

1. Privilege Objection. The Cleanup Team objects to each Interrogatory to the extent it requests information protected by the attorney-client privilege, joint prosecution privilege, common interest privilege, settlement communication privilege, mediation privilege or deliberative process privilege, and to the extent it requests information subject to the work-product exemption, collectively referred to herein as the “privilege” or “privileged.” The Cleanup Team contends that all information exchanged between it and its counsel is privileged. The Cleanup Team objects to identifying or producing any and all products of investigations or inquiry conducted by, or pursuant to the direction of counsel, including, but not limited to, all products of investigation or inquiry prepared by the Cleanup Team in anticipation of this proceeding, based on the attorney-client privilege and/or the work-product doctrine. The Cleanup Team further objects to identifying information subject to or protected by any other privilege, including, but not limited to, settlement communications, the joint prosecution privilege, the common interest privilege, the mediation privilege and/or the deliberative process privilege. Inadvertent production of privileged documents shall not constitute a waiver of said privileges.
2. Scope of Discovery Objection. The Cleanup Team objects to each Interrogatory to the extent it purports to impose any requirement or discovery obligation other than as set forth in Title 23 of the California Code of Regulations, sections 648 et seq., the California Government Code, sections 11400 et seq. and/or applicable stipulations, agreements and/or orders governing this proceeding.

3. Irrelevant Information Objection. The Cleanup Team objects to the Interrogatories to the extent they are overbroad and/or seek information that is not relevant to the claims or defenses asserted in this proceeding and are not reasonably calculated to lead to the discovery of admissible evidence.
4. Burdensome and Oppressive Objection. The Cleanup Team objects to each Interrogatory to the extent that it seeks the identification of documents that have already been produced, or that otherwise are equally available to NASSCO, or are already in NASSCO's possession, custody or control, which renders the Interrogatory unduly burdensome and oppressive. The Cleanup Team has already provided NASSCO with a copy of the electronic, text searchable administrative record for this matter. Therefore, the burden of identifying documents that are equally accessible to NASSCO is no greater on NASSCO than it would be on the Cleanup Team, and the Cleanup Team will not create a compilation or index of documents that NASSCO could create itself with equal or less burden.
5. Overbroad Objection. The Cleanup Team objects that certain Interrogatories are overbroad, and are framed in a manner that prevents any reasonable ability to search for and locate all responsive information. Such Interrogatories create an unreasonable risk of inadvertent noncompliance as framed.
6. Cleanup and Abatement Order Proceeding is Ongoing. The instant Cleanup and Abatement Order proceeding is ongoing, and the Cleanup Team expects that additional evidence will be provided by the Designated Parties hereto in accordance with governing statutes, regulation and applicable hearing procedures. While the Cleanup

Team's response to each of these Interrogatories is based on a reasonable investigation and search for the information requested as of this date, additional information may be made available to the Cleanup Team subsequent to the date of this response. These responses are provided without prejudice to the Cleanup Team's right to supplement these Responses, or to use in this proceeding any testimonial, documentary, or other form of evidence or facts yet to be discovered, unintentionally omitted, or within the scope of the objections set forth herein.

OBJECTIONS TO DEFINITIONS

1. The Cleanup Team objects to the defined term "DOCUMENTS" on the ground and to the extent that it seeks information protected by settlement confidentiality rules, the attorney-client privilege, the joint prosecution privilege, the work product doctrine, the mediation privilege, the common interest privilege, the deliberative process privilege, and/or any other privilege or confidentiality protection.
2. The Cleanup Team objects to the defined terms "YOU" and "YOUR" on the grounds that they are overbroad, and that they are vague, ambiguous and unintelligible. For purposes of this Response, the Cleanup Team shall use the term REGIONAL BOARD as if it means all persons employed by the California Regional Water Quality Control Board, San Diego Region, other than the ADVISORY TEAM.
3. The Cleanup Team objects to the defined term "COMMUNICATIONS" on the ground and to the extent that it seeks information protected by the attorney-client privilege, the joint prosecution privilege, the work product doctrine, the common interest

privilege, the mediation privilege, the deliberative process privilege, and/or any other privilege or confidentiality protection.

RESPONSES TO SPECIAL INTERROGATORIES

INTERROGATORY NO. 1:

For each response to a Request in NASSCO's Second Set of Requests for Admission:

- a. State the number of the Request;
- b. State all facts supporting your response;
- c. IDENTIFY each PERSON who has knowledge RELATING TO the facts; and
- d. IDENTIFY all DOCUMENTS that RELATE TO YOUR response.

RESPONSE TO INTERROGATORY NO. 1.

The Cleanup Team incorporates each of the General Objections set forth above as if set forth in full herein. The Cleanup Team further objects to this Interrogatory as overbroad, and unduly burdensome and harassing. The Interrogatory is improperly disguised as a single interrogatory, when, in fact, it constitutes 84 distinct interrogatories (4 x 21 Requests for Admissions). All facts supporting and Response by the Cleanup Team to NASSCO's Second Set of Requests for Admission that are denials are set forth specifically in the individual Request and these facts are equally available to NASSCO in the electronic, text searchable administrative record and/or the CAO, the Draft Technical Report and/or the appendices. The persons with knowledge relating to the facts set forth in the electronic, text searchable administrative record include the persons identified therein, David Barker, Julie Chan, David Gibson, Tom Alo, Craig Carlisle, and unknown members of the named Dischargers and their agents, consultants and employees. All documents that relate to the Cleanup Team's responses have already been provided to and are equally available to NASSCO in either the Draft Technical Report or electronic, text searchable administrative record, and the Cleanup Team will not prepare a compilation or abstract of those documents since the burden of doing so is equal or less for NASSCO than it is for the Cleanup Team.

INTERROGATORY NO. 2:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of the human health risk assessment utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 2.

Tom Alo

David Barker

Craig Carlisle

Julie Chan

INTERROGATORY NO. 3:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of the ecological risk assessment utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 3.

Tom Alo

David Barker

Craig Carlisle

Julie Chan

David Gibson

INTERROGATORY NO. 4:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of the economic feasibility analysis utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 4.

David Barker

Julie Chan

Craig Carlisle

INTERROGATORY NO. 5:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of the technological feasibility analysis utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 5.

David Barker

Julie Chan

Craig Carlisle

INTERROGATORY NO. 6:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of any cost analysis utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 6.

David Barker

Julie Chan

Craig Carlisle

INTERROGATORY NO. 7:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of any remedy selection alternatives analysis utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 7.

David Barker

Julie Chan

David Gibson

Craig Carlisle

INTERROGATORY NO. 8:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of any aquatic life impairment analysis utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 9.

Tom Alo

David Barker

Julie Chan

Craig Carlisle

David Gibson

INTERROGATORY NO. 9:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of any aquatic-dependent wildlife impairment analysis utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 9.

Tom Alo

David Barker

Julie Chan

Craig Carlisle

David Gibson

INTERROGATORY NO. 10:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of any bioavailability analysis utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 10.

Tom Alo

David Barker

David Gibson

Julie Chan

Craig Carlisle

INTERROGATORY NO. 11:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of any alternative sediment cleanup levels analysis utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 11.

David Barker

Julie Chan

David Gibson

Craig Carlisle

Tom Alo

INTERROGATORY NO. 12:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of any remedial monitoring analysis utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 12.

David Gibson

David Barker

Julie Chan

Tom Alo

Craig Carlisle

INTERROGATORY NO. 13:

IDENTIFY the CLEANUP TEAM staff primarily responsible for preparation of the analysis regarding the contribution of stormwater to sediment contamination in the San Diego Bay, utilized in connection with proposed cleanup levels and remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 13.

Tom Alo

David Barker

Julie Chan

Craig Carlisle

David Gibson

INTERROGATORY NO. 14:

IDENTIFY all site(s) in San Diego Bay where contaminated sediment has been remediated, the remedy selected, and the starting and ending dates of such remediation, including but not limited to the Campbell Shipyard Site, Paco Terminals, Commercial Basin and Convair Lagoon.

RESPONSE TO INTERROGATORY NO. 14.

1. Paco Terminals Inc
2. Teledyne Ryan (Convair Lagoon)
3. Bay City Marine (Americas Cup Harbor)
4. Driscoll Boatyard (Americas Cup Harbor)
5. Kettenburg Marine (Americas Cup Harbor)
6. Koehler Kraft (Americas Cup Harbor)
7. Mauricio and Sons (Americas Cup Harbor)
8. Campbell Industries Shipyard
9. BF Goodrich (Upland Tidal Marsh)

(See Exhibit A attached hereto for additional responsive information.)

INTERROGATORY NO. 15:

For any sites identified in response to the preceding Special Interrogatory, IDENTIFY the constituents of concern that were remediated and the cleanup levels that were set for those constituents.

RESPONSE TO INTERROGATORY NO. 15.

Responsive information is attached on Exhibit A.

INTERROGATORY NO. 16:

IDENTIFY all site(s) within the REGIONAL BOARD'S jurisdiction, other than San Diego Bay, where sediment contamination has been remediated in rivers, bays, estuaries, ocean, wetlands, or any other surface water body, and the starting and ending dates of such remediation.

RESPONSE TO INTERROGATORY NO. 16.

There are no sites within the Regional Board's jurisdiction, other than those identified in Response to Interrogatory No. 15, where sediment contamination has been remediated in rivers, bays, estuaries, ocean, wetlands, or any other surface water body.

INTERROGATORY NO. 17:

For any sites identified in response to the preceding Special Interrogatory, IDENTIFY the constituents of concern that were remediated and the cleanup levels that were imposed for those constituents.

RESPONSE TO INTERROGATORY NO. 17.

There are no sites within the Regional Board's jurisdiction, other than those identified in Response to Interrogatory No. 15, where sediment contamination has been remediated in rivers, bays, estuaries, ocean, wetlands, or any other surface water body.

INTERROGATORY NO. 18:

IDENTIFY all site(s) within the State of California where sediment contamination in rivers, bays, estuaries, ocean, wetlands, or any other surface water body has been remediated, and the starting and ending dates of such remediation.

RESPONSE TO INTERROGATORY NO. 18.

The Cleanup Team incorporates each of the General Objections set forth above as if set forth in full herein. The Cleanup Team further objects to this Interrogatory as burdensome and harassing to the extent it seeks information about sites outside the jurisdiction of the San Diego Water Board on the ground and to the extent that the information sought is not known by the Cleanup Team and is equally available to NASSCO. The Cleanup Team further objects to this Interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence because, on its face, it seeks information about cleanups over which the San Diego Water Board has no jurisdiction.

INTERROGATORY NO. 19:

For any sites identified in response to the preceding Special Interrogatory, IDENTIFY the constituents of concern that were remediated and the cleanup levels that were imposed for those constituents.

RESPONSE TO INTERROGATORY NO. 19.

The Cleanup Team incorporates each of the General Objections set forth above as if set forth in full herein. The Cleanup Team further objects to this Interrogatory as burdensome and harassing to the extent it seeks information about sites outside the jurisdiction of the San Diego Water Board on the ground and to the extent that the information sought is not known by the Cleanup Team and is equally available to NASSCO. The Cleanup Team further objects to this Interrogatory on the ground that it is not reasonably calculated to lead to the discovery of admissible evidence because, on its face, it seeks information about cleanups over which the San Diego Water Board has no jurisdiction.

INTERROGATORY NO. 20:

IDENTIFY any alternative cleanup methodologies YOU considered in connection with the remediation of the SITE.

RESPONSE TO INTERROGATORY NO. 20.

The Cleanup Team incorporates each of the General Objections set forth above as if set forth in full herein. The Cleanup Team further objects to the Interrogatory as vague and ambiguous with respect to "alternative cleanup methodologies." Subject to and without waiving the foregoing

objections, the Cleanup Team considered natural attenuation, monitored attenuation, cleanup to background, and cleanup to various multiples of background all as set forth in detail in the CAO, the supporting DTR and/or the appendices.

INTERROGATORY NO. 21:

IDENTIFY all COMMUNICATIONS between YOU and ENVIRONMENTAL GROUPS RELATING TO the TENTATIVE ORDER or TECHNICAL REPORT.

RESPONSE TO INTERROGATORY NO. 21.

The Cleanup Team incorporates each of the General Objections set forth above as if set forth in full herein. Subject to and without waiving these objections, the Cleanup Team responds as follows: After reasonable investigation, the Cleanup Team was unable to identify any non-privileged communications between the Cleanup Team or San Diego Water Board staff and environmental groups relating to the tentative order that were not already produced or otherwise provided to NASSCO. Because of the ambiguous definition of "YOU," the Cleanup Team clarifies that it does not have access to ADVISORY TEAM COMMUNICATIONS that were not otherwise made to all parties.

INTERROGATORY NO. 22:

IDENTIFY all COMMUNICATIONS between YOU and any PERSON RELATING TO the TENTATIVE ORDER or TECHNICAL REPORT.

RESPONSE TO INTERROGATORY NO. 22.

The Cleanup Team incorporates each of the General Objections set forth above as if set forth in full herein. The Cleanup Team further objects to this Interrogatory as overbroad, and unduly burdensome and harassing. Subject to and without waiving these objections, the Cleanup Team responds as follows: After reasonable investigation, the Cleanup Team was unable to identify any non-privileged communications between the Cleanup Team or San Diego Water Board staff and any other person relating to the tentative order that were not already produced or otherwise provided to NASSCO. Because of the ambiguous definition of "YOU," the Cleanup Team clarifies that it does not have access to ADVISORY TEAM COMMUNICATIONS that were not otherwise made to all parties.

INTERROGATORY NO. 23:

IDENTIFY all COMMUNICATIONS between YOU and any local, state or federal agency RELATING TO the TENTATIVE ORDER or TECHNICAL REPORT.

RESPONSE TO INTERROGATORY NO. 23.

The Cleanup Team incorporates each of the General Objections set forth above as if set forth in full herein. The Cleanup Team further objects to this Interrogatory as overbroad, and unduly burdensome and harassing. Subject to and without waiving these objections, the Cleanup Team responds as follows: After reasonable investigation, the Cleanup Team was unable to identify

any communications between the Cleanup Team or San Diego Water Board staff and any local, state or federal agency relating to the tentative order that were not already produced or otherwise provided to NASSCO. Because of the ambiguous definition of "YOU," the Cleanup Team clarifies that it does not have access to ADVISORY TEAM COMMUNICATIONS that were not otherwise made to all parties.

INTERROGATORY NO. 24:

IDENTIFY all COMMUNICATIONS between YOU and any PERSON RELATING TO YOUR dismissal of natural attenuation as a preferred remedy for the SITE.

RESPONSE TO INTERROGATORY NO. 24.

The Cleanup Team incorporates each of the General Objections set forth above as if set forth in full herein. The Cleanup Team further objects to this Interrogatory as overbroad, and unduly burdensome and harassing. Subject to and without waiving these objections, the Cleanup Team responds as follows: After reasonable investigation, the Cleanup Team was unable to identify any non-privileged communications between the Cleanup Team or San Diego Water Board staff and any other person relating to its rejection of natural attenuation as a preferred remedy for the site. Because of the ambiguous definition of "YOU," the Cleanup Team clarifies that it does not have access to ADVISORY TEAM COMMUNICATIONS that were not otherwise made to all parties.

INTERROGATORY NO. 25:

IDENTIFY all COMMUNICATIONS between YOU and any PERSON RELATING TO the results and findings of the June 2009 sediment quality testing performed by Exponent at the SITE.

RESPONSE TO INTERROGATORY NO. 26.

The Cleanup Team incorporates each of the General Objections set forth above as if set forth in full herein. Subject to and without waiving these objections, the Cleanup Team responds as follows: After reasonable investigation, the Cleanup Team was unable to identify any non-privileged communications between the Cleanup Team or San Diego Water Board staff and any other person relating to the results and finding of the June 2009 sediment quality testing performed by Exponent at the site. Because of the ambiguous definition of "YOU," the Cleanup Team clarifies that it does not have access to ADVISORY TEAM COMMUNICATIONS that were not otherwise made to all parties.

INTERROGATORY NO. 26:

IDENTIFY all COMMUNICATIONS between YOU and any PERSON RELATING TO any alternative cleanup methodologies YOU considered for the remediation of the SITE, including but not limited to Lowest Apparent Effects Thresholds ("LAETs").

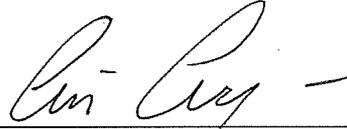
RESPONSE TO INTERROGATORY NO. 26.

The Cleanup Team incorporates each of the General Objections set forth above as if set forth in full herein. The Cleanup Team further objects to this Interrogatory as overbroad, and unduly burdensome and harassing. Subject to and without waiving these objections, the Cleanup Team responds as follows: After reasonable investigation, the Cleanup Team was unable to identify any non-privileged communications between the Cleanup Team or San Diego Water Board staff and any other person relating to the alternative cleanup methodologies the Cleanup Team considered for remediation of the site, including LAETs, that were not already produced or otherwise provided to NASSCO. Because of the ambiguous definition of "YOU," the Cleanup Team clarifies that it does not have access to ADVISORY TEAM COMMUNICATIONS that were not otherwise made to all parties.

