guidelines.
4. **Notification:** The Water Board has notified the discharger and all interested agencies and persons of its intent under California Water Code Section 13304 to amend site cleanup requirements for the discharge, and has provided them with an opportunity to submit their written comments.
5. **Public Hearing:** The Water Board, at a public meeting, heard and considered all comments pertaining to this discharge.

IT IS HEREBY ORDERED, pursuant to Section 13304 of the California Water Code, that Order No. 90-133 shall be amended as follows:

- A. Las Vegas II Storage, LLC is hereby named as a discharger by virtue of its current ownership of the 401 High Street property, but will only be responsible for complying with the requirements of this order in the event that the primarily-responsible dischargers fail to perform (secondarily-responsible status). For existing dischargers, the title "The Koch Trust" is hereby replaced with "Richard Koch, trustee for the R&N Koch Trusts", and the title "ARCO Corporation" is hereby replaced with "Atlantic Richfield Company."

B. Add new provision C.3.h:

TASK: REMEDIAL INVESTIGATION WORK PLAN

COMPLIANCE DATE: February 15, 2007

Submit a work plan acceptable to the Executive Officer to define the vertical and lateral extent of soil gas, soil, and groundwater pollution. The work plan should specify investigation methods and a proposed time schedule. Work may be phased to allow the investigation to proceed efficiently, provided that this does not delay compliance. The work plan shall include the following scope:

1. (401 High Street) Sample soil gas to define: the extent of toluene in the area immediately northwest of the property boundary, from the edge of the Estuary to at least 500 feet northeast; the extent of TPH as gasoline southwest of the 401/411 High Street property boundary and northwest of the property; and the extent of VOCs, particularly PCE, northwest to northeast of the northern corner of the property.
2. (401 High Street) Sample soil to define: the extent of toluene in the area immediately northwest of the property boundary, from the Estuary inland to at least 500 feet northeast; the extent of TPH as gasoline and diesel in the area around soil borings HA8, HA11, and HA18; and the extent of benzene in the area between HA11 and HA12 in the vicinity of former USTs 16, 17, and 18.
3. (401 High Street) Sample groundwater to define: the extent of toluene in Zone A and B in the area immediately northwest of the property boundary, from the Estuary inland to at least 500 feet northeast, except around well RW-1 in Zone B; the extent of TPH as gasoline in Zone B, and TPH as diesel exceeding the ESL in Zone A and B in the area between the central portion of the 401/411 High Street property boundary and soil borings HA8, HA11, and HA18; the extent of benzene in Zone A and B in the area around well SVE-8; the extent of VOCs, particularly 1,1-DCE, 1,1-DCA, and vinyl chloride, in Zone B in the area from wells RW-6 and MW-32B to the 401/411 High Street property boundary; and the extent of VOCs, particularly vinyl chloride and PCE, in Zone B northwest to northeast of the northern corner of the property.
4. (411 High Street) Sample soil gas to define: the extent of TPH as gasoline and diesel, and benzene northwest of SVP8, northeast across the property boundary between SVP11 and SVP10, and west across the 401/411 High Street property boundary between SVP1 and SVP6; and the extent of VOCs, particularly PCE, northwest and northeast of SVP3, and the northwestern 100 feet of the property.

Define the extent of vapor intrusion into nearby buildings through the use of indoor air sampling and/or sub-slab soil gas sampling, as appropriate.

5. (411 High Street) Sample vadose zone soil to define: the extent of toluene in the northwestern 100 feet of the property, west of well RW-10; the extent of TPH as gasoline and diesel, and benzene around well AMW-13A; the extent of TPH as diesel between wells FMW-2A and RW-10 and further northwest; the extent of TPH as gasoline around well AMW-9B; and the extent of benzene around well AMW-5A. Should any of the soil results exceed their ESLs for vapor intrusion into buildings, then sample the corresponding soil gas to define the extent exceeding their ESLs.
6. (411 High Street) Sample groundwater to define: the extent of toluene in Zone A and B the northwestern 100 feet of the property; the extent of TPH as gasoline in Zone B, and TPH as diesel in Zone A and B southwest of the central portion of the 401/411 High Street property boundary, from well AS-10 to wells AMW-3A/3B; the extent of TPH as gasoline and diesel, and benzene in Zone A and B east of wells AMW-2A/2B; and the extent of TPH as gasoline and diesel, benzene, and toluene in Zone B east of well AMW-9B and southwest of well AMW-5B.

C. Add new Provision C.3.i:

TASK: COMPLETION OF REMEDIAL INVESTIGATION

COMPLIANCE DATE: June 15, 2007

Submit a technical report acceptable to the Executive Officer documenting completion of necessary tasks identified in the Task C.3.h. work plan. The technical report should define the vertical and lateral extent of pollution, as specified in Task C.3.h., to concentrations at or below the ESLs.

