



**California Environmental Protection Agency
Department of Toxic Substances Control**

DRAFT VARIANCE

Applicant Name:
FOCIL-MB, LLC
255 Channel Street
San Francisco, CA 94158

Variance No. [RESERVED]

Effective Date: MMMM/DD/YYYY
Expiration Date: MMMM/DD/YYYY

Pursuant to section 25143 of the California Health and Safety Code, this Variance (consisting of seven pages plus attachments) is issued to FOCIL-MB, LLC.

Edward Nieto, P.E.
Supervising Hazardous Substances Engineer

Department of Toxic Substances Control

Date: _____

1. INTRODUCTION:

Pursuant to Health and Safety Code section 25143, the California Department of Toxic Substances Control (DTSC) grants a variance to the Applicant below from the requirements specified herein and in accordance with all terms and conditions specified herein.

2. APPLICANT INFORMATION:

FOCIL-MB, LLC
255 Channel Street
San Francisco, CA 94158
Contact: Mr. Phil Owen

3. TYPE OF VARIANCE:

This variance waives certain hazardous waste transportation requirements for contaminated soils and excavated fill materials¹ that are non-RCRA hazardous wastes within the Mission Bay Risk Management Plan (RMP) Area.

4. ISSUANCE AND EXPIRATION DATES:

DATE ISSUED: MMMM/DD/YYY EXPIRATION DATE: MMMM/DD/YYY

5. APPLICABLE STATUTES AND REGULATIONS: Health and Safety Code division 20, chapter 6.5 (sec. 25100, et seq.) and California Code of Regulations, title 22, division 4.5 (sec. 66260.1 et seq.), except as specifically identified in section 8.0 of this variance.

6. FINDINGS/DETERMINATIONS: DTSC has determined that the issuance of this variance meets the requirements set forth in Health and Safety Code section 25143. The findings and determinations made by DTSC are as follows:

6.1 The Applicant submitted a variance application dated March 15, 2011 to DTSC.

6.2 The management of soils in the Mission Bay RMP Area is subject to oversight by the California Regional Water Quality Control Board, San Francisco Bay Region (Board), as specified in the Risk Management Plan (RMP) dated May 11, 1999 and subsequently revised and approved by the Board on March 22, 2005. The RMP defines an "RMP Area" wherein

¹ Hereafter, "soils" refers to both soils and excavated fill materials unless otherwise indicated.

the RMP provisions are applicable. The RMP Area is identified on Attachment A.

The lead agency for oversight of contaminated soils management in the RMP Area is the Board. The RMP delineates the specific risk management measures that must be implemented prior to, during and after development of each parcel within the RMP Area. Soils management in the RMP Area must be conducted in accordance with the RMP Section 4.3.5 "Soil Management Protocols During Site Development." Section 4.3.5 establishes requirements for soils that are placed in landscaped areas, under covered areas and in residential areas.

- 6.3 This variance is for transportation of non-RCRA hazardous waste soils generated from construction activities conducted by the Applicant on property owned by the Applicant or city streets and/or rights of way where the Applicant is completing infrastructure improvements and /or other parcels where the Applicant has a contractual obligation with the City of San Francisco or its Redevelopment Agency to handle soils as part of required infrastructure installation on public roads within the RMP Area (identified on Attachment A as Active Infrastructure Project or Future Infrastructure Project), using a bill of lading in lieu of a hazardous waste manifest. These soils shall be transported using registered hazardous waste transporters within the RMP Area. The transportation routes will avoid any residential areas, school developments and emergency facilities and minimize contact with congested traffic areas when transporting the soil.
- 6.4 Activities subject to this variance are identical to activities covered under a previous Variance No. V2-04/06-002 issued to FOCIL-MB on April 7, 2006. The Applicant is one of several affiliated single party entities (SPEs) who, together, own more than 60 acres within the RMP Area previously owned by Catellus.
- 6.5 Hazardous wastes subject to the requested variance consist of contaminated soils that are non-RCRA hazardous wastes generated during construction activities within the RMP Area. The fill material consists largely of building rubble and debris from the 1906 San Francisco earthquake.

Soils at various locations within the RMP Area may have lead concentrations that exceed the soluble threshold limit concentration, when analyzed by the California Waste Extraction Test ("WET") test procedure

which would cause the soil to be characterized as a non-RCRA hazardous waste.

Results of soil sampling conducted February 23, 2007 in accordance with the San Francisco Department of Public Health's Article 22A (Maher) Ordinance (Article 22A of the San Francisco Health Code and Section 106.3.2.4 of the Building Code) indicate that total lead concentration of soils in the RMP Area range from 2.1 mg/kg at the surface to 390 mg/kg at 6 feet depth below surface. Analytical results in the subject area are documented in "Soils Analysis Report, 1500 Owens Street Redevelopment, Blocks 42 and 43, Mission Bay Project Area, San Francisco CA" dated March 29, 2007.

As the contaminated soils are not regulated under the federal hazardous waste laws, the soils are eligible for a variance per Health and Safety Code Section 25143(a)(1)(A).

