



**MISSION  
BAY  
DEVELOPMENT  
GROUP**

March 15, 2011

Edward Nieto, P.E.  
California Department of Toxic Substances Control  
Office of Permitting  
8800 Cal Center Drive  
Sacramento, CA 95826-3200

**Subject:** Re-Application for a Hazardous Waste Activity Variance:  
Transportation of Hazardous Waste Soils Along Public Streets Within the  
Mission Bay Risk Management Plan Area  
Mission Bay Project Area  
San Francisco, California

Dear Mr. Nieto,

This letter and accompanying exhibits are submitted to the California Department of Toxic Substances Control (DTSC) pursuant to the Reimbursement Agreement referenced above and in support of an application of a Hazardous Waste Activity Variance to be issued to FOCIL-MB, LLC (FOCIL). As you know, prior to FOCIL's involvement at the Mission Bay Project Area, Catellus Development Corporation (Catellus), applied for and received a variance on November 8, 2001 and again on May 24, 2005. On November 23, 2004, Catellus sold a large number of private property parcels as well as all remaining obligations for infrastructure design and installations to FOCIL. Because FOCIL was now the responsible party charged with executing the infrastructure projects, FOCIL applied for and received its own variance (issued April 7, 2006; Variance Number V2-04/06-002).

This letter and supporting documentation seeks to fulfill application procedures for a new Hazardous Waste Activity Variance to cover FOCIL's activities within the Mission Bay Project Area for the next ten years. The variance will be used to transport non-RCRA hazardous waste soils from one location within the Mission Bay Risk Management Plan Area (RMP Area) to another location within the RMP Area, under cover of a Bill of Lading in lieu of a hazardous waste manifest. Please note that a Reimbursement Agreement is pending that will define the scope of work and related cost for DTSC to both review and process the new variance to be issued to FOCIL.

**I. Summary of Application for Variance**

1. Background and Identity of Applicants for Variances: The RMP amendment approved by the DTSC in 2005<sup>1</sup> provides that a generator of non-RCRA hazardous waste soils within the RMP Area must comply with hazardous waste manifesting requirements or the conditions of a variance

---

<sup>1</sup> Letter from Bruce H. Wolfe, Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, to Catellus, Subject: "Approval of Amendment to Mission Bay Risk Management Plan (RMP) to Clarify DTSC Requirements regarding Certain Movement of Hazardous Waste Soil along Public Streets within the RMP Area, Mission Bay Redevelopment Project Area, City and County of San Francisco, California," June 23, 2005, File Nos. 2169.6035 (RL), 38S0044 (RL)

issued specifically to the generator. Accordingly, FOCIL is applying for such a variance. FOCIL is the entity that holds the obligations to design and install certain infrastructure components in concert with adjacent vertical development carried out by other third party developers or the San Francisco Redevelopment Agency. In order to effectively and safely execute these obligations, it will continue to be necessary to move soil around the RMP Area, temporarily stockpile soil and then re-use this soil, in accordance with the provisions in the RMP (Section 4.3.5.3(c) and Appendix D, Soil Reuse Within the RMP Area), as backfill.

2. Scope of Variance: The intention is that this variance will be functionally identical to the variance issued to FOCIL on April 7, 2006 (Variance No. V2-04/06-002, attached as Exhibit 1). The variance will be used to transport (Mission Bay) variance soil along public streets and in support of infrastructure and public park construction efforts. Generated soil will come from current and future infrastructure corridors, future public parks and FOCIL-controlled private property parcels.
3. Conditions and Duration of Variance: The requested variance should be subject to the same conditions as the current variance; soil to only be transported by registered hazardous waste transporters and shall be packaged, labeled, placarded, and transported in accordance with all DTSC, California Department of Transportation and California Highway Patrol requirements. Soil will be transported throughout the duration of the issued variance. For purposes of this application, FOCIL is seeking a variance valid for ten (10) years from the date of issuance. While we acknowledge that past variances have been issued for five year terms we thought it more efficient to request a term that more closely tracks overall project completion (also ten years). This will preclude the need to re-apply in five years for a variance with the same terms and conditions, covering the same activities within the same geographic area and with the same control measures.
4. Description of Hazardous Waste: The type of hazardous waste subject to the requested variance will consist of non-RCRA hazardous waste soil and other excavated fill materials generated during construction activities within the RMP Area. Although its chemical composition may vary, the one chemical that has generally determined classification of Mission Bay soils is lead. Some soils excavated from the project area have been determined to not constitute hazardous waste. However, in light of our understanding of the nature and extent of contamination throughout the RMP Area, we expect that some amount of soil excavated during planned construction activities will constitute a non-RCRA hazardous waste, most likely due to soluble concentrations of lead in excess of the soluble threshold concentration limit (STLC). If such soils were slated for off-site disposal, they would be classified as a non-RCRA hazardous waste solid and the US DOT description listed on the Bill of Lading would be, "Environmentally hazardous substances, solid, not otherwise specified (n.o.s.), 9, UN3077, III RQ (lead contaminated soil and debris).
5. Quantity of Hazardous Waste: While it is difficult to determine the amount of soils, on an annual basis that FOCIL will transport pursuant to the variance, FOCIL hopes to reuse at least as much surplus soil generated during construction. This way, off-site disposal will be held to a minimum. For purposes of estimation, FOCIL is expecting to transport between 10,000 and 15,000 cubic yards of variance soil each calendar year the variance is in effect.

