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VIA E-MAIL AND OVERNIGHT MAIL

California Regional Water Quality Control Board
Los Angeles Region
ATTN: Dr. Teklewold Ayalew
320 W. Fourth Street, Suite 200
Los Angeles CA, 90013
E-Mail: tayalew@waterboards.ca.gov

Re: **Former Kast Tank Farm Property (Carousel Tract)/ Remedial Action Plan/
Draft Environmental Impact Report/Comments/ City of Carson**

Dear Dr. Ayalew:

Pursuant to the California Regional Water Quality Control Board, Los Angeles Region's ("RWQCB") November 7, 2014 Notice of Completion of Draft Environmental Impact Report ("DEIR") and proposed Remedial Action Plan ("RAP") for the Former Kast Tank Farm Property (Carousel Tract) in Carson, California ("Site"), the City of Carson ("City") hereby submits comments on both documents.¹

Even though the RAP is the "project" analyzed in the DEIR, the City understands that the RWQCB's evaluation and response to comments on the RAP (a technical document) and DEIR (a planning document) may be performed by different persons for different purposes using different standards. As such, for clarity and ease of evaluation, the City's comments on the proposed RAP are attached hereto as Exhibit A, and the City's comments on the DEIR are attached as Exhibit B.

¹ There have been numerous drafts, revisions and addendums regarding the RAP and DEIR. The City's comments are based on the most recent documents provided to it; namely, the Relocation Plan dated September 19, 2014, the Addendum to the Revised RAP (incorporating the Addendum to the Revised Feasibility Study and Addendum to the Revised Human Health Risk Assessment) all dated October 15, 2014, and the DEIR dated November 5, 2014.

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The City appreciates the efforts of the RWQCB to identify, assess and mitigate the adverse health and environmental impacts posed by the Site and looks forward to our joint and continued efforts to protect the residents of Carousel Tract. If you have any questions, please do not hesitate to contact Mr. Stephen R. Onstot at the letterhead address.

Very truly yours,

ALESHIRE & WYNDER, LLP



Stephen R. Onstot
Partner

SRO

cc: The Honorable Mark Ridley-Thomas
Carson City Council Members
Carson City Manager
Carson City Attorney

EXHIBIT A

EXHIBIT A

City of Carson's Comments On Proposed RAP for Kast Former Tank Farm Property (Carousel Tract)

1. The RWQCB proposes to amend CLEANUP AND ABATEMENT ORDER NO. R4-2011-0046 ("CAO") to include Barclay Hollander Corporation ("BHC") as a Discharger/Responsible Party. If the CAO is so amended, the RAP should identify BHC as responsible for implementing the RAP jointly and severally with Shell. If there is a division of responsibility between Shell and BCH for implementing certain parts of the RAP, that division should be clearly identified in the final RAP. (For example, in the property buy-back and relocation program, are property owners/sellers to look to only to Shell or only to BCH for such relief, or to both? If the latter, what are the logistics of making that happen?) The RAP should also identify how disputes between Shell and BCH regarding implementation of the RAP will be resolved so the property owners do not get "caught in the middle" with Shell and BCH each contending a specific part of RAP implementation is the other's responsibility.¹

2. The RAP is not "user-friendly" given the very unique nature of this specific project. Unlike the customary contaminated site that is located in a commercial/industrial area, this site has homes on top of it. Thus, the affected population is that of residents, not workers, and people are more likely to take interest in issues that affect their homes and families than they do their workplaces or colleagues. As such, they should be given a RAP that they can read and understand, and one which clearly provides information important, "bottomline" information to the resident, and not just the Discharger or regulatory agencies. Of course the RAP should not sacrifice scientific explanation and accuracy for brevity, but the Executive Summary or even a short "Resident Summary" that is directed to the residents should be included ***and include information the residents want and need to know***. (For example, the Executive Summary in the RAP states that Alternative 4D from the Feasibility Study was selected as the preferred alternative. But the Executive Summary is silent on many things about Alternative 4D the residents need to know: e.g. that the RWQCB estimates there are 14 million pounds of contamination at the site, which translates to over 24.5 tons of contamination per residence (14 million pounds / 285 residences x 1 ton/2000 pounds= 24.56 tons/residence)²; that Alternative 4D will remove only 9% of the waste at the site, leaving 91% of the waste beneath their homes³; that benzene is a chemical that causes cancer and, along with lead and arsenic, is found in elevated levels in soil and groundwater at the site⁴; that there is a 9 foot thick layer of gasoline-like contamination floating on the groundwater table at the site⁵; and that there is a property buy-back/relocation plan⁶). It is unfair to the residents of Carousel Tract to be required to plow through technical reports to find information important to them that is buried in mountains of