Dated: October 4, 2010

CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN
DIEGO REGION, CLEANUP TEAM

By:



Christian Carrigan

Exhibit A to Cleanup Team's Responses to NASSCO's Special Interrogatory and BAE Systems' Special Interrogatory

Cleanup Site	Paco Terminals, Inc.	Teledyne Ryan (Convair Lagoon)	Eichenlaub Marine	Shelter Island Boatyard	Bay City Marine	Driscoll Boatyard	Kettenburg Marine	Koehler Kraft	Mauricio and Sons	Campbell Industries Shipyard		BF Goodrich (Upland Tidal Marsh)	Shipyard Sediment Site	
										Campbell Industries CAO	Campbell Industries (CAP As Constructed Design)			
Order No.	CAO No.85-91	CAO No. 86-92	CAO	CAO	CAO No.88-79	CAO No. 89-31	CAO No. 88-78	CAO No. 89-32	CAO No. 88-86	CAO No. 95-21	WDR R9-2004-0295	CAO No. 98-08	Tentative CAO No. R9-2011-0001	
Year Order Issued	1985	1986	1988	1988	1988	1989	1988	1988	1988	1995	2004	1998	2010 (Latest Draft)	
No. of Responsible Parties	2	1	1	1	2	1	2	1	1	1	1	1	8	
Year Cleanup Level Set by San Diego Water Board	1991	1991	12/9/1991	10/28/1991	10/28/1991	10/28/1991	10/28/1991	10/28/1991	10/28/1991	1995	2004	2004		
Cleanup Remedial Action Completion	12/16/1994	5/15/1998	12/9/1991	10/28/1991	7/30/1998	8/15/2001	8/15/2001	1/27/1995	8/15/2001	6/30/2008		10/15/2004		
Cleanup Level Threshold	Copper Ocean Plan Water Quality Objective (water column)	USFDA Shellfish Standard	No Cleanup Required	No Cleanup Required	Apparent Effects Threshold (AET)	Apparent Effects Threshold (AET)	Apparent Effects Threshold (AET)	Apparent Effects Threshold (AET)	Apparent Effects Threshold (AET)	Apparent Effects Threshold (AET)		NOAA Effects Range Low (ERLs)	Multiple lines of evidence for benthic community protection. Human health and aquatic dependent wildlife risk assessment.	
Cleanup Level Metric	Site-wide Maximum not to be Exceeded Concentration	Site-wide Maximum not to be Exceeded Concentration			Site-wide Maximum not to be Exceeded Concentration	Site-wide Maximum not to be Exceeded Concentration	Site-wide Maximum not to be Exceeded Concentration	Post Remedial Surface-Area Weighted Average Concentrations	Post-Remedial Dredge Area Concentrations (Background Levels)					
Pollutants of Concern	Copper Ore	PCBs	Copper, Mercury, TBT	Copper, Mercury, TBT	Copper, Mercury, TBT	Copper, Mercury, TBT	Copper, Mercury, TBT	Copper, Mercury, TBT	Copper, Mercury, TBT	Copper, Lead, Zinc, Mercury, TBT, TPH, HPAH and PCBs	Copper, Lead, Zinc, Mercury, TBT, TPH, HPAH and PCBs	Antimony, Arsenic, Cadmium, Copper, Mercury, Lead, Nickel, Silver, Zinc, PAHs, and PCBs	Primary CoC - Copper, Mercury, HPAH, PCBs and TBT. Secondary CoC - Arsenic, Cadmium, Lead and Zinc.	
Arsenic												8.2 mg/kg		
Cadmium												1.2 mg/kg		
Chromium														
Copper	1000 mg/kg				530 mg/kg	530 mg/kg	530 mg/kg	530 mg/kg	530 mg/kg	810 mg/kg	264 mg/kg	34 mg/kg	159 mg/kg	121 mg/kg
Lead					4.8 mg/kg	4.8 mg/kg	4.8 mg/kg	4.8 mg/kg	4.8 mg/kg	231 mg/kg	88 mg/kg	46.7 mg/kg	0.68 mg/kg	0.57 mg/kg
Mercury												0.15 mg/kg		
Nickel												20.9 mg/kg		
Silver												1 mg/kg		
Zinc										820 mg/kg	410 mg/kg	150 mg/kg		
TBT					Natural Degradation	5.75 mg/kg	0.121 mg/kg		110 ug/kg	22 ug/kg				
TPH										4300 mg/kg	<14 mg/kg			
LPAH												552 ug/kg		
HPAH										44 mg/kg	3.47 mg/kg	1700 ug/kg	2451 ug/kg	663 ug/kg
Benzo[a]pyrene												430 ug/kg		
PCBs		4.6 mg/kg								0.95 mg/kg	0.11 mg/kg	22.7 ug/kg	194 ug/kg	84 ug/kg
Cleanup to Background Evaluated	Yes	Yes			Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Alternative Cleanup levels greater than background approved by San Diego Water Board	Yes	Yes			Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	San Diego Water Board Approval Pending	
Benthic Community Effects Evaluated	Yes	Yes			Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Aquatic Dependent Wildlife Risk Evaluated										Yes	Yes	Yes	Yes	
Human Health Risk Evaluated		Yes								Yes	Yes	Yes	Yes	
Cleanup Method	Dredging	Capping			Dredging	Dredging	Dredging	Dredging	Dredging	Capping/ Dredging		Dredging	Dredging/Sand Covering	
Sediment Dredge Disposal	Bay- side landfill, Part of dredged material recycled to copper mine in Arizona for copper ore recovery. Copper ore recovered was exported to Japan.	-			Landfill	Landfill	Landfill	Landfill	Landfill	Landfill		Landfill	To be determined.	
Dredge Volume (Cubic Yards)	20,926		0	0	17,250	700	8,799	300	1,845	41,000		795	143,400	
Capped Volume (Cubic Yards)		112,933								135,000				
Remediation Monitoring	Yes	Yes			Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
Post Remediation Monitoring		Yes								Yes	Yes	Yes	Yes	

Environmental Health Coalition

COALICION de SALUD AMBIENTAL

401 Mile of Cars Way, Suite 310 ♦ National City, CA 91950 ♦ (619) 474-0220 ♦ FAX: (619) 474-1210
ehc@environmentalhealth.org ♦ www.environmentalhealth.org



Media Conference Agenda

Coalition Gathers to Raise Awareness of Warning Signs

September 5, 2005 10:30am
Pepper Park Marina Pier

List of speakers:

Bay Council Organizations

- Laura Hunter, Director, Clean Bay Campaign, Environmental Health Coalition
- Georgette Gomez, CBC Community Organizer, Environmental Health Coalition
- Bruce Reznik, Executive Director, San Diego Coastkeeper

Elected Officials

- State Senator Denise Ducheny, 40th District

Local Fisherman

- Erick Carbajal
- Frank LoPresti, Captain, Royal Polaris, Seaforth Sportfishing
- Dan McKirnan, Boardmember, Environmental Health Coalition



We Need a Clean Bay Safe for Wildlife Safe for Communities Saved for Future Generations

FACT SHEET

CLEANUP OF TOXIC SEDIMENTS IN SAN DIEGO BAY

Facts:

- San Diego Bay is seriously threatened by contamination with toxic and hazardous chemicals.
- Three large shipyards, NASSCO, Southwest Marine, Campbell, have seriously polluted San Diego Bay by discharging large amounts of toxic materials into the Bay during operations. These shipyards are being directed to clean up the pollution at their sites by the Regional Water Quality Control Board.
- Many of these poisons have ended up concentrating in the sand in the bottom of the Bay (called sediments) where they can contaminate fish and other marine life.
- Many of the toxic chemicals that have been dumped into the Bay bioaccumulate meaning that they concentrate up the food chain and can impact the health of people who consume fish from the Bay and their children.
- Fish from San Diego Bay have been tested and elevated levels of dangerous chemicals have consistently been found, as recently as this year.
- Bay fishing piers have already been posted with a fish consumption warning due to elevated chemical levels in some fish. Children, pregnant or nursing mothers, the elderly and infirm are more at risk from eating contaminated fish.
- If contaminated sediments are removed some of them will be taken out of the Bay by train or truck. If trucks are used, there are truck routes that do not go through the community that should be used.
- Some of the most dangerous chemicals in the Bay remain toxic for 100's of years if not removed.

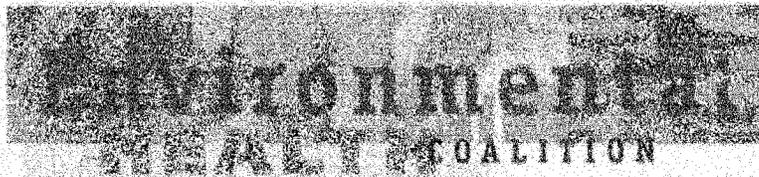
Issues:

- Consultants for the Shipyards propose to leave all of their contaminated sediments in the Bay and do no cleanup. If this happens, it would put the people who fish from the Bay and wildlife at risk for years to come.
- EHC supports a stringent cleanup level that will remove toxic sediments from the Bay permanently.
- Some portion of the contaminated sediment may have to be removed to a landfill. The option of using rail cars to remove sediment is preferred. If trucks are used, they must be use routes that do not go through the community of Barrio Logan. There are cleaner dredging options and truck emission technologies that must be used.
- There are many fatal flaws in the study done by the polluters about this site. For example, people of many cultures consume fish from San Diego Bay. They consume fish in different ways and at different rates. These differences have not been addressed in the assessments done at this site.

Solutions:

- The Regional Board should direct the shipyards to clean up the toxic chemicals in sediments at the Shipyards to levels that will protect human health and the environment.
- The most stringent levels should be set for chemicals that bioaccumulate such as mercury, PCBs, and TBT.
- Air emissions must be minimized during cleanup activities. Removal of sediments by rail car must have first consideration. Any traffic that is created must be routed around and not through Barrio Logan and cleaner emission trucks must be mandated. An electric dredge should be used for the dredging.

For more information, please contact Sonia Rodriguez, Community Organizer, Environmental Health Coalition at (619) 235-0281 (ext 142) 1717 Kettner, Suite 100, San Diego 92101 or check out our website at www.environmentalhealth.org



Necesitamos un Bahía Limpia
Segura para la Vida Silvestre
Segura para las Comunidades
Segura para Futuras Generaciones

HOJA INFORMATIVA

LIMPIEZA DE SEDIMENTOS TÓXICOS EN LA BAHÍA DE SAN DIEGO

Hechos:

- La Bahía de San Diego esta muy amenazada por la contaminación de químicas tóxicas y peligrosas
- Tres grandes astilleros: NASSCO, Southwest Marine y Campbell, han contaminado seriamente a la Bahía de San Diego por descargar enormes cantidades de materiales tóxicos durante sus operaciones. La Junta Regional de Control de Calidad de Agua esta obligando a los astilleros a que eliminen la contaminación de estos sitios.
- Muchos de estos venenos se han concentrado en la arena al fondo de la Bahía (llamados sedimentos) en donde pueden contaminar a los peces y otros seres marinos.
- Muchas de las químicas tóxicas que se han desechado a la bahía, se bioacumulan, es decir que se concentran mas delante en la cadena alimenticia y pueden impactar la salud de las personas y niños que consumen el pescado de la bahía.
- Se han estudiado los peces de la Bahía de San Diego y constantemente se encuentran niveles elevados de químicas peligrosas en ellos, inclusive este mismo año.
- Ya se han puesto alertas en los muelles para pesca de la Bahía sobre los peligros por consumir pescado, debido a los niveles elevados de químicas en algunos peces. Los niños, mujeres embarazadas, madres que estén amamantando, los ancianos y los enfermos están en mayor riesgo por el consumo de pescado contaminado.
- Si los sedimentos contaminados son removidos algunos de ellos serán retirados por tren o camión. Si se usan camiones deberán utilizarse rutas que no atraviesan a la comunidad.
- Algunos de las químicas más peligrosas de la Bahía seguirán siendo tóxicas por 100 años de no ser eliminadas.

Problemas:

- Los consultores de los astilleros proponen dejar todos los sedimentos contaminados en la Bahía sin realizar limpieza alguna. Si esto sucede, pondría en riesgo por años a la gente que pesca en la Bahía así como a la vida silvestre.
- EHC apoya un saneamiento profundo que elimine completamente los sedimentos tóxicos de la Bahía.
- Es posible que una porción del sedimento contaminado tenga que depositarse en el basurero. La opción de usar tranvías para remover el sedimento es preferida. De utilizarse camiones, deberán usar rutas que no atraviesen por la comunidad del Barrio Logan. Existen opciones mas limpias de dragado y de tecnologías de emisiones de los camiones que deberán utilizarse.
- Hay muchas fallas severas en el estudio sobre el sitio realizado por los contaminadores. Por ejemplo, hay personas de muchas culturas que consumen pescado de la Bahía de San Diego. Consumen pescado de diversas formas y en diferentes cantidades. No se han atendido estas diferencias en los estudios realizados sobre el sitio.

Soluciones:

- La Junta Regional deberá obligar a los astilleros a que eliminen los sedimentos tóxicos hasta niveles que protejan la salud humana y el ambiente.
- Se deberán poner los límites más estrictos en las sustancias químicas que se bioacumulan, tales como Mercurio, PCB (bifenilo policlorado) y TBT.
- Se deberán minimizar las emisiones al aire durante las actividades de saneamiento. Debiendo considerar en primer termino la eliminación de sedimentos por tranvía. Cualquier trafico que resulte deberá enviarse por fuera del Barrio Logan, sin atravesarlo y deberán requerirse camiones con emisiones más limpias. Deberá utilizarse una draga eléctrica para hacer el dragado.

Para más información, comuníquese con Sonia Rodríguez, Organizadora Comunitaria, Coalición de Salud Ambiental al (619) 235-0281 (ext 142)
1717 Kettner, Suite 100, San Diego 92101 o concéctate al sitio de internet www.environmentalhealth.org

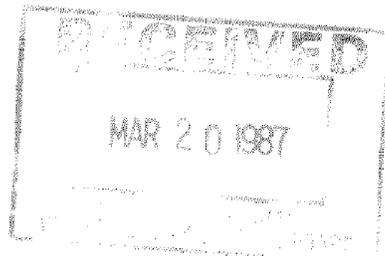
TELEDYNE RYAN STORM DRAIN
SAMPLING



Multi-Tech
Laboratories, Inc.

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03-17-87



San Diego Regional Water Quality Control Board
9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Attn: Scott Hugenberg

Sample No.: 6-12219
Date collected: 10-22-86
Date in lab: 10-24-86
Collected by: Client
Sample type: Soil
Client ID: TRA 15/30 154

BASIN # 154
(ON 15/30 LINE)

COLLECTED ON 10/22/86
WITH WESTEC SERVICES

PCB ANALYSIS

AROCHLOR 1242: <2 mg/kg (ppm)
AROCHLOR 1254: 15 mg/kg (ppm)
AROCHLOR 1260: 2 mg/kg (ppm)
TOTAL PCB: 17 mg/kg (ppm)

NOTE: These detection limits are 20 times higher than usual due to the dilution needed to bring all peaks within the linear range of the detector.

Lisa Busch

Analytical Director

TELEDYNE RYAN AERONAUTICAL
PCB CLEANUP & REMEDIATION
CONVAIR LAGOON
WDR ORDER: 86-92
LNF REPORT FILE: 33 03/87-12/87
02-0381.06 STATUS: C

jmt

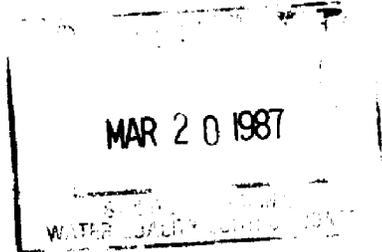


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TELEDYNE RYAN AERO.
STORM DRAIN SAMPLING

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03-17-87



San Diego Regional Water Quality Control Board
9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Attn: Scott Hugenberger

Sample No.: 6-12218
Date collected: 10-22-86
Date in lab: 10-24-86
Collected by: Client
Sample type: Soil
Client ID: TRA 15/30 153

BASIN # 153
(ON 15/30 LINE)

COLLECTED ON 10/22/86
WITH WESTEC SERVICES

PCB ANALYSIS

AROCHLOR 1242: <8 mg/kg (ppm)
AROCHLOR 1254: 110 mg/kg (ppm)
AROCHLOR 1260: 10 mg/kg (ppm)
TOTAL PCB: 120 mg/kg (ppm)

NOTE: These detection limits are 80 times higher than usual due to the dilution needed to bring all peaks within the linear range of the detector.

Lisa Busch

Analytical Director

jnt



TELEDYNE RYAN AERO.
STORM DRAIN SAMPLING

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03-17-87

San Diego Regional Water Quality Control Board
9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Attn: Scott Hugenberg

Sample No.: 6-12217
Date collected: 10-22-86
Date in lab: 10-24-86
Collected by: Client
Sample type: Soil
Client ID: TRA 15/30 152

BASIN # 152
(ON 15/30 LINE)

MAR 20 1987

PCB ANALYSIS

COLLECTED ON 10/22/86
WITH WESTEC SERVICES

AROCHLOR 1242: <2 mg/kg (ppm)
AROCHLOR 1254: 40 mg/kg (ppm)
AROCHLOR 1260: 2 mg/kg (ppm)
TOTAL PCB: 42 mg/kg (ppm)

NOTE: These detection limits are 20 times higher than usual due to the dilution needed to bring all peaks within the linear range of the detector.