## **II. History and Background of Mission Bay Development**

The Mission Bay RMP Area (the site) originally consisted of marshlands and tidal flats bordering the San Francisco Bay. It was filled in association with development activities which began in the latter half of the nineteenth century and continued until the mid twentieth century. Prior to redevelopment, the site was a

mixed use industrial area that included warehouses, railroad yards and other commercial and industrial activities.

1. Site Designation Process: In 1996, Catellus embarked upon an intensive three-year site investigation and evaluation process to determine whether redevelopment of the site could occur in a manner that was both protective of human health and the environment and also be economically viable. As part of the environmental review process, the California Environmental Protection Agency (CalEPA), with consent of the DTSC, designated the Regional Water Quality Control Board (RWQCB) as the "Administering Agency" for the site pursuant to the "Site Designation Process" (Cal. Health & Safety Code §§ 25260, *et seq.*, "the Site Designation Law"). As Administering Agency, the RWQCB was charged with unifying regulatory oversight of the environmental investigation and remedial process, while assuring that other appropriate State and local "support agencies" were involved in the process. For Mission Bay, the support agencies most actively involved were the DTSC and the San Francisco Department of Public Health (SFDPH). Other support agencies, such as the Bay Area Air Quality Management District, were invited to participate and did so when particular issues arose within their purview. Consistent with the Site Designation Law, a "Consultative Workgroup" was formed and met frequently to advise the RWQCB and its staff as necessary and appropriate (given the agencies' respective technical expertise).
  
2. Site Investigation and Risk Assessment: Under the RWQCB's oversight, Catellus' team of environmental consultants completed extensive investigations between 1996 and 1998, and produced several technical reports explaining the field investigations, conclusions and recommendations for both the "North of Channel" and "South of Channel" portions of the RMP Area. Impacts on the water quality, public health and the environment were evaluated in light of the proposed future land use. In brief, the environmental investigations found the following:
  - a. Principal chemicals detected were petroleum hydrocarbons, which resulted from historic use of the site, and metals (primarily lead) associated with historic fill material.
  - b. No high concentrations of volatile organic compounds (VOCs) were found in either soils or groundwater.
  - c. No significant source areas for metals (other than the historic fill materials) were identified in soil or groundwater.
  - d. No concentration of any chemical would pose a threat to human health or the environment following completion of the planned development, except for the petroleum free product area (generally located east of Illinois Street and on either side of the 16<sup>th</sup> Street corridor, which has now been remediated by a consortium of oil companies and pursuant to a series of RWQCB Orders).
  
3. Risk Management Plan: Based on the conclusions of the site investigation process, Catellus (in consultation with the RWQCB, DTSC and other support agencies) concluded that the site could be redeveloped in a phased manner (i.e., some parcels could still be undergoing construction while others were already developed and occupied). Detailed environmental evaluations of the RMP Area's soils confirmed that they could be moved and reused throughout the RMP Area without resulting in any adverse impacts to human health. However, because such soil material contained lead at levels that would cause it to be classified as a non-RCRA hazardous waste (based principally on State of

California leachability criteria), Catellus sought regulatory approval and concurrence from both the RWQCB and DTSC authorizing reuse of such soils within the RMP Area, which approvals were respectively granted in 1997 and 1998 (as per the letters attached as Exhibits 2 and 3, respectively).

To assure long-term protection of human health and the environment throughout the phased development of the RMP Area, Catellus prepared the Risk Management Plan (RMP) in collaboration with the City and County of San Francisco (CCSF), the San Francisco Redevelopment Agency (SFRA) and the University of California (UC). Drafts of the RMP were submitted to Baykeeper, the Mission Bay Citizens Advisory Committee and the Alliance for a Clean Waterfront. RWQCB staff met numerous times with various representatives of these groups, provided them an opportunity to submit comments and responded in writing to written comments. In addition, RWQCB staff met extensively with Catellus, CCSF, SFRA and UC. The RWQCB also met with and obtained the participation of the support agencies throughout the Consultative Workgroup, and ultimately granted approval of the RMP on May 12, 1999.

