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STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In Re: SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD CAO NO. R9-2004-0258 REGARDING FORMER TELEDYNE RYAN AERONAUTICAL SITE, 2701 NORTH HARBOR DRIVE, SAN DIEGO, CALIFORNIA	No. _____ **PETITION FOR REVIEW OF CAO NO. R9-2004-0258 BY SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD REGARDING FORMER TELEDYNE RYAN AERONAUTICAL SITE**

Petitioners TDY Industries, Inc., TDY Holdings, LLC, Teledyne Ryan Aeronautical Company and Allegheny Technologies Incorporated submit this Petition for Review ("Petition") pursuant to California Water Code Section 13320 and California Code of Regulations, Title 23, Section 2050 for review of Cleanup and Abatement Order No. R9-2004-0258 ("CAO") regarding the former Teledyne Ryan Aeronautical facility at 2701 North Harbor Drive, San Diego, California (the "Site"). The San Diego Regional Water Quality Control Board ("Regional Board") Executive Officer issued the CAO on October 4, 2004. A copy of the CAO is attached as Exhibit A. Petitioners may amend this Petition with further evidence, argument, and authorities as appropriate.

I. NAME AND ADDRESS OF PETITIONER

Petitioners are TDY Industries, Inc., TDY Holdings, Inc., Teledyne Ryan Aeronautical Company and Allegheny Technologies Incorporated. As explained in Section

IV.B.3, Allegheny Technologies Inc. is improperly named in the CAO. Accordingly, throughout this Petition reference is made to TDY, which collectively includes TDY Industries, Inc., TDY Holdings, LLC and Teledyne Ryan Aeronautical Company. All correspondence and other written communications regarding this matter should be addressed as follows:

1) Jon D. Walton
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With a copy to Petitioner's counsel:

2) Diana Martin
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II. ACTION OF THE REGIONAL BOARD BEING PETITIONED

TDY requests that the State Water Resources Control Board ("State Board") hold this Petition in abeyance pending TDY's efforts to meet with the Regional Board and attempt to resolve the issues raised in the Petition. To the extent TDY is unable to resolve matters with the Regional Board, and TDY is forced to reactivate this Petition, TDY will request the State Board to review and vacate or remand the CAO which requires TDY to undertake a five step investigation and remediation of the Site. TDY's Petition is based on two fundamental flaws in the CAO: (1) the CAO fails to name the appropriate responsible parties; and (2) the CAO is based on inaccurate and incomplete factual information thereby resulting in a CAO that reaches inappropriate and invalid conclusions.

III. DATE OF ACTION FOR WHICH REVIEW IS SOUGHT

TDY seeks review of the CAO issued by the Regional Board Executive Officer on October 4, 2004.

IV. STATEMENT OF REASONS WHY THE ACTION IS INAPPROPRIATE OR IMPROPER

The Regional Board issued the CAO without any advance discussion or notification to TDY. As a result, the CAO is riddled with inaccuracies and errors. The CAO fails to name all responsible parties, as it excludes: (1) the San Diego Unified Port District (the

"Port"), who has owned the Site property and surrounding properties since at least the early 1960s and, until 2003, owned Lindbergh Field, which is immediately upstream of the Site; (2) the San Diego Regional Airport Authority ("Airport Authority"), who currently leases both a portion of the Site as well as surrounding properties under a long-term leases with the Port, and, as of January 1, 2005, will lease the entire Site under a 64-year term lease, and since January 2003, has owned Lindbergh Field; and (3) General Dynamics Corporation, a former operator on Port owned property upstream of Lindbergh Field. These entities should be named as responsible parties in the CAO as there is ample evidence showing they contributed to the contamination at issue, and, with respect to the Port and the Airport Authority, they are the only ones with possession of and control over the Site. Further, the CAO contains numerous factual assertions that are not supported by the record. The Regional Board improperly relies on these inaccurate assertions as the factual support for the CAO. Thus, the premises underlying the CAO are invalid and the CAO is devoid of support for its two main propositions: (1) that the Site is the source of ongoing PCB-impacted sediments found in the storm water outfalls that discharge to Convair Lagoon; and (2) that TDY is responsible for the ongoing discharges from the Site. Contrary to the statements made in the CAO, the source(s) of PCB sediments found in Convair Lagoon are not fully known at this time. Finally, the CAO contains a host of errors which taken together, undermine its credibility. The wrong address for the Site is one example of these errors. The CAO identifies the Site address as 2710 Harbor Drive, San Diego, CA. The correct Site address is 2701 Harbor Drive, San Diego, CA.

A. Brief Factual Summary

The Regional Board has been involved with the Site work raised by the CAO for approximately the last 18 years. To enable the State Board to put the issues TDY is raising in this Petition in context, a brief history of pertinent Regional Board interactions and other Site-related activities is provided below.

1. PCB Investigation And Clean Up Activities

In October 1986, the Regional Board initially sought to have Teledyne Ryan Aeronautical ("TRA") evaluate possible PCB discharges from the Site to Convair Lagoon

through issuance of CAO No. 86-92. The Regional Board amended CAO No. 86-92 ten times through 1996. As required by CAO No. 86-92, TRA conducted clean outs of the storm drain system within its Site, characterized sediments found in Convair Lagoon and constructed an in-water berm and an engineered sand cap to contain sediments containing PCBs at or above 4.6 mg/kg (dry weight) found in Convair Lagoon. During the cap construction work, the Regional Board issued WDR 95-123, which established standards for monitoring and controlling sediments during the cap installation work. In-water cap construction was completed in approximately mid-1998. The cap covers approximately seven acres on the bottom of Convair Lagoon.

In 1997, just prior to the cap construction, but following TRA's clean outs of the lines beneath the Site, PCBs were detected at 360 mg/kg in sediments in the 60" line upstream of the Site on property owned by the Port.[1] The Port apparently required General Dynamics, as a tenant at the General Dynamics Lindbergh Field Plant ("LFP"), to clean out a portion of the 60" line, although details of this clean out effort are not available to TDY at this time.[2] When the Port undertook further sampling of the 60" line in 2000, PCBs were again detected in sediments at 26 mg/kg at a location approximately 325 feet north (*i.e.*, upstream) of the Site and downstream of other sources including the General Dynamics LFP.[3]

In 1998, the Regional Board issued WDR 98-21 to regulate sand cap-related monitoring, maintenance and repair activities. This WDR, which TDY continues to comply with, requires visual inspections to ensure cap integrity, sampling of cap sediments in designated locations, tissue sampling of specified organisms, and sediment sampling from specified Site storm drain outfalls that discharge into Convair Lagoon, or in the absence of sufficient sediments

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[1] September 13, 1997 letter from Eileen Maher, San Diego Unified Port District, to Randy Venier, Teledyne Ryan Aeronautical.

[2] *Convair Lagoon PCB Technical Report,* Brown and Caldwell (January 2002), prepared for the San Diego Unified Port District.

