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DOLE FOOD COMPANY, INC. and
BARCLAY HOLLANDER CORPORATION

BEFORE THE REGIONAL WATER QUALITY CONTROL BOARD

LOS ANGELES REGION

In the Matter of Los Angeles Regional
Water Quality Control Board's Notice of
Opportunity to Submit Comments on
Proposed Draft Order in the Matter of
Cleanup and Abatement Order No. R4-
2011-0046 Former Kast Property Tank
Farm (SCP No. 1230, Site ID No.
2040330, File No. 11-043).

**DECLARATION OF GEORGE
BACH**

DECLARATION OF GEORGE BACH

I, George Bach, declare as follows:

1. I am providing this declaration at the request of Gibson, Dunn & Crutcher LLP, counsel for Barclay Hollander Corporation (“Barclay”), which I understand is submitting comments to the Los Angeles Regional Water Quality Control Board (“Regional Board”) on their Draft Clean-up and Abatement Order No. RB 4-2011-0046 concerning the former Kast Property in Carson, California (“Site”). From 1966 to 1968, I was employed by a predecessor of Barclay at the former Kast Property, where I supervised the dismantling of three large reservoirs that had been used for oil storage by an affiliate of Shell Oil Company (“Shell”) in its past operations at the Site. Our purpose was to grade the property to make it ready for construction of residential housing in a development known as the Carousel. The following facts are true and based upon my own personal knowledge, and if called as a witness, I could and would testify competently thereto.

2. I have read a letter dated June 16, 2014 addressed to Ms. Deanne Miller of Morgan, Lewis and Bockius, LLP, counsel for Shell, prepared “on behalf of Shell Oil Company” by Thomas Johnson PG, CHG (“Johnson”) of Thomas Johnson Associates (“Johnson Letter”). On pages one and two of that letter, Mr. Johnson names me as a source of certain facts. I submit this declaration to clarify those facts.

3. In his letter, Mr. Johnson cites two sources to support the facts he attributes to me: (1) the transcript of testimony I gave on March 7 and 11, 2013 in a deposition (“2013 Deposition”) conducted in litigation pending in the Los Angeles County Superior Court entitled *Acosta, et al. v. Shell Oil Company, et al.*, Case No. NC053643 (“Litigation”); and (2) a 12-page typed statement dated May 13, 2011 (“2011 Statement”), which I prepared at the request of

Adam Mitchell, an attorney at Girardi Keese, who are attorneys for Plaintiffs in the Litigation. I understand that the Regional Board has copies of both of these sources.

4. Adam Mitchell reported to another member of his law firm, Chris Aumais. I had been meeting with both of them together and answered their questions about what had occurred from 1966 to 1968 at the Carousel. Mr. Mitchell sent me his notes from our meetings and asked that I use them to summarize what we had been discussing, and with the input of Mr. Mitchell, I prepared the 2011 Statement. In the 2011 Statement I did not attempt to distinguish facts known to me from what I had personally observed and information derived from hearsay or surmise.

5. The testimony I gave in the 2013 Deposition is focused on what I know by first-hand knowledge. Accordingly, my best recollection of what occurred at the former Kast Property from 1966 through 1968 based on my first-hand knowledge is in my 2013 Deposition.

6. Mr. Johnson nevertheless relies on the 2011 Statement as authority for a number of his facts, even when his interpretation is contrary to the testimony that I gave in the 2013 Deposition. Mr. Johnson asserts, for example, "it is reasonable to conclude that soil backfill brought to the surface during the trenching process contained petroleum hydrocarbons."

(Johnson Letter at 2.) This is contrary to what I said in my deposition:

Q When you were -- when Mr. Vollmer's crews were ripping the floors of the reservoirs, were you able to see the dirt underneath and see whether there was oil in the dirt underneath?

A In the trenches, yes, we could, uh-huh.

Q You could see dirt underneath?

A No, we could see -- well, the dirt -- as he ripped it, the dirt came up with the concrete. There would be a certain amount of turnover from the ripper tooth.

Q And did you see oil in it?

A No, I never did.

(Deposition of George Bach, Volume II, March 11, 2013 (“Bach Depo. II”) at 188:15–189:1.)