The RWQCB approved an amendment to the RMP on June 23, 2005, following its approval by DTSC. This amendment dealt specifically with the DTSC's determination that to move non-RCRA hazardous waste soil along public streets within and in the vicinity of the RMP Area, parties responsible for excavating and transporting such soils needed to obtain a variance from otherwise applicable hazardous waste manifesting requirements. The amendment expressly provides that a generator may apply to the DTSC "for a variance from some or all of the regulatory requirements then in effect applicable to the transportation of [non-RCRA] hazardous waste, including without limitation labeling, container, manifesting, fees and recordkeeping requirements..." (Mission Bay RMP, § 4.3.5.3 (c), as amended on June 23, 2005). It also makes clear that "any such variance ...is specific to the applicant..."

4. Earlier and Existing Variances Issued by DTSC: In light of DTSC's determination that parties would either need to comply with hazardous waste transportation requirements or obtain a variance from such requirements to transport soil along public streets within the RMP Area, Catellus originally applied for and obtained a variance from the DTSC on November 8, 2001 (Serial No. V01HQSCD052, Contract No. 01-T2289, Project Code 201398-50). When the 2001 variance expired, Catellus applied for and obtained a new variance, which was issued by DTSC on May 25, 2005 (Variance No. V2-04/05-002). As stated above, FOCIL acquired a large portion of the RMP Area as well as the remaining obligations to design and install infrastructure projects from Catellus in late 2004. FOCIL applied for and obtained its own variance from DTSC on April 7, 2006 (Variance No. V2-04/06-002).

Additionally, Alexandria Real Estate Equities (ARE) acquired large portions of the RMP Area from Catellus and applied for and received their own variances. Each of the ARE-requested variances were to be issued to Special Purpose Entities (SPEs) that hold title to the acquired property. The list of SPEs that applied for variances are: ARE-San Francisco 15, LLC; ARE-San Francisco 34, LLC; ARE-San Francisco 35, LLC; ARE-San Francisco 36, LLC and ARE-San Francisco 37, LLC. We also understand that the University of California San Francisco (UCSF) applied for their own variance as UCSF owns the central 43 acres of the Mission Bay Project Area and are currently developing large parcels south of 16<sup>th</sup> Street for a new UCSF hospital and trauma center.

### III. Satisfaction of Statutory Criteria for Granting the Proposed New Variance

To grant a variance for hazardous waste requirements applicable to non-RCRA hazardous waste, DTSC must make one of the following findings:

- a. The hazardous waste, the amount of hazardous waste or the hazardous waste management activity or management unit is insignificant or unimportant as a potential hazard to human health and safety or to the environment, when managed in accordance with the conditions, limitations and other requirements specified in the variance.
- b. The requirements, from which a variance is being granted, are insignificant or unimportant in preventing or minimizing a potential hazard to human health and safety or the environment.
- c. The handling, processing, or disposal of the hazardous waste, or the hazardous waste management activity, is regulated by another governmental agency in a manner that ensures it will not pose a substantial present or potential hazard to human health and safety and the environment.
- d. A requirement imposed by another public agency provides protection of human health and safety or the environment equivalent to the protection provided by the requirement from which the variance is being granted.

California Health & Safety Code § 25143(A)(2)

This application satisfies these criteria primarily because the requested variance will apply solely to a non-RCRA hazardous waste, as described in Section 6.5 of the existing FOCIL Variance set to expire on April 7, 2011. Furthermore, compliance with the conditions of the requested variance, including continued use of the Bill of Lading (attached as Exhibit 4), has adequately assured that other parties' development activities within the RMP Area did not result in any substantial present or potential hazard to human health and safety or to the environment.

Additional information in support of FOCIL's application is attached to this application as Exhibit 5, "Supporting Information: Application for Variance from Hazardous Waste Manifesting Requirements for Mission Bay Risk Management Plan Area"

Please feel free to contact the undersigned at 415-355-6600 with any questions or concerns regarding this application.