[3] *Convair Lagoon PCB Technical Report*, Brown and Caldwell (January 2002), prepared for the San Diego Unified Port District.

at the outfall, in the first upstream catch basin. The WDR also established a 4.6 mg/kg PCB action level that applies at the storm drain outfalls and to the sand cap. The WDR prohibits sediments at the outfall or on the cap above the 4.6 mg/kg action level. The WDR does not prohibit accumulation of sediments throughout the entire storm water system above the 4.6 mg/kg action level.[4]

Based on the sampling TDY has done pursuant to WDR 98-21, the PCB concentration at the 60" line outfall has exceeded the 4.6 mg/kg action level three times since 2000, with the trend increasing from 22.4 mg/kg in 2000 to 165 mg/kg in 2003.[5]

Because PCB concentrations exceeding the WDR 98-21 standard of 4.6 mg/kg PCBs were detected during TDY's annual 98-21 cap compliance sampling, by letter dated November 7, 2001, the Regional Board requested that TDY, the Port, the City of San Diego ("City") and the Marine Corps Recruiting Depo ("MCRD") undertake work to determine the source(s) of PCBs.[6] While the City and the MCRD undertook limited sampling in response to this request, the Port elected not to proceed with any sampling.[7] TDY collected numerous samples from various points along the 54", 60" and 30" lines. All samples were below the 4.6

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[4] WDR 98-21 requires cleaning of the 60" and 30" E. line from the outfall to the nearest upstream catch basin if sediments in the nearest upstream catch basin contain PCBs in excess of 4.6 mg/kg.

[5] *Convair Lagoon Annual Post-Closure Monitoring Reports*, JNE & Associates, Inc. (July 6, 2000), (July 10, 2001), (July 28, 2002) and (June 18, 2003).

[6] As a further note, three tidal surveys have been conducted, two by TDY in 1998 and 2002 and one by the Port in 2003. *PCB Investigation Technical Report, Former Teledyne Ryan Aeronautical Facility, 2710 [sic] N. Harbor Drive, San Diego, California*, GeoSyntec Consultants (April 30, 2002); *Report on Baseline Site-wide Investigation Former Teledyne Ryan Aeronautical Facility. Volume I – V. 2701 N. Harbor Drive, San Diego, California.* Haley & Aldrich (May 2004), prepared for San Diego Unified Port District. All three surveys reached the same conclusion -- the tidal prism reaches the northern Site property boundary. Accordingly, PCBs on Lindbergh Field and upstream of the Site only are attributable to local airport and upstream sources (*e.g.*, General Dynamics Convair Plant 19 and LFP which were known to have used PCBs in their operations).

[7] The Port may have done some testing in December 2001, but it is simply reported as non-compliant sampling. *Convair Lagoon Technical Report*, Brown and Caldwell (January 2002), prepared for the San Diego Unified Port District.

mg/kg action level. TDY provided the results of its sampling and investigation work to the Regional Board in April 2002.[8] The CAO is the first response TDY received from the Regional Board regarding its April 2002 report.

2. Storm Water Discharges To Convair Lagoon[9]

a. Storm Water Permits Applicable To The Site

Principally due to concerns associated with PCBs, the Regional Board has regulated storm water discharges from the Site since at least 1986. Under CAO 86-92, the Regional Board required TRA to implement Best Management Practices ("BMPs") and obtain an NPDES permit. (CAO 86-92, p. 8-9, ¶¶ 3-8.) In coordination with the Regional Board, TRA developed a BMP program in the 1986/1987 timeframe. Subsequently, in 1988, the Regional Board adopted WDR 88-39 in lieu of an NPDES permit which outlined sediment sampling requirements applicable to the Site. In 1991, the State Board issued Order No. 91-13, the initial General Industrial Storm Water Permit, that provided an NPDES permit and program for all non-point source industrial storm water discharges. The former TRA facility was regulated under this permit, and WDR 88-39 was rescinded in 1993. In 1992, TRA established a Storm Water Pollution Prevention Plan ("SWPPP") that implemented the BMPs developed earlier for WDR 88-39. TRA also commenced annual storm water sampling. Based on this sampling, between 1992 and 2001, PCBs were not detected in storm water exiting the Site.

In 1997, the State Board updated its General Industrial Storm Water Permit as Order No. 97-03-DWQ that replaced Order No. 91-13 and was in effect while TDY was a tenant at the Site. As the current owner-occupant of the Site, these permit requirements are applicable

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[8] *PCB Investigation Technical Report, Former Teledyne Ryan Aeronautical Facility, 2710 [sic] N. Harbor Drive, San Diego, California*, GeoSyntec Consultants (April 30, 2002).

[9] The information presented in this portion of the Petition is from a variety of sources including *PCB Investigation Technical Report, Former Teledyne Ryan Aeronautical Facility, 2710 [sic] N. Harbor Drive, San Diego, California*, GeoSyntec Consultants (April 30, 2002); City and County of San Diego Storm Drain Records obtained from SANGIS; *Phase 1 Baseline Assessment, Part II General Dynamics Convair*, Brown & Caldwell (November 1994); and *Storm Water Pollution Prevention Plan Prepared for Teledyne Ryan Aeronautical*, Ogden Environmental and Energy Services (November 1992).

and binding on the Port. Further, as a current operator at a portion of the Site, and as the soon to be operator of the entire Site, the General Industrial Permit is also applicable to the Airport Authority. Under the General Industrial Permit, the Port and the Airport Authority are to have a SWPPP and a monitoring program. By Order No. 2001-01, the Regional Board instituted a local Municipal Separated Storm Sewer System permit that is binding on the Port and the Site.

b. Storm Water Conveyance Systems Discharging To Convair Lagoon

There are a total of six storm water outfalls that discharge into Convair Lagoon. Two of the outfalls are from lines associated with the former General Dynamics Harbor Drive Plant ("HDP"). The HDP facility is known to have used PCBs in its operations.[10] Of the remaining four outfalls, two are from storm drain lines that transect the Site, and two are from storm drain lines that originate on the Site. At various times between approximately 1986 and 1991, TRA undertook work to clean and remove sediments from these lines.

Moving from west to east around Convair Lagoon the six lines include the following:

- 15" line: This line drains what is now a parking area. It appears to have drained what was a portion of General Dynamics HDP and may be what HDP called HD-12.

- 18" line: This line drains what is now a parking area. It appears to have drained what was a portion of General Dynamics HDP and may be what HDP called HD-13A.

- 54" line: This line is a continuation of a storm drain from the San Diego Airport Lindbergh Field facility, and it enters the Site from the north and west. The two branches traverse the western portion of the Site, and connect into a single line that discharges to Convair Lagoon. This line receives runoff from the western portions of the Site, from Lindbergh Field and from Harbor Drive.

- 30" W. line: This line, which is located on the southwest portion of the Site, between the 54" and 60" lines, originates on-Site and receives runoff from the parking area of the former TRA facility, as well as runoff from along Harbor Drive.

- 60" line: This line crosses under the center of the Site, traversing from the northern to the southern property boundaries. The 60" line is a continuation of a major storm water conveyance line for properties north of the Site: starting north of Pacific Highway 1 near

[10] *Phase I Baseline Assessment, Parts I and II General Dynamics Convair*, Brown and Caldwell (November 1994).

former Convair Plant 19, passing by the MCRD and onto the former General Dynamics LFP property, and then to the San Diego Airport Lindbergh Field, then through the Site, and ultimately discharging into Convair Lagoon.