¹ In these comments, "Discharger" refers to Shell and BHC, collectively.

² 12/8/2014 letter to D. Smith from S. Unger

³ 6/30/2014 revised Feasibility Study, Alternative 4D analysis

⁴ Proposed revised CAO

⁵ Proposed revised CAO

⁶ 9/19/2014 RAP Relocation Plan and Optional Real Estate Program

paper. Stated another way, the Discharger should put itself in the shoes of a Carousel Tract resident and create an Executive Summary that contains information that would be important it.

3. The RAP is the product of the Feasibility Study (“FS”) that was based on a Human Health Risk Assessment (“HHRA”). Unfortunately, there was no formal comment period on the HHRA or FS, so the City provides its comments on such documents as follows.

3a. HHRA. The HHRA identifies an acceptable incremental cancer risk of 1×10^{-6} for residents and 1×10^{-5} for construction workers. People are people, so it makes no sense to provide construction workers with less protection than residents. The incremental cancer risk for each should be 1×10^{-6} . The HHRA states that 172 properties currently have incremental cancer risks in excess of the 1×10^{-6} threshold and Hazard Indices greater than the 1.0 threshold (at 5 feet bgs), yet there is nothing in the FS or RAP to show that the preferred remedial alternative, Alternative 4D will result in these properties being mitigated to a level below such thresholds. In other words, there is no showing that the preferred alternative will work. The HHRA also excluded from consideration all chemicals detected in less than 5 samples. Such exclusion is arbitrary and unfair to the residents who had “hits” of such chemicals on their specific properties.

As a result, it cannot be said that the preferred alternative will satisfy the following Remedial Action Objective adopted for the Carousel Tract:

“Prevent human exposures to concentrations of COCs in soil, soil vapor, and indoor air such that total (i.e., cumulative) lifetime incremental carcinogenic are within the NCP risk range of 1×10^{-6} to 1×10^{-4} and noncancer hazard indices are less than 1 or concentrations are below background, whichever is higher. Potential human exposures include onsite residents and construction and utility maintenance workers. For onsite residents, the lower end of the NCP risk range (i.e., 1×10^{-6}) and a noncancer hazard index less than 1 have been used.”⁷

3b. FS. The FS identified possible remedial technologies, screened them individually, analyzed the retained technologies individually, then selected preferred one for each medium. However, the FS did not consider combinations of medium-specific technologies. For example, the FS eventually rejected “removal of all site features” (Section 4.3.3), “temporarily moving houses” (section 4.2.2.1.2) and “lifting and cribbing houses” (Section 4.3.5.1) to effectuate excavation of soil. But the FS did not consider the possibility of “removal of all site features” for those residents who wish to sell their homes to Discharger and “lifting, cribbing or temporarily moving houses” for those residents who wish to remain at Carousel Tract. Such non-consideration is extremely shortsighted because the FS acknowledges that excavation, in general, is technologically feasible and removes, rather than mitigates, the contamination. As noted above, the RAP admits that its implementation will only remove 9% of the contamination because (as to soil) excavation would be surgical, only occurring in the easiest places to excavate, and only to the extent necessary to reduce exposure pathways to the point that they comply with risk thresholds.

⁷ Revised RAP, 5-1

The FS also suggests installation and operation of a vapor extraction system would be effective to remove hazardous vapors from soil. That may be true; however, the FS assumes, incorrectly, that the City and residents would welcome the placement of extraction wells and pumping/treatment equipment in city streets and front/back yards. The FS should only consider technologies that the Discharger is reasonably sure it can implement.