Sincerely,

//Original signed by//

Philip Owen  
President, Mission Bay Development Group, LLC  
Development Manager for FOCIL-MB, LLC

Exhibits

- Exhibit 1 FOCIL Variance No. V2-04/06-002
- Exhibit 2 February 26, 1998 RWQCB Soil Reuse Letter
- Exhibit 3 December 10, 1997 DTSC Soil Reuse Letter
- Exhibit 4 FOCIL Bill of Lading
- Exhibit 5 Supporting Information - Application for Variance from Hazardous Waste Manifesting Requirements for Mission Bay Risk Management Plan Area

# **EXHIBIT 1**



Arnold Schwarzenegger  
Governor

# Department of Toxic Substances Control

Maureen L. Gossen, Director  
1001 "I" Street  
P.O. Box 805  
Sacramento, California 95812-0805



Alan C. Floyd, Ph.D.  
Agency Secretary  
Cal/EPA

April 10, 2006

Seth Hamalian  
FOCIL-MB, LLC  
One Maritime Plaza, Suite 1325  
San Francisco, California 94111

FOCIL-MB, LLC MANIFEST VARIANCE

Dear Mr. Hamalian:

The Department of Toxic Substances Control (DTSC) has issued the enclosed variance to FOCIL-MB, LLC for the Mission Bay project, effective April 7, 2006. The variance is in effect for a five year period expiring April 7, 2011.

If you have any questions or wish to discuss further, please contact me at (916) 324-1799.

Sincerely,

**//Original signed by  
David Wright for//**

Maureen L. Gossen  
Hazardous Substances Scientist

Enclosures

cc: Kevin J. Poloncarz  
Attorney at Law  
Farrella Braun + Martel LLP  
Russ Building  
235 Montgomery Street  
San Francisco, California 94104

Seth Hamalian  
April 10, 2006  
Page 2

cc: Deborah J. Schmall  
Attorney at Law  
Farella Braun + Martel LLP  
Russ Building  
235 Montgomery Street  
San Francisco, California 94104

Robert Oiken  
Office of Legal Counsel  
Department of Toxic Substances Control  
Berkeley Regional Office  
700 Heinz Avenue Suite 200  
Berkeley, California 94710-2721

Randy Lee  
San Francisco Regional Water Quality Control Board  
Toxics Cleanup Division  
1515 Clay St. Suite 1400  
Oakland, California 94612



California Environmental Protection Agency  
Department of Toxic Substances Control

VARIANCE

Applicant Name:

Variance No. V2-04/06-002

FOCIL-MB, LLC  
One Marilime Plaza, Suite 1325  
San Francisco, CA 94111

Effective Date: 04/07/06

Expiration Date: 04/07/11

Pursuant to section 25143 of the California Health and Safety Code, the Department of Toxic Substances Control hereby issues the attached Variance consisting of five pages to FOCIL-MB, LLC ("FOCIL").

**//Original signed by//**

 Jan Radimsky, P.E. Chief  
Program Support Branch  
Department of Toxic Substances Control

Date: 4/10/06

VARIANCE

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  
One Maritime Plaza, Suite 1325  
San Francisco, CA 94111  
Contact: Seth Hamalian

3. TYPE OF VARIANCE:

This variance would waive manifest requirements for transportation of non-RCRA regulated hazardous waste along the public streets within the "Risk Management Plan Area (RMP Area)" designated in the approved Risk Management Plan and would allow use of approved Bill of Lading forms in lieu of manifest.

4. ISSUANCE AND EXPIRATION DATES:

DATE ISSUED: 04/07/06      EXPIRATION DATE: 04/07/11

5. APPLICABLE STATUTES AND REGULATIONS: The hazardous wastes that are the subject of this variance are fully regulated under Health and Safety Code section 25100, division 20, et seq., and California Code of Regulations, title 22, division 4.5, except as specifically identified in section 8 of this variance.

6. FINDINGS/DETERMINATIONS: DTSC has determined that the variance applicant meets the requirements set forth in Health and Safety Code section 25143 for a variance from specific regulatory requirements as outlined in section 8 of this variance. The specific findings and determinations made by DTSC are as follows:

6.1 FOCIL-MB, LLC ("FOCIL") submitted a Variance Application dated January 31, 2006 to DTSC.

FOCII-MB, LLC  
Variance  
Page 3 of 6

- 6.2 The management of soils in the Mission Bay project area is subject to oversight by the San Francisco Regional Water Quality Control Board (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 the RMP provisions are applicable.
- 6.3 DTSC issued a manifest variance to Catellus, effective May 24, 2005 and expiring May 24, 2010 for transportation of non-RCRA hazardous waste soils on public roads within the Mission Bay RMP area. Catellus was previously subject to a manifest variance issued by DTSC on November 8, 2001, covering the period November 8, 2001, to January 8, 2005.
- 6.4 On November 22, 2004, FOCIL purchased land from Catellus Urban Construction Inc. ("Catellus") in the Mission Bay project area. FOCIL holds 21 acres of the approximately 300 acre Mission Bay RMP area and has assumed the obligation to fund completion of Mission Bay infrastructure projects.
- 6.5 This variance is applicable to transportation, on public roads, of non-RCRA hazardous waste soils and other excavated materials generated from construction activities conducted by FOCIL on property owned by FOCIL or city streets and/or rights of way where FOCIL is completing infrastructure improvements and/or other parcels where FOCIL has a contractual obligation with the City of San Francisco or its Redevelopment Agency to handle soil as part of required infrastructure installation on public roads within the Mission Bay project RMP area. Soils at various locations at the site commonly 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 in accordance with the San Francisco Department of Public Health's Article 22A (Maher) Ordinance indicate that total lead concentration of soils in the Mission Bay project area has been found to be less than 1000 mg/kg, with a 95% confidence level. The presence of lead is associated with the filling of Mission Bay during the period from the 1860's into the early 1900's. The soils are also typically contaminated with petroleum hydrocarbons at levels below hazardous waste levels under state or federal law. The presence of petroleum hydrocarbons in these soils is associated with past land use. Materials other than soil that may be encountered during normal excavation activities and transported in