Mr. Johnson does not cite this testimony from my deposition. Instead, he cites the 2011 Statement for the proposition that “Soils immediately beneath the reservoirs floors were observed to be oil-stained.” (Johnson Letter at 2.) Then, as though he is relying on two different things, he cites a drainage report by Pacific Soils dated March 11, 1966, which was an exhibit to my deposition, for the proposition that “Prior to demolition of reservoir No. 6, test borings encountered oily and oil-stained soils immediately beneath the reservoir floor extending to depths of at least 12 to 15 feet.” (*Id.*) Although the 2011 Statement uses the words “immediately under the concrete” to describe what was known about “oil stained” soil, I made it clear in my deposition that I had only one source of information about oil stains beneath the concrete bottom of any reservoir—the March 11, 1966 report—nothing else. (Bach Depo. II at 188:8–14 (“Q Except for the analysis and information provided by Pacific Soils Engineering in this report plus whatever they told you, did you have any other source of information about oil under the slabs of the reservoirs? A No, not that I can recall. This was pretty much the extent of it.”).) Thus, if Mr. Johnson inferred from the 2011 Statement that I had seen oil immediately beneath the concrete slabs, he was mistaken. I never had any personal, first-hand knowledge of any oil staining beneath the reservoir floor other than that March 11, 1966 report. The notion that the “oil stains” were “immediately beneath” the concrete floor of the reservoir referred to their location within the top two feet of the boring as depicted in the logs. I never saw oil beneath the reservoir floor, and nothing in the 2011 Statement was intended to mean that I had.

7. Mr. Johnson makes a similar mistake when he relies on the 2011 Statement to support his description of supposed fill contamination that he says resulted from techniques used by Lee Vollmer during the clean-out of reservoir 7. I explained in my deposition that Mr.

Vollmer provided assistance to Chancellor & Ogden, whose vacuum trucks were stymied by the viscosity of the remaining oil-based residues at the bottom of reservoir 7. Mr. Vollmer and I came up with a way to move the residual materials that remained at the bottom of reservoir 7 toward the Chancellor & Ogden trucks. To do this, Lee Vollmer created an earthen dam, and with it, pushed the residue across the concrete bottom of reservoir 7 toward the waiting vacuum trucks. In my deposition, I was clear that all waste materials, even including the earthen dam material, were cleaned up from reservoir 7:

Q I see. And what happened to the sand and clayey material after you were done cleaning out the liquids?

A That was the final cleanup and that all went to the dump.

Q So that went the way of the saturated soils?

A Yes, with the final cleanup it all went

* * *

Q Tell us what you remember about your first visit to the No. 7 reservoir immediately after -- on the first day after the final liquids had been removed.

A After the final liquids had been removed, we were able to go down in seven -- and, in fact, we were in seven -- and you could walk around, drive around. It was just relatively clean. There was no -- you know, there was nothing there. Like I said, I walked all over the place and had no problem with it at all. Nothing stuck to my shoe, nothing.

Q Was there residual oil around?

A No. Lee had cleaned it up really well. He picked up everything he possibly could and it was clean.

(Deposition of George Bach, Volume I, March 7, 2013 (Bach Depo. I) at 119:15-22; 134:13-135:2.) In my deposition, I testified to what I recalled based on first-hand knowledge. Mr. Johnson relied on conjecture in the 2011 Statement for the proposition that some of the least

contaminated materials from Mr. Vollmer's earthen dam were "mixed with the fill materials in the reservoir." (Johnson Letter at 2.) Nothing I actually saw supports this statement (or the sentence found at page 7, lines 26 through 27 of the 2011 Statement) because I was not present when disposal of the last vestiges of the earthen dam materials occurred. I typically was on site every morning on my way to work and made random visits to the Site in the late afternoon.

8. Mr. Johnson is also confused about how the sidewall berms were covered. The first sentence of the second full paragraph of page 2 of his letter seems to acknowledge that the sidewall berms were covered with concrete, which is accurate. But then Mr. Johnson says that "[s]oils in the[] sidewall berms were likely impacted by petroleum hydrocarbons . . . [because] surfaces of the earthen berms were covered with a preexisting layer of oil or asphalt, and these soils from the sidewall berms were used to fill the lower portions of the reservoirs." For this Mr. Johnson cites testimony from my deposition, none of which is accurately portrayed by Mr. Johnson. Based upon my personal observations at the time, there was only concrete, no asphalt or oil, on the interior reservoir sidewalls. So when the sidewalls came down, I saw only clean fill dirt, no asphalt or oil beneath the concrete. I was clear on this in my deposition. In the passage cited by Mr. Johnson, I testified that I only saw asphalt, no oil, and the asphalt covering was only placed on the parts of the berm exposed to the weather, all of which are on the reservoir exterior. I said the asphalt served as a "protective coating" to "keep dust from blowing off." (Bach Depo. I at 59:3-25.) That asphalt pulverized upon contact, and the soils directly underneath were not "used to fill the lower portions of the reservoirs."