- 6.6 In accordance with Article 22A of the San Francisco Health Code and Section 106.3.2.4 of the Building Code, analyses have been conducted to determine the presence of hazardous wastes in soils. The San Francisco Department of Public Health Environmental Health Section-Hazardous Waste Unit (SFDPH) has accepted the determination by Iris Environmental that the mitigation measures and management decisions procedures identified within the RMP will mitigate any potentially significant environmental or health and safety risks that may be caused by hazardous substances in soils.
- 6.7 Approximately 15,000 cubic yards of excavated soils within the RMP Area are subject to the provisions of this variance annually. The movement of the soils will occur in a concentrated effort over several week periods during the term of the variance with long periods of no movement of soils.

Based on the above findings and determinations, DTSC finds that the activities subject to this variance are insignificant as a potential hazard to human health and safety and the environment, when managed in accordance with the conditions, limitations and other requirements specified in section 8 of this variance.

7. PROVISIONS SUBJECT TO VARIANCE: DTSC, subject to all terms and conditions herein, waives the hazardous waste manifest requirements of Health and Safety Code section 25160 and California Code of Regulations, title 22, sections 66263.20(a) through (g), 66263.21(a), 66263.22(a) and 66263.23(b).

These requirements are waived as set forth in Health and Safety Code section 25143.

8. SPECIFICATIONS OF THE TERMS, CONDITIONS, LIMITATIONS, OR OTHER REQUIREMENTS: The Applicant shall be subject to the following conditions:
- 8.1. This variance applies to transportation, on public roads, of contaminated soils² that are non-RCRA hazardous waste generated from construction activities conducted by the Applicant on property owned by the Applicant or city streets and/or rights of way where the Applicant is completing infrastructure improvements and /or other parcels where the Applicant has a contractual obligation with the City of San Francisco or its Redevelopment Agency to handle soils as part of required infrastructure installation on public roads within the RMP Area (identified on Attachment A as Active Infrastructure Project or Future Infrastructure Project).
 - 8.2. The Applicant and, as appropriate, its agents or contractors, shall comply with the applicable provisions of the most current version of the RMP, including but not limited to section 4.3.5.3 Reuse of Native Soil.
 - 8.3. The hazardous waste soils subject to this variance must be packaged, labeled, placarded, and transported in accordance with all applicable DTSC, Department of Transportation, and California Highway Patrol requirements. Vehicles may not be loaded in excess of the legal gross weight limit set in the Vehicle Code.
 - 8.4. Hazardous waste transporters registered with DTSC must be used for all transportation activities subject to this variance.
 - 8.5. The hazardous waste soils subject to this variance may be transported along public streets only from one location within the RMP area, as designated in the RMP, to another location within the RMP area.
 - 8.6. Transportation shall be scheduled to avoid peak commuter hours in congested traffic areas. The Applicant shall continue to monitor the traffic throughout the term of the variance to verify that the routes used avoid any residential areas, school developments and emergency facilities and minimize contact with congested traffic areas when hauling the hazardous waste soils.

² See footnote 1.

- 8.7. Bills of Lading (see example in Attachment B) shall be used to document and track all loads of hazardous waste soils subject to this variance as it is being moved along public streets from one location of the RMP Area to another. Copies of the Bills of Lading shall be maintained for at least five years at the Applicant's office located at 255 Channel Street, San Francisco, CA 94158.
- 8.8. The Applicant's agents and contractors shall be made aware of the requirements for the management of the hazardous waste soils subject to this variance and the RMP.
- 8.9. The Applicant shall immediately notify DTSC regarding any accident associated with the transportation of hazardous waste soils subject to this variance. An accident report shall be submitted to the DTSC office specified below within ten (10) calendar days of any accident associated with the transportation of hazardous waste soils subject to this variance.
- 8.10. The Applicant shall prepare a report that summarizes the total quantity of hazardous waste soils transported pursuant to this variance during each calendar year. The report shall be submitted to DTSC each year. Each submitted report is due on January 28 of each year for the period covering the preceding calendar year.
- 8.11. The Applicant shall comply with all other applicable federal, state and local statutes, regulations, ordinances, requirements or limitations.
- 8.12. The Applicant shall comply with the conditions set forth in this variance. Failure to comply may result in modification or revocation of this variance, denial of authorization for future operations, or enforcement actions taken by DTSC or other agencies. The Applicant shall immediately notify DTSC of any noncompliance with the terms of this variance.
- 8.13. A copy of this variance shall be carried in each vehicle used to transport the hazardous waste soils subject to this variance and shall be available for review at the office of the Applicant located at 255 Channel Street, San Francisco, CA 94158.
- 8.14. All correspondence regarding this variance shall be directed to the following office:
Department of Toxic Substances Control
Attn: Hazardous Waste Permitting
8800 Cal Center Drive
Sacramento, CA 95826-3200

9. DISCLAIMER:

9.1. The issuance of this variance does not relieve the Applicant of responsibility for compliance with Health and Safety Code division 20, chapter 6.5 (sec. 25100 et seq.), or its implementing regulations, and any other laws and regulations other than those specifically identified in section 7 of this variance. The Applicant is subject to all terms and conditions herein. The granting of this variance confers no relief from compliance with any federal, state, or local requirements other than those specifically provided herein.