FOCIL MB, LLC  
Variance  
Page 4 of 6

accordance with this variance include wood that may have been treated with creosote and serpentine boulders

- 6.6 Approximately 10,000 to 15,000 cubic yards of excavated soils are estimated to be subject to the provisions of this variance on an annual basis. A typical building project would require movement of approximately 1,000 to 3,000 cubic yards of soil over a period of 15 days. During the term of the variance, the soils would typically be moved in several concentrated efforts over several week periods with long periods of no soil movement

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 through 66263.23. These requirements are waived as set forth in Health and Safety Code section 25143. FOCIL must comply with all other requirements of this variance.

8. SPECIFICATIONS OF THE TERMS, CONDITIONS, LIMITATIONS, OR OTHER REQUIREMENTS: The Applicant shall be subject to the following conditions:

- 8.1. This variance is applicable only to the transportation of excavated soil materials that constitute non-RCRA hazardous waste.
- 8.2. FOCIL and its agents or contractors shall comply with all provisions of the most current version of the RMP, including but not limited to section 4.3.5.3 Rouse 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. Registered hazardous waste transporters 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. A Bill of Lading will be used to document and track all loads of variance soil moved along public streets from one area of the approved RMP area to another. FOCIL will maintain copies of the Bills of Lading for at least five years at the FOCIL - MB, LLC office, One Maritime Plaza, Suite 1325, San Francisco, CA 94111.
- 8.7. FOCIL's agents or contractors shall be made aware of the requirements for management of hazardous waste soils subject to the provisions of this variance and the RMP.
- 8.8. FOCIL shall immediately notify DTSC regarding any noncompliance or any accident associated with the transportation of soils subject to this variance. An accident report shall be submitted to the DTSC office specified below within ten (10) days of any accident associated with the transportation of soils subject to this variance.
- 8.9. FOCIL shall prepare a report that summarizes the total quantity of materials transported pursuant to this variance during each calendar year. The report shall be submitted to DTSC each year. The report is due on January 28 of each year for the submittal of the report for the period covering the preceding calendar year.
- 8.10. FOCIL shall comply with all other applicable federal, state and local statutes, regulations, ordinances, requirements or limitations.
- 8.11. FOCIL 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 lead to enforcement actions taken by DTSC or other agencies. FOCIL shall immediately notify DTSC if FOCIL becomes aware of any noncompliance with the terms of this variance.
- 8.12. A copy of this variance shall be carried in each vehicle used to transport the variance soil and shall be available for review at the FOCIL - MB, LLC office, One Maritime Plaza, Suite 1325, San Francisco, CA 94111.
- 8.13. All correspondence regarding this variance shall be directed to the following office:  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, California 95812-0806  
Attn: Mr. Jan Radimsky, Chief  
Program Support Branch

FOCIL-MB, LLC  
Variance  
Page 6 of 6

9. DISCLAIMER:

9.1. The issuance of this variance does not relieve FOCIL's responsibility for compliance with Health and Safety code division 20, chapter 6.5, or the regulations adopted therein, and any other laws and regulations other than those specifically identified in section 8 of this variance. FOCIL 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 FOCIL 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 Office of Planning and Research.

## **EXHIBIT 2**



San Francisco  
Bay Regional  
Water Quality  
Control Board

2101 Webster St. #500  
Oakland, CA  
94612  
(510) 286-1255  
FAX (510) 286-1380



Pete Wilson  
Governor

Mr. Jim Adams  
Catellus Development Corporation  
201 Mission Street, 2nd Floor  
San Francisco, CA 94105

Date: February 26, 1998  
File: 38S0044  
2169.6035

Subject: ENVIRON's Proposed Soil Reuse  
Mission Bay Project Area  
San Francisco, California

Dear Mr. Adams:

Regional Board Staff have reviewed ENVIRON's proposed soil reuse for the Mission Bay Project Area and have received comments from Department of Toxic Substances Control (DTSC) as well as from Elaine Warren, Deputy City Attorney for the City and County of San Francisco. Board Staff held an advisory meeting under the AB2061 process regarding the issue of reuse of soils for the Mission Bay Project Area (Site) which were or will be generated at the site during redevelopment. Board Staff and DTSC have determined that such soil may be reused on site without triggering hazardous waste regulatory requirements. DTSC's approval was addressed in a December 10, 1997 letter to our staff.