For groundwater, the FS favors monitored natural attenuation (“MNA”), and the RAP adopts this technology for 5 years.⁸ In essence, MNA is the “wait and see” or “do nothing” technology which makes no sense here. The FS notes that Shell’s tank farm was installed over 90 years ago, that the Kast Property along with off site sources contribute to the groundwater contamination, and that part of the groundwater plume consists of the carcinogen benzene. Nevertheless, Shell proposes to leave the fate of the groundwater flowing under the Kast Property in the hands of those controlling upgradient sources of contamination and natural attenuation. From the City’s perspective, it makes much more sense for Shell to stop contamination from upgradient sources by pumping and treating groundwater at the site’s southwest corner, eliminate the onsite sources by excavating contaminated soil, and then allow the remaining contamination to naturally attenuate.

When compared to the preferred alternative implemented through the RAP (i.e. Alternative 4D), Alternatives 2 (removal of all site features and the excavation of impacted soils over entire site) and 3 (removal of all site features and excavation to a depth of 10 feet over entire site) were prematurely rejected. According to Table 5-3 of the FS, the “effectiveness” of Alternatives 2,3, and 4D are nearly the same, with Alternative 2 being slightly superior because all cleanup goals at all depths would be satisfied. Further, Table 5-3 states that the “implementability” of Alternatives 2 and 3 is superior to that of Alternative 4D. Alternatives 2 and 3 will take 4.5 years and 2.5 years, respectively, to implement. Alternative 4D will take 6.7 years (modified to 5.5 years in FS Addendum). Alternatives 2 and 3 are deemed “very difficult” to implement, whereas Alternative 4D is deemed “infeasible” (later changed to “Difficult” in FS Addendum) All three Alternatives are deemed “high or very high” in terms of costs, with Alternative 4D estimated to cost between \$117 million and \$190 million. There is no estimate of what the costs would be for Alternatives 2 and 3. Alternatives 2 and 3 are labelled “possibly not permitted under CEQA” in the original FS, which is misleading because any remedial alternative, even Alternative 4D, may not pass CEQA muster, but that cannot be known unless and until such alternative is submitted for CEQA review. Thus, the FS is severely flawed in that it dropped from detailed analysis two remedial alternatives that it found to be superior to the one it retained (and ultimately adopted as the “preferred alternative.”) Because the FS forms the basis for the RAP and, in this case the FS is flawed, the RAP is necessarily flawed as well. Accordingly, the City suggests that the FS be redone to include detailed analysis of Alternatives 2 and 3 and a new resulting RAP prepared.

4. In implementing the RAP, what is to be done as to structures under which total petroleum hydrocarbons (“TPH”) concentrations exceed 100 x site specific cleanup goal (“SSCG”)?

⁸ The preferred alternative states that after 5 years, if the groundwater plume is not stable or declining, then more studies (including a pilot study) on active remediation will be conducted. This may set back the start of actual remediation 1-3 years.

5. More detail is needed as to what will be done with properties identified as “not investigated.”

6. The RAP Relocation Plan/Optional Real Estate Program requires more detail, clarification, and delineation of responsibilities.

6a. Temporary Relocation Plan (“TRP”). According to the TRP, Discharger, in its discretion, determines who is eligible for temporary relocation. Such provision should be revised to state that all residents affected by the remediation shall, at their discretion, be eligible for temporary relocation for as long as the remediation activities affect them. The TRP anticipates that each eligible resident will be relocated for approximately eight weeks. That is more than a mere “inconvenience,” for depending on the time of the year, living in a hotel for two months could mean a major disruption to the residents’ lives. The TRP requires much more detail as to how Discharger will minimize the adverse impacts of relocation and compensate residents for those impacts that cannot be eliminated. For example, issues such as mail and parcel delivery, school transportation, and home-based businesses must be addressed. The City suggests that final approval of the RAP be withheld until Discharger surveys each resident and develops a property-specific enforceable agreement with each resident that addresses that resident’s specific needs and concerns. The current proposal to simply ask a resident to fill out a questionnaire and let Discharger ultimately determine the resident’s needs provides little assurance to residents that they will be made whole under the TRP. Stated another way, before a person agrees to move his/her entire family to a different location for two months, that person should know exactly what he/she is agreeing to.