D. Add new Provision C.3.j:

TASK: DRAFT REMEDIAL ACTION PLAN INCLUDING DRAFT CLEANUP STANDARDS

COMPLIANCE DATE: October 15, 2007

Submit a technical report acceptable to the Executive Officer containing:

1. Results of the remedial investigation
2. Evaluation of the installed previous and ongoing remedial actions
3. Feasibility study evaluating alternative final remedial actions
4. Risk assessment for current and post-cleanup exposures
5. Recommended final remedial actions and cleanup standards
6. Implementation tasks and time schedule

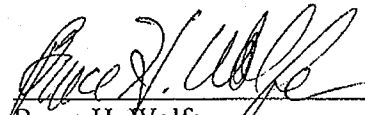
Item 3 should include projections of cost, effectiveness, benefits, and impact on public health, welfare, and the environment of each alternative action.

Items 1 through 3 should be consistent with the guidance provided by Subpart E of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), CERCLA guidance documents with respect to remedial investigations and feasibility studies, Health and Safety Code Section 25356.1(c), and State Board Resolution No. 92-49 as amended ("Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304").

Items 2 through 4 may include a summary of, and reference to, existing reports instead of a full replication of existing report information.

Item 5 should take into consideration applicable water quality objectives for the protection of ecological receptors, prevention of nuisance conditions, prevention of leaching of contaminants to groundwater, and protection of human health under a commercial/industrial indoor air exposure scenario, and should address the attainability of background levels of water quality.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on December 13, 2006.


Bruce H. Wolfe
Executive Officer

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FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTIONS 13268 OR 13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY

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ATTACHMENT C

OCTOBER 15, 2007 LETTERS



California Regional Water Quality Control Board

San Francisco Bay Region



Linda S. Adams
Secretary for
Environmental
Protection

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Arnold Schwarzenegger
Governor

Date: October 15, 2007
File No: 01S0645 (CFC)

Union Oil Company
c/o Chevron Environmental Management Company
Superfund & Property Management Business Unit
Attn.: Mr. Michael Mailloux
6001 Bollinger Canyon Road, K-2052
San Ramon, CA 94583
mmailloux@chevron.com

SUBJECT: Deadlines for Submittal of *Technical Report – Remedial Investigation, 401/411 High St., Oakland, California*, and Draft Remedial Action Plan for 401/411 High Street, Oakland, Alameda County.

Dear Mr. Mailloux:

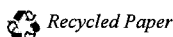
This is in response to a written request dated September 25, 2007, from your consultant, Robert Horwath, of URS Corporation. URS requested an extension from October 15, 2007, to January 15, 2008, for submittal of the addendum to the *Technical Report – Remedial Investigation, 401/411 High St., Oakland, California*. The October 15, 2007, deadline was pursuant to our conditional approval of *Technical Report – Remedial Investigation, 401/411 High St., Oakland, California*, dated August 30, 2007. The extension was requested to allow time to perform additional field work and submit a report to adequately address the conditions of our letter, as well as obtain additional data to support a risk assessment.

In addition, URS requested an extension from October 15, 2007, until May 15, 2008, for the draft Remedial Action Plan (RAP), including draft cleanup standards. The October 15, 2007, deadline for the draft RAP was pursuant to Provision C.3.j of Board Order No. R2-2006-0084. The extension was requested to allow time to incorporate the results of the Remedial Investigation addendum into the draft RAP.

I find your request acceptable. I will not recommend enforcement action, provided that you submit the reports by the dates specified above (i.e., RI Addendum by January 15, 2008, and draft RAP by May 15, 2008). Please note that this letter does not formally alter the original deadlines, and the Board may pursue enforcement action if either report is not submitted by these later dates.

Please provide a paper copy for staff review and upload an electronic copy to the GeoTracker website. Please reference the file number on all correspondence and reports.

Preserving, enhancing, and restoring the San Francisco Bay Area's waters for over 50 years

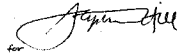


Union Oil Company

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If you have any questions, please contact Cleet Carlton of my staff at (510) 622-2374 [e-mail ccarlton@waterboards.ca.gov].

Sincerely,



Digitally signed by Stephen Hill
Date: 2007.10.15 15:46:47 -07'00'

Bruce H. Wolfe
Executive Officer

cc: Mailing List

Mailing List

Atlantic Richfield Company
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Arnold Schwarzenegger
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Date: October 15, 2007
File No: 01S0645 (CFC)

Atlantic Richfield Company
Attn.: Mr. Paul Supple
P.O. Box 1250
San Ramon, CA 94583
supplpv@bp.com

SUBJECT: Deadlines for Submittal of Remedial Investigation Report and Draft Remedial Action Plan for 411 High Street, Oakland, Alameda County.

