

## Los Angeles Regional Water Quality Control Board

### Memorandum

**TO:** Deborah Smith, Chief Deputy Executive Officer  
**Los Angeles Regional Water Quality Control Board**

**CC:** Nicole Kuenzi, Staff Counsel  
**State Water Resources Control Board**

**FROM:** Samuel Unger, Executive Officer   
**Los Angeles Regional Water Quality Control Board**

**DATE:** December 8, 2014

**SUBJECT:** **Tentative Revised Cleanup and Abatement Order No. R4-2011-0046 for the Former Kast Property Tank Farm**

The Regional Water Quality Control Board, Los Angeles Region (Regional Board) Site Cleanup Program<sup>1</sup> proposes that Deborah Smith issue Revised Cleanup and Abatement Order No. R4-2011-0046 for the Former Kast Property Tank Farm (Revised CAO). See Attachment 1. The Revised CAO would add Barclay Hollander Corporation (Barclay) as a responsible party to the original CAO issued on March 11, 2011 for the reasons discussed in this Memorandum and based on the documents in the Regional Board's files.

### Background

The Regional Board Site Cleanup Program provides regulatory oversight for the environmental investigation of the Former Kast Tank Farm Property (Site). The Site is located in Carson, California and occupies approximately 44 acres. From the early 1920s to the mid-1960s, the Site was owned and operated by Shell Oil Company (Shell) as a crude oil storage facility. The facility included equipment to pump oil to the nearby Shell refinery for processing from three concrete-lined oil storage reservoirs with a total capacity of 3.5 million barrels. In the mid-1960s, Shell closed the facility and sold the Site to a development company with the reservoirs in place. Subsequently, the Site was developed into the Carousel Tract neighborhood, containing 285 single-family detached homes.

On March 11, 2011, Deborah Smith, Chief Deputy Executive Officer of the Regional Board, pursuant to delegated authority of the Regional Board, issued Cleanup and Abatement Order No. R4-2011-0046

<sup>1</sup> The following Regional Board staff participated in the preparation of the Revised CAO: Samuel Unger, Executive Officer; Paula Rasmussen, Assistant Executive Officer; Dr. Arthur Heath, Thizar Tintut-Williams, Dr. Teklewold Ayalew, Dr. Ching-piau "C.P." Lai, and Cris Morris. Frances McChesney and Jennifer Fordyce, Attorneys in the State Water Resources Control Board Office of Chief Counsel, advised the Regional Board staff. Neither the Regional Board staff nor the attorneys have discussed this matter with any other Regional Board staff.

(2011 CAO) to Shell to address discharges of petroleum hydrocarbons and other wastes at the Site. See Attachment 2. The 2011 CAO required, among other tasks, that Shell continue its investigation of the Site, conduct pilot tests, conduct a human health risk assessment, and prepare and submit for Regional Board approval a proposed remedial action plan (RAP), including a feasibility study regarding methods of remediation. Shell has completed many of the tasks set forth in the 2011 CAO.

The investigation provided the following information: The Kast Property Tank Farm was used as a crude oil storage and distribution facility developed with three concrete reservoirs which had a total capacity of 3.5 million barrels. In 1966, Lomita Development Company (Lomita)<sup>2</sup> purchased the property from Shell with the reservoirs largely empty but still in place. Lomita explicitly agreed in writing to complete decommissioning of the reservoirs. In phases between 1967 and 1969, Lomita developed the Site into one- and two-story single family residential parcels and sold the developed lots to individual homeowners. As documented in the records of the Regional Board, in developing the property Lomita emptied and demolished the reservoirs, and graded the Site prior to it developing the Site as residential housing; removed part of the concrete floor of the central reservoir from the Site; and where the reservoir bottoms were left in place, Lomita made 8-inch wide circular trenches in concentric circles approximately 15 feet apart to permit water drainage to allow the percolation of water and sludge present in the reservoirs into the subsurface and in one reservoir removed much of the concrete.