6b. Optional Real Estate Program (“ORP”). It is unclear what “fair market value of the property without regard to environmental conditions and RAP activities” means. For example, should an appraisal take into account that the property is subject to an upcoming eight week relocation of its residents, or that it will house a vapor extraction pump in the back yard, or undergo bioventing activity? Also, “fair market value” determination should be made based on comparable sales in Carousel Tract before contamination was discovered (if possible) or other comparable sales of residential properties that are not environmentally impaired. In the event of a dispute over market value, the ORP requires the resident to pay for an “approved appraiser.” Approved by who---Discharger? Also, it is unfair to require the resident to pay for the appraisal, for the cost could run into the thousands of dollars and (a) a resident may not be able to afford an appraisal, and (b) the resident should not be required to bear the burden of justifying the fair market value of a property environmentally impaired by Discharger. Accordingly, Discharger should pay for the appraisal. Further, if a third appraisal is ultimately required, a neutral third party should select the appraiser. What is “sale price?” Is it gross sale price, or sale price net of seller-paid fees and costs? If the transaction results in a payment to the resident, how is such payment reported for tax purposes? Finally, looking at the proverbial “forest through the trees,” Discharger should consider buying all of the properties itself. According to the RAP, Discharger expects to spend up to \$191 million in resolving the Kast Property contamination issues to residential standards. Instead of pursuing the current remediation path, if Discharger was to purchase all 285 homes at (for example) \$450,000 each, Discharger would pay \$128,250,000, leaving \$62,750,000 for remediation. By removing residents and structures from the Carousel Tract, more contamination could be remediated at lower cost and in a shorter time period than currently contemplated. In addition, a change in allowable land use may permit Discharger to

clean up to commercial/industrial standards rather than residential and own a property that has asset value.

7. The above comments all have the common theme of maximum protection to Carousel Tract residents by mitigating contamination and related issues to the maximum extent possible and compensating the residents for the contamination and related issues that cannot be fully mitigated. Consistent with such theme, the City's final comment is that the HHRA, FS and RAP must go beyond pure science and address quality of life issues. There are no RAOs that seek to improve the quality of life of Carousel Tract residents; however, there should be for, after all, shouldn't the *ultimate* RAO in all environmental cleanups be to protect or improve quality of life?

The FS is required to address "social considerations (i.e. quality of life issues)," which the FS describes as:

Social Considerations – For this FS Report, an especially important evaluation criterion is the social impact of the remedial action on the community. Considerations associated with social impact include disruption of the ability of individual homeowners to enjoy the use of their property, community disruption during and after remediation, environmental factors such as traffic, dust and noise, and effects on the integrity and preservation of the neighborhood.⁹

For the preferred alternative, Alternative 4D, the FS's analysis of "social considerations" as follows:

6.3.5.10 Social Considerations

Alternative 4D would have a high level of social impact. Alternative 4D has the same impacts that were discussed for Alternative 4B and 4C. Alternative 4D has an added social impact because the excavation and soil replacement would take longer than Alternatives 4B or 4C because of additional soil excavation, the added time associated with auger excavation, and utilities interruption and restoration. There would be increased truck traffic from Alternative 4D due to more soil being removed than for Alternative 4B, 4C, 5B, 5C, and 5D, and due to the extensive lengthy disruption of the Community.¹⁰

Then, stunningly, when the preferred alternative, Alternative 4D, is compared to other alternatives, the FS concludes:

Alternatives 4D and 5D would have a very high social impact, but neither is implementable.¹¹

⁹ FS, at 64-65

¹⁰ Revised FS

¹¹ FS, at 98

The City contends that having a “preferred alternative” that (a) won’t work, and (b) poses the most severe social impacts of all the alternatives considered is indicative of misplaced priorities.