Lisa Busch

Analytical Director

jat



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Laboratories, Inc.

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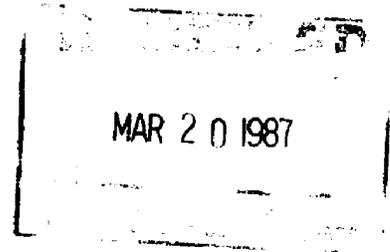
TELEDYNE RYAN AERO.
STORM DRAIN SAMPLING

03-17-87

San Diego Regional Water Quality Control Board
9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Attn: Scott Hugenberg

Sample No.: 6-12216
Date collected: 10-22-86
Date in lab: 10-24-86
Collected by: Client
Sample type: Soil
Client ID: TRA 15/30 151

BASIN # 151
(ON 15/30 LINE)



COLLECTED ON 10/22/86
WITH WESTEC SERVICES

PCB ANALYSIS

AROCHLOR 1242: <2 mg/kg (ppm)
AROCHLOR 1254: 30 mg/kg (ppm)
AROCHLOR 1260: 4 mg/kg (ppm)
TOTAL PCB: 34 mg/kg (ppm)

NOTE: These detection limits are 20 times higher than usual due to the dilution needed to bring all peaks within the linear range of the detector.

Lisa Burch

Analytical Director

jmt



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Laboratories, Inc.

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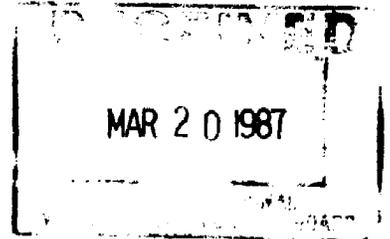
TELEDYNE RYAN AERO.
STORM DRAIN SAMPLING

03-17-87

San Diego Regional Water Quality Control Board
9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Attn: Scott Hugenberger

Sample No.: 6-12214
Date collected: 10-22-86
Date in lab: 10-24-86
Collected by: Client
Sample type: Soil
Client ID: TRA 15/30 149

BASIN # 149
(ON 15/30 LINE)



PCB ANALYSIS

COLLECTED ON 10/22/86
WITH WESTEC SERVICES

AROCHLOR 1242: <4 mg/kg (ppm)
AROCHLOR 1254: 120 mg/kg (ppm)
AROCHLOR 1260: 10 mg/kg (ppm)
TOTAL PCB: 130 mg/kg (ppm)

NOTE: These detection limits are 40 times higher than usual due to the dilution needed to bring all peaks within the linear range of the detector.

Lisa Buch

Analytical Director

jmt



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Laboratories, Inc.

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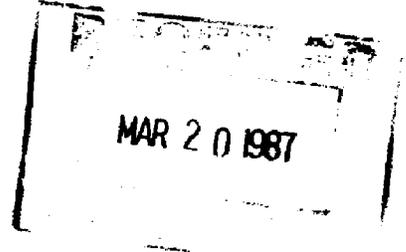
TELEDYNE RYAN AERO.
STORM DRAIN SAMPLING

03-17-87

San Diego Regional Water Quality Control Board
9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Attn: Scott Hugenberg

Sample No.: 6-12213
Date collected: 10-22-86
Date in lab: 10-24-86
Collected by: Client
Sample type: Soil
Client ID: tra 15/30 148

BASIN # 148 (ON 15/30 LINE)



PCB ANALYSIS

**COLLECTED ON 10/22/86
WITH WESTEC SERVICES**

AROCHLOR 1242: <5 mg/kg (ppm)
AROCHLOR 1254: 30 mg/kg (ppm)
AROCHLOR 1260: 220 mg/kg (ppm)
TOTAL PCB: 250 mg/kg (ppm)

NOTE: These detection limits are 50 times higher than usual due to the dilution needed to bring all peaks within the linear range of the detector.

Lisa Busch

Analytical Director

jmt



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Laboratories, Inc.

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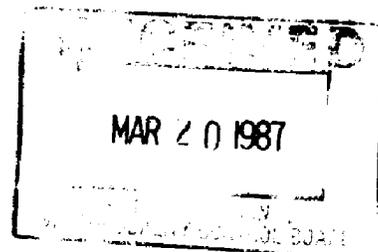
TELEDYNE RYAN AERO.
STORM DRAIN SAMPLING

03-17-87

San Diego Regional Water Quality Control Board
9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Attn: Scott Hugenberg

Sample No.: 6-12211
Date collected: 10-22-86
Date in lab: 10-24-86
Collected by: Client
Sample type: Soil

BASIN # 146
(ON 15/30 LINE)



Client ID: TRA 15/30 146

PCB ANALYSIS

COLLECTED ON 10/22/86
WITH WESTEC SERVICES

AROCHLOR 1242: <10 mg/kg (ppm)
AROCHLOR 1254: 80 mg/kg (ppm)
AROCHLOR 1260: 3 mg/kg (ppm)
TOTAL PCB: 83 mg/kg (ppm)

NOTE: These detection limits are 100 times higher than usual due to the dilution needed to bring all peaks within the linear range of the detector.

Lisa Busch

Analytical Director

jmt



Multi-Tech
Laboratories, Inc.

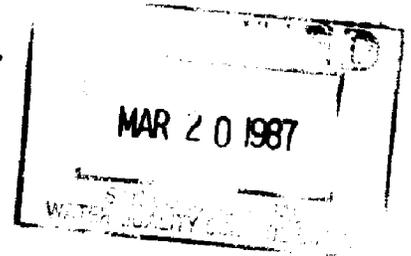
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TELEDYNE RYAN AERO.
STORM DRAIN SAMPLING

03-17-87

San Diego Regional Water Quality Control Board
9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Attn: Scott Hugenberger

Sample No.: 6-12210 **BASIN # 145**
Date collected: 10-22-86 **(ON 15/30 LINE)**
Date in lab: 10-24-86
Collected by: Client
Sample type: Soil



Client ID: TRA 15/30 145

COLLECTED ON 10/22/86
WITH WESTEC SERVICES

PCB ANALYSIS

AROCHLOR 1242: <30 mg/kg (ppm)
AROCHLOR 1254: 460 mg/kg (ppm)
AROCHLOR 1260: 60 mg/kg (ppm)
TOTAL PCB: 520 mg/kg (ppm)

NOTE: These detection limits are 300 times higher than usual due to the dilution needed to bring all peaks within the linear range of the detector.

Lisa Burch
Analytical Director

jmt



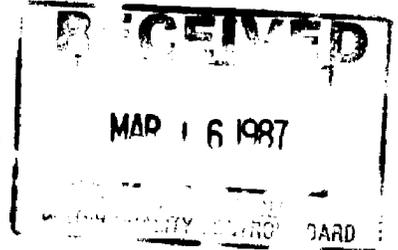
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TELEDYNE RYAN AERO.
STORM DRAIN SAMPLING

SPLIT SAMPLE
COLLECTED BY WESTEC SERVICES
ON 10/22/87

03-11-87



San Diego Regional Water Quality Control
9771 Clairmont Mesa Blvd., Suite B
San Diego, CA 92124-1331
Attn: Scott Hugenberg

Sample No.: 6-12215

Date collected: 10-22-86

Date in lab: 10-24-86

Collected by: Client

Sample type: Soil

BASIN # 150
(ON 15/30 LINE)

Client ID: TRA 15/30 150

PCB ANALYSIS

AROCHLOR 1242: <0.5 mg/kg (ppm)

AROCHLOR 1254: 14 mg/kg (ppm)

AROCHLOR 1260: <0.5 mg/kg (ppm)

TOTAL PCB: 14 mg/kg (ppm)

NOTE: These detection limits are 5 times higher than usual due to the dilution needed to bring all peaks within the linear range of the detector.

-----*Jim Beach*-----
Analytical Director

jmt

Brian Kelley
3/20/87

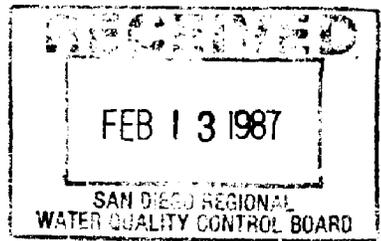


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TELEDYNE RYAN AERO.
STORM DRAIN SAMPLING

02-10-87



San Diego Regional Water Quality Control Board
9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Attn: Scott Hugenberger

Sample No.: 6-12212
Date collected: 10-22-86
Date in lab: 10-24-86
Collected by: Client
Sample type: Soil

*Collected by Westec
Services on 10/22/86.*

Client ID: TRA 15/30 147, TELEDYNE RYAN

PCB ANALYSIS

BASIN # 147

AROCHLOR 1242: <1 mg/kg (ppm)
AROCHLOR 1254: <1 mg/kg (ppm)
AROCHLOR 1260: 6 mg/kg (ppm)
TOTAL PCB: 6 mg/kg (ppm)

Cheryl A. Smith
Analytical Director

jmt

Supplemental Storm Drain Activities Documentation

SUBMITTED TO:

California Regional Water Quality Control Board
San Diego Region

SUBMITTED BY:

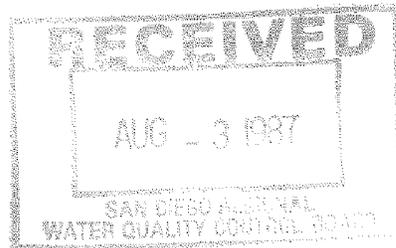
Teledyne Ryan Aeronautical
2701 Harbor Drive
San Diego, California 92138 - 9012

PREPARED BY:

WESTEC Services, Inc.
5510 Morehouse Drive
San Diego, California 92121-1709

AUGUST 3, 1987

TELEDYNE RYAN AERONAUTICAL
PCB CLEANUP & REMEDIATION
CONVAIR LAGOON
WDR ORDER: 86-92
ENF REPORT FILE: 3B 05/87-12/87
02-0381.06 STATUS: C



CONWARD E WILLIAMS, General Counsel



TELEDYNE RYAN AERONAUTICAL
2701 HARBOR DRIVE
P O BOX 80311
SAN DIEGO, CALIFORNIA 92138-9012
(619) 260-4305 TWX (910) 335-1180

August 3, 1987

Ladin H. Delaney
Executive Officer
California Regional Water Quality
Control Board
San Diego Region
9771 Clairemont Mesa Blvd., Suite B
San Diego, CA 92124-1331

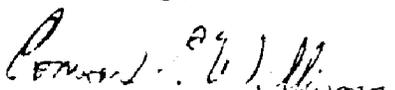
Dear Mr. Delaney:

On April 3, 1987, Teledyne Ryan Aeronautical (TRA) submitted a report entitled "Teledyne Ryan Aeronautical Analytical Data Sets, January 1, 1984 to Present". This report covered the results of storm drain and sump sampling conducted at our facility from January 1, 1984 to April, 1987.

In response to Directives No. 9 and 10 of Addendum No. 1 to Cleanup and Abatement Order No. 86-92, TRA hereby submits our report entitled "Supplemental Storm Drain Activities Documentation, Teledyne Ryan Aeronautical, San Diego, California".

TRA is available to discuss this report with you and your staff at your convenience.

Sincerely,


Conward E. Williams
General Counsel

Enclosure

CEW:jo

cc: P. Cafferty
Westec

CUT 001325

**SUPPLEMENTAL
STORM DRAIN ACTIVITIES DOCUMENTATION
TELEDYNE RYAN AERONAUTICAL
SAN DIEGO, CALIFORNIA**

Submitted to:

California Regional Water Quality Control Board
San Diego Region

Submitted by:

Teledyne Ryan Aeronautical
2701 Harbor Drive
San Diego, California 92138-9012

Prepared by:

WESTEC Services, Inc.
5510 Morehouse Drive
San Diego, CA 92121-1709

August 3, 1987

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SECTION 1 INTRODUCTION

The information contained in this document has been prepared in response to "Addendum No. 1 to Cleanup and Abatement Order No. 86-92 for Teledyne Ryan Aeronautical near Lindbergh Field, San Diego County" (hereinafter referred to as Addendum No. 1). This addendum was issued to Teledyne Ryan Aeronautical (TRA) by the California Regional Water Quality Control Board, San Diego Region (RWQCB), on July 2, 1987. Directive No. 9 of Addendum No. 1 requires that TRA submit by August 1, 1987 any results of analyses performed on post-cleanup samples collected from storm drains which have been cleaned of contamination since September 1986. Each sample result is required to contain the following information listed in Directive No. 5 of Addendum No. 1: Sample type, sample location, date and time of sampling, method of sample collection, sample analysis method, method of sample preservation and laboratory used to analyze sample. Directive No. 10 of Addendum No. 1 requires that TRA submit by August 1, 1987 copies of all field notes taken by TRA staff and/or consultants pertaining to sampling and cleanup activities conducted onsite from September 1986 to the present.

TRA analytical results were originally submitted to the RWQCB in a document entitled "Teledyne Ryan Aeronautical Analytical Data Sets, January 1, 1984 to Present." This document ("Supplemental Storm Drain Activities Documentation") contains all additional analytical results necessary to supplement the original submittal in order to comply with Directive No. 9.

Data sets included in the original submittal were: (1) results of the analysis of TRA's splits of samples collected by the RWQCB in June and October 1985; (2) polychlorinated biphenyl (PCB) analysis results of hydraulic fluid and waste oil samples collected in March and April 1984; (3) results of the analysis of samples collected during storm drain cleaning activities in October and December 1986; (4) analytical results of splits collected during the Environmental Protection Agency (EPA) Toxic Substances Control Act (TSCA) inspection in September and October 1986; (5) analytical results of additional storm drain samples collected during November and December 1986 and January and February 1987; (6) analytical results of sump and basin samples collected from and around TRA building 120 in October and November 1986 and January 1987; and (7) results of the analysis of samples collected until April 1987 in the audit of other portions of the TRA facility.

Data sets included in this supplemental submittal are: (1) analytical results of storm drain samples collected on May 1, 1987; and (2) analytical results of storm drain samples collected on May 28, 1987.

This supplemental submittal also contains all field notes necessary to comply with Directive No. 10.

The project sampling and quality assurance/quality control (QA/QC) protocols utilized in the collection of samples are described in Section 2 of this document. The original analytical laboratory reports for the data sets included in this supplementary submittal are provided in Section 3; the specific sample analysis methods and analytical laboratories used are also included. In addition, a tabular summary of sample activities is provided in Section 3. The table lists the sample number, sample matrix (type), sample location, and the collection date (collection times are noted in the accompanying field notes). All field notes taken by TRA's consultant, WESTEC Services, Inc. (WESTEC), pertaining to storm drain sampling and cleanup activities conducted on site between September 1, 1986 and July 2, 1987 may be found in Section 4. TRA staff did not compile any storm drain related field notes during this time period.

SECTION 2

PROJECT SAMPLING AND QA/QC PROTOCOLS

Quality assurance and quality control (QA/QC) procedures are critical in the field, during sample collection, and in the analytical laboratory, to ensure that accurate information is generated. Sample-acquisition planning, methodology, and equipment protocols, as well as the sample processing, documentation, and custody procedures specified in Section 1 of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," SW-846 (third edition), published by the U.S. EPA, were followed during this project to assure high QA/QC standards. In addition, the sampling and sample management requirements of Section 66694 of Title 22, Division 4, Chapter 30, of California Administrative Code were consistently adhered to at all times.

QA/QC is an integral part of any field or laboratory program involving hazardous wastes and materials. Decisions concerning the control and management of hazardous materials or the need for enforcement actions must be based on analytical data and strict sample-acquisition control and handling. Since these decisions can be no better than the data on which they are based, it is imperative that all data be of high quality.

High quality data were obtained by applying QC protocols during all phases of this project. Activities concerning sampling site selection, the frequency of sampling, the number of samples to be collected, the collection procedures, preservation, sample handling, etc., were all incorporated into these protocols. Improper QC practices during any of these phases could have invalidated any resultant analytical data. Since there are legal implications in maintaining sample identity and integrity, it was assumed that every sample collected during the course of this study could potentially be used as court evidence. Therefore, it was critical that accurate and comprehensive sample collection and handling procedures be used by all field personnel.

In an effort to attain this high degree of quality, samples were collected in such a fashion as to preserve their original form and chemical composition. In addition, they were handled in a manner that would prevent cross-contamination or changes in the concentration of materials to be analyzed.

The sample acquisition and handling procedures used by WESTEC are based on EPA-accepted methods and techniques as described in the references cited above. Techniques

from several of these water and soil/sediment sampling methods were adopted to develop sample acquisition procedures for the TRA project.

Post-cleanup samples collected from storm drains between September 1986 and July 1987 fall into two types of categories: samples collected from storm drain basins, and samples collected from storm drain pipes. Where enough sediment existed in a storm drain basin to obtain a representative sample volume, a sediment sample was obtained through use of a pre-cleaned stainless steel trowel or scoop. Where no sediment existed in a basin, but standing water did exist, a sample was obtained through the use of glass containers. Where samples were collected from material adhering to the walls of storm drain pipes, a pre-cleaned stainless steel trowel or scoop was again used.