Based on this information, Regional Board Staff, along with DTSC, concur that reuse of soils in the Mission Bay Project Area is acceptable if conducted in accordance with Risk Management Plans (RMPs) that specify soil management procedures for the project. RMPs are to be prepared prior to development of the Project Area and submitted for review and approval by the RWQCB prior to implementation.

This letter is not intended as a substitute for Catellus' compliance with the Maher Ordinance (San Francisco Public Works Code, Article 20, Section 1000 et seq.). If you have any questions, please contact Mr. Vic Pal at (510) 286-0687.

Sincerely,

**//Original signed by//**

Steve Morse

Chief, Toxics Clean-Up Division

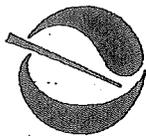
cc: Doug Stimpson, Catellus  
✓ Phil Fitzwater, ENVIRON  
Elaine Warren, City Attorney  
Deborah Schmall, Landels Ripley & Diamond  
Stephanie Cushing, DPH  
Janet Naito, DTSC



Recycled Paper

*Our mission is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.*

## **EXHIBIT 3**



Cal/EPA

Department of  
Toxic Substances  
Control

700 Heinz Avenue  
Suite 200  
Berkeley, California  
94710-2737

December 10, 1997



Pete Wilson  
Governor

Peter M. Rooney  
Secretary for  
Environmental  
Protection

Mr. Steve Morse  
Regional Water Quality Control Board  
2101 Webster Street, Suite 500  
Oakland, California 94612

Dear Mr. Morse:

### SOIL REUSE WITHIN THE MISSION BAY PROJECT

The Department of Toxic Substances Control (DTSC) has completed its review of Environ's request to manage soils in the Mission Bay Project Area including the current stockpiled areas as an "area of contamination". Environ submitted information on both November 19 and December 3, 1997 as part of this demonstration. Based on an evaluation of this information, DTSC agrees that the "area of contamination" for soil management purposes can be applied for this Project.

If you have any questions, please contact me at (510) 540- 3843.

Sincerely,

*//Original signed by//*

Barbara J. Cook, P.E., Chief  
Northern California - Coastal  
Cleanup Operations Branch

cc: Margaret Peischl  
Environ  
5820 Shellmound Street, Suite 700  
Emeryville, California 94608

## **EXHIBIT 4**

# 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)	
<u>Special Handling Instructions:</u> <ul style="list-style-type: none"> <li>• Avoid inhalation of dust</li> <li>• Minimize direct contact with soils.</li> <li>• Soils to be managed and handled in accordance with the Risk Management Plan, Mission Bay Area (May 11, 1999)</li> </ul>	
24 Hour Emergency Contact: Phil Owen, MBDG: (415) 355-6600	

**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): <b>FOCIL-MB, LLC</b>	Signature	Date
Transporter (print name):	Signature	Date
Received by (print name): <b>FOCIL-MB, LLC</b>	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](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 with 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, handwrite in 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.

## **EXHIBIT 5**

## EXHIBIT 5

### SUPPORTING INFORMATION

#### APPLICATION FOR VARIANCE FROM HAZARDOUS WASTE MANIFESTING REQUIREMENTS FOR MISSION BAY RISK MANAGEMENT PLAN AREA

1. *Describe the physical characteristics and chemical composition of the hazardous waste or the specifications of the hazardous waste management activity to which the variance applies.* The materials subject to the requested variance will be comprised of soil and other excavated fill materials generated during construction activities within the Mission Bay area of San Francisco. Due to the historic nature of the fill in Mission Bay, other materials may be encountered within the soil during normal excavation activities, including wood (which may have been treated with creosote) and serpentine boulders (which, when characterized, usually consist of California Class II non-hazardous debris). The chemical composition of the soil and other excavated fill material (collectively, soils) may vary, although the one chemical that has generally driven its waste characterization is lead. Heavier end hydrocarbons are also ubiquitous within the soil material as a result of historical activities, but have not typically played a role in its waste characterization. The soils have never been found to be reactive, ignitable, and/or corrosive, as those characteristics are defined by DTSC regulations appearing at Title 22 of the California Code of Regulation, Sections 66261.21 through 66261.23.