- 30" E. line: This line is located east of the 60" line in the central eastern side of the Site. This line is sometimes referred to as the 15/30 or 18/30 line. This line receives runoff from the Site and is not connected to other neighboring property storm drain systems. TRA substantially removed and replaced this line in 1988. In addition, TRA over excavated and removed adjacent soil. Continuing into January 1989, TRA removed and replaced existing catch basins with new concrete catch basins and existing interconnecting concrete pipes with PVC pipes. In January 2003, the Port, as the Site owner-occupant, undertook cleaning of the 30"E. line by hydroblasting.[11]

c. Other Storm Water Discharges in the Vicinity of Convair Lagoon

- HD-7: This line, which originates on the General Dynamics HDP site, was found to be heavily contaminated with PCBs (>13,000 mg/kg in soil) when tested in 1987 and was subsequently removed in late 1988.[12] The outfall is into the East Basin and could have brought PCB contaminated material to the mouth of and into Convair Lagoon. Other testing in 1986 and 1987 showed consistent PCB contamination of catch basin sediment ranging from 33 mg/kg to 130 mg/kg with an increasing trend over three sampling events.[13]

- HD-1, HD-2, HD-3, HD-4, HD-5, HD-6, HD-8, HD-9, HD-10, HD-11A and HD-11B: These lines all originate on the former General Dynamics HDP and outfall into East Basin. Any PCB discharges from these lines could pass by the mouth of and into Convair Lagoon. All the sediment samples from the lines contained PCBs when tested in both 1986 and 1987. Sediment samples from lines HD-1 and HD-11A contained PCBs at 6.6 mg/kg and 4.2 mg/kg respectively.[14]

- 48" Airport East Basin Drain: This line drains the vast majority of the industrial portions of the airport where commuter and larger aircrafts are serviced. Documented VOC contamination exists in these areas.[15] Given the position of the outfall location, PCB contaminated material from the East Basin could travel to the mouth of and into Convair Lagoon. To the best of TDY's knowledge, no testing has been done along this line.

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[11] *Report on Storm Water Conveyance System Maintenance Former Teledyne Ryan Aeronautical Facility Site,* Haley & Aldrich (April 2003), prepared for the San Diego Unified Port District.

[12] *Phase 1 Baseline Assessment, Part II General Dynamics Convair*, Brown & Caldwell (November 1994), page 13-8.

[13] *Convair Lagoon PCB Technical Report,* Brown and Caldwell (January 2002), prepared for the San Diego Unified Port District.

[14] *Id.*

[15] *See* Section IV.A.4 below.

- 18" line beneath U.S. Coast Guard Station: This line originates on the Site and receives runoff from the eastern portion of the Site. This line has not shown historic PCB contamination (the highest level detected was 0.460 mg/kg of total PCBs), nor is it likely, given the placement of the line that any discharges from the line would end up in Convair Lagoon.
- 36" line: This line originates at Lindbergh Airfield and picks up drainage from a small northeastern portion of the Site. Due to its outfall location outside of Convair Lagoon east of the U.S. Coast Guard Station, it has no likely relationship on PCB discharges found in Convair Lagoon.

3. Other Site Related Investigation Work

The Regional Board has been involved with two other issues at the Site: volatile organic chemicals ("VOCs") and heavy metals, most notably hexavalent chromium. The Regional Board issued a request to TDY for a workplan and investigation report for both of these issues on November 8, 2001. TDY promptly complied with the request and, in 2002, produced both a workplan[16] and a report.[17] Although TDY's report recommended further work to address both the VOCs and hexavalent chromium issues, TDY heard nothing from the Regional Board until issuance of the CAO.

a. VOC WORK

VOCs, principally perchloroethylene ("PCE") have been found beneath Building 120 near a former vapor degreaser and a former maintenance pit area. Soils in this area were removed during Site characterization activities in the 1990s and three groundwater monitoring wells were installed. Following the Regional Board's November 2001 request, TDY installed eight soil borings into the groundwater table using temporary well casings to further delineate the affected areas. The existing monitoring wells were surveyed and measured for groundwater elevations. While TDY's April 2002 report summarizing this work concluded that VOCs in groundwater in the area of the former vapor degreasers (Nos. 11 and 76) did not warrant further

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[16] *Site Assessment Work Plan, Former Teledyne Ryan Aeronautical Facility 2701 North Harbor Drive, San Diego, California*, GeoSyntec Consultants (Feb. 1, 2002).

[17] *Report on Site Assessment Activities, Former Teledyne Ryan Aeronautical Facility 2701 North Harbor Drive, San Diego, California,* GeoSyntec Consultants (Sept. 13, 2002).

investigation, it recommended further VOC delineation work in the area south of the former pit and a vapor degreaser (No. 75). The report also recommended installation of two downgradient groundwater monitoring wells to determine the lateral extent of potential VOC impacts. As the report noted, the Water Quality Control Plan for the San Diego Basin identifies limited beneficial uses of groundwater beneath the Site because of the high salinity due to the proximity to San Diego Bay. The report also noted the need to identify whether VOCs were likely to reach surface water at appreciable concentrations. To date, the Regional Board has not provided TDY with any comments on the report.

In 1995, the Port relocated its fuel storage tanks at Lindbergh Field from below ground to an above ground storage tank on the north side of the airfield with a below ground pipeline extending approximately 2,000 feet to a remote fuel dispensing facility at the south end of the airport property. The Port collected soil borings and drilled monitoring wells in the tank farm and the remote fuel dispensing facility to ascertain baseline conditions. Concentrations of >2,000 ug/l total VOCs were found at the remote fuel dispensing facility.[18] This area is adjacent to the western branch of the 54" storm drain line, which drains into the western portion of the Site. In 2003, the Port conducted soil gas and groundwater characterization activities on the Site and discovered a plume of VOCs adjacent to this western branch of the 54" line.[19] This plume of VOCs bears no relationship to known VOC usage or storage at the Site but likely is related to the VOC release discovered by the Port in 1995.

b. Hexavalent Chromium Work

Soil and groundwater beneath Building 158 were known to have been affected by hexavalent chromium by Fall 2001. In response to the Regional Board's November 2001 request, TDY further characterized the extent of potential hexavalent chromium impacts by

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[18] *DRAFT Above Ground Storage Tank Farm Baseline Assessment*, Leighton & Associates (1995), prepared for the San Diego Unified Port District.

[19] *Report of Baseline Site Wide Investigation at 2701 N. Harbor Drive*, Haley & Aldrich, (May 2004), prepared for the San Diego Unified Port District.

installing five soil borings with groundwater grab samples.[20] Based on this sampling, as indicated in their report to the Regional Board, TDY's consultants concluded that the impacted area appeared to have limited extent but recommended further characterization work. To date, the Regional Board has not provided TDY with any comments on the report.