All samples were placed into 8-ounce laboratory-cleaned glass jars and sealed with a Teflon-lined cap. To prevent cross-contamination of samples, all sampling equipment was decontaminated between basins by a detergent wash utilizing Alconox, a common laboratory detergent. Following each sample acquisition, sample containers were labeled with the following information: sample number, location, date, time, and name of sampler. Refrigeration was the only type of sample preservation utilized. As soon as each sample had been labeled, it was immediately placed on ice in a cooler to await shipment to the analytical laboratory.

All samples collected were delivered to Analytical Technologies, Inc. (ATI), a full-service analytical chemistry laboratory committed to rigorous quality assurance practices. ATI's current certifications and the requirements for obtaining these credentials are summarized in Table 2-1.

Samples received at ATI were considered to be physical evidence and were handled according to procedural safeguards established by the EPA.

Chain-of-custody procedures were utilized for all samples received at the laboratory. The purpose of these procedures is to establish and maintain detailed legal documentation of all transactions in which the samples are transferred from the custody of one individual to another. These procedures were instituted and adhered to from the point of sample collection to the time that the samples were opened at the laboratory for analytical work.

Table 2-1

ANALYTICAL TECHNOLOGIES, INC. CERTIFICATIONS

<u>Certification</u>	<u>Requirements</u>
California Department of Health Services (DOHS) Approved Water Laboratory	Proficiency samples and onsite inspection
Environmental Protection Agency Superfund Contract Laboratory	Completion of performance evaluation samples and onsite inspections
California DOHS Approval for AB 1803	Successful completion of proficiency samples
Nuclear Powered Electric Utilities Certification (10 CFR 50)	Submission of documentation and onsite inspection
California DOHS Hazardous Waste Contract Laboratory	Onsite inspection
Arizona Department of Health Services Certified Drinking Water Laboratory	Proficiency samples and onsite inspection

ATI's internal routine QA/QC program includes the following activities to ensure the reproducibility and accuracy of analytical work in the facility.

- Initial Calibration and Calibration Verification
A calibration check is executed each time an instrument is calibrated. Calibration standards are analyzed to initiate any type of analysis.
- Continuing Calibration Verification
To assure calibration accuracy during an analytical procedure, either an EPA quality control solution or a National Bureau of Standards-traceable control solution is analyzed for each analyte after every 10 samples.
- Preparation Blank Analysis
Preparation blanks are utilized to rule out contamination by reagent preparation.
- Interference Check Sample Analysis (for Inductively Coupled Argon Plasma (ICAP) Work)
The interference check sample allows the analyst to verify inter-element and background correction factors on a regular basis.
- Matrix Spike Analysis
The spike analysis provides information about the effect of the sample matrix on the analytical methodology. At least one spike sample analysis is performed on each group of 10 samples of a similar matrix.
- Duplicate Sample Analysis
At least one duplicate sample analysis is performed on each group of 10 samples of a similar matrix.

Analysis of all samples collected at TRA were performed according to standard EPA analytical methods as described in SW-846. The analyses performed on any particular sample are detailed in the laboratory reports section of this document (Section 3).

SECTION 3 LABORATORY REPORTS

This section contains the additional laboratory reports necessary to supplement those originally submitted in the document entitled "Teledyne Ryan Aeronautical Analytical Data Sets, January 1, 1984 to Present" (dated April 1987) and thus comply with Addendum No. 1. Two lab reports are included. The first presents the analytical results for storm drain samples collected on May 1, 1987; the second presents the analytical results for storm drain samples collected on May 28, 1987. A tabular summary of the samples collected on these two dates is included as Table 3-1.

Results of analyses performed on all samples collected from storm drains between September 1, 1986 and July 2, 1987 have been included in either this supplemental document or the original submittal.

Table 3-1
STORM DRAIN SAMPLES

<u>Sample Number</u>	<u>Sample Matrix</u>	<u>Sample Location</u>	<u>Collection Date</u>
W153	Water	TRA 15/30 #153	05-01-87
W149	Soil	TRA 15/30 #149	05-01-87
S146	Soil	TRA 15/30 #146	05-01-87
S141	Soil	TRA 15/30 #141	05-01-87
145L-1	Soil	TRA 15/30 #145 (Sample collected from material adhering to walls of influent pipe)	05-28-87
145-3	Soil	TRA 15/30 #145 (Sample collected from material at bottom of Basin #145)	05-28-87



ATI I.D. 705012

May 20, 1987

Westec Services
5510 Morehouse Drive
San Diego, CA 92121

Attention : Bob Horner
Project : TRA

On May 1, 1987, Analytical Technologies, Inc. received one (1) water and three (3) soil samples for analyses. The samples were analyzed for polychlorinated biphenyls.

The polychlorinated biphenyls were analyzed using gas chromatography/electron capture detection in accordance with EPA methods 608 (water) and 8080 (soil).

The results of these analyses and the quality control data are enclosed.

Patricia A. Schroder
GC Supervisor

For: Richard M. Amano
Laboratory Manager

PS:bc

Note: The samples from this project will be disposed of thirty (30) days from the date of this report. If an extended storage period is required, please contact our sample control department before the scheduled disposal date.

ORGANIC ANALYSIS DATA SHEET
PCB

CLIENT : WESTEC SERVICES
PROJECT: TRA
CLIENT I.D: W153
METHOD NO.: EPA 608
TECHNIQUE: GC/ECD
SAMPLE MATRIX: WATER
DILUTION: 10

DATE SAMPLED: 05-01-87
DATE RECEIVED : 05-01-87
DATE EXTRACTED: 05-06-87
DATE ANALYZED: 05-18-87
UNITS: ug/L

PARAMETER	DETECTION LIMIT	RESULT ✓
AROCHLOR 1016	6.8	U
AROCHLOR 1221	6.8	U
AROCHLOR 1232	6.8	U
AROCHLOR 1242	6.8	U
AROCHLOR 1248	6.8	22
AROCHLOR 1254	6.8	U
AROCHLOR 1260	6.8	U

U indicates the compound was analyzed for but not detected.

ATI I.D. 70501202

ORGANIC ANALYSIS DATA SHEET
PCB

CLIENT : WESTEC SERVICES
PROJECT: TRA
CLIENT I.D: W149
METHOD NO.: EPA 8080
TECHNIQUE: GC/ECD
SAMPLE MATRIX: SOIL
DILUTION: 50

DATE SAMPLED: 05-01-87
DATE RECEIVED : 05-01-87
DATE EXTRACTED: 05-16-87
DATE ANALYZED: 05-18-87
UNITS: mg/Kg

PARAMETER	DETECTION LIMIT	RESULT ✓
AROCHLOR 1016	50	U
AROCHLOR 1221	50	U
AROCHLOR 1232	50	U
AROCHLOR 1242	50	U
AROCHLOR 1248	50	140
AROCHLOR 1254	50	130
AROCHLOR 1260	50	U

U indicates the compound was analyzed for but not detected.

ORGANIC ANALYSIS DATA SHEET
PCB

CLIENT : WESTEC SERVICES
PROJECT: TRA
CLIENT I.D: S146
METHOD NO.: EPA 8080
TECHNIQUE: GC/ECD
SAMPLE MATRIX: SOIL
DILUTION: 1000

DATE SAMPLED: 05-01-87
DATE RECEIVED : 05-01-87
DATE EXTRACTED: 05-16-87
DATE ANALYZED: 05-18-87
UNITS: mg/Kg

PARAMETER	DETECTION LIMIT	RESULT ✓
AROCHLOR 1016	1000	U
AROCHLOR 1221	1000	U
AROCHLOR 1232	1000	U
AROCHLOR 1242	1000	U
AROCHLOR 1248	1000	2100
AROCHLOR 1254	1000	U
AROCHLOR 1260	1000	U

U indicates the compound was analyzed for but not detected.

ATI I.D. 70501204

ORGANIC ANALYSIS DATA SHEET
PCB

CLIENT : WESTEC SERVICES
PROJECT: TRA
CLIENT I.D: S141
METHOD NO.: EPA 8080
TECHNIQUE: GC/ECD
SAMPLE MATRIX: SOIL
DILUTION: 1

DATE SAMPLED: 05-01-87
DATE RECEIVED : 05-01-87
DATE EXTRACTED: 05-16-87
DATE ANALYZED: 05-18-87
UNITS: mg/Kg

PARAMETER	DETECTION LIMIT	RESULT
AROCHLOR 1016	1.0	U
AROCHLOR 1221	1.0	U
AROCHLOR 1232	1.0	U
AROCHLOR 1242	1.0	U
AROCHLOR 1248	1.0	U
AROCHLOR 1254	1.0	U
AROCHLOR 1260	1.0	U

U indicates the compound was analyzed for but not detected.

ATI I.D. 705012RB

ORGANIC ANALYSIS DATA SHEET
PCBCLIENT : WESTEC SERVICES
PROJECT: TRA
SAMPLE I.D: REAGENT BLANK
METHOD NO.: EPA 608
TECHNIQUE: GC/ECD
SAMPLE MATRIX: WATER
DILUTION: 1DATE SAMPLED: N/A
DATE RECEIVED : N/A
DATE EXTRACTED: 05-06-87
DATE ANALYZED: 05-16-87
UNITS: ug/L

PARAMETER	DETECTION LIMIT	RESULT
AROCHLOR 1016	1.0	U
AROCHLOR 1221	1.0	U
AROCHLOR 1232	1.0	U
AROCHLOR 1242	1.0	U
AROCHLOR 1248	1.0	U
AROCHLOR 1254	1.0	U
AROCHLOR 1260	1.0	U

U indicates the compound was analyzed for but not detected.

ATI I.D. 705012RB

ORGANIC ANALYSIS DATA SHEET
PCB

CLIENT : WESTEC SERVICES
PROJECT: TRA
SAMPLE I.D: REAGENT BLANK
METHOD NO.: EPA 8080
TECHNIQUE: GC/ECD
SAMPLE MATRIX: SOIL
DILUTION: 1

DATE SAMPLED: N/A
DATE RECEIVED : N/A
DATE EXTRACTED: 05-16-87
DATE ANALYZED: 05-17-87
UNITS: mg/Kg

PARAMETER	DETECTION LIMIT	RESULT
AROCHLOR 1016	1.0	U
AROCHLOR 1221	1.0	U
AROCHLOR 1232	1.0	U
AROCHLOR 1242	1.0	U
AROCHLOR 1248	1.0	U
AROCHLOR 1254	1.0	U
AROCHLOR 1260	1.0	U

U indicates the compound was analyzed for but not detected.

ATI I.D. 705012

 QUALITY CONTROL DATA
 MATRIX SPIKE/MATRIX SPIKE DUPLICATES

 CLIENT : WESTEC SERVICES
 PROJECT: TRA
 SAMPLE I.D. : REAGENT WATER

 SAMPLE MATRIX: WATER
 UNITS: ug/L

COMPONENT	SPIKE ADDED	1ST RESULT	1ST RESULT'S % REC. *	2ND RESULT	2ND RESULT'S % REC.	RPD (%) **
PCB 1260	1000	1013	101	1065	107	5.8

$$* \% \text{ RECOVERY} = \frac{(\text{SPIKE SAMPLE RESULT})}{\text{SPIKE ADDED}} \times 100$$

$$** \text{ RPD (RELATIVE PERCENT DIFFERENCE)} = \frac{1\text{ST RESULT} - 2\text{ND RESULT}}{\text{AVERAGE RESULT}} \times 100$$

ATI I.D. 705012

 QUALITY CONTROL DATA
 MATRIX SPIKE/MATRIX SPIKE DUPLICATES

 CLIENT : WESTEC SERVICES
 PROJECT: TRA
 SAMPLE I.D. : 70414303

 SAMPLE MATRIX: SOIL
 UNITS: mg/Kg

COMPONENT	SPIKE ADDED	1ST RESULT	1ST RESULT'S % REC. *	2ND RESULT	2ND RESULT'S % REC.	RPD (%) **
PCB 1260	1.0	0.95	95	1.03	103	8.2

$$* \% \text{ RECOVERY} = \frac{(\text{SPIKE SAMPLE RESULT})}{\text{SPIKE ADDED}} \times 100$$

$$** \text{ RPD (RELATIVE PERCENT DIFFERENCE)} = \frac{1\text{ST RESULT} - 2\text{ND RESULT}}{\text{AVERAGE RESULT}} \times 100$$



ATI I.D. 705194

June 8, 1987

Westec Services
5510 Morehouse Drive
San Diego, CA 92121

Attention : Bob Horner
Project : TRA
P.O. No. : 37091

On May 28, 1987, Analytical Technologies, Inc. received two (2) oil samples for analyses. The samples were analyzed for polychlorinated biphenyls.

The polychlorinated biphenyls were analyzed using gas chromatography/electron capture detection in accordance with EPA method 8080.

The results of these analyses and the quality control data are enclosed.

Patricia A. Schroder
GC Supervisor

Richard M. Amano
Laboratory Manager

PS:sh

Note: The samples from this project will be disposed of thirty (30) days from the date of this report. If an extended storage period is required, please contact our sample control department before the scheduled disposal date.

ORGANIC ANALYSIS DATA SHEET
PCB

CLIENT : WESTEC SERVICES
PROJECT: TRA 37091
CLIENT I.D: 145L-1
METHOD NO.: EPA 8080
TECHNIQUE: GC/ECD
SAMPLE MATRIX: OIL
DILUTION: 10000

DATE SAMPLED: 05-28-87
DATE RECEIVED : 05-28-87
DATE EXTRACTED: 06-01-87
DATE ANALYZED: 06-04-87
UNITS:mg/Kg

PARAMETER	DETECTION LIMIT	RESULT ✓
AROCHLOR 1016	10000	U
AROCHLOR 1221	10000	U
AROCHLOR 1232	10000	U
AROCHLOR 1242	10000	U
AROCHLOR 1248	10000	26000
AROCHLOR 1254	10000	U
AROCHLOR 1260	10000	U

U indicates the compound was analyzed for but not detected.

ORGANIC ANALYSIS DATA SHEET
 PCB

 CLIENT : WESTEC SERVICES
 PROJECT: TRA 37091
 CLIENT I.D: 145-3
 METHOD NO.: EPA 8080
 TECHNIQUE: GC/ECD
 SAMPLE MATRIX: OIL
 DILUTION: 100

 DATE SAMPLED: 05-28-87
 DATE RECEIVED : 05-28-87
 DATE EXTRACTED: 06-01-87
 DATE ANALYZED: 06-04-87
 UNITS: mg/Kg

PARAMETER	DETECTION LIMIT	RESULT
AROCHLOR 1016	100	U
AROCHLOR 1221	100	U
AROCHLOR 1232	100	U
AROCHLOR 1242	100	U
AROCHLOR 1248	100	220
AROCHLOR 1254	100	U
AROCHLOR 1260	100	U

U indicates the compound was analyzed for but not detected.

ATI I.D. 705194RB

ORGANIC ANALYSIS DATA SHEET
PCBCLIENT : WESTEC SERVICES
PROJECT: TRA 37091
CLIENT I.D: REAGENT BLANK
METHOD NO.: EPA 8080
TECHNIQUE: GC/ECD
SAMPLE MATRIX: OIL
DILUTION: 1DATE SAMPLED: N/A
DATE RECEIVED : N/A
DATE EXTRACTED: 06-01-87
DATE ANALYZED: 06-03-87
UNITS:mg/Kg

PARAMETER	DETECTION LIMIT	RESULT
AROCHLOR 1016	1.0	U
AROCHLOR 1221	1.0	U
AROCHLOR 1232	1.0	U
AROCHLOR 1242	1.0	U
AROCHLOR 1248	1.0	U
AROCHLOR 1254	1.0	U
AROCHLOR 1260	1.0	U

U indicates the compound was analyzed for but not detected.