Shell has conducted a series of investigations, pilot studies, and other environmental evaluations of the Site. An extensive multimedia sampling and testing have been conducted at the site during investigations from 2008 to present. Investigations at the Site included: (a) soil, soil vapor, and groundwater investigation in public rights-of-way, the adjacent railroad right-of-way, and other nonresidential areas; (b) methane screening, shallow soil, sub-slab soil vapor, indoor and outdoor air investigation at 272 out of 285 (95%) individual residential properties; and (c) assessment of environmental impact and feasibility of removal of residual concrete reservoir slabs. The collected information includes approximately 11,000 shallow soil samples, 2400 sub-slab soil vapor probe samples, 1470 indoor air samples and 975 outdoor air samples. Results of the sampling confirm that there were discharges of petroleum and other constituents of concern associated with the crude oil that was stored at the site. In addition, chlorinated compounds were detected in all site media. A groundwater monitoring well network of 17 shallow and 8 deep wells have been sampled quarterly since 2009. Light non-aqueous phase liquid (LNAPL) in the form of crude oil is locally present in the site soils at the groundwater table. On June 30, 2014 Shell submitted the proposed RAP and on October 15, 2014 submitted an addendum to the proposed RAP. The Regional Board Site Cleanup Program staff is in the process of reviewing the RAP and has prepared a Draft Environmental Impact Report (EIR). Both the RAP and EIR are currently subject to a public review and comment process. Comments are due on January 9, 2015.

Based on Site Investigation data, the Regional Board Site Cleanup Program has estimated the total petroleum hydrocarbons (TPH) mass for the 0 to 2, 5 and 10-foot depth below ground surface interval.

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<sup>2</sup> A group of companies, including Lomita Development Company, merged into a company known as Barclay Hollander Curci, Inc., which was then acquired by Castle & Cooke, Inc. and it became a wholly-owned subsidiary of Castle & Cooke, Inc. Barclay Hollander Curci, Inc. continued to sell parcels to residential owners. Barclay Hollander Curci, Inc. was later renamed Barclay Hollander Corporation, Inc. (BHC). Castle & Cooke, Inc. merged with Flexi-Van Corporation in 1985, which in 1991, changed its name to Dole Food Company, Inc. BHC agreed to be responsible for the liabilities of Lomita and the other entities. BHC is currently a wholly-owned subsidiary of Dole.

The total mass of petroleum-impacted soils has been calculated to be approximately 14-million pounds of TPH that is presently on the Site.<sup>3</sup>

### **CAO Revision Process**

On July 28, 2010, the law firm of Morgan, Lewis & Bockius LLP (Morgan Lewis) submitted comments on behalf of Shell on the proposed draft 2011 CAO, requesting that the Regional Board name additional responsible parties to the 2011 CAO, specifically Lomita Development Company, Richard Barclay, Barclay-Hollander-Curci (and/or any of its successors), and Dole Food Company, Inc. (Dole) (referred to as the “developers”). See Attachment 4. Shell contended that the developers were responsible for decommissioning the oil storage reservoirs and in developing the Site for residential housing distributed petroleum hydrocarbon wastes throughout the Site. The Regional Board declined to add the developers to the draft CAO at that time and issued the CAO to Shell only on March 11, 2011, but the 2011 CAO included a finding that the Regional Board would continue to investigate the need to name additional responsible parties.

On April 22, 2011 the Regional Board issued an order pursuant to California Water Code section 13267 (13267 Order) requiring Dole to provide technical information about the Site. See Attachment 5. On September 15, 2011, the law firm of Gibson Dunn on behalf of Dole provided a detailed letter and attachments in response to the 13267 Order disputing that it and/or Barclay or any other developer entity should be named as responsible parties in the CAO. See Attachment 6.

After conducting an initial investigation regarding the appropriateness of adding responsible parties to the 2011 CAO, Paula Rasmussen, Assistant Executive Officer of the Regional Board, who supervises the Site Cleanup Program, on October 31, 2013, issued a public notice providing the opportunity for interested persons to comment on proposed revisions to the 2011 CAO (Proposed Draft Revised CAO). See Attachment 7. The notice was provided directly to representatives of Barclay and Dole and was published at the Regional Board website. The proposed revisions would add Barclay Hollander Corporation (Barclay), a wholly-owned subsidiary of Dole, as a responsible party to the 2011 CAO, based on information in the Regional Board’s record showing that the developers of the Carousel Tract purchased the Site from Shell and took responsibility for dismantling the reservoirs upon acquiring the Site and in the process of developing the property into the Carousel Tract disbursed petroleum-contaminated soil around the Site. In addition, the residual petroleum hydrocarbons are still present at the Site and continue to cause pollution and nuisance as documented in the Proposed Draft Revised CAO and Regional Board files.

The notice provided a deadline of December 6, 2013 to submit comments. Pursuant to the notice, comments on the Proposed Draft Revised CAO were limited to the revised portions of the Proposed Draft Revised CAO that concerned naming of responsible parties and indicated by strike outs and underline. Written comments outside the scope of the revisions were not accepted nor responded to.