B. The CAO Fails To Identify The Appropriate Responsible Parties[21]

1. The San Diego Unified Port District And The San Diego County Regional Airport Authority Should Be Named As Responsible Parties Under The CAO

While TDY is a former operator, it has never owned the Site. The Port is the historic and current owner of the Site and surrounding property -- and the historic owner of Lindbergh Field, which is directly upstream of the Site. The Airport Authority now owns Lindberg Field and leases surrounding airport properties and a small portion of the Site from the Port under long term lease agreements. Effective January 1, 2005, the Port will enter into an additional 64-year lease with the Airport Authority for the entire Site. *See* Exhibit B (San Diego Unified Port District Board Meeting, October 5, 2004, Agenda Item 7). The Airport Authority was separated into its own authority by the Airport Authority Act, Senate Bill 1896 (2002). Ownership of the Lindbergh Field transferred from the Port to the Airport Authority effective January 1, 2003.[22]

TDY vacated the Site in October 2002, and has not had access or control over the Site since its departure. The Port repeatedly rejected TDY's attempts to proceed with work at the Site, imposing onerous and unrealistic requirements.[23] As the current owners and soon to be

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[20] *Report on Site Assessment Activities, Former Teledyne Ryan Aeronautical Facility 2701 North Harbor Drive, San Diego, California*, GeoSyntec Consultants (Sept. 13, 2002).

[21] References for technical documents discussed in Section IV.A are not repeated again in the remainder of this Section IV.

[22] Paragraph 5 of the CAO states that the Port transferred ownership of the Site to the Airport Authority in August 2003. This type of factual misstatement is just one of many such errors found throughout the CAO.

[23] Commencing in approximately in June 2002, through approximately October 2002, TDY sought Port approval for terms governing specified Site work. The Port effectively denied TDY the ability to perform the work because of the unrealistic terms and conditions it sought to

(Footnote Continued on Next Page.)

lessees of the Site, the Port and the Airport Authority have the sole ability to control access and ensure the work required under the CAO is carried out. As such, they need to be named as responsible parties on the CAO.

Further, there is substantial evidence demonstrating that activities on the adjacent upstream property have contributed to impacts at the Site and in Convair Lagoon.[24] First, PCBs have repeatedly been detected in storm drains on the property immediately upgradient of the Site. In 1997, the Port tested portions of the 60" line upgradient of the Site apparently due to concerns about on-going PCB concentrations in the 60" outfall and the then impending sand cap implementation. Testing revealed total PCB levels as high as 360 mg/kg. Ultimately, General Dynamics apparently performed the clean out work of these sediments in late 1997 or 1998 before the sand cap construction was completed.[25] Further testing by the Port in 2000 found up to 26 mg/kg in sediment collected from the 60" line beneath Lindbergh Field, approximately 325 ft north of the northern Site property boundary.

Unlike the other parties that received the Regional Board 2001 letter, the Port did not conduct any sampling, nor has the Port sampled the storm drain lines upgradient of the Site (including Lindbergh Field) despite an increasing trend in total PCBs from 60" outfall samples since the 1997/1998 60" line clean out on the Port property (*i.e.*, increase from 22.4 mg/kg in 2000 to 165 mg/kg in 2003). The Port's activities on Lindbergh Field also appear to be a possible source of VOCs detected at the Site. In 1995, VOC concentrations of >2,000 ug/l total VOCs were found at the remote fuel dispensing facility just upstream of the Site. Based on work

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(Footnote Continued from Previous Page.)

impose. In early 2003, when TDY sought access after vacating the premises, the Port attempted to impose additional requirements including overly broad damages and indemnity requirements. After numerous attempts by TDY, the Port refused to retract its proposed onerous condition, thereby denying TDY access to the Site.

[24] With the exception of Lindbergh Field, the Port owns the upstream property. The Port leases this property (and surrounding properties) to the Airport Authority under long-term lease agreements. Effective January 1, 2003, the Airport Authority has owned of Lindbergh Field.

[25] TDY does not currently have the details of the extent of the clean out work performed by General Dynamics.

the Port did at the Site in 2003, a plume of VOCs bearing no relationship to known VOC usage or storage at the Site was detected on the Site, just downstream of the airport property. These 2003 detections are likely related to the 1995 detections.

The 48" Airport east basin drain line, which drains the vast majority of the industrial portions of the airport where commuter and larger aircrafts are serviced, travels beneath these known VOC impacted areas. To the extent these areas are also impacted with PCBs, any PCB contaminated material discharged from the East Basin could travel to the mouth of and into Convair Lagoon.

2. General Dynamics Corporation Should Be Named As A Responsible Party Under The CAO

Numerous facts support naming General Dynamics as a responsible party under the CAO. First, in 1997, PCBs were detected in sediments at 360 mg/kg in the 60" line upstream of the Site. (The 60" line continues on, traversing the Site and discharging to Convair Lagoon.) General Dynamics apparently conducted the clean out of the impacted portion of the 60" line required as a result of levels found in 1997. Sediment samples from the outfall of the 60" line have exceeded the 4.6 mg/kg PCB action level following this clean out, with levels going from 22.4 mg/kg in 2000 to 165 mg/kg in 2003. Second, two storm water lines that discharge directly to Convair Lagoon discharge from the General Dynamics former HDP. Third, HD-1, HD-2, HD-3, HD-4, HD-5, HD-6, HD-7, HD-8, HD-9, HD-10, HD-11A and HD-11B all originate on the former General Dynamics HDP and outfall into East Basin. Any PCB discharges from these lines could pass by the mouth of and into Convair Lagoon. All sediment samples from the lines contained PCBs when tested in 1986 and 1987, with sediments from HD-7 containing PCBs at 130 mg/kg. Further, TDY understands that General Dynamics purchased Convair Air Force Plant 19 along Pacific Highway 1. Storm water from this facility also drains to the 60" line. Based on a citizen complaint letter sent to the U.S. EPA in 1997 in relation to the Convair Lagoon remediation, Convair Plant 19 was known to have released PCBs to the environment.[26]

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[26] Inquiries to the U.S. EPA Region IX report that they could not locate their file on this matter.

Collectively, these factors support naming General Dynamics as a responsible party in the CAO.

3. Allegheny Technologies Incorporated Is Improperly Named As A Responsible Party And Should Be Removed

Allegheny Technologies Incorporated is the parent of TDY Holdings, LLC and TDY Industries, Inc., viable legal entities already named as a responsible party in the CAO. Accordingly, there is no basis for naming Allegheny Technologies Incorporated. In approximately January 1969, Teledyne, Inc. bought the outstanding stock of The Ryan Aeronautical Company. In approximately February 1969, The Ryan Aeronautical Company was merged into Teledyne United Corporation, and Teledyne United Corporation changed its name to Ryan Aeronautical Company. In approximately December 1969, Ryan Aeronautical Company merged into Teledyne, Inc, and Teledyne, Inc. transferred the assets of Ryan Aeronautical Company to Teledyne Industries, Inc., a wholly owned subsidiary of Teledyne, Inc. In approximately August 1996, there was a business combination of Teledyne, Inc. and Allegheny Ludlum Corporation that resulted in the formation of Allegheny Teledyne Incorporated. Both Teledyne, Inc. and Allegheny Ludlum Corporation became wholly owned subsidiaries of Allegheny Teledyne Incorporated. In 1999, Allegheny Teledyne Incorporated changed its name to Allegheny Technologies Incorporated, and Teledyne, Inc. was dissolved. TDY Holdings, LLC is the successor to certain liabilities of Teledyne, Inc. In December 1999, Teledyne Industries, Inc. changed its name to TDY Industries, Inc. Based on this history, the Regional Board has no basis for naming Allegheny Technologies Incorporated and it should be removed as a responsible party from the CAO.