ATI I.D. 705194

 QUALITY CONTROL DATA
 MATRIX SPIKE/MATRIX SPIKE DUPLICATES

 CLIENT : WESTEC SERVICES
 PROJECT: TRA 37091
 SAMPLE I.D. : 70407401

 SAMPLE MATRIX: OIL
 UNITS: mg/Kg

COMPONENT	SPIKE ADDED	1ST RESULT	1ST RESULT'S % REC. *	2ND RESULT	2ND RESULT'S % REC.	RPD (%) **
AROCLOR 1260	1.0	0.91	91	0.91	92	1.1

$$* \% \text{ RECOVERY} = \frac{(\text{SPIKE SAMPLE RESULT})}{\text{SPIKE ADDED}} \times 100$$

$$** \text{ RPD (RELATIVE PERCENT DIFFERENCE)} = \frac{1\text{ST RESULT} - 2\text{ND RESULT}}{\text{AVERAGE RESULT}} \times 100$$



Analytical Technologies, Inc.
 San Diego • Phoenix • Seattle

Chain of Custody

DATE 5-25-87 PAGE 1 OF 1

PROJECT INFORMATION				SAMPLE RECEIPT				ANALYSIS REQUEST													RELINQUISHED BY		
PROJECT:	TOTAL NO. OF CONTAINERS	CHAIN OF CUSTODY SEALS	REC'D GOOD CONDITION/COLD	CONFORMS TO RECORD	LAB NO.	RELINQUISHED BY (Signature)	RELINQUISHED BY (Time)	RELINQUISHED BY (Date)	RECEIVED BY (Signature)	RECEIVED BY (Time)	RECEIVED BY (Date)	RECEIVED BY (Company)	RECEIVED BY (Laboratory)	RECEIVED BY (Signature)	RECEIVED BY (Time)	RECEIVED BY (Date)	RECEIVED BY (Company)						
TAA	2					<i>[Signature]</i>	4:15		<i>[Signature]</i>				2	<i>[Signature]</i>				3					
PQ NO. 37091						<i>[Signature]</i>			<i>[Signature]</i>				1	<i>[Signature]</i>				2					
SHIPPING ID. NO.						<i>[Signature]</i>			<i>[Signature]</i>				1	<i>[Signature]</i>				2					
VIA: HAND CARRY						<i>[Signature]</i>			<i>[Signature]</i>				1	<i>[Signature]</i>				2					
SPECIAL INSTRUCTIONS/COMMENTS: Analyze sediment component of sample 145-3																							
PROJ. MGR. <i>[Signature]</i>	ANALYSIS REQUEST																	RELINQUISHED BY (Signature)	RELINQUISHED BY (Time)	RELINQUISHED BY (Date)			
COMPANY WESTEC	GC/MS/ 625/8270	GC/MS/ 624/8240	PESTICIDES/PCB	608/8080	POLYNUCLEAR AROMATIC 610/8310	PHENOLS, SUB PHENOLS 604/8040	HALOGENATED VOLATILES, 601/8010	AROMATIC VOLATILES 602/8020	TOTAL ORGANIC CARBON 415/9060	TOTAL ORGANIC HALIDES 9020	PETROLEUM HYDROCARBONS 418	PRIORITY POLLUTANT METALS (13)	CAM METALS (18)	TITANIUM	ETOX METALS (18)	SWA, INORGANICS PRIMARY/SECONDARY	HAZARDOUS WASTE PROFILE	NUMBER OF CONTAINERS					
ADDRESS			X	X														1					
SAMPLERS (SIGNATURE)																		1					
DATE	145L-1	145-3																					
TIME	5/28	5/28																					
MATRIX	Soil	Soil																					
LAB ID.																							
PHONE NO.																							

DISTRIBUTION: WHITE, CANARY - ANALYTICAL TECHNOLOGIES, INC. • PINK - ORIGINATOR
 ATL LABORATORIES: SAN DIEGO (619) 468-8141 PHOENIX (602) 436-1520

SECTION 4

FIELD NOTES

This section contains the field notes compiled by TRA's consultant, WESTEC Services, Inc. (WESTEC), for storm drain related sampling and cleanup activities between September 1, 1986 and July 2, 1987. TRA staff did not compile any storm drain related field notes during this time period.

The field notes fall into three categories. The first category is field notes compiled during the EPA TSCA Inspection (9/30/86-10/2/86). The second category is field notes compiled during storm drain cleaning activities (10/22/86-10/27/86). Notes from additional storm drain cleaning activities, which took place between November 30 through December 1, 1986, have previously been reported in a letter dated December 3, 1986, from TRA to Mr. David Barker of the RWQCB. The third category is field notes compiled during storm drain sampling activities (2/13/87, 5/1/87, 5/28/87).

The field notes are presented in chronological order.

TSCA Inspection
30 September 1986
9-30-86

Field Notes
PAGE 1

WRITTEN/LOGGED BY:

COLIN YOUNG
SENIOR SCIENTIST

IDENTIFICATION OF:

4" DRAIN IN Bldg #120 E
3" " " " " "
4'x3' BASIN FILLED w/oil
? " " " "

3:45 (1545) COMMENCED WITH SAMPLING AT BASIN #153 OF THE TRA 15/30 LINE.

EPA SAMPLING TEAM OF:

- FRANCES SCHULTZ - ENVIR. SCIENTIST - SAMPLER
- DRESSED IN SARANEX TYVEK, PE. BOOTIES, NITRILE GLOVES (TAPED TO SLEEVE), FULL FACE/DUAL-CARTRIDGE RESP. w/ORGANIC VAPOR CARTRIDGE
- AYN SCHMIT - NOTES
- DRESSED IN REG. TYVEK, VINYL DISP. GLOVES

OTHER ATTENDEES: JOHN PALMER - TRA
DAVID BARKER - CRWQCB
SCOTT HUGENBERGER - CRWQCB
BRIAN KELLEY - CRWQCB

3:55 SAMPLE ACQUISITION WITH A CHROME PLATED TROWEL INITIALLY COVERED WITH ALUMINUM FOIL. CLEANED UNDER LOT # 413304 (CLEANED) BY I-CHEM (ANY QA?)

- ACQUISITION FROM SOUTH-EASTERN WALL/CORNER OF BASIN
- COLLECTED IN A 7-11 PAPER CUP (APPROX 28 OZ.). VOLUME OF SOIL COLLECTED ~ 6 OZ.

3:58 - HOMOGENIZED IN CUP WITH TROWEL, DISPERSED TO:
WITH TONGUE DEPRESSOR

7oz. JAR; LOT # 45360032	FOR EPA	SAMPLE # AS.09C
4oz. JAR; LOT # 45360032	FOR TRA	SAMPLE # AS.09C
8oz. JAR; LOT # NONE	FOR CRWQCB	SAMPLE # AS.09C

4:02

* REMAINDER SOIL FROM CUP⁴² AND SPILL ON CONCRETE
P.T. BACK IN DRAIN

(CONT.)

- PAPER CUP & DEPRESSOR DISPOSED w/ TROWEL IN BAG (RETAINED)

- ALL SAMPLES SEALED WITH CUSTODY SEAL PACKAGED IN ZIP-LOCK BAGS - STORED IN COOLER (NO ICE)

4:20 (1610) MOVED TO BASIN # ONE FORTY FIVE (145) OF 15/30 LINE

SAMPLER USED NEW GLOVES/BOOTS/TROWEL (LOT # 413304) SEAL BROKEN

1:23 - ACQUISITION FROM BOTTOM; 10" FROM SOUTH WALL; FROM 3 POINTS WEST TO EAST.

- SLIGHTLY LESS ACQUISITION VOLUME (~6 oz.)

1:26 - HOMOGENIZED AND DESIGNATED TO JARS USING SAME METHODOLOGY AS IN BASIN # 153

1:28-	4oz JAR	LOT # 45360032	FOR EPA	SAMPLE # AS.0191
4:32	4oz JAR	LOT # 45360032	" TRA	" " AS.0192(B)
	8oz JAR	LOT # NONE	" CRWQCB	" " AS.0191(C)

SAME CLOSURE/DISPOSAL PROCEDURE AS BASIN # 153

STORED IN UNREFRIDGERATED COOLER

MOVED TO BASIN # 144 OF TRA 15/30 LINE

1:45 ACQUISITION FROM BOTTOM, E-W CENTER FOR 1/2' NORTH FROM SOUTH WALL. PLENTY OF MATERIAL TROWEL LOT # 413301

~4:50 HOMOGENIZED IN SAME METHOD AS BASIN # 153 DISPERSED TO JARS WITH TROWEL

4oz JAR	LOT # 74347072	FOR EPA	SAMPLE # AS.0192
4oz "	" "	FOR EPA (DUP)	AS.0194
4oz "	" "	FOR TRA	AS.0192(B)
4oz "	" "	FOR TRA (DUP)	AS.0194(B)
8oz "	NONE	FOR CRWQCB	AS.0192(C)
8oz "	NONE	FOR CRWQCB (DUP)	AS.0194(C)

(T.)
ALL CLEAN-UP/DISPOSAL/STORAGE ; SAME AS #153

MOVED TO BASIN #142 w/in BLDG #128 AT TRA 5/30 LINE

- 5:20 TROWEL LOT # 413301 USED FOR ACQUISITION
6:03 ACQUISITION COMMENCES. FROM SOUTHERN & CENTRAL PORT
OF BASIN (DIRECTLY BELOW ELBOW PIPE). DRY
6:05 HOMOGENIZED USING SAME METHODOLOGY IMPLEMENTED AT
BASIN #153
DISPERSED WITH TROWEL
- 6:10 4oz. JAR; LOT # 45360032 FOR EPA SAMPLE # AS.0193
4oz. JAR; LOT # 45360032 " TRA " AS.0193(B)
3oz. JAR; LOT # NONE " CRWQCB " AS.0193(C)

ALL DISPOSAL/CLEAN-UP/TAGGING & STORAGE ; SAME AS BASIN #153

MOVED TO BASIN #140 w/in BLDG #128

- 6:25 SOIL ACQUISITION BEGINS FROM BELOW PIPE WITH
TROWEL (LOT # 413304). WET MEDIUM
SEAL BROKEN
- 6:26 HOMOGENIZED WITH TROWEL USING BASIN METHODOLOGY
OF BASIN #153
- 6:30 DISPERSED WITH TROWEL
- 4oz. JAR, LOT # 45360032 FOR EPA SAMPLE # AS.0195
4oz. JAR, " " " TRA " AS.0195(B)
3oz. JAR, LOT # NONE " CRWQCB " AS.0195(C)

ALL DISPOSAL/CLEAN-UP/TAGGING & STORAGE ; SAME AS BASIN #153

227

53 MOVED TO NEWLY IDENTIFIED PIPE INSIDE BLDG #120; 30 FT DUE WEST OF THE ENTRANCE BETWEEN BLDG NOS. #128 & 112

7:00 pm ACQUISITION BEGINS WITH TROWEL (LOT # 413304)
- CHANGED MIND, DECIDED TO USE TONGUE DEPRESSORS.
- CHANGED MIND, BACK TO TROWEL.

OBTAINED SOIL FROM SETTLING RING AROUND PIPE w/ TROWEL

7:05 HOMOGENIZED WITH TROWEL (SEE METHOD FROM #153)

7:06	4oz. jar	Lot # G6036292	FOR EPA	SAMPLE # AS.0196
	4oz. jar	Lot # G6036292	FOR TRA	" AS.0196(B)
	8oz. jar	Lot # NONE	FOR CRWQCB	" AS.0196(C)

ALL DISPOSAL/CLEAN-UP/TAGGING & STORAGE SAME AS METHOD USED AT BASIN #153

7:15 MOVED TO NEWLY IDENTIFIED PIPE INSIDE BLDG #120; APPROX 45 FT DUE WEST OF PREVIOUSLY IDENTIFIED AND SAMPLED PIPE. PIPE LOCATED IN SE CORNER OF 1.5' X 1.5' X 1.5' BASIN. SOIL WITHIN 7 DRY

7:18 ACQUISITION BEGINS w/ TROWEL (LOT # 413304) ^{SEAL BROKEN}
OBTAINED SOIL FROM DIRECTLY AROUND PIPE

7:20 HOMOGENIZED SAMPLE w/ TROWEL

7:23	4oz. jar	Lot # G6036292	FOR EPA	SAMPLE # AS.0197
	4oz. jar	Lot # G6036292	FOR TRA	" AS.0197(B)
	8oz. jar	Lot # NONE	FOR CRWQCB	" AS.0197(C)

ALL DISPOSAL/CLEAN-UP/TAGGING & STORAGE; SAME AS BASIN #153

7:35 FINISHED - ALL SAMPLES RETAINED BY EPA UNTIL THE OCT. 1 SAMPLING ROUND IS COMPLETE
SAMPLES NOT REFRIGERATED.

OCTOBER 1, 1986

NOTES BY COLIN P. YOUNG

7:00 AM ARRIVED AT SITE, MET WITH:

JOHN PALMER - TRA
Ayn SCHMIT - EPA
FRANKS SCHULTZ - EPA
BRIAN KELLEY - CRWQCB
SCOTT HUGENBERGER - CRWQCB

7:30 SCOTT HUGENBERGER RETAINED CUSTODY OF THE SAMPLES OBTAINED ON 9-30-86 FOR CRWQCB AND LEFT THE SITE TO RETURN THEM TO THEIR LABS.

8:11 COMMENCED TO WRACO 600 TON DRY PIT W/IN BLDG #120

8:28 INITIATED SAMPLING USING TROWEL (CHROME PLATE) LOT# 413303 (SEAL BROKEN)

BASIN APPROX 6.5 FT DEEP X 10 X 10
EPA DECIDED NOT TO GO INTO THE TRENCH YET WILL TRY TO BAIL THE SAMPLE USING AN OPEN-END JAR TIED TO A STRING.

8:40 FIRST JAR BROKE IN PIT FROM THROW
8:50 SECOND JAR BROKE IN PIT FROM THROW

AN INTERNAL (TRA) MECHANIC (PAUL FESTEN) HAS DETERMINED THAT THE SUBJECT PRESS IS A "CRANK" PRESS AND THAT ANY OIL ASSOCIATED WITH THE MACHINE WOULD BE LUBE OIL. EPA NEVER INQUIRED FROM THE START AS TO WHAT TYPE OF MACHINE (OIL) WAS USED. ONCE THEY DETERMINED THAT IT WAS A LUBE ONLY MACHINE, THEY DECIDED NOT TO SAMPLE.

9:35 COMMENCED TO ERLO STRETCH PRESS.

PLAN TO SAMPLE FROM THE HYDRAULIC FLUID RESERVOIR WILL SAMPLE BY IMMERSING A JAR INTO THE RESERVOIR (LOT# 64164022).

9:40 OBTAINED SAMPLE IN A 7.5 GAL OIL CAN FROM ERLO STRETCH PRESS

(INT.)

10-1-86

HOMOGENIZED IN PAPER CUP & DISPERSED TO 53 SAMPLE JARS

9:55	4oz jar: lot# 45360032	FOR EPA	SAMPLE # AS.0198
	4oz jar. lot# "	FOR TRA	" AS.0198(B)
	8oz jar. lot# NONE	FOR CRWQCB	" AS.0198(C)

59. ALL SAMPLES ARE CUSTODY SEALED AND PLACED IN ZIP LOCK BAG.
REFUSE PLACED IN PLASTIC BAG

017 COMMENCED TO THE WILLIAMS & WHITE PRESS # 3-15015
HYDRAULIC FLUID RESERVOIR LOCATED ON TOP

0120 SAMPLE ACQUISITION VIA TAP AT RESERVOIR
SAMPLE PASSED DOWN TO 2ND EPA EMPLOYEE
(SOME SPILLAGE)

0130 SAMPLES TRANSFERRED TO SAMPLE JARS

0133	4oz ;	LOT# 45360032	FOR EPA	SAMPLE # AS.0199
	4oz ;	"	" (DUP)	" AS.0200
	4oz ;	"	FOR TRA	" AS.0199(B)
	4oz ;	"	" (DUP)	" AS.0200(B)
	8oz ;	NONE	FOR CRWQCB	" AS.0199(C)
	8oz ;	NONE	" (DUP)	" AS. 0199 0200(C)

0135 ALL SAMPLES CUSTODY SEALED AND PLACED IN ZIP LOCK BAG
REFUSE PLACED IN PLASTIC RUBBISH BAG

0148 COMMENCE TO PIT BELOW THE WILLIAMS & WHITE PRESS # 3-15015

SAMPLING INITIATED BY SUBMERSING OPEN END JAR IN PIT (LOT# 6414022)
COLLECTED IN A 7-ELEVEN PAPER CUP

DOUNDED IN SAMPLE JARS

10:54	40L JAR ; LOT # 45360032	FOR EPA	SAMPLE # AS.0201
	40L JAR ; LOT # "	FOR TRA	" AS.0201(B)
	80L JAR. LOT # NONE	FOR CRUCIB	" AS.0201(C)

SAMPLES CUSTODY SEALED AND PACKED IN ZIP-LOCK BAGS
ALL TRASH PUT IN PLASTIC BAG - SAMPLES PUT IN COOLER
SAMPLES NOT RECTIFIED.

10:57 BOB HORNER REPLACE COIN YOUNG.

- Met in proceedings at 11:48. Issue surrounds the following. As a part of the TSCA inspection and a completion of that effort 2 EPA inspectors wish to have sediment sampled from Basin # 58 and #131. The bond wishes them to sample 4 rows (154, 151, 146, 141). EPA will have glassware adequate for all the samples (2) plus two more. Subsequently for the other 2 of the sites the bond wishes to sample the jars will be supplied by the bond for municipal laboratories in Santa Rosa.

- Agreed to start sample at 7:45 on Tuesday October 2;

- Balors indicate they will turn samples around in a hurry. determine what to do as for

LOGGED BY RBH

2:29 Counsel final 2 samples that are to be collected as part of the EPA TSCA inspection. All TRASH into Basin # 131
EPA sample team desired 100 before.

Others attending
 Bob Horner David Balor
 Brian Kelly
 John Palmer

Basin # 131 lies directly over the 60" ϕ storm drain. Tidal influence reaches up to low tide and could breach the system. RWQ wishes to collect 3 samples from the walls and the inlet pipe to the Catch Basin. After discussion of tidal influence,

(I-CREM LOT#)

2:53

Cleaned travel lot # 413301 - Travell placed on ground under foot to level it to desired slope. Apparent foil cover was disturbed in this process. Soil soaked extensively.

Soil acquisition possibility from bottom of box. Travel lot 413301 used for probing the box bottom. Soil appears to be low today since a car slips into virtually full 60" ϕ system. No loose material on bottom of catch basin (2:54 pm).