Although the chemical composition may vary, the one chemical that has generally determined classification of Mission Bay soils is lead. Some soils excavated from the RMP Area have been determined not to constitute hazardous waste. However, in light of our understanding of the nature and extent of contamination throughout the RMP Area, we expect that some volume excavated during planned construction activities will constitute a non-RCRA hazardous waste, most likely due to soluble concentrations of lead in excess of the soluble threshold concentration limit (STLC). While soils at various locations throughout Mission Bay have been found to contain lead in excess of the STLC, they have generally been found to contain less than 1000 milligrams per kilogram (mg/kg) total lead, with a 95% upper confidence level.

The specifications of the hazardous waste management activity to which the variance applies is the movement of soils entirely within the Mission Bay Project Area (or Risk Management Plan (RMP) Area). Briefly, soils may be excavated from one location within the RMP Area, loaded into trucks, transported via city streets within the RMP Area, and placed within a pre-determined parcel to raise the grade prior to building, backfill an excavation, or await sampling for future ultimate disposal at an appropriate disposal facility.

2. *Is this your own waste? From where will you be transporting the waste?* FOCIL-MB, LLC (FOCIL) would be listed as the generator if the soils under its control were to be sent to a disposal facility. The soil to be managed is from (i) property owned by FOCIL, (ii) property being developed by FOCIL, or (iii) from within city streets, rights-of-way or other city-owned land to be developed into public parks where FOCIL has agreed to manage soils pursuant to various agreements between FOCIL and the City of San Francisco or private third party developers. The soil will be generated

from excavation activities to create trenches for the installation of below grade utilities, for the realignment of city streets, for the construction of public parks, and for grading requirements within private development parcels. A copy of the RMP was included with previous applications by FOCIL and other entities that hold variances. Within the RMP are several figures that depict the Project Area (or RMP Area) and show the future alignment of city streets, future public park parcels and numerical private development parcel designations.

3. *How will the hazardous waste be prepackaged, marked or labeled for transportation?* Non-RCRA hazardous waste soils will be transported within the RMP Area in trucks of varying size. As per the RMP, all loads moving around the RMP Area must use tarpaulins or other effective means to cover and/or prevent dust generation during transport. Additionally, the tires for the trucks must be clean prior to driving on city streets. In addition, all loads of soil will be accompanied by a Bill of Lading, to be completed by the truck driver. A copy of the current Bill of Lading used by FOCIL is attached to the cover letter as Exhibit 4. The Bill of Lading includes transporter information, such as the name of the trucking company and its hazardous waste transporter registration number, the locations in the RMP Area (i.e., Block number, street address or street section) where the soils were both picked up and delivered, and special handling instructions. The Bill of Lading will identify FOCIL-MB, LLC as both the "Shipper" and the entity that "Received" the soil.

As required by the current variance issued to FOCIL, "hazardous waste soils subject t 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 their legal gross weight limit set in the Vehicle Code." (FOCIL Variance, Section 8.3). Additionally, and as also provided by the current FOCIL Variance, "registered hazardous waste transporters must be used for all transportation activities subject to this variance." (Id, Sec 8.4). FOCIL will agree to comply with the same conditions as set forth in its current variance. If hazardous waste soils were to be transported to an offsite disposal facility, such soils would be accompanied by an appropriate hazardous waste manifest and the driver/truck would be properly licensed and registered.

4. *Give the proper DOT shipping description for this waste, if applicable, or the generic description or commonly used industrial name.* If the soils are slated for offsite disposal, they would most likely be classified as non-RCRA hazardous waste solids. The US DOT description indicated on the Bill of Lading is, "Environmentally hazardous substances, solid, n.o.s. (not otherwise specified), 9, UN3077, III RQ (Lead-contaminated soil and debris)".
5. *Will you or your employees be transporting the hazardous waste? Will it be transported in your own vehicles?* Employees of FOCIL (or employees of the development manager for FOCIL, Mission Bay Development Group, LLC) will not transport soils along pubic streets nor will they use their own vehicles for such transportation. Rather, soils will only be transported over public streets by registered hazardous waste transporters hired by FOCIL's contractors.
6. *Where will the waste be taken? Is this a permitted facility? If stored for consolidation purposes, give the temporary storage facility address and indicate how long it will be stored at this location.*

Soil transported under the variance may only be transported from one location within the RMP Area to another such location. The RMP Area is not a permitted hazardous waste storage and/or disposal facility. Rather, per the terms of the DTSC's soil reuse agreement (attached to the cover letter as Exhibit 3) and the RMP, soils may be reused within the RMP Area, although, according to the June 23, 2005 RMP Amendment, they may only be transported along the RMP Area's public streets under cover of either a hazardous waste manifest or a variance and associated Bill of Lading.