C. The CAO Is Premised On Faulty, Incomplete And Inaccurate Factual Information

The CAO attempts to link TDY to the continued discharge of PCB impacted sediment to Convair Lagoon even though the true source(s) of the PCB contaminated material that continues to be discharged out of the 60" outfall into Convair Lagoon remains unclear. Rather than recognize this, through issuance of the CAO, the Regional Board appears to be limiting further inquiry as to source and responsibility for the PCBs and, instead, is seeking to impose all future investigation and remediation obligations on TDY. In attempting to build a

case against TDY, the CAO contains numerous factual assertions that lack valid underlying support. The result is a misleading, factually inaccurate CAO. At best, the CAO provides an incomplete story associated with the ongoing discharge of PCBs from the 60" outfall into Convair Lagoon.

1. The CAO Evidence Regarding Past Discharges Is Misleading

Paragraph 8 of the CAO purports to outline the history of PCB discharges associated with the Site. This paragraph is misleading for a number of reasons. First, it fails to explain the extensive work undertaken by TRA to clean out the storm drains at the Site prior to construction of the sand cap, including the work to remove and replace the 30" E. line and associated catch basins and interconnecting pipes. Further, it fails to even mention the 360 mg/kg and 26 mg/kg levels of PCBs found pre-and post-sand capping at the upstream Port/Airport Authority owned property (which includes Lindbergh Field and the former General Dynamics LFP). Likewise, there is no mention of the other lines that discharge directly to Convair Lagoon or the East Basin even though there is documented PCB contamination associated with these lines and the facilities that discharge to these lines. Finally, the Regional Board fails to discuss its 2001 requests to the Port, the City, TDY and MCRD to perform additional investigation to determine the source(s) of PCB in Convair Lagoon, or the results of those investigations. This is of particular concern as TDY submitted a detailed report demonstrating that the Site was not a source of the ongoing PCB contamination. These oversights result in an inaccurate portrayal of the potential sources of PCBs that continue to be found in the samples collected from the outfall of the 60" line.

2. The CAO Evidence Regarding Ongoing Discharges Is Erroneous

The CAO suggests that the post-cap monitoring data generated from 1999-2003 as required under WDR 98-21, supports the assertion that there are ongoing discharges of PCBs from the Site. A review of the data demonstrates that it does not support this position. Paragraph 12 of the CAO indicates that between 1999 and 2003, "[e]levated PCB concentrations above the 4.6 mg/kg cleanup level established in CAO 86-92 were found in 17 out of the 47

sediment samples taken from the SWCS . . . ." This sentence is troubling for a number of reasons. First, it references CAO No. 89-92 as the source of the 4.6 mg/kg action level for SWCS sediments. This is an error. WDR 98-21 established the current 4.6 mg/kg sediment action level. Second, the sentence implies that the 4.6 mg/kg action level applies to all sediments throughout the entire SWCS. Again, this is wrong. The 4.6 mg/kg action level applies to sediments at the outfall of the 30" E. and 60" lines and to sediments that accumulate on the sand cap. The 4.6 mg/kg action level does not apply to sediments elsewhere in the SWCS.[27] Since 1999, sediment samples have been collected 12 times from the outfalls of the 60" and 30" E. line. Of these 12 samples, three samples (collected in 2000, 2001 and 2003) from the 60" line outfall have exceeded the 4.6 mg/kg standard set in WDR 98-21. Thus, rather than referencing 47 samples, this paragraph should properly reference 12 samples; and rather than citing 17 exceedances of the 4.6 mg/kg action level, this paragraph should reference three -- all from the outfall of the 60" line (which receives discharges from a host of other facilities including facilities owned and/or operated by the Port, the Airport Authority and General Dynamics).

Relying on these faulty premises, and with no factual reference or document, this paragraph goes on to state that sediments in the storm drain are discharged to Convair Lagoon during storm events. CAO ¶ 12. This statement lacks evidentiary support. At this point, where the PCBs are coming from, and how they are ending up on the cap is unknown. There is no evidence that sediments are being released from the storm drains during storm events. To the contrary, in accordance with applicable storm water permit requirements, TDY conducted annual storm water sampling during storm events from 1992 to 2001. During all of these sampling events, PCBs were not detected in storm water exiting the Site.

Further, two particular PCB Arochlor groupings, Arochlor 1016 and 1242, are present in a number of the sediment samples from the 60" line as well as in samples collected at the 60" line outfall and from the upper core of the sand cap. Based on information collected to date, these Arochlor groupings have not been found to any considerable extent at the Site, nor are

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[27] *See* footnote 4, *supra*.

they known to have been used by TRA at the Site. Their principal commercial uses were in heat dissipation (*e.g.*, insulating fluid on metal casting devices) and hydraulic power fluids (e.g. metal presses). The presence of these Arochlors, as well as their traditional uses, point to the Port/Airport Authority owned property as the ongoing source of PCB discharges coming through the 60" line and ending up in Convair Lagoon.

Paragraph 13 of CAO again starts with the incorrect assumption that the source(s) of the PCBs are known. The paragraph starts by stating that "SWCS PCB discharges from the Site SWCS are resulting in the accumulation of PCBs on the surface of the Convair Lagoon Sand Cap in San Diego Bay." This conclusion is not supported by the facts. In 2002, TDY conducted detailed sampling of the SWCS beneath the Site. This sampling did not reveal any sediments above the outfall action level of 4.6 mg/kg. There is simply no way to conclude that the PCBs found on the cap are from Site, nor is it even definite that they are from the lines that discharge from the Site. As outlined in Section IV.A.2.b-c above, there are multiple other lines that discharge into Convair Lagoon (many of which are associated within known PCB contamination). Further, this paragraph improperly references an upper core cap sediment sample result of 99.5 mg/kg of PCBs. This reference is erroneous. The actual result was almost four-fold lower, with a PCB concentration of 20.44 mg/kg in the upper core sample.[28]

3. The CAO Evidence Regarding NPDES Permit Violations Is Erroneous

At paragraphs 14 through 16, the CAO attempts to allege various storm water permit violations. This entire discussion ignores two fundamental facts: (1) TDY no longer operates at the Site and has no access to the Site; and (2) PCBs were not detected in any of the annual storm water sampling done by TRA and TDY between 1992 and 2001 (when it was at the Site) as required under the applicable storm water permits. To insist that TDY is responsible to ensure no ongoing discharges are occurring at the Site when TDY has no access or ability to

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[28] *Convair Lagoon Annual Post-Closure Monitoring Report*, JNE & Associates, Inc. (July 6, 2000). Page 8 of the report lists 99.5 mg/kg for the upper core sample. However, a review of the attached laboratory data sheets shows a total PCB concentration of 20.44 mg/kg.

control such alleged discharges makes no sense. To the extent the Site is the source of ongoing discharges (which TDY disputes), TDY cannot do anything to halt the discharges. Rather, it is the Port and the Airport Authority that have the ability (and the obligation) to control such discharges.