Dear Mr. Supple:

This is in response to your written request, dated October 4, 2007, for an extension from June 15, 2007, to January 15, 2008, for submittal of an acceptable Remedial Investigation Report for 411 High St., Oakland, California. The June 15, 2007, deadline was pursuant to Provision C.3.i of Board Order No. R2-2006-0084. The technical report *Remedial Investigation Report, 411 High Street, Oakland, Alameda County* was submitted on June 15, 2007. The report was rejected by the Water Board and a Notice of Violation letter was issued on August 30, 2007. The extension was requested to allow time to perform additional field work and submit a report to adequately address the conditions of the rejection letter, as well as obtain additional data to support a risk assessment.

In addition, you requested an extension from October 15, 2007, until May 15, 2008, for the Draft Remedial Action Plan (RAP), including draft cleanup standards. The October 15, 2007 deadline for the draft RAP was pursuant to Provision C.3.j of Board Order No. R2-2006-0084. The extension was requested to allow time to incorporate the results of the Remedial Investigation into the draft RAP.

With respect to your request for an extension for submittal of an acceptable Remedial Investigation Report, as stated in the rejection and Notice of Violation letter, I urge you to come into compliance as soon as possible.


With respect to your request for an extension for submittal of the Draft RAP, including draft cleanup standards, I find your request acceptable. I will not recommend enforcement action, provided that you submit the report by May 15, 2008. Please note that this letter does not formally alter the original deadline, and the Board may pursue enforcement action if the report is not submitted by this later date.

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Please provide a paper copy for staff review and upload an electronic copy to the GeoTracker website. Please reference the file number on all correspondence and reports.

If you have any questions, please contact Cleet Carlton of my staff at (510) 622-2374 [e-mail ccarlton@waterboards.ca.gov].

Sincerely,



Digitally signed by Stephen Hill
Date: 2007.10.15 15:48:04 -07'00'

Bruce H. Wolfe
Executive Officer

cc: Mailing List

Mailing List

Union Oil Company
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ATTACHMENT D

Specific Factors Considered to Determine Administrative Civil Liability

Attachment D – Administrative Civil Liability Complaint No. R2-2011-0043

Specific Factors Considered to Determine Administrative Civil Liability

Each factor in the Enforcement Policy methodology and its corresponding category, adjustment, and/or amount for the non-discharge violation alleged in Administrative Civil Liability (ACL) Complaint No. R2-2011-0043 (Complaint) is presented below:

Violation: Failure to submit a draft Remedial Action Plan (dRAP), acceptable to the Executive Officer of the Regional Water Board, by May 15, 2008:

Adjustments to Determination of Initial Liability

- a) **Specific Factor:** Potential Harm to Beneficial Uses

Category: Minor

Discussion: The potential for harm to groundwater and San Francisco Bay was minor. During the delay, groundwater and Oakland Estuary beneficial uses were negatively impacted by the unpermitted discharge of contaminants to soils and groundwater below the Site, and by their transport to the Estuary. The rate of transmission to the Estuary, however, was likely low.

- b) **Specific Factor:** Deviation from requirement

Category: Moderate

Discussion: The deviation from requirement is “moderate” because the intended effectiveness of the requirement was partially compromised. The Dischargers submitted an acceptable dRAP for 411 High Street on August 18, 2010 and an acceptable dRAP for 401 High Street on October 28, 2010. Provision C.3.j required the Dischargers to submit a dRAP that addressed both properties by October 15, 2007, which was subsequently extended to May 15, 2008. The Dischargers’ submitted the 401 dRAP 896 days after the May 15, 2008 deadline, which delayed cleanup work on the Site.

- c) **Specific Factor:** Days of Violation

Amount: 35 days

Discussion: The Enforcement Policy allows for a reduction in days of violation when it can be determined that the Dischargers’ on-going violation did not result in economic benefit that can be measured on a daily basis. The requirement to prepare and submit a dRAP does not require work on a daily basis. Therefore, the Discharger did not receive a daily economic benefit and it is appropriate to apply the Alternative Approach—Multiple Day Violations factor to this violation.

The Dischargers submitted the required dRAP 896 days late. Pursuant to the Enforcement Policy, the days of violations is reduced to 35 days.

d) **Civil Liability:** Initial amount of ACL assessed for this violation

Amount: \$43,750

Discussion: The maximum \$5,000 per day statutory requirement is multiplied by the reduced number of days—35 days—giving a liability amount of \$175,000. Considering the specific factors (a) through (c) above, the liability amount is multiplied by a factor of 0.25, resulting in the above initial amount of ACL.