9.2. The issuance of this variance does not release the Applicant from any liability associated with the handling of hazardous waste, except as specifically provided herein and subject to all terms and conditions of this variance.

10. VARIANCE MODIFICATION OR REVOCATION: This variance is subject to review at the discretion of DTSC and may be modified or revoked by DTSC at any time pursuant to Health and Safety Code section 25143.

11. CEQA DETERMINATION: DTSC has prepared a Notice of Exemption for this project, pursuant to California Code of Regulations, title 14, section 15061(b)(3). The Notice of Exemption will be filed with the Governor's Office of Planning and Research.



LEGEND:

INFRASTRUCTURE

- Completed
- Active
- Future
- Mission Bay Project Area Boundary

PARKS

- Completed
- Active
- Future

HAUL ROUTES

- Haul Route Currently Available
- Haul Route Available Within Next 2 Years

SOIL EXCAVATION / RE-USE

- Active Soil Excavation and Re-Use Area
- Future Soil Excavation and Re-Use Area

Project Status



BILL OF LADING

Shipper Information

FOCIL – MB, LLC
 255 Channel Street
 San Francisco, CA 94158
 (415) 355-6600

8100

Variance No. V2-04/06-002

Transporter Information

Driver Name: _____
 Company Name: _____
 Address: _____
 Phone: _____
 HW Transporter Registration Number: _____
 Driver License No.: _____

Description

US DOT Description	Estimated Quantity (yds)
Environmentally hazardous substances, solid, n.o.s., 9, UN3077, III RQ (Lead-contaminated soil and debris)	
Special Handling Instructions: <ul style="list-style-type: none"> • Avoid inhalation of dust • Minimize direct contact with soils. • Soils to be managed and handled in accordance with the Risk Management Plan, Mission Bay Area (May 11, 1999) <p style="text-align: center;">24 Hour Emergency Contact: Phil Owen, MBDG: (415) 355-6600</p>	

Shipper's Certification: I hereby certify that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transportation according to all applicable laws and regulations.

Shipper (print name): FOCIL-MB, LLC	Signature	Date
Transporter (print name):	Signature	Date
Received by (print name): FOCIL-MB, LLC	Signature	Date

Transported From: Mission Bay Parcel No.: _____
 Street Name/Address (where applicable): _____
Transported To: Mission Bay Parcel No.: _____
 Street Name/Address (where applicable): _____

**POLICIES AND PROCEDURES FOR
MANIFEST VARIANCE AND BILLS OF LADING**

1. Contractor shall notify FOCIL's construction manager (CM) in writing at least 1 day prior to transport of soil along public streets within RMP Area.
2. Contractor shall arrange for the transport of soil along public streets within the RMP Area by a registered hazardous waste hauler and shall notify CM of the name and registration number of the Transporter in advance of transporting the soil.
3. Prior to allowing the transport of soil to proceed, CM shall verify that Transporter is a registered hazardous waste hauler: http://www.dtsc.ca.gov/database/Transporters/trans_name.cfm
4. CM shall inform FOCIL's project manager (PM) where and when Contractor will be transporting the soil.
5. PM, CM and Contractors must comply with all provisions of RMP.
6. Soil must be packaged, labeled, placarded, and transported in accordance with all applicable Department of Toxic Substance Control, Department of Transportation, and California Highway Patrol requirements.
7. Vehicle may not be loaded in excess of legal gross weight limit set in the Vehicle Code.
8. Soils may be transported along public streets only from one location within the RMP areas to another location within the RMP area.
9. A Bill of Lading must be filled out/signed on date the soil is transported:
 - Driver or agent of Transporter shall complete Driver Name, Company Name, Address, Phone, HW Transporter Registration No. and Driver License No.
 - Driver or agent of Transporter shall enter the Est. Quantity (yds) of soil.
 - Driver or agent of Transporter shall enter Transporter name.
 - Driver or agent of Transporter shall sign on behalf of Transporter and enter date the Bill of Lading is signed.
 - CM shall sign on behalf of Shipper and Receiver, handwritten name and company of person signing (e.g. Joe Smith, TMI or Joe Smith, ALTA), and enter date the Bill of Lading is signed.
 - CM shall enter "Transported From" and "Transported To" info.
10. Driver shall keep a copy of (a) Bill of Lading and (b) Manifest Variance in the vehicle at all times during transport.
11. Driver shall give the original Bill of Lading to CM upon completion of the transport and a copy to the Contractor.
12. Contractor shall maintain a complete set of all Bills of Lading related to its work at the site.
13. On behalf of FOCIL, CM shall maintain all original Bills of Lading in a file with Mission Bay Development Group, LLC ("MBDG") for a period of at least five years.
14. In the event of any accident associated with the transportation of soils under the Manifest Variance or any failure to comply with the requirements of the Manifest Variance, Driver and Contractor shall immediately notify CM. CM shall immediately notify PM of such event.