Soils are expected to be transported to pre-determined consolidation areas constructed to meet certain requirements for construction/maintenance of soil stockpile areas, as defined by the RMP. These control measures include, at a minimum, implementation of erosion control measures to minimize silt-laden stormwater from flowing offsite and onto adjacent public streets, secured stockpile covers to minimize wind-generated dust and erosion during rainfall events, installation of six-foot-high fences to preclude access to the general public, and quarterly inspections of all control measures (these quarterly reports are submitted to the RWQCB and the SFDPH). Ultimately, all excavated soils reused within the RMP Area will be inaccessible to future users and occupants because the RMP requires placement of a building, sidewalk, street, parking lot, or, in areas of landscaping, a minimum of one to one and a half feet of clean fill, above any such soils.

If a certain volume of soils cannot be reused within the RMP Area, it will be sampled and profiled for offsite disposal. If it constitutes a hazardous waste, the appropriate manifests will be completed, properly licensed and registered truckers will be hired, and the waste will then be loaded and hauled to the disposal facility in accordance with all applicable laws and regulations (including the requirement that California Class I hazardous waste may only be hauled offsite by a fully licensed and insured trucking company). Only permitted Class I or Class II waste disposal facilities will be used.

7. *Do you have the proper insurance coverage for transporting hazardous waste? If not and you wish a variance from the insurance requirements, give your reasons why you believe the insurance coverage is not necessary.* Hazardous waste soils will only be hauled by registered hazardous waste haulers who meet the following minimum insurance requirements. They must provide coverage with a combined single limit of \$10,000,000 per accident and must have the pollution exclusion of ISO For CA 00 01 06 92 (or its equivalent) amended by deleting the following respective clauses from Section a.(1)a and Section a.(1)b.: "being transported or towed away by, or handled for movement into, onto or from the covered auto"; and "otherwise in the course of transit by the insured". The haulers must also provide commercial automobile liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence and insuring against liability for claims arising out of ownership, maintenance, or sue of any owned, hired or non-owned vehicles. In addition to these requirements, such insurance must: (i) name FOCIL, its agents and lenders as additional insureds, (ii) be primary as respects the additional insured parties; (iii) contain a waiver of subrogation in favor of the additional insured parties; and meet a number of other stringent requirements.
8. *Will the waste be shipped using a Uniform Hazardous Waste Manifest? If a manifest variance also requested, give the reasons showing why you need this variance. If a manifest variance is granted, a*

*shipping paper will be required to accompany the shipment – attach a sample of the shipping paper you plan to use.* FOCIL is seeking a variance from manifesting requirements for non-RCRA hazardous waste soils, so it can transport such soils along the public street within the RMP Area under a cover of a Bill of Lading, in lieu of a hazardous waste manifest. Use of a hazardous waste manifest would not be appropriate because the RMP authorizes reuse of soils within the RMP Area, which is not a permitted hazardous waste disposal facility. In addition, using a Bill of Lading to track movement of the soils within the RMP Area will provide detailed information, such as the volume of soils moved, where they were moved from and to, and the identity of the trucking company responsible for their movement. An example of the Bill of Lading currently in use to track the soils transported along public streets within the RMP Area is included as Exhibit 4 to the cover letter.

9. *Please provide statements explaining how this variance is going to be beneficial to the environment.* The soils reused within the RMP Area will be transported in accordance with the RMP. The RMP contains provisions that assure that reuse of such soils will not result in any unacceptable risks, both during the phased development of the RMP Area and upon its completion, since the RMP requires that all such soils be inaccessible to future users through placement of a building, sidewalk, street, parking lot, or, in areas of landscaping, a minimum of one to one and a half feet of clean fill above such soils. Thus, transportation and reuse of the soils in this manner will result in a reduction of environmental or human health risks. In addition, scarce landfill space will not be used up with soils that could otherwise be used as backfill within the RMP Area, which will facilitate the economic redevelopment of a large brownfield site. Additionally, reuse of soils within the RMP Area will obviate the need to ship truckloads of soils outside of the RMP Area to a permitted disposal facility, and to haul truckloads of replacement fill material into the RMP Area for necessary grading and backfilling. This will result in a reduction in the number of trucks traveling on congested Bay Area highways, which will reduce Bay Area traffic, consumption of fossil fuels, and the associated emissions of diesel particulate matter and greenhouse gases. Furthermore, economic redevelopment of the RMP Area should ultimately result in a substantial reduction in greenhouse gases, as infill development of mixed-use, transit-linked communities such as Mission Bay will assure the Bay Area's continued growth as a center of biotechnology research and development, while resulting in an overall reduction in vehicle miles traveled.