Paragraph 14 of the CAO alleges a violation of Prohibition A.2 of Order No. 97-03-DWQ. However, the paragraph goes on to quote Prohibition A.1. To the extent a violation of Prohibition A.1 is actually being alleged, such an allegation lacks factual support. First, the quote of Prohibition A.1 is incomplete. Contrary to what is contained in the CAO, Prohibition A.1 provides in relevant part that "[e]xcept as allowed in Special Conditions (D.1) of this General Permit, materials *oilier* than storm water (non-storm water discharges) that discharge directly or indirectly into waters of the United States are prohibited." (Emphasis added). The CAO omits the "oilier" reference. This oversight is important as storm water testing conducted by TDY from 1992 to 2001 did not detect oil or PCBs in storm water leaving the Site. Thus there is not basis to conclude that Prohibition A.1 has been violated.

Paragraph 15 alleges a violation of Prohibition A.2 of Order No. 97-03-DWQ. Again, the factual support provided for this alleged violation is erroneous. First, there is no evidence of PCB content paint in paint chips collected from the Site (CAO ¶ 15.a).[29] Second, there is no evidence of uncontrolled PCB discharges from the Site. The evidence of discharges exceeding the 4.6 mg/kg action level are associated with the 60" line. The 60" line transects a host of upstream facilities before reaching the Site including properties owned by both the Port and the Airport Authority (and previously leased, in part, by General Dynamics). Simply because the impacted sediments are being measured at the outfall of the 60" line (as required by WDR 98-21) does not mean the Site is the source of the sediments.

Similar to paragraphs 14 and 15, paragraph 16 of the CAO attempts to hold TDY

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[29] To the extent PCBs have been detected in paints, the PCB concentrations are inconsistent with PCB content paint (which would generally result in PCB levels of several thousands of mg/kg). Rather, the PCB levels are consistent with adhesion of atmospheric PCBs such as those generated out of a jet engine.

solely responsible for ongoing discharges of PCB impacted sediments from the 60" line outfall. TDY cannot control any ongoing discharges, as it has no access to the Site, or to upstream properties. Further, while TDY was at the Site, it implemented Regional Board approved BMPs. As evidenced by the fact that PCBs were not detected in any of the storm water samples collected by TRA/TDY between 1992 and 2001, the BMPs were working, and prevented any PCB impacted storm water from leaving the Site. As the current owner, and the soon to be long-term tenant, BMP compliance requirements should be imposed on the Port and Airport Authority. Attempting to impose them on TDY makes no sense, and will not prevent any future discharges from occurring.

4. The CAO Evidence Regarding The Storm Water Conveyance System Is Misleading

The discussion of the SWCS associated with the Site provided in Paragraph 7 of the CAO is misleading at best. First and foremost, it fails to identify that the Port, the Airport Authority and General Dynamics all have utilized, and, with the exception of General Dynamics, continue to utilize the 60" line and that their facilities are (or were) directly upstream of the Site. PCBs well above the 4.6 mg/kg action level have been found in 60" line sediments on the upstream property. Further, the CAO fails to mention that in the 1988-1989 timeframe, TDY largely removed and replaced the 30" E. line and its associated catch basins and piping, and that impacted soil was over excavated. The CAO also does not reference clean out work TRA did on other lines at the Site between approximately 1986 and 1991. In addition, the CAO provides an inaccurate picture of the storm drains that discharge to Convair Lagoon. The CAO references 18" and 36" storm water lines as coming from the Site and discharging to Convair Lagoon. These lines, however, do not discharge to Convair Lagoon. Moreover, the CAO fails to identify two other lines that discharge directly to Convair Lagoon from the former General Dynamics HDP facility (which have had known PCB impacts), or the lines that discharge to the upstream East Basin from the former General Dynamics HDP facility and the airport property and likely contain contaminants that could make their way into Convair Lagoon.

D. There Are Numerous Inaccuracies In The CAO That Require Correction

The CAO is replete with inaccuracies that require correction. Some of the more significant inaccuracies are listed below.[30]

- The Site address is wrong. It is listed as 2710 N. Harbor Drive. The correct address is 2701 N. Harbor Drive.
- Paragraph 4 of the CAO indicates that manufacturing operations ceased in 1999, when TDY sold the Site assets to Northrop Grumman Corporation. This is incorrect. Northrop Grumman continued to operate at the Site for approximately a year after the sale.
- Paragraph 5 indicates that the Port no longer owns the Site as ownership was transferred to the Airport Authority. This is erroneous. The Port was and is the Site owner. Under a 64-year term lease scheduled to commence in January 2005, however, the Airport Authority will be the new tenant for the entire Site.

V. HOW THE PETITIONER IS AGGRIEVED

The Regional Board issued the CAO without first contacting TDY or working with TDY to ensure the appropriate parties are named in the CAO. Such actions violated TDY's due process rights. Further, such action resulted in a CAO in which TDY is named as the sole responsible party, even though there is substantial evidence that the Port, the Airport Authority and General Dynamics contributed to the contamination at issue, and, with respect to the Port and the Airport Authority, they have the sole and exclusive possession of and access to the Site. Further, underlying premises supporting the CAO are erroneous and lead to issuance of a CAO replete with factual errors and inaccuracies. As a result, TDY is being ordered to undertake work based on faulty assumptions at a Site for which it has no access.

VI. ACTION THE PETITIONER REQUESTS THE STATE BOARD TO TAKE

TDY requests that the State Board initially hold this Petition in abeyance to give

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[30] This section provides exemplars of CAO inaccuracies. It is not intended to be comprehensive; multiple other errors that also require correction.

TDY the opportunity to discuss the issues raised in the Petition with the Regional Board. Should TDY not be able to resolve the issues with the Regional Board, TDY will request the State Board to reactivate this Petition and do the following: (1) vacate the CAO; (2) revise the CAO to include the Port, the Airport Authority and General Dynamics as responsible parties, remove Allegheny Technologies Inc. as a responsible party, and correct the other CAO errors and inaccuracies documented in this Petition; or (3) remand the CAO to the Regional Board and direct the Regional Board to add the appropriate responsible parties, delete the improperly named responsible parties, and correct the other deficiencies.

VII. STATEMENT OF POINTS AND AUTHORITIES FOR THE LEGAL ISSUES RAISED

A. The Port, The Airport Authority, And General Dynamics Should Be Added As Responsible Parties To The CAO

As the current property owner and soon to be sole tenant at the Site, the Port and the Airport Authority have the sole and exclusive possession of and access to the Site. Accordingly, the Port and the Airport Authority should be added as responsible parties. *In the Matter of the Petition of Zoecon Corporation*, Order No. WQ 86-2, *15 (1986) ("[T]his very role [of landowner] puts Zoecon in the position of being will [sic] suited to carrying out the needed onsite cleanup. The petitioner has exclusive control over access to the property. As such, it must share in responsibility for the clean up."); *In the Matter of the Petition of the San Diego Unified Port District*, Order No. WQ 89-12, *7 (1989) (as the landowner leasing the property to its tenants, the Port has knowledge of the tenants' activities and the ability to control the activities, and hence, is properly named as a responsible party in the CAO issued pursuant to 13304); *In the Matter of the Petition of County of San Diego, City of National City and City of National City Community Development Commission*, Order No. WQ 96-2 (1996) (in a CAO issued under 13304 it is appropriate to name the City because of its authority to control and maintain the property at issue).