2:54

(I-CREM LOT#)

Travel lot # 413303 used on sample pole to scrape soil material from sides of box wall. The lot # travel has the paint and several areas on the side and end covered by all foil. Thus the travel was subject to contamination during transit/storage.

3:02

EPA sampler worn same as Resp. Scraped south wall for soil sample. Mixed in 7/8 Big Gulp paper cup. Wall of box scraped 8-10" below concrete area opening. Within reach. Also collected material from the top rim. East wall scraped similarly. West wall also.

3:11

~~3:11~~

~~Sample analyzed in paper cup with food.~~

3:17

Sample analyzed with a wooden spatula and in the paper cup.

Samples dispensed to ASO202
ASO202(B) (TRA/WESTEC)
ASO202(C) (RWQCB)

The glass jar provided for the Bond's sample ASO202C was provided by the Bond. Bond's lab is situated in Santa Rosa. EPA's and TRA/WESTEC's sample dispensed to EPA-provided jars.

<u>403 Jars</u>	<u>Lot #</u>	<u>Sample #</u>
ICHEM Research, Inc	45360032	ASO202
"	45360032	ASO202(B)
NO LOT # for BOND-supplied jars.		ASO202(C)

Completed @
3:25

TRASH TO PLASTIC BAG. SAMPLE BOTTLES TO ZIP LOCK BAG. ~~BAG~~ Manway sealed.

3:33 MOVED TO Catch Basin #58 on the 54" ϕ line.
Health and Safety gear for Dave \rightarrow before.
Journal lot # 413303, Again Al. foil attached around around edge of the travel.

3:45 Sediment at south end of box dead on surface of cigarette/cigar butts. Sample removed beneath the pipe that runs from bed # 158.
Similarly treated effluent line at west corner of box. ϕ at North corner of the box.

* \rightarrow Collection adequate for a field duplicate.

Sample homogenized with ~~sample~~ ^{collection travel} in paper cup. Some objects removed.

continued page 6
 \downarrow
410

3:54

Samples dispersed from cup to the following jars with wooden spatula. Jar cover caps held in open by RWQCB ^{Barium Kelly} Lot # Sample #

ICHEM	Lot #	Sample #
ICHEM	45360032	
"	"	
"	"	
"	"	
2 MULTITECH JARS	NO LOT #	
"	NO LOT #	

EPA
EPA
TRA
TRA
RWQCB
RWQCB

field duplicate

4:02

Distribution of Samples

4:07

EPA - AS 0203	] B
AS 0204	
TRA/WESTEC AS 0203	] B
AS 0204	
RWQCB AS 0203	] C
AS 0204	

4:12

~~S~~ Clothing moved and placed into trash bag.

→ End of TSCA sample program.

4:18

Sample bottles packed in ziploc bags then into paint cans w/ vermiculite. ~~then~~ Had over requested for today.

02 OCTOBER 86

Sampling program requested by RWQCB and carried out with assistance of EPA. Present

- DAVID BORNER - RWQCB
- BOB HORNER - WESTEC SUGS INC.
- AYN SCHMIDT - EPA - Region 9
- FRANCIS SCHWITZ - EPA - Region 9

AM.

2:47 Commenced at TRAVIS/30 Basin # 141.

Sampler ^{and assistant} wearing same HFS Gear as on 2 October 86 and 30 September 86.

TROWER ICHERM LOT # 413302 - Again travel point and several ~~other~~ side portions with disturbed foil cover.

8:36 Sampling from floor of catch basin. Very wet sediment material and residual water. Great deal of solid waste. Extremely dirty sample. Approx 3" of sediment in the box including the water. Sediment moved to paper cup with travel cited above. Sample collected beneath 4" pipe to basin # 140 and beneath 15" to 143.

7:01 Sediment mixed in cup. Excess water poured back into the basin.

9:05 (povero) Samples dispensed to jars for 4 oz jars for EPA/ERA and to larger jar for RWQCB. RWQCB's jars signed by multi-test lab of Intalova. EPA to Chem 4 oz jars as lot # 75275012 (I Chem - Hayward). Samples allocated as follows for sediment from Basins # 140. WET jar mouths cleaned w/ chemwipes.

DATE	SAMPLE #	
10/2/86	AS0205	} EPA
"	AS0206 field dupe	
"	AS0205 B	} TRAVIS/WESTEC
"	AS0206 B field dupe	
"	AS0205 C	} RWQCB
"	AS0206 C field dupe	

9:14 - 1.20 P.D. sealed and ~~in~~ ⁴⁻¹² certain seals analyzed. Into into

9:25 Closed cover to catch Basin #141 - Invald sampling implements to trash bag.

MOVED TO TRA 15/30 Catch Basin #146.

9:37 Opened catch Basin 146. Towel lot #413302 Sample.

9:39 JOINED BY WALT POPICHA of TRA.

9:41 Sediment $\approx 1/4$ " deep. A 3" ϕ line runs to unknown origin to west. Sampled beneath this line plus the 15" ϕ feeder and effluent from box.

9:44 Sample complete. Debris and sediment mixed in paper cup for dispensing. Sample not mix very well. 15-20" record at root. Dispensed to 4" jars and with

9:47. note for RWQCB.

SAMPLE #	JAR LOT #	Receipt
AS0207	G 6036292	
AS0207 B	G 6036292	TRA/WESTEC
AS0207 C	MULTITECH LABS	RWQCB.

9:50 Jar lids handled properly by EPA assistant. Custody seals employed.

9:55 Box closed

10:00 Moved to Catch Basin #151. Contains a 2" ϕ pipe and a gate valve in the center of box. 2" ϕ pipe appears to go into interior of building #120. EPA samples dressed as previously indicated. Exterior glass changed to

Towel: 413302 lot # I-Chem. Bottom portion of foil badly broken. Exposed area includes approximately 1" sq. of uncorrod towel. EPA photograph taken.

10:08
10:09

Sample stood in center of catch Basin. Sample collected beneath East invert. Sediment depth is ≈ 3 ". Sampled seal again under west invert. Depth is again $\approx 3\frac{1}{2}$ "

10:15

Sediment supply at Box 151 continues. Again collected for mix in paper cup.

10:16

Sample mixed with pointed trowel in paper cup. \approx 1 min. Mixed again with wooden tongue depressor.

Caps OK. Held by glove assistant. Draped to jar.

10:20

Sample #	Jar lot #	Recipient
AS0208	7434 74347072	EPA
AS0208 B	74347072	TRA/WESTEC
AS0208 C	MULTITECH VOL. #	RWQCB

During sample transfer tongue depressor touched exterior of mixing cup. Attention called. ~~Sample resealed~~
~~Distribution completed~~ Distribution completed.

Custody seals replaced

10:27

Sample jars to plastic bags. Work completed.

10:29

Sample out of box. Contaminated boots and glove removed. Placed into trash.

10:30

Basin closed

10:45 Basin # 154

Trowel 413303 lot #. Again partial breakdown in field cover. Photographs taken again.

10:48

Re-gloved for sampling. One sample outer glove touched near hatch gear of automobile used for sampling. ~~Controlled~~ out/ignored. Decided to change gloves. Gloves changed.

10:52

~~Sample~~ ~~sample~~. Tongue depressor used to measure sediment depth. Decided to collect dry sediment sample beneath influent isvants. Mussel shell extracted from this location and photograph taken. was influent proof

10:58

Sample mixed in cup with SS. Trowel.

11:00

Final mix w/ tongue depressor for dispensing to
Jas. Caps handling OK.

<u>Sample #</u>	<u>Jan Lot #</u>	<u>Recipient</u>
AS0209	74347072	EPA
AS0209 B	74347072	TRA/WESTEC
AS0209 C	64164022	RWPCB

11:06

Custody seals not mailed before hand. Prepared and

11:09

imposed.

11:14

Sealed down as before. Trash to bags.

11:22

Final Photographs taken

11:25

Box Closed

END of Sampling

Waste collection bag sent to PCB storage area.

Woody Naze at IT.

Basin Sediment Sampling

DATE - 10-22-86

By Colin F. Young
Senior ScientistTIME

1500 - INFORMED BY CRWQCB THAT CUSTODY SEALS & RETENTION WOULD NOT BE ALLOWED.

- ORDERED TO OBTAIN SAMPLES OF MATERIAL REMOVED FROM BASINS THROUGHOUT THE DAY

- ORDER BY DAVID BARKER VIA SCOT HUGENBERGER

1630 - BEGAN SAMPLING CONTAINERS OF ^(MATERIAL) SAMPLES RETAINED IN BUILDING NO. 130 BY BILL KELLEY OF TRA.- SAMPLING OF ALL CONTAINERS PRECEDED BY HOMOGENIZATION. METHOD AGREED UPON BY SCOT HUGENBERGER & MYSELF; INCLUDED ~~TWO~~ ⁽²⁾ CASES: CASE #1 FOR CONTAINERS WITH SMALL VOLUME (eg.

JUST ENOUGH FOR THE AMOUNT OF SAMPLES REQUIRED

... AN ALIQUOT WOULD BE OBTAINED FROM THE CANISTER WITH A "DECONTAMINATED" ^{STAINLESS STEEL} SPOON

AND PLACED IN A STAINLESS STEEL BOWL

(NOTE - "DECONTAMINATED" = WASH IN SOLUTION OF

ALCONOX DETERGENT AND WATER, RINSE IN

CLEAN WATER, AND RINSE WITH METHANOL

HOMOGENIZATION WOULD BE ATTAINED BY MIXING WITH THE SPOON ^{FOR APPROX 5-MIN} AND PLACING ALIQUOTS INTO

THE (PRESENTLY UNASSIGNED) SAMPLE JARS

RANDOMLY. ⁴¹⁶ ONCE EACH JAR WAS FILLED, THEY

BASIN SEDIMENT SAMPLING

1986

10-22-86

Colin P. Young

WOULD AGAIN BE ASSIGNED RANDOMLY AND LABELED
- SAMPLES WOULD BE COLLECTED BY COLIN YOUNG OF
WESTEC AND PLACED IN 8 OZ, LABORATORY-
CLEANED* JARS WITH TEFLON LINED CAPS.

(LAB-CLEANED BY ATI)

- TWO 8 OZ. JARS FOR WESTEC (ONE FOR ANALYSIS,
ONE FOR ARCHIVE)

- TWO 8 OZ. JARS FOR CRDOCB (ONE FOR PCB'S,
ONE FOR METALS)

CASE #2 IF CONTAINER CONTAINED A LARGE VOLUME OF
MATERIAL, IT WOULD INITIALLY BE HOMOGEN-
IZED INSITU BY ROLLING OR SHAKE-MIXING
THE CONTAINER FOR 15 minutes (APPROX)
- THE CONTAINER WOULD THEN BE OPENED
AND PROCEDURES SPECIFIED IN CASE #1 WOULD
BE CARRIED OUT.

- SCOTT HUGENBERGER WOULD ASSIST COLIN YOUNG
WHEN NECESSARY.

- SAFETY PRECAUTIONS FOR SAMPLING?

- HALF-FACE, DUAL CARTRIDGE RESPIRATOR W/
COMBO CARTRIDGE

- REGULAR TYVEK

- NITRILE GLOVES W/ VINYL DISPOSABLE
LINERS

Basin Sediment Sampling

L-22-84

Colin P. Young

THE REMAINDER OF THESE FIELD NOTES UNLESS A VARIANCE HAS OCCURRED.

NOTE: AT THE REQUEST OF SCOTT HUGENBERGER, SAMPLE TIMES REPORTED HEREIN AFTER REFLECT THE TIME AT WHICH THE MATERIAL WAS OBTAINED FROM THE BASIN.

<u>TIME (approx)</u>	<u>SAMPLE TIME</u>	<u>BASIN #</u>	<u>SAMPLE No.</u> <u>COMB</u>
1625	15:50	148	15/30-148
1645	1525	149	15/30-149
1655	0915	154	15/30-154
1720	1030	153	15/30-153
1740	1500	150	15/30-150
810	1147	152	15/30-152
1835	1658	147	15/30-147
1900	1719	146	15/30-146
929	1410	151	15/30-151
2020	1758	145	15/30-145

All samples (sample jars) placed in zip-lock bags & retained by the representative of each est.
 Colin Young - Westec
 Scott Hugenberg - CRWQCB.

Basin Sediment Sampling

DATE - 10-22-86

By COLIN P. YOUNG
SENIOR SCIENTIST

0700 SAMPLING TO COMMENCE AS SPECIFIED IN CASE METHODS: SEE NOTES FROM 10-22-86.

ALL SAMPLING PERFORMED IMMEDIATELY FOLLOWING REMOVAL OF MATERIAL FROM BASIN

<u>TIME</u>	<u>SAMPLE TIME</u>	<u>Basin #</u>	<u>SAMPLE #</u>	<u>COMMENTS</u>
0730	0730	144	15/30-144	
0845	0820	143	15/30-143	
0930	0910	141	15/30-141	
0915	0955	140	15/30-140	
1015	0959	140	15/30-135	(Duplicate of #140)
1015	1043	142	15/30-142	

1130 BROKE FOR LUNCH - RETURN SCHED. @ 1330.

1245 MET WITH SCOTT HUGENBURGER TO COMMENCE WITH BASIN "INSITU" SAMPLING ROUND

1445 SPENT 1ST HOUR LOCATING KEY FOR ACCESS TO BASIN #173 & LOCATING OTHER SUMPS TO BE SAMPLED AS SPECIFIED IN C&A ORDER No. 869 (pg. 8 & 8)
BEGAN AT SUMP # 4-19 181 OF TRA 30"

Basin Sediment Sampling

Colin Young

10-23-86

NOTE: SAMPLE ACQUISITION & HOMOGENIZATION SAME AS SPECIFIED IN NOTES OF 10-22-86, EXCEPT...
 INITIAL ACQUISITION MADE RIGHT FROM SUMP.
 MATERIAL TAKEN FROM ALL OBTAINABLE PORTIONS OF SUMP, THEN HOMOGENIZED IN BOWL -----
 (SEE 10-22-86)

1505 - Sample No. 30-181 OBTAINED - WHITE SLUM MIXED WITH WATER & SEDIMENT

1520 - OBTAINED ACCESS TO BASIN # 173.
 - DRY BASIN WITH NO OBTAINABLE MATERIAL TO OBTAIN (DRY = SEDIMENT ONLY / BASIN CONTAINED 6" WATER)
 SCOTT AGREED THAT WE SHOULD SAMPLE FROM BASIN # 172

1612 - Sample No. 30-172. OBTAINED - APPEARED CLEAN

1630 - FINISHED SAMPLING FOR THE DAY. SIGNED SPLIT SAMPLES FOR CRUCCB TO SCOTT HUGENBERGER.
 WESTEC RETAINS COPY OF CHAIN OF CUSTODY

BASIN SEDIMENT SAMPLING

DATE: 10-24-86

By: Colin P. Young
SENIOR SCIENTIST

- 0730 - MET w/ SCOTT HUGENBURGER OF CRWQCB.
- COMMENCED TO BASIN # 130 OF TRA 60" LINE
- BASIN CONTAINS 18+ " OF MATERIAL
- 3 SAMPLES TO BE TAKEN
 - 60-130-1 → 0-6"
 - 60-130-2 → 6-12"
 - 60-130-3 → 12-18"

PROCEDURE FROM 10-23-86 FOLLOWED (Pg. 2-TOP) (ALL SAMPS.)

- 0755 - SAMPLE # 60-130-1 OBTAINED - DIRT
- 0800 - TOP 6" OF MATERIAL REMOVED FROM THE BASIN WITH A SHOVEL AND PLACED ON PLASTIC BAGS OUTSIDE OF THE BASIN. AN ALIQUOT WAS RETAINED & PUT IN ~~PAN~~ STAINLESS STEEL PAN. DIGGING COMMENCED TO THE 12" TO 18" LAYER AND AN ALIQUOT WAS RETAINED IN A SEPERATE PAN

- 0830 SAMPLE # 60-130-2 OBTAINED USING "GRAB" METHOD
- " " 60-130-3 OBTAINED USING "GRAB" METHOD

CHECKED IN TO CLEAN-CREW NEAR BASIN #141
COMMENCED TO BASIN #91

- 1000 SAMPLE # ~~60-91~~ ⁴⁻²¹ 60-91 OBTAINED w/ "GRAB" METHOD FROM BASIN

Basin Sediment Sampling

Colin P. Young

10-24-86

- 1010 - COMMENCED TO BASIN #92.
NO OBTAINABLE MATERIALS INSIDE - SCOTT
HUGENBURGER CONCURS
- COMMENCED TO BASIN #132
- 1024 - OBTAINED SAMPLE #60-132 USING A CORE
SAMPLER W/ EXTENSION, PRE-DECONTAMINATED
USING SAME METHOD SPECIFIED IN NOTES: 10-22-86
CPY.
- 1045 - MOVED TO 54" LINE TO AREA OF BASINS #58, 57, 56,
55 - T
- 1100 - DECIDED TO COMMENCE TO ~~Basin 124~~ ~~Basin 124~~ - RANKID SMELL/OILY
- 1135-45 - COLLECTED SAMPLE NOS. 60-124 & 60-125 (DUPLICATE) W/ CORE SAMPLER
- 1215 - BEGAN WITH SAMPLE PREP. & BASIN PREP. AT BASIN #5
YELLOW MATERIAL CONTAINED IN BASIN 57 BELIEVED
TO BE PAINT CONTAINING CADMIUM
- 1230 - OBTAINED SAMPLE No. 54-57 FROM BASIN #57
VERY DRY MATERIAL
- 139 - OBTAINED SAMPLE No. 54-56 FROM BASIN #56.
- 134 - OBTAINED SAMPLE No. 54-55 FROM BASIN #55.
- 1315 - SCOTT HUGENBER COMMENCED WITH SAMPLING OF BASIN
#66 WHILE I WENT TO HAVE THE CORE SAMPLER
STEAM-CLEANED FOR USE ON BASIN #67

BASIN SEDIMENT SAMPLING

10-24-86

Colin P. Young

- 1100 SCOTT HUGENBERGER SAMPLES BASIN # 66
SAMPLE # 54-66 OBTAINED
137. USING THE EXTENDED CORE SAMPLER, SAMPLE
NO. 54-67 OBTAINED
- 1455 NOTED MISSING BASIN # 58 - LOCATED ADDITIONAL BASINS
1530 RETURNED TO BASIN # 58
- 1619 SAMPLE NO. 54-58 OBTAINED
- 10:45. CALL IT A DAY! SPLITS FOR CRWQCB SIGNED
OVER TO SCOTT HUGENBERGER. WESTEC RETAINS
COPY OF CHAIN-OF-CUSTODY.