On November 8, 2013, the law firm of Gibson Dunn & Crutcher LLP (Gibson Dunn), on behalf of Barclay and Dole, requested an extension of time to provide comments on the Proposed Draft CAO. See Attachment 8. On November 15, 2013, Ms. Rasmussen granted the request. See Attachment 9.

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<sup>3</sup> See Memorandum to Samuel Unger, Executive Officer, from Dr. C.P. Lai: “TPH Mass Calculation For Subsoil At Kast Property” (March 20, 2104). Attachment 3.

On January 21, 2014 Gibson Dunn submitted timely comments on the Proposed Draft Revised CAO, including a lengthy technical report and declarations of Donald E. Shepardson, Marcia E. Williams, Patrick W. Dennis and Jeffrey V. Dagdigian. See Attachment 10.

On June 3, 2014, Ms. Rasmussen published a Notice of Opportunity for Additional Comments on the Proposed Draft Revised CAO providing an opportunity for Shell to submit comments regarding the Proposed Draft Order and an opportunity for Barclay and Dole to submit comments in response to any comments received from Shell by the Regional Board. See Attachment 11. On June 16, 2014, the law firm of Morgan Lewis submitted comments regarding the Proposed Draft Revised CAO. See Attachment 12. On June 30, 2014, Gibson Dunn submitted comments in response to those submitted by Morgan Lewis, including an additional technical report by Waterstone, and declarations of Jeffrey V. Dagdigian, Charles R. Faust, George Bach and Robert W. Loewen. See Attachment 13. No comments were received in a timely manner by any other persons.

The Regional Board Site Cleanup Program staff has considered the comments received regarding the Proposed Draft Revised CAO. See Attachment 14. In response to those comments, the Regional Board staff continues to propose to add Barclay as a responsible party to the 2011 CAO and has modified the Proposed Draft Revised CAO. The modified CAO is referred to as the Draft Tentative Revised CAO. See Attachment 15.

#### **Summary of Comments and Responses**

Gibson Dunn's comments on the Proposed Draft Revised CAO included a lengthy legal response and the Waterstone Report. In that Report, Waterstone reviewed historical documents, site investigation data consisting of thousands of soil, soil vapor and groundwater samples, depositions by eyewitnesses from ongoing litigation regarding the Site who were involved with the site demolition, and academic articles regarding mechanisms of contaminant fate and transport. Based on this information, Waterstone concluded that the development activities did not contribute or mobilize wastes on the Site. The Waterstone Report addresses Barclay's knowledge of the wastes on the Site, Barclay's activities involving removal and disposal of waste off the Site, and Barclay's activities that may have mobilized wastes on the Site. The Waterstone Report concludes that the distribution pattern of petroleum hydrocarbon wastes at the Site is explained by a theory of upward capillary migration of wastes from deeper depths to shallow depths.

The Site Cleanup Program's response to comments explains why the staff disagrees with the legal comments and Waterstone's theory of the distribution of wastes at the Site. In summary, the Regional Board Site Cleanup Program staff concludes that there is sufficient evidence to name Barclay as a responsible party pursuant to California Water Code section 13304 in Cleanup and Abatement Order R4-2011-0046. The Regional Board Site Cleanup Program staff concludes after review of the detailed comments on the proposed draft revised CAO, technical literature, and data from the Site investigation, that Barclay (1) acquired the Former Kast Tank Farm with explicit knowledge that it was a crude oil storage facility and general knowledge of the presence of petroleum hydrocarbons; (2) agreed to and did decommission the reservoirs after acquiring the property; (3) had explicit knowledge of the presence of petroleum hydrocarbons in the reservoirs, under the reservoirs, in the reservoir berms, in the swing pit, in the pump house, and in pipeline areas; (4) removed a miniscule amount of soil saturated with petroleum hydrocarbons, and removed soil based only on geotechnical considerations not on whether petroleum hydrocarbons were present, (5) distributed the remaining soil containing petroleum hydrocarbons and concrete slabs with attached wastes, i.e., petroleum hydrocarbons, around the Site during grading and development activities which accounts for the distribution of petroleum hydrocarbons in on-site shallow soils and soil vapor, and could not have resulted from the alleged mechanism of upward capillary

migration; and (6) ripped open and removed concrete slabs causing and contributing to the movement of petroleum hydrocarbons into groundwater. The developers' actions have caused or permitted and continue to cause or permit wastes to be discharged where they impact the waters of the State and cause and continue to cause pollution and nuisance.