Further, as outlined above in Section IV.B, there is substantial evidence indicating that the Port/Airport Authority owned properties upgradient of the Site (a portion of which

General Dynamics previously leased) have contributed to, and continue to contribute to contaminants both at the Site and in Convair Lagoon. This evidence supports naming the Port, the Airport Authority and General Dynamics as primarily liable responsible parties. As the State Board has made clear, parties are to be named for cleanup at a site if there is "credible and reasonable evidence which indicates the named party has responsibility." *In the Matter of the Petition of Exxon Company*, Order No. WQ 85-7, at *17 (1985). Given the plethora of evidence linking contamination at the upgradient property (controlled by the Port, Airport Authority and/or General Dynamics) to the contamination at the Site and in Convair Lagoon, there is "substantial evidence to support a finding of responsibility" for each of these parties. *Id.*

Even if there was some dispute as to the evidence connecting the Port, the Airport Authority and/or General Dynamics to the contamination at issue (which there is not), this would not prevent naming of these parties as responsible parties. As the State Board has noted multiple times, public policy considerations dictate naming multiple parties as responsible parties in cases of disputed responsibility. *In the Matter of the Petition of Stinnes-Western Chemical Corporation*, Order No. WQ 86-1, *19 (1986) ("To the extent possible, we believe that multiple parties should properly be named in cases of disputed responsibility); *In the Matter of the Petition of U.S. Cellulose*, Order No. WQ 92-04, *4 (1992) ("In cases involving several potentially responsible parties, it is appropriate to name in cleanup orders all parties for which there is reasonable evidence of responsibility."); *Exxon Company*, Order No. WQ 85-7, at *17.

B. Allegheny Technologies Incorporated Should Be Removed As A Responsible Party

The CAO identifies the appropriate TDY entities with a potential relationship to the Site (*i.e.*, TDY Industries, Inc. and TDY Holdings, LLC). Where there are "fully capitalized, independently operating companies" there is no basis to support naming the parent corporation. *In the Matter of the Petitions of Aluminum Company of America; Alcoa Construction Systems, Inc. and Challenge Developments, Inc.*, Order No. WQ 93-9, *9 (1993). Here, the CAO identifies and names the relevant subsidiaries of Allegheny Technologies Incorporated. Neither the allegations of the CAO nor the existing record provide support for naming Allegheny

Technologies Incorporated, the parent of the named TDY entities. Accordingly, Allegheny Technologies Incorporated should be removed as a responsible party.

C. An Inaccurate Factual Record Cannot Support Issuance Of A CAO

As the administrative agency issuing the CAO, the Regional Board "must set forth findings to bridge the analytic gap between raw evidence and ultimate decision or order." *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 515 (Cal. 1974). In other words, the Regional Board's "findings must explain [its] reasoning." *In the Matter of the Petition of Las Virgenes Municipal Water District*, Order No. WQ 2001-03, *2 (2001). This "findings requirement" ensures "orderly analysis and minimiz[es] the likelihood that the agency will randomly leap from evidence to conclusions." *Topanga Association for a Scenic Community*, 11 Cal. 3d at 516. It also enables a "reviewing court to trace and examine the agency's mode of analysis" and, thus, precludes a judicial guessing game. *Id.* (stating that "absent such roadsigns, a reviewing court would be forced into unguided and resource-consuming explorations; it would have to grope through the record to determine whether some combination of credible evidentiary items which supported some line of factual and legal conclusions supported the ultimate order or decision of the agency").

Here, the Regional Board has failed to meet the findings requirement. As outlined in Section IV.C, the CAO is replete with unsupportable facts and conclusions. For example, the CAO lumps together various sediment sampling results collected throughout the SWCS and concludes that the Site is the source of the PCB sediments and that TDY is the cause of the contamination. In reaching this "conclusion" the CAO fails to identify, let alone explain: (1) the other upstream contributors to the SWCS (all of whom used PCBs); (2) the other non-Site outfalls that discharge to Convair Lagoon (and have documented PCB-impacted sediments in their lines); (3) that the 4.6 mg/kg action level does not apply throughout the entire SWCS; (4) that TDY's extensive 2002 sampling of the SWCS beneath the Site indicated that the Site is not the source of any ongoing PCB contamination; and (5) that during TRA's and TDY's 10+ years of storm water sampling, there was no PCB detections in storm water exiting the Site. Additionally, the CAO does not cite to any reports or other documents to explain how the

Regional Board reached their legal conclusions. Without documentation, the facts are not credible, and, without a "mode of analysis," the findings are unfounded. The findings requirement is aimed to avoid this exact type of guessing game. As such, without any "roadsigns" to assist TDY or any reviewing body in reviewing the CAO, no deference should be given to the facts provided and conclusions reached by the Regional Board.

D. The Port And The Airport Authority Are The Appropriate Entities To Ensure Compliance With Site Storm Water Permit Requirements

First, the Port must undertake extensive oversight responsibilities pursuant to its municipal permit (Order No. 2001-01 (NPDES No. CAS0108758)). The Port's obligations under this permit alone should put the Port on notice with respect to any concerns associated with the Site.

Second, the Port has occupied the Site since TDY vacated the premises in Fall 2002. Depending on their activities during this time, they may have been required to obtain coverage under the General Industrial Permit. Further, as the owner of property on which industrial activities are conducted, the Port ultimately is responsible for storm water compliance requirements under the General Industrial Permit. State Board, Notice of Intent Instructions (stating that "[w]here operations have discontinued and significant materials remain on site (such as at closed landfills), the landowner may be responsible for filing a NOI and complying with this General Permit").

Moreover, as an operator of an industrial facility, the Airport Authority must also be covered under the General Industrial Permit. State Board, Instructions for Completing Notice of Termination of Coverage Under Industrial Activities Storm Water General Permit No. 97-03-DWQ (stating that the "new facility operator must submit a Notice of Intent and fee for coverage under the General Permit"). Prior to January 1, 2005, the Airport Authority has operated at a portion of the Site. Effective January 1, 2005, they will operate at the entire Site. As a Site operator, the Airport Authority must implement a SWPPP and a monitoring program. Thus, it is the Port and the Airport Authority, who own and operate the Site that can and must comply with storm water permit requirements.

E. As Issued, The CAO Violates TDY's Due Process Rights

The Regional Board's failure to discuss the CAO with TDY in advance of its issuance violated TDY's due process rights. Administrative procedures must afford constitutional due process protections. *Mathews v. Eldridge*, 96 S. Ct. 893, 902 (U.S. 1976). While "[t]he fundamentals of due process include notice and an opportunity to be heard" (*Gamet v. Blanchard*, 91 Cal. App 4th 1276, 1286 (Cal. Ct. App. 2001)), there is no firm rule that commands "what protections are necessary in a particular situation." *Saleeby v. The State Bar of California*, 39 Cal. 3d 547, 564 (Cal. 1985). Generally, "[t]he specific dictates of due process . . . requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail" (collectively referred to as the "*Mathews* Factors"). *Mathews v. Eldridge*, 96 S. Ct. at 903.