All samples TAKEN & RECEIVED BY ATI

NOTE: BASIN # 133 FULL OF WHITE WATER. TOO
DEEP TO BE SAMPLED. ACQUISITION ATTEMPT
TO BE MADE BY FRANK KINGERY (WESTEC) ON
10-25-86 DURING EVACUATION & CLEANOUT OF
BASIN.

10-27-86

Basin Sediment Sampling

Colin P. Young
Senior Scientist

- 0930 - Met Scott Hugenberg at front gate
- Obtained decontaminating materials & commenced to Basin # 102 of the TIRA 60' line
- Refer to previously described sampling & decontamination procedures (copy notes: 10-22-86 → 10-24-86)
- 0950 - Obtained Sample No. 60-102 from Basin # 102 (in-situ)
- 1110 - Returned to 54" line & Basin # 64
- 1025 - Using the extended core sampler, obtained Sample No. 54-64
- 1035 - Commenced to Basin # 45 - inaccessible
- 1045 - Commenced to Basin # 47
- 1100 - Obtained Sample Nos # 54-47 & # 54-470 (duplicate)
- 1115 - Commenced to Basin # 43 (deep)
- 1145 - Obtained sample with extended core sampler, Sample # 54-43
- 130 - Commenced to Basin # 21 near the metal shavings waste area. Basin clearly contains large amounts of these wastes.

10-27-84

BASIN SEDIMENT SAMPLING

Colin P. Young

1224 OBTAINED SAMPLE No. SY-21

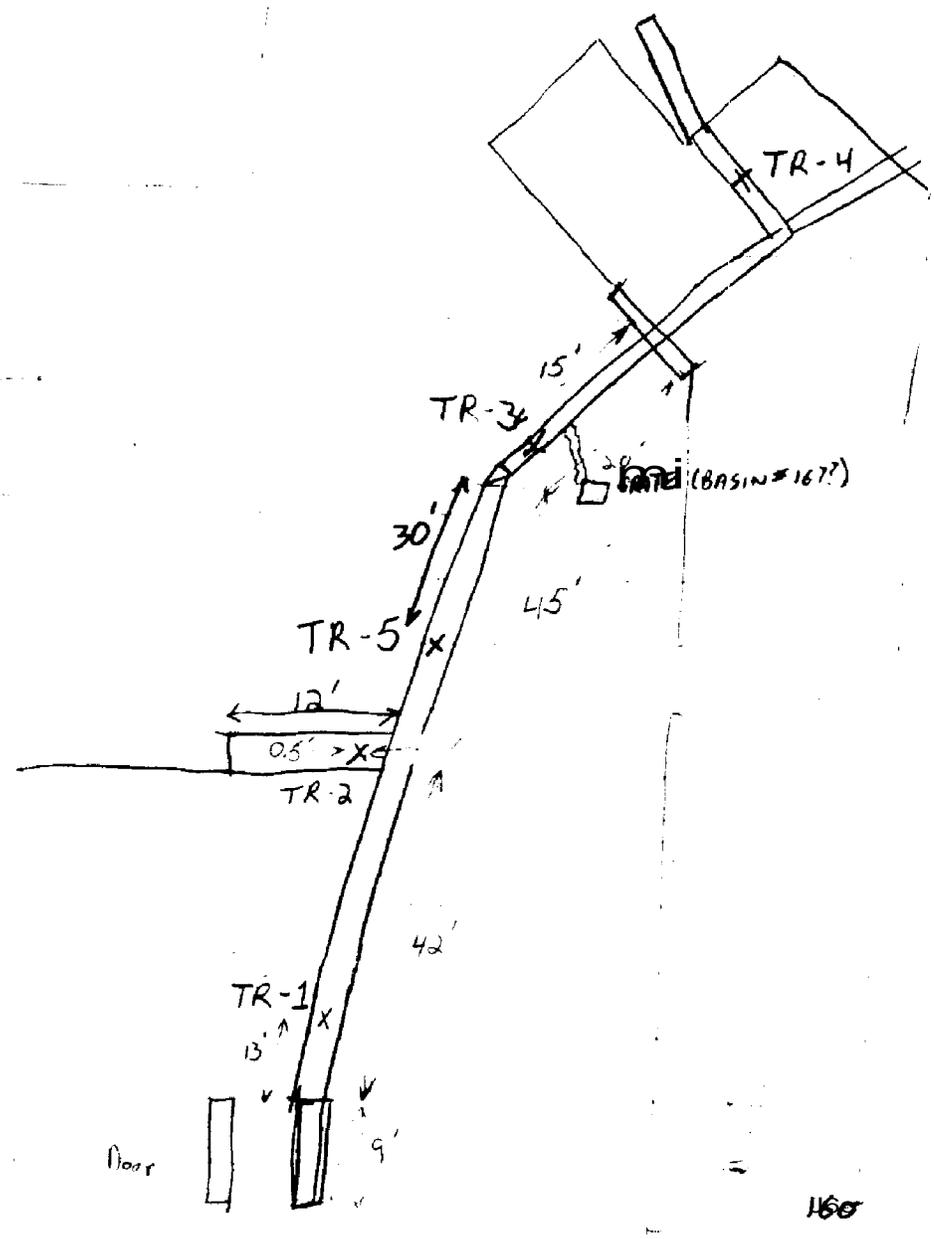
1300 FINISHED SAMPLING - RELINQUISHED SPLITS FOR
CRWQCB TO SCOTT HUGENBERGER. RETAINED COPY
OF CHAIN-OF-CUSTODY.

145 DELIVERED TO ATE & RECEIVED

12/15/87

STORM DRAIN SAMPLING ACTIVITIES

p. 1



169

FR-1
TR-2
IDT-1

Composite
Composite
Composite

Time
005
015
1025

DESCR
Dark soil, metal fragments
Dark soil, only
Crust removed 54/215 look like
regular 14 brown dirt

2/13/87

~~LAB~~

p. 2

Kirk site - Tin, Zinc, & a little Pb
(from foundry workers) harder than Pb, up
to 25 people @ one time

TR-3 Composite (3 locs) 1100

Very dark soil
Maybe $\frac{1}{2}$ " - $\frac{3}{4}$ " sediment above concrete
Top moist very dark; bottom dry, mixed gray & brown
appears fairly sandy

TR-4 Composite (4 locs) 1110

About $\frac{1}{2}$ " - 1" sediment. May have been smell when
first opened up the cover. Logjam due to wood rags in
drain @ end of first section

TR-5 Composite (3 locs)

Very black sediment on top. About 1" thick.
Concrete underneath sediment. Lower sediments
were mixed gray and light brown. Mixed coarse
& sediments

Notes from 5/1/87, TRA

Date: 5/1/87 approx 2pm STORM DRAIN SAMPLING ACTIVITIES

Field personnel: T. Tullio; Monte Frankel; WESTEC Services Inc.
By Monte Frankel, WESTEC Services, Inc.

Time

14:13

Basin #153 contained some standing water but no collection of sediments. A glass quart jar was filled with water by dipping it into the basin. The jar was immediately sealed, labeled and placed in ~~the~~ cooler on ice for shipment to the laboratory.
Sample ID# W153

14:25

Basin #149 contained standing water and some solid debris at bottom. ~~A~~ glass quart jar was filled 3/4 full of the sediment and topped off with water. The jar was then sealed, labeled and placed in ~~the~~ cooler on ice for shipment to the laboratory.
Sample ID # W149

14:35

Basin #146 was dry and contained some sediment. A sample of this sediment was obtained with a ^{decontaminated} ~~metal~~ trowel and placed in a 4-ounce glass jar. The jar was then sealed, labeled and placed in the cooler on ice for shipment to the laboratory.
Sample ID # S 146

14:48

Basin #141 was full of a brown pudding-like sludge. A glass quart jar was filled with the sludge using a decontaminated trowel. The jar was sealed, labeled and placed on ice in the cooler for shipment to the laboratory.
Sample ID # S141

(2)

When samples were obtained: Sampler (M. Frankel) wore Tyvek suit, 2 pairs of gloves, rubber boots and eye protection. Gratings on bars were removed with a pickaxe. Sampler then reached into drain and obtained liquid and solid samples. Decontamination of tools, etc involved scrubbing with alconox cleaning solution followed by rinsing with deionized water. A total of four samples from four basins were obtained on 5/1/87.

Moto Frankel
WRITER

Note: Prepared in office subsequent to field collection activities.
Preparation Date: 5/4/87

STORM DRAIN SAMPLING ACTIVITIES
5-28-87 RStum

Butch suited up to inspect the lines connected to Basin #145. The sediment appears light colored, but when removed the under side is black and looks though it could contain oil. Sides of basin are stained black approx 6" up from the bottom. The basin contains very little sediment, 2"-3" of water with an oily sheen on top. The pipes have a sediment line in them which corresponds to the top of the black stain in the basin - high-water mark?

1403 PDT Sampled black sediment from in-coming line (north) of Basin 145. Sample ID# 1454-1

1407 PDS Sampled sediment from bottom of Basin 145 - black, oily, with a lot of debris. Sample ID# 145-3

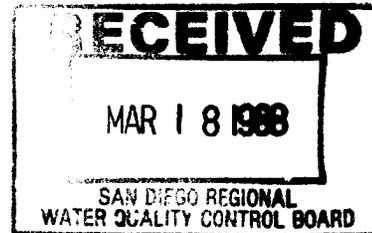
LAND USE &
ENVIRONMENTAL LAW
*also admitted in
ALASKA & MASSACHUSETTS

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March 18, 1988

David Barker
Regional Water Quality Control Board
9771 Clairemont Mesa Boulevard
Suite B
San Diego, CA 92124



RE: Response to Staff's Second Request for Information under
RWQCB Order 88-27

Dear Mr. Barker:

Pursuant to our conversations of 3/11 and 3/16 I am providing you with information on behalf of Paco Terminals, Inc. relating to your effort to determine the appropriate amount of Administrative Civil Liability (ACL) to be assessed against Paco.

In determining the amount of civil liability to be imposed the RWQCB is bound by the guidelines set out in the California Water Code Section 13351 and/or Section 13385. As you know, we believe that the only Section which legally can be applied to Paco for assessment of an ACL is Water Code Section 13350 et seq. It is my understanding that an opportunity to discuss this matter with RWQCB counsel will take place on Tuesday, March 22nd.

Water Code Section 13351 provides that the following issues shall be considered in determining the amount of the ACL:

- (1). The nature, circumstance, extent, and gravity of the violation or violations;
- (2). Whether the discharge is susceptible to clean-up and abatement; and,
- (3). With respect to the violator;
 - (a). the ability to pay,
 - (b). the effect of the assessment on the ability of the company to continue its business,
 - (c). any voluntary clean-up efforts undertaken,
 - (d). any prior history of violations,
 - (e). the degree of culpability,

CUT 003615

David Barker
Page 2
March 18, 1988

(f). economic savings, if any, resulting from the violation, and,

(g). such other matters as justice may require.

In order to assist the staff and help it meet the statutory requirements of establishing the appropriate amount of an ACL Paco provides the following responses:

(1). Paco believes that the nature, circumstance, extent and gravity of the alleged violation or violations have been and are currently being addressed in the response to the RWQCB Clean-up and Abatement Order No. 85-91 and Addendum No. 1 to that Clean-Up & Abatement Order.

Paco contends that the nature, circumstance, extent and gravity of harm, if any, that may result from the presence of copper concentrate in San Diego Bay is an open question. The staff itself admits that there is no harm that the subject copper is presently causing to the environment. The concern of the staff is a prospective one based on the uncertainty of what result may occur from the presence of the copper ore in the bay. The issues relating to the extent of the harm are necessarily implicated by the uncertainty surrounding the issue of whether the copper ore will cause harm. In addition, there are questions that in attempting to remove the ore and disturbing the sediment may create a greater risk than leaving it in place.

Paco is presently pursuing scientific information relating to an analog or parallel circumstances that may exist in other marine loading operations. At this time, it is inappropriate to assess a substantial fine on Paco because of the uncertainty that any environmental damage will necessarily result. Minimally, this uncertainty should justify only a minimal fine.

(2). As discussed above the issue of whether or not the discharge is susceptible to a clean-up or abatement as the best available treatment method appears to be an open question. Complicating the issue of whether a clean-up can be accomplished is the uncertainty relating to available disposal options of the sediment material. It is possible that no such option will exist. Attempting to remove the sediment could seriously jeopardize the existing environmental balance in that area. Finally, due to the uncertainty of harm a clean-up may economically be an inappropriate option.

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Until these issues are resolved it is inappropriate to assess a fine against Paco.

(3). Paco provides the following information in order to help the staff better appreciate Paco's history in this matter and its current economic situation.

(a). Paco's ability to pay an ACL is directly related to the fundamental issue of what resources Paco will have available to sponsor the clean-up and abatement. These resources should be allocated to the greatest extent possible to effecting environmental protection. If such protection is necessary then the civil liability should be kept to a minimum amount in order to preserve these limited funds for the clean-up and abatement effort. If on the other hand clean-up and abatement is not appropriate then the nature, circumstance, extent and gravity of the alleged violations would not support any fine.

Paco is willing to provide financial data to the Board. However, because the company is closely held this information is not to be released to the public. Paco requests that the information be treated confidentially and viewed only by staff and board member as necessary. On this condition Paco provides the information included in Attachment A. If the staff cannot comply with this request Paco requests an opportunity to meet and confer with the staff prior to the dissemination of this information.

Attachment A shows Paco's total assets have decreased by 35% from 1986 to 1987. In addition, the stockholders equity decreased by 38% during this period of time, and their net income for the first time was negative. Additionally, their working capital decreased by nearly 40% during this time, and the company paid no dividends to its stockholders during 1987.

(b). It is apparent from Attachment A and the above referenced percentage figures that the impact of the RWQCB proceedings has caused Paco to incur substantial financial hardship. As indicated in Paco's first ACL submittal to the staff dated 2/18/88, relating to copper ore loading and rain days, the last day on which copper ore was loaded out of the Paco facility was December 29, 1986. Paco has not stockpiled or loaded copper ore at the 24th Street Terminal since that time. This curtailment was necessitated by Paco's concern with the pending RWQCB Clean-Up and Abatement Order.

The inability to continue loading copper ore has resulted in a loss of business not only for Paco but for the approximately 30

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International Longshoremen and Warehouse Union (ILWU) Members employed at the facility. In addition, several stevedoring sub-contractors, the railroads who brought the ore from the mines to the 24th Street Terminal, and the San Diego Unified Port District (the lessor who received land rent, minimum wharfage fees, and a fee for leasing the Hitachi Crane and a Port mechanic for all loading operations) have all suffered economic detriment from the loss of this business.

In addition to the effect of the ACL on the ability of the company to continue in business the staff must consider the existing cost which the company has already incurred (see item (c) below) and the fact that monies are continually being spent on dealing with both the ACL matter and the Clean-up and Abatement Order.

(c). Paco has undertaken voluntary efforts to accomplish clean-up of the 24th Street Marine Terminal facility. The cost of cleaning up its leased premises during 1987 totaled approximately \$117,000.

In addition to actually accomplishing the clean-up of the facility the company has expended approximately \$242,000 in consulting and legal fees since 1985. The Port lease payments for 1987 totaled \$65,000. These costs total \$424,000.

(d). Paco has no prior history of violations.

(e). It is alleged that Paco is responsible for copper concentrate ore in San Diego Bay. It should be pointed out that Paco is merely a labor broker for various parties involved in the shipping of copper concentrate ore from U.S. mines to the foreign markets. In 1978 when Paco was discussing the possibility of taking over a copper loading operation here in San Diego, the Port was extremely solicitous of obtaining a lease agreement with Paco. That lease specifically provided that the leased premises shall be used "only and exclusively for the receiving, handling, and storage of copper concentrate in bulk and ... for no other purposes".

The Port required that an environmental assessment be filed through their environmental department. The Port was therefore aware of the environmental issues involved with the copper loading operations. Indeed, the Port had had experience with another tenant loading copper in bulk prior to Paco's arrival in San Diego.