As one can imagine, the quality of life issues posed by living on contaminated property are significant. In this case, one Carson resident complained to the City that she sent invitations for her child’s birthday party to several of his classmates. The party was to be held at the child’s home in Carousel Tract. To the child’s dismay, everyone declined to attend, the reason given is that the home is on contaminated property. Imagine the stress of living in a community where environmental workers walk around wearing personal protective gear or being asked to host a monitoring well or extraction equipment, or your family potentially spending the holiday season in a hotel. It is well documented that stress manifests itself via adverse physical and mental health impacts, impacts that the Discharger is responsible for and, as such should do whatever is possible to eliminate them or provide fair compensation for such factors that are not able to be eliminated. To that end, the City requests that the Discharger revisit the feasibility study process to identify and give higher priority to remedial alternatives that both work and have the fewest adverse quality of life impacts.

EXHIBIT B

EXHIBIT B

City of Carson's Comments On Draft Environmental Impact Report for Remedial Action Plan To Remediate Kast Former Tank Farm Property (Carousel Tract)

1. Section 15125 of the CEQA Guidelines (Environmental Setting) requires a full understanding of the regional context of the proposed project. (“Knowledge of the regional setting is critical to the assessment of environmental impacts.”) Page 2-5 of the DEIR notes that the Turco, Fletcher Oil and Oil Transport Co. properties are near the Kast Property and are known to have releases of chemical substances. The RAP also indicates that there are offsite sources of contamination impacting the Kast Property. However, the Environmental Setting requirement is not satisfied here because the DEIR does not identify and analyze the nexus, if any, between offsite sources and the remediation measures proposed in the RAP. For example, page 2-2 of the DEIR states that the RAP will remove the layer of LNAPL floating on the groundwater beneath the Kast Property, but nowhere is the source of the LNAPL identified and, if the source is offsite, where is it coming from, what is being done to stop the migration, and how long will it take to remediate. Simply put, the RAP is unclear as to whether it is designed to remediate contamination from only onsite sources, only offsite sources, or both. The analysis of contributions by offsite sources to be remediated by the proposed RAP is critical, for it forms the basis as to whether the proposed project is of the proper scope. CEQA requires that projects be analyzed “as a whole” and not piece-mealed, so the RWQCB should determine whether the subject RAP is whole “in and of itself” or part of a larger project to remediate regional contamination. “Projects with a regionally significant impact should consider the regional context.” Section 15126.6(f)(1).

2. Section 15126.6 of the CEQA Guidelines (Alternatives) requires analysis of a reasonable range of alternatives to the proposed project. Section 15126.6(a) states, in relevant part:

An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives.

The DEIR does not comply with Section 15126.6 for several reasons.

a. Section 3 of the DEIR (Alternatives) does not disclose the RWQCB's reasons for selecting the range of alternatives. Section 3.3 of the DEIR simply identifies the 3 Alternatives to be analyzed in the DEIR but does not explain why they were chosen.

b. The RWQCB applied the wrong standard in choosing alternatives for further analysis in the DEIR. The RWQCB appears to have applied the standards for analyzing remedial action alternatives in a FS to selecting a range of alternatives for consideration in an EIR; however, the criteria for the FS process and CEQA process are different, the main distinction being that the latter focuses more on the environmental impacts of the alternative than the former.

c. The range of alternatives is too small. A “range,” by definition, is an assortment of different things of the same general type. Aside from the “no project alternative,” the DEIR’s assortment of different ways to remediate Carousel Tract consists of only two options----both of which are so similar that they are of little value. Excavating only landscaped areas as opposed to landscaped and hardscaped areas or excavating to 5 feet as opposed to 5 feet plus targeted areas to 10 feet only changes the amount of soil removed. It does not present the reality of a diverse set of remedial options, therefore failing as an informational document.

d. Section 15126.6(b) of the CEQA Guidelines states, in relevant part:

... the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

Accordingly, failure to include a discussion of FS Alternatives 2 and 3 (remove site features and excavate) because such Alternatives would not maintain residential land use, displace current residents, and be relatively costly compared to other alternatives is not warranted. There are many advantages and disadvantages to nearly all possible alternatives, and the RWQCB Board members who ultimately make a decision on the project should have sufficient information to be able to weigh and prioritize these advantages and disadvantages. This is especially true in this case where the proposed project (i.e. the RAP) was declared infeasible with very high costs in Table 5-3 of the 3/10/2014 FS.