The Regional Board, therefore, has the authority pursuant to the Porter-Cologne Water Quality Control Act to order Barclay to clean up the waste and abate the effects of the discharges of waste pursuant to Water Code section 13304. The actions were in violation of the Dickey Act, which was in effect at the time the developer took the actions.

### **Conclusion and Recommendation**

All of the documents cited above are provided in the attached documents. These documents and other data and reports for the Site are also available for your review at the Regional Board office and are also posted on the GeoTracker database. This Memorandum and attachments is also provided to representatives of Barclay Hollander Corporation and Shell Oil Company and other interested persons. See enclosed Letter to Michael Carter, President, Dole Food Company, Inc. and Douglas J. Weimer, Project Manager, Shell Oil Products US.

I recommend that you issue the attached Revised Cleanup and Abatement Order No. R4-2011-0046 (Attachment 1) adding Barclay Hollander Corporation as a responsible party. I also request that you make your determination prior to January 9, 2014.

If you have any questions, please contact Samuel Unger at (213)576-6605 or [samuel.unger@waterboards.ca.gov](mailto:samuel.unger@waterboards.ca.gov) or Frances McChesney at (916)341-5174 or [frances.mcchesney@waterboards.ca.gov](mailto:frances.mcchesney@waterboards.ca.gov).

#### **Attachments:**

- Attachment 1: Revised Cleanup and Abatement Order No. R4-2011-0046
- Attachment 2: Cleanup and Abatement Order No. R4-2011-0046
- Attachment 3: Memorandum to Samuel Unger from Dr. C.P. Lai: "TPH Mass Calculation For Subsoil At Kast Property" (March 20, 2104)
- Attachment 4: Letter to Ken Harris from Morgan, Lewis & Bockius, LLP, Shell Comments and Request that Developer Parties be added to Cleanup and Abatement Order and Identified as Responsible Parties (July 28, 2010)
- Attachment 5: Order to Dole Food Company, Inc. to Submit Technical Report Pursuant to California Water Code Section 13267 – Former Kast Property Tank Farm (April 22, 2011)
- Attachment 6: Letter to Samuel Unger from Gibson Dunn & Crutcher LLP Re: Kast Tank Farm – Response of Dole Food Company, Inc. to Regional Board's April 22, 2011 Water Code Section 13267 Order to Submit Technical Report (September 15, 2011)
- Attachment 7: Notice of Opportunity to Submit Comments on Proposed Draft Order, In the Matter of Cleanup and Abatement Order No. R4-2011-0046 (October 31, 2013)
- Attachment 8: Letter to Paula Rasmussen from Gibson Dunn & Crutcher LLP (Gibson Dunn), Re: In the Matter of Cleanup and Abatement Order No. R4-2011-0046 Former Kast Property Tank Farm (November 8, 2013)
- Attachment 9: Letter from Paula Rasmussen to Michael Carter, President, Dole Food Company, Inc. (November 15, 2013)

Deborah Smith  
Chief Deputy Executive Officer  
Los Angeles Regional Water Quality Control Board

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- Attachment 10: Letter to Paula Rasmussen from Gibson, Dunn & Crutcher LLP, Re: "Comment Letter – Former Kast Property Tank Farm – Revised CAO" (January 21, 2014)
- Attachment 11: Notice of Opportunity for Additional Public Comment, Proposed Revised Draft Cleanup and Abatement Order No. R4-2011-0046 (June 3, 2014)
- Attachment 12: Letter to Dr. Teklewold Ayalew from Morgan Lewis and Bockius LLP, Re: Comment Letter – Former Kast Property Tank Farm – Revised CAO No. RB4-2011-0046 (June 16, 2014)
- Attachment 13: Letter to Dr. Teklewold Ayelew from Gibson, Dunn & Crutcher LLP on behalf of Dole Food Company, Inc., Re: Response to Shell's Comments – In the Matter of Cleanup and Abatement Order No. R4-2011-0046 (June 30, 2014)
- Attachment 14: Regional Board Site Cleanup Program Response to Comments on Draft Revised Cleanup and Abatement Order, Former Kast Property Tank Farm (Cleanup and Abatement Order R4-2011-0046)
- Attachment 15: Draft Tentative Revised Cleanup and Abatement Order No. R4-2011-0046
- Enclosure: Letter to Michael Carter and Douglas J. Weimer from Paula Rasmussen, dated December 5, 2014