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(415) 856-7088
matthewshaps@paulhastings.com

November 20, 2006

59706.00002

VIA FACSIMILE AND E-MAIL

Mr. Cleet Carlton
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612

Re: Tentative Order, Amendment of Site Cleanup Requirements (Order No. 90-133),
401 and 411 High Street, Oakland, California

Dear Mr. Carlton:

On behalf of the R&N Koch Trusts (Koch), we are writing to express our support for the Regional Board's proposed Tentative Order, Amendment of Site Cleanup Requirements (Order No. 90-133) for property located at 401 and 411 High Street in Oakland, California (Amendment).

Koch agrees with the Regional Board that the primarily responsible dischargers should be required to work jointly to complete a comprehensive remedial investigation (RI) and feasibility study (FS) for the entire site. As indicated by the proposed Amendment, it is essential that the remaining soil and groundwater data gaps at the site be addressed. In addition, as we have discussed in prior comments to the Regional Board, Koch is also keenly aware that a proper FS has never been performed for the site. As such, the FS required by the Amendment should serve as the basis for the long-overdue evaluation and selection of appropriate cleanup standards and final remedial alternatives for the site. Thus, taking the approach set forth in the Amendment will finally provide for the development of a comprehensive conceptual site model, which is essential for the effective investigation and remediation of the two properties comprising the site.

Koch is also of the opinion that once final remedial alternatives are evaluated and selected, completion of remedial action(s) and curtailment should be placed on a reasonable time table with an end date established by the Regional Board. For over 20 years the site has been subject to ineffective investigation and remediation efforts that have not made significant progress toward achieving cleanup goals. A review of the scope provision of the 1990 Order indicates tasks that were to be addressed in the 1990-1991 time frame originally included completion of site characterization; 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. To date, however, some sixteen years after the Regional Board's adoption of the 1990 Order, none of those tasks are

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complete, with the exception of the implementation of certain interim remedial actions at the site which were never the subject of a complete RI/FS.

Establishing a reasonable time frame for remediation, in conjunction with the tasks required by the Amendment, will assure that future cleanup activities are conducted in an effective and timely manner. Including real target dates in the final Remedial Action Plan for the site will provide a critical means of assessing compliance with the 1990 Order and Amendment, and the relative success of the final remedial actions over time. For this reason, Koch proposes that an additional subsection be added to the Regional Board's newly-proposed Provision C.3.j). This new subsection would be numbered (7) and read as follows:

7. Projected time table for completion of remedial alternatives and curtailment.

Finally, Koch believes it is appropriate to include language in the Amendment that clearly indicates that Koch, as the current owner of 411 High Street, is a discharger with secondary liability, and that there is no evidence Koch itself has discharged any pollutants. We therefore suggest that language substantively identical to the language in the 1990 Order be repeated in the Amendment, so that Koch's role at the site remains clear. For similar reasons, it may also be appropriate to include such language in the Amendment for Las Vegas II Storage, LLC with regard to the 401 High Street property.

The relevant language on page 3 of the 1990 Order reads as follows:

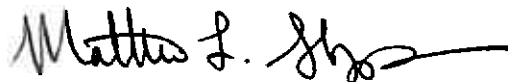
Koch Investments Company is a discharger with secondary liability because, as the current owner, they are ultimately liable for existing pollution on, and emanating from, the 301 and 411 High Street property. There is currently no evidence that Koch itself discharged pollutants at their property. Koch would be required to meet the Specifications, Prohibitions and Provisions of their 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.

This language should be kept substantively the same but changed in the Amendment to (1) include the correct names of the parties; (2) remove the reference to 301 High Street; and (3) properly reference the collective requirements of the 1990 Order and the Amendment.

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Koch appreciates the opportunity to provide the Regional Board with these comments on the proposed Amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew L. Shaps", with a long horizontal flourish extending to the right.

Matthew L. Shaps
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

MLS:ema

cc: Richard Koch
Jon Rosso

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