Here, TDY's due process rights were violated by the Regional Board's failure to provide TDY with advance notice of the CAO. TDY has consistently cooperated with the Regional Board. TDY has performed sampling and submitted its findings pursuant to WDR 98-21. Additionally, of all the parties requested to perform investigative work by the Regional Board in November 2001, TDY was the only entity that performed significant sampling, all of which indicated that the Site was not the source of ongoing PCB discharges to Convair Lagoon. Although TDY submitted its PCB investigation report to the Regional Board in April 2002, the Regional Board has yet to provide TDY with any comments. The Regional Board also has not responded to any of TDY's submittals done pursuant to WDR 98-21. Given TDY's cooperative behavior, at a minimum, the Regional Board owed TDY some informal notice of the Regional Board's concerns and an opportunity to respond to those concerns in advance of issuance of the CAO. For example, in *Machado v. State Water Resources Control Board*, 90 Cal. App. 4th 720 (Cal. Ct. App. 2001), the court concluded that plaintiff's due process rights were not violated because the plaintiff was afforded advance opportunity to respond to the

Regional Board's concerns before the Regional Board issued a cleanup and abatement order. The Court states as follows:

> The cleanup and abatement order was issued only after a [Regional Board] employee observed unlawful discharges from the [plaintiff]. A letter was written to the [plaintiff], notifying it of this discovery; the letter provided the name and phone number of someone to contact should the [plaintiff] wish to discuss the matter. The [plaintiff] therefore had an informal opportunity to dispute the [Regional Board's] determination before the order issued.

Machado, 90 Cal. App. 4th at 727.

Unlike the plaintiff in *Machado*, TDY was not afforded advance opportunity via letter or otherwise to address any of the Regional Board's concerns before the CAO was issued. As a consequence of the Regional Board's improper procedures, the CAO contains numerous fatal inaccuracies and errors. In light of TDY's demonstrated interest in working with the Regional Board to address issues at Convair Lagoon, the Regional Board's failure to provide TDY with advance notice prior to issuing the CAO was not only unfounded but also was without due process of law.

Additionally, TDY's due process rights were violated by the Regional Board's failure to state with any specificity the legal authority for issuance of the CAO. The CAO simply states as follows:

> This Order is based on (1) the federal Clean Water Act; (2) the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000); (3) applicable state and federal regulations; (4) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board and the Water Quality Control Plan for the San Diego Basin (Basin Plan) adopted by the Regional Board including beneficial uses, water quality objectives, and implementation plans; (5) State Water Board policies, including State Water Board Resolution No. 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California) and Resolution No. 92-49 (Policies and/Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304); and (6) relevant standards, criteria, and advisories adopted by other state and federal agencies.

CAO at 19. With not a single reference to a specific code section or provision, the CAO does

not inform TDY of the Regional Board's legal or regulatory authority and, just as the second *Mathews* Factor warns, runs the "risk of an erroneous deprivation of [private interests] through the procedures used." *Machado*, 90 Cal. App. 4th at 726.

Thus, the Regional Board's failure to include specific legal and regulatory citations fails to give TDY sufficient information to adequately address the Regional Board's concerns and violates TDY's due process rights.

VIII. LIST OF PERSONS INTERESTED IN THIS MATTER

TDY believes that the San Diego Unified Port District, the San Diego County Regional Airport Authority and General Dynamics Corporation have an interest in the subject matter of this petition. TDY is not presently aware of other parties that may have an interest in this matter at this time.

IX. STATEMENT THAT PETITION HAS BEEN SENT TO THE REGIONAL BOARD AND OTHER INTERESTED PARTIES

Copies of this Petition have been sent to the Regional Board, Attn. John Phillips, the Port, Attn. David Merk, the Airport Authority, Attn. Paul Manasjan, and General Dynamics Corporation (Falls Church, VA), Attn. Senior Vice President and General Counsel, General Dynamics, Convair Division (San Diego, CA), and National Steel and Shipbuilding Company (San Diego, CA), Attn. Vice President and General Counsel.

X. REQUEST TO THE REGIONAL BOARD TO PREPARE RECORD

A copy of TDY's request to the Regional Board to prepare the record is attached as Exhibit C. As explained in the request, TDY has asked the Regional Board to hold TDY's request to prepare the record in abeyance until after TDY and the Regional Board have an opportunity to review the CAO. TDY anticipates that discussions with the Regional Board could result in additional material being added to the administrative record.[31]

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[31] If TDY reactivates this Petition it will provide the State Board with copies of the pertinent materials referenced in the Petition as well as any additional information necessary to supplement this Petition.

XI. REQUEST FOR HEARING

TDY asks that this Petition be held in abeyance while TDY attempts to resolve the issues raised in the Petition with the Regional Board. Should TDY seek to reactivate the Petition, TDY requests a hearing before the State Board to present evidence and legal argument in support of its claims. TDY anticipates that additional evidence supporting this Petition will become available. TDY will amend this Petition and submit any additional evidence consistent with the requirements of 23 CCR § 2050.6.

XII. CONCLUSION

Although the CAO is replete with factual errors that undermine and invalidate the CAO, TDY requests that the State Board hold this Petition in abeyance pending TDY's efforts to resolve the matter with the Regional Board. In the event TDY reactivates this Petition, TDY asks that the State Board vacate the CAO or direct the Regional Board to vacate the CAO until such time as the Regional Board provides substantial valid and credible evidence to support the issuance of the CAO. In the alternative, TDY asks that the State Board either amend the CAO or remand the CAO and direct the Regional Board to amend the CAO to: (1) name the Port, the Airport Authority and General Dynamics as responsible parties; (2) include accurate and complete facts to support the CAO; (3) correct the factual inaccuracies in the CAO; and (4) remove Allegheny Technologies Incorporated as a named responsible party in the CAO.

DATED: November 2, 2004

BINGHAM McCUTCHEN LLP

By: _____

Diana Pfeffer Martin
Attorneys for Petitioners
TDY Industries, Inc.
TDY Holdings, LLC
Teledyne Ryan Aeronautical Company
Allegheny Technologies Incorporated

PROOF OF SERVICE

I am over 18 years of age, not a party to this action and employed in the County of Los Angeles, CA at 355 South Grand Avenue, Suite 4400, Los Angeles, CA 90071-3106. I am readily familiar with the practice of this office for collection and processing of correspondence for mailing with the United States Postal Service and correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

Today I served the attached:

PETITION FOR REVIEW OF CAO NO. R9-2004-0258 BY SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD REGARDING FORMER TELEDYNE RYAN AERONAUTICAL SITE

by causing a true and correct copy of the above to be placed in the United States Mail at Los Angeles, CA in sealed envelope(s) with postage prepaid, addressed as follows:

Elizabeth Miller Jennings
Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
1001 "I" Street, 22nd Floor
Sacramento, CA 95814

Mr. Paul Manasjan
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San Diego, CA 92138-2776

Mr. David Merk
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San Diego Region
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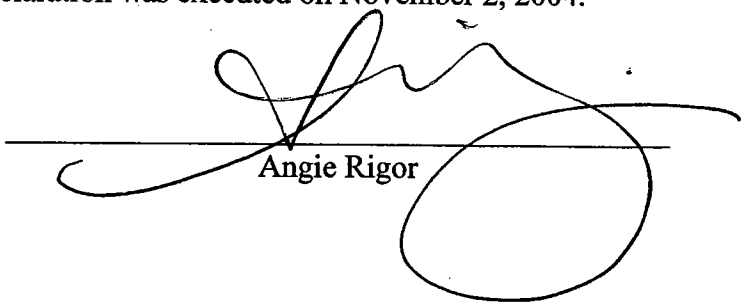
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 2, 2004.



Angie Rigor