Adjustments to Determination of Initial Liability

e) **Specific Factor:** Culpability

Adjustment: 1.2

Discussion: The Dischargers were actively negligent in failing to timely submit an acceptable dRAP for the Site. The Dischargers continued to propose a “monitored natural attenuation” remedial approach more than two years after being informed by Regional Water Board staff that such an approach was unacceptable. The Dischargers did not revise the 401 or 411 dRAP to address the drinking water beneficial use for site groundwater. Additionally, the risk assessment modeling factors in the 401 and/or 411 dRAP did not appropriately reflect Site conditions. The proposed cleanup goals did not factor in estuarine ecological receptors that may be impacted by contaminated groundwater discharging from the Site.

f) **Specific Factor:** Cleanup and Cooperation

Adjustment: 1.1

Discussion: ARCO maintained an interim groundwater remediation system at the 411 High Street property on or about and between May 15, 2008 and October 28, 2010, as required by SCR Order No. 90-133, as amended. The interim remediation measures, however, were not optimally set to address groundwater impacts at the Site. UNOCAL did not operate any remediation systems at the 401 High Street property on or about and between May 15, 2008 and October 28, 2010. Additionally, the Dischargers’ conduct required multiple meetings with Regional Water Board staff, and the issuance of letters and a NOV to obtain an acceptable dRAP for the Site.

g) **Specific Factor:** History of Violations

Adjustment: 1

Discussion: The Regional Water Board has not issued other formal enforcement actions against the Dischargers for violations similar to the one alleged in the Complaint.

h) **Total Base Liability:** The adjusted ACL for the alleged violation.

Amount: \$57,750 (Initial Liability (\$43,750) * Adjustments ((1.2) * (1.1) * (1))

i) **Specific Factor:** Ability to Pay and to Continue in Business

Adjustment: 1

Discussion: The Dischargers will be able to pay the proposed civil liability and continue in business. ARCO is a wholly owned subsidiary of BP. From 2007 through 2010, BP reported operating revenue of about \$1.18 trillion, and a total net income of about \$54.9 billion. UNOCAL is a wholly owned subsidiary of Chevron Corporation. Chevron Corporation's 2010 Annual Report reported a net income of \$19 billion and operating revenue of \$198 billion. The Regional Water Board has no evidence that the Dischargers would be unable to pay the proposed liability set forth in this Complaint or that the amount of the liability would cause undue financial hardship.

j) **Specific Factor:** Other Factors as Justice May Require

Discussion: The Enforcement staff time incurred to prepare this Complaint and supporting information is estimated to be 160 hours. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be \$24,000.

k) **Specific Factor:** Economic Benefit

Discussion: The Dischargers obtained an estimated economic benefit of \$118,461 by delaying the submittal of an acceptable dRAP for the Site. By not timely submitting an acceptable dRAP, the Dischargers deferred expenditures associated with the required soil and groundwater cleanup at the Site. Staff estimated the economic benefit based on a cost analysis provided by ARCO's consultant for the proposed soil vapor extraction, dual phase extraction, and in-situ anaerobic and/or chemical oxidation alternatives at the Site³ and a cost analysis provided by UNOCAL's consultant for the proposed bioremediation with sulfate addition alternative at the Site.⁴

³ May 28, 2010, "Technical Report – Final Remedial Action Plan 401/411 High Street, Oakland, California, Section 3.4 p 3-13." URS.

⁴ May 28, 2010, Technical Report – Final Remedial Action Plan 401/411 High Street, Oakland, California, Section 3.4, pp. 3-13. URS.

l) **Civil Liability:** Minimum Liability Amount

Amount: \$130,307

Discussion: The Enforcement Policy requires that the adjusted Total Base Liability Amount be, at a minimum, 10 percent higher than the economic benefit received as a result of the alleged violation. The Dischargers' estimated economic benefit plus 10 percent is \$130,307. Because the economic benefit received exceeds the Adjusted Total Base Liability, the minimum liability amount that must be imposed is \$130,307.

m) **Civil Liability:** Maximum Liability Amount

Amount: \$4,480,000

Discussion: The maximum liability that may be imposed under CWC section 13350 is \$4,480,000. This is based on the maximum liability of \$5,000 per day for 896 days of violation (from May 16, 2008, through October 28, 2010, the date the Dischargers submitted an acceptable dRAP for the Site).

Final Proposed Civil Liability

The total final liability amount proposed for the late reporting violation is \$154,307 (the sum of the economic benefit received plus 10 percent and staff costs) based on the considerations discussed in detail above.

The proposed liability is less than three percent of the maximum liability that the Regional Water Board has the discretion to impose.