3. Section 15131 of the CEQA Guidelines authorize, but do not require, consideration of economic and social factors (except with respect to project changes to mitigate adverse effects, where consideration of such factors is mandated.) In this case, the DEIR is silent on such factors, and the City is dismayed that the RWQCB considers them of such low importance as to not address them in the DEIR as authorized. Section 15131(b) states: “(b) Economic or social effects of a project may be used to determine the significance of physical changes caused by the project.” In this case, RAP implementation will result in many physical changes: digging up residents’ front and back yards, installation of indoor and outdoor monitoring and treatment equipment on residents’ properties; extended periods of noise and vibration; and installation of security fencing, to name a few. While such changes may be small or even insignificant in an industrial or commercial setting, in a residential setting such physical changes are made hugely significant because they diminish quality of life, especially for those residents who choose not to relocate during the eight weeks their homes are remediated. Common sense dictates that *any* change to the physical attributes of a person’s home is significant to that homeowner.

4. Section 15131(c) of the CEQA Guidelines states:

Economic, social, and particularly housing factors shall be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.

As such, the EIR is required to consider economic, social and housing factors to determine the feasibility of *project changes* (not mitigation measures) to lessen or avoid significant effects on the environment. In this case, the two environmental impacts declared to be substantial and unavoidable are noise and vibrations; however, although there are mitigation measures proposed for such impacts, there is no discussion of *project changes* that may lessen or eliminate such impacts if feasible from an economic, social and/or housing perspective.

5. The FS, RAP and DEIR appear to have been drafted to support a predetermined outcome (i.e. that Alternative 4D is the most feasible and environmentally superior project). The City certainly recognizes that sometimes multiple drafts of a document are required or that revisions to a final document are justified; however, in this case it appears as if final documents were revised or an Addendum attached to them in an effort to justify Alternative 4D rather than let the analytical process filter out the preferred Alternative as it is intended to do. For example, the HHRA, FS, and RAP were all initially posted on the RWQCB's website as final documents in March, 2014. Then revised versions were posted in June, 2014. Finally, Addenda to each of the revised documents were posted in October, 2014. Such multiple iterations of "final" products, in and of themselves, are not alarming. However, in this case, the multiple iterations continually change significant conclusions *without explaining the reasons therefore* in a effort to justify Alternative 4D. Conclusions, and hence the preferred Alternative, should only change if the data and analysis of the data warrant such change. And we do not have that here. Again by way of example, attached hereto are the Alternative 4D portions of "Table 5-3---Screening of Remedial Alternatives" from the March, 2014, June, 2014 and October, 2014 FS's, respectively. The March 2014 FS flatly describes the implementability of Alternative 4D as "Infeasible," but "retained as directed by RWQCB." Then, the June, 2014 and October, 2014 FS's describe the implementability of Alternative 4D as "Difficult," but "retained as technically and economically feasible." Yet, there is no analysis between March, 2014 and October, 2014 justifying such change of conclusion; therefore, it appears arbitrary and created only to allow a "feasible" RAP to be advanced as the "project" for CEQA purposes. Other non-supported conclusions are evident in Table 5-3 as well. For example, Alternatives 2 and 3 were rejected, in part, as "possibly not being permitted under CEQA," (see attached) yet there is no explanation of what that conclusion means, let alone why it is a reason to reject Alternatives 2 and 3 because the CEQA option of adopting a Statement of Overriding Considerations is always available to the lead agency. In sum, the RWQCB should track its significant conclusions from the first "final documents" through the last ones and document the reasons for such changes in an appropriate place (e.g the Alternatives section) of the EIR.