9. Mr. Johnson sometimes misstates facts that I know did not occur at the Carousel Site. For example, Barclay did not engage in overexcavation and recompaction of the top three feet of soil at the Site as asserted in the first sentence of the last paragraph on page two of Mr.

Johnson's letter. Mr. Johnson is also wrong when he assumes that the fill soils that were moved during grading were contaminated. Refilling the reservoirs involved significant movement of soils from the berms surrounding the reservoirs back into the spaces in the ground from which they were taken out when the reservoirs were excavated in the 1920s, but I viewed the fill soils as they were being graded and compacted and did not observe oil in them. (Bach Depo. I at 143:23-144:4 ("Q [B]ased on your observation, as you took the soil from the berms and brought it down to become fill soil, did you observe oil in the berms? A No. Q That was clean? A Yes.")) Far less volume of soil was moved outside the reservoirs, and I am not aware of any oil or oil impacted soil being moved during that grading either. As I explained in my deposition, the only hydrocarbons we were aware of that remained on site were those identified in the March 11, 1966 Pacific Soils report, and those were left undisturbed below the bottom of the reservoir where Pacific Soils found them and with the concurrence of the County Engineer.

10. A portion of the 2011 Statement, page 10, lines 7 through 20, was written in response to an interest shown by Plaintiffs' counsel to know where to explore further for contamination. These passages are my own surmise based solely on what I believed I knew of Shell's activities and are not based on my own personal knowledge.

11. As indicated, my deposition testimony covers far more detail than the 2011 Statement, and unlike the 2011 Statement, my deposition testimony is based on my personal knowledge. On pages 9 to 10 of the 2011 Statement, there is a paragraph discussing Shell's use of retention dikes to create sumps during its period of operations and how that might have affected contamination at the Site. That entire paragraph is surmise on my part, including a reference to "blending" contaminated soil with fill soil found on page 10 lines 1 through 3, because I was not there and have no personal knowledge of those facts. But during my

deposition, I testified about a related point based on what I had personally observed. I explained that after removal of a large concrete “swing box,” shown in an aerial photo taken during Shell’s operations, I observed pipes in the ground in the area where the swing box had been, which was an area I had in mind when I referred in the 2011 Statement to how Shell might have used retention dikes to form sumps during its operations. (Bach Depo. I at 122:10–16 (explaining how oil was likely released during pipe removal; “some of it went into the pit, but that’s why the pit was there, to catch the stuff.”).) When those pipes were removed, moist soil was visible, and all of it was removed from the Site. (*Id.* at 103:4–21.) I explained that “when they took the [pipes] apart the oil would run out of the pipes,” leaving the soil saturated with some oil and some water. (*Id.* at 121:16–25.) That saturated soil was the original basis for a stockpile, and it became standard practice to move saturated soil to the stockpile and then move the contents of the stockpile off site for disposal. Although I did not personally observe other oil coming from pipes found on site, I knew that our people followed the same protocol of taking any oil-contaminated soil off site, because “I just saw the results of it” when I observed additional saturated soil on the stock pile. (*Id.* at 122:17–123:8.) Based on these observations, I testified that, “all of the soil that had what we considered, I considered to be contaminated with petroleum was exported from the property.” (Bach Depo. II at 282:8–11.) I never saw anyone “blend” contaminated soil into fill soil. And that is how I responded to Shell’s counsel on cross-examination at my deposition:

Q And was there an effort to remove all of that soil, some of it, or what was the process as you understood it?

A Pretty much all of it.

Q Was there any left behind from those sorts of spills?

A Not that I know of.

Q Can you say one way or another whether there was any left?

A No, I can't because I wasn't there all the time, but I don't know of any case where it was.

(*Id.* at 328:12–22.)

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct. Executed this 26th day of June, 2014, at Denver, Colorado.

A handwritten signature in cursive script that reads "George Bach". The signature is written in black ink and is positioned above a horizontal line.

George Bach