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Paco has been charged with permitting a discharge of copper in violation of its NPDES permit. When the RWQCB determined (Paco contends inappropriately) that an NPDES was necessary for this bulk loading facility the staff requested that the Port apply for such a permit. Paco was not in a position to bargain with the Port when the Port refused to apply for the permit. Reluctantly, Paco executed the application.

Paco contends that the NPDES program which provided that Paco shall not discharge "any" copper into San Diego Bay could not possibly be fulfilled. Compounding this impossibility was the fact that Paco did not control the entire 24th Street Terminal facility. Its leased premises came no closer than 120 feet to the pierface. The Port controlled the remaining tidelands and the storm drain system. The Port was at all times aware of the NPDES requirements and the proposed Best Management Practices (BMP) which Paco undertook. The Port prevented Paco from taping the storm drains due to a concern for their underground electrical systems. Ultimately in 1985 Paco was able to accomplish this task; however, an extended period of time had already passed.

Paco itself did not conduct the actual operation of the loading. It brokered for the labor that was performed. In some cases it sub-contracted this labor. For example, Cabrillo Crane Company provided the crane, its own driver and an oiler. The Hitachi crane which is also used in the loading operations, was leased from the Port and the Port provided a mechanic that was on-site at all times during loading operations.

In focusing on degrees of culpability for the current situation it is important to note that in the overall operation Paco was not a single player. Paco is willing to accept its fair share of responsibility, however it should not be viewed as a party culpable for all of the alleged harm.

(f). There was no economic savings that resulted from the alleged violations. The copper concentrate is a valuable commodity. There is a significant incentive and duty placed on those who handled the ore to avoid its discharge.

Discharging the ore would not speed up the process. To the extent that ore was discharge at the facility additional labor was required to correct this problem. Equipment was also employed, for e.g. a water truck, mechanical sweeping equipment, and other devises.

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It is easy to see that there is no economic savings resulting from the alleged discharge. In fact, from mid-1985 Paco has experienced significant and continuing expenses to deal with the discharge. It has at all times been apparent that permitting the discharge of copper ore provided no economic advantage.

(g). Other items which justice requires the staff to consider involve the following: The staff should consider the limited resources which Paco has available. Those resources need to be available for the clean-up and abatement. Assigning those limited resources to an ACL may prevent accomplishing the shared goal of establishing the appropriate environmental solution.

Paco feels that the staff should consider the factual and legal impossibility in which Paco has been placed. It was not possible for Paco to load copper and prevent the discharge of "any" copper into San Diego Bay. Pursuant to my discussion with you on March 11, 1988 that was the prescription contained in the relevant NPDES permit.

Additionally Paco contends that requiring an NPDES permit for this operation was inappropriate. First, it is not clear that the cupric ferris sulfide ore (chalcopyrite) is either a hazardous or toxic substance under the provisions of the Clean Water Act (CWA). Second, there was no point source involved which was under Paco's control. Third, if there was a point source an allocation of the harm should be accomplished limiting Paco's responsibility to the damage associated with that point source only and it should not include any non-point source discharge. A point source is a defined, discrete conveyance temporary and stockpiling of copper for transportation or wind created discharges are not point source.

Paco wants to work with the staff and has evidenced a cooperative approach over the past several years. This effort is supported by the considerable expenses and the loss of business which Paco has suffered through this effort. Paco requests that the staff consider these issues when it determines what ACL amount of fine is appropriate. Paco has already lost several hundred thousand dollars in business opportunities. Paco believes no fine is appropriate or at most a nominal fine of \$1,000 be assessed.

Annuity: In our conversation of March 11, I proposed the possibility of Paco providing an annuity as a means of meeting the total ACL assessment. This proposal may not have to be considered depending on the amount of the fine. If the fine is substantial then the annuity option may be appropriate and necessary.

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An annuity will permit Paco to incur a lower initial deposit, while at the same time providing the RWQCB with the total payout amount. Paco is not suggesting that this method be employed to increase the ACL liability which is assessed, but rather the ACL amount be determined and then options as to how that amount can be paid be analyzed.

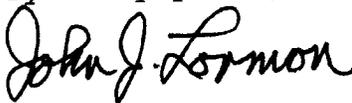
For example, assuming a 15 year payout at 10% a \$50,000 fine would require an initial deposit of \$25,000. Alternatively, a fine of approximately \$100,000 would require a deposit of \$50,000. Likewise, a \$75,000 deposit would produce a payout of approximately \$148,000. Obviously, increasing the payout period or conversely shortening it will impact the initial deposit and total payout amount. Likewise the interest rate will impact these figures. The numbers given above permit the staff to have some rough order of magnitude of how any annuity at 10% interest (which may be high) would work. If additional information is required please let us know.

We look forward to meeting with the staff and its counsel on March 22nd, at 2 P.M. If you feel I can be of any assistance prior to that meeting please feel free to call me.

No Waiver or Admission: The responses contained in this document are not meant to be a limitation to Paco introducing new or different positions. Paco reserves its rights to amend, delete or add to any response provided herein. Further, the statements and positions taken in this paper are not intended to be an admission of any or all liability for an ACL assessment or any clean-up and abatement activities associated with these matters.

Conclusion: Paco believes that it has and continues to suffer tremendous economic detriment from the RWQCB proceedings surrounding the alleged discharge of copper at the 24th Street Terminal. Paco believes that no fine or at most a nominal fine of \$1,000 be assessed. If a higher amount is assessed Paco requests that an annuity payment option be provided.

Very truly yours,



John J. Lormon

JJL/erj

Attachment



WESTEC Services, Inc.

5510 Morehouse Drive, San Diego, CA 92121-1709
(619) 458-9044



April 29, 1988

Mr. Ladin Delaney
Regional Water Quality Control Board
9771 Clairemont Mesa Blvd Suite B
San Diego, CA 92124

Dear Mr. Delaney:

Enclosed please find Progress Report 1 submitted in response to Cleanup and Abatement Order 85-91, Addendum No. 1 issued to Paco Terminals. This report covers Paco's activities conducted in response to the order and the Cleanup Plan submitted on February 4, 1988.

If you have any questions or need additional information please contact me.

Sincerely,

A handwritten signature in black ink that reads "William C. Lester". The signature is written in a cursive style.

William C. Lester
Senior Scientist

WCL/dp

CUT 003577

**VERTICAL AND HORIZONTAL LOCATION OF THE
1000 PPM COPPER ORE CONTOUR
IN THE VICINITY OF PACO TERMINALS, INC.
SAN DIEGO BAY, SAN DIEGO, CALIFORNIA**

MASTER Copy

Prepared by:

ERC Environmental and Energy Services Company
5510 Morehouse Drive.
San Diego, CA 92121-1709

April 28, 1988

**VERTICAL AND HORIZONTAL LOCATION OF THE
1000 PPM COPPER ORE CONTOUR
IN THE VICINITY OF PACO TERMINALS, INC.
SAN DIEGO BAY, SAN DIEGO, CALIFORNIA**

Prepared for:

Paco Terminals, Inc.
2720 Terminal Street
P.O. Box 2026
National City, CA 92050-0451

Prepared by:

ERC Environmental and Energy Services Company
5510 Morehouse Drive.
San Diego, CA 92121-1709

April 28, 1988

1.0 INTRODUCTION

Addendum No. 1 to Regional Water Quality Control Board (RWQCB) Order No. 85-91 specifies that Paco Terminals, Inc., shall reduce the sediment copper concentration in the affected portion of San Diego Bay, identified in WESTEC (1986), to a sediment copper concentration of less than 1000 mg/kg (ppm).

The initial studies conducted to define the distribution of copper ore in the vicinity of the 24th Street Marine Terminal addressed an area extending up to 1 mile north, south, and west of the terminal (WESTEC 1986). This large area was surveyed to ensure that maximum boundaries of the copper ore distribution were identified. Now that the cleanup level has been specified, Paco has conducted a more detailed survey to better document the vertical and horizontal distribution of copper ore in the affected area and to map the location of the 1000 mg/kg contour or the target cleanup concentration. This information will be used to prepare a detailed map identifying areas requiring clean up.

A detailed sampling plan describing the proposed study was submitted to the RWQCB on May 24, 1988 and approved by the RWQCB on December 28, 1988. A summary of the approved plan is presented in the following methods section.

2.0 METHODS

The proposed sampling transects were located on 100 ft centers along the west and north sides of the pier at the 24th Street Marine Terminal (Figure 1). This resulted in a total of 27 transects, 13 along the west pier face (No 0 through 12) and 14 along the north pier face (No. 13 through 26). Transects 18 through 21 were 320 ft in length. All other transects were 160 ft in length. These dimensions generally encompass the area within the 1000 mg/kg contour described by WESTEC (1986) in the vicinity of the storm drain outlet on the north side of the pier and the ore storage and loading sites on the west side of the pier (Figure 1).

Prior to sampling, origin sites of all transects were surveyed and permanently marked on the pier. During field sampling transect lines were established from each pier origin site to a distance of 160 or 320 ft offshore as required. Core samples were collected at each of five sites (0,40,80,120, and 160 ft from the pier) on the 23 transects and at 9 sites (0, 40, 80, 120, 160, 200, 240, 280, and 320 ft from the pier) on four transects with diver-operated coring devices made of 2-inch diameter aluminum tubing. Tubes were manually pushed into the sediment to a depth of 4 ft or a point of refusal. After sample collection each primary 4 ft core tube was capped, the exterior thoroughly cleaned, labeled, and stored in a cool container.

At the end of each sampling day, all primary core tubes were transported to the laboratory in a cooler packed with dry ice. Upon arrival at the laboratory, accompanying chain-of-custody forms were signed by field personnel delivering and laboratory personnel receiving the cores. Cores were then placed in a sample storage refrigerator maintained at 4° C to await subsampling.

In order to determine the vertical distribution of copper in the sediments each primary core tube was subdivided into segments, each representing 1 ft of the actual vertical sediment column in the bay bottom. The actual length of each segment was determined by the proportional relationship between the actual depth of penetration of the core sample tube into the bay bottom and the actual length of the sediment contained in the core sample tube. This procedure compensates for the compaction of the sediment sample during sample collection and provides an estimate of the actual length of each subsample.

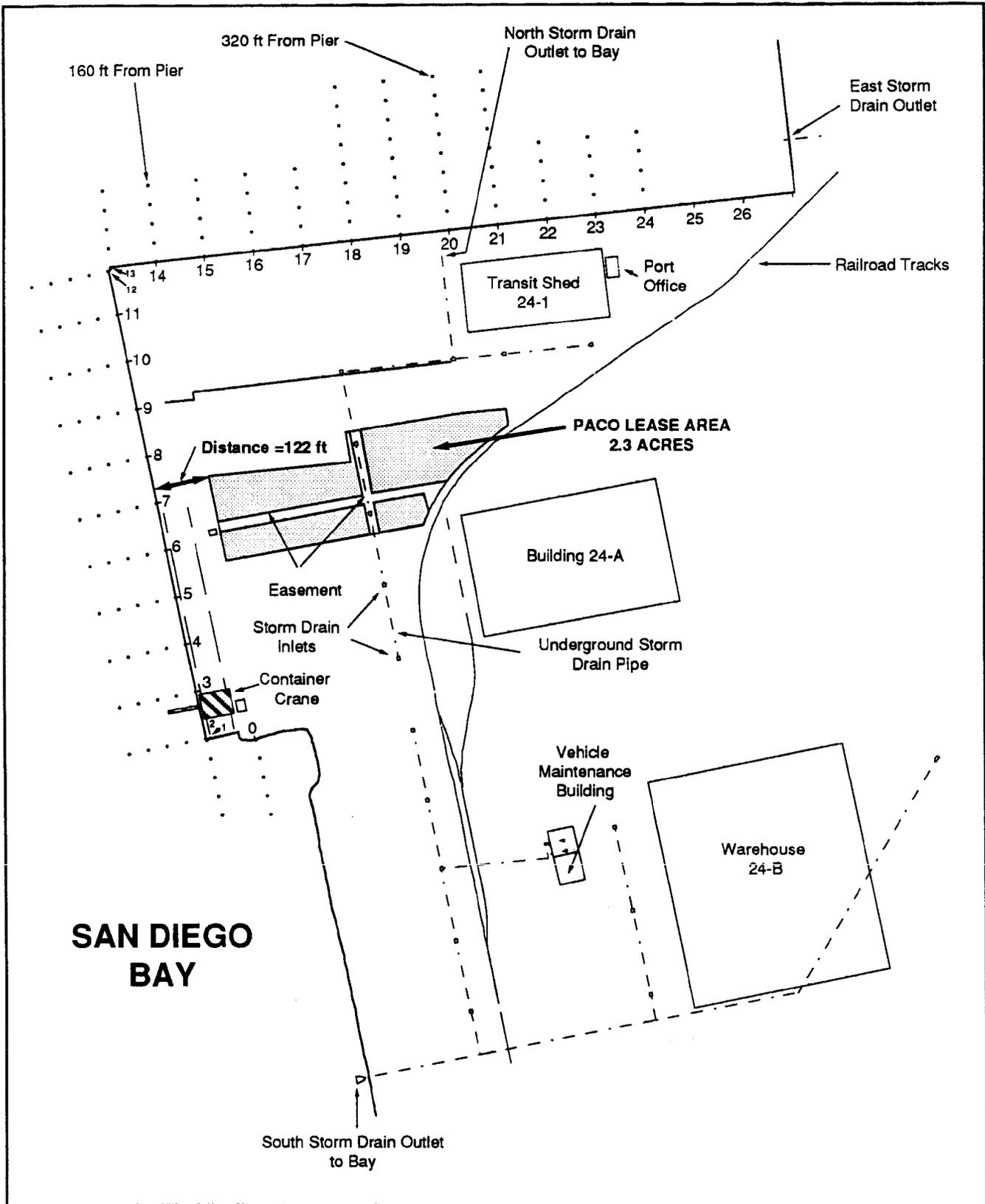


FIGURE 1. SEDIMENT SAMPLING SITES AT THE NATIONAL CITY MARINE TERMINAL

Basically, each primary core was divided into sections up to 1 ft in length to permit determination of the vertical distribution of copper in the sediment column as described above. Prior to subsampling, the primary core barrel was removed from the refrigerated sample storage room and secured in a pipe stand. The length of the core barrel was measured and, starting from the top of the core barrel, marked into specific lengths or segments to account for the sampler induced compaction as previously described. Each segment was labeled with station and subsample numbers.

Following labeling, the core barrel was cut with a pipe cutter. The sediment samples within each segment were individually separated with a clean knife. Following separation, a piece of Teflon sheeting and a plastic cap was used to seal the bottom of each section and each section was stored vertically, top up, until the entire core barrel was subdivided. A subsample the length of each segment was extracted from the center axis of each segment by pushing a 12-inch long, -1 inch diameter aluminum tube lengthwise through the center of the sediment sample. This subsampling procedure, developed by WESTEC (1988), minimizes the opportunity for cross-contamination of deeper sediment by the passage of the sampler through the potentially greater copper contaminated surface sediments. Subsample tubes were relinquished to laboratory personnel, along with appropriate chain-of-custody documentation, at the end of each day.

Laboratory personnel extruded the sediment in each individual subsampling tube into a clean container and thoroughly homogenized the sediment. The homogenized sediment was then placed into pre-cleaned one-liter glass jars in preparation for copper and percent moisture analysis. Remaining sediment was retained for future evaluation as needed. Sample containers were labeled with station number, subsample number, project name, date and time of collection, and subsampler's initials. Each sediment sample was analyzed for total copper concentration using EPA Method 6010.

3.0 RESULTS AND DISCUSSION

Field sampling was conducted from January 9-11 1989. Samples were collected as proposed on Transects 0 through 24. A large barge and the facilities of San Diego Tug and Barge located at the northeast corner of the terminal precluded safe access to the locations of Transects 25 and 26, consequently these areas could not be sampled. The dry weight concentrations of copper for the sites sampled are summarized in Table 1.

The location of the site where 1000 ppm of copper was found on each transect was plotted on a map of the study area at sediment depths of 1, 2, 3, and 4 ft. The actual location of the 1000 ppm position between sample sites along each transect was determined by linear interpolation between adjoining points. The locations of the positions where 1000 ppm copper concentrations were found were contoured to produce a map of the horizontal distribution of 1000 ppm of copper at each sediment depth. This information has been summarized on a single map (Figure 2) which shows the horizontal and vertical distribution of 1000 ppm concentration of copper at depths of 1, 2, 3, and 4 ft into the bay bottom. This map and data will be used to define the cleanup area and will be submitted to the U.S. Army Corps of Engineers and the EPA to amend and obtain approval of Paco's existing dredge material bioassay plan.

4.0 LITERATURE CITED

WESTEC Services, Inc. 1986. An Evaluation of the Impact of Copper Ore in the Marine Environment in the Vicinity of Paco Terminals.

**WESTEC Services, Inc. 1988. Characterization of the Vertical Extent of Contaminated
Sediments in Convair Lagoon, San Diego Bay.**

TABLE 1

TOTAL SEDIMENT COPPER CONCENTRATION AT THE 24TH STREET
MARINE TERMINAL, JANUARY 9-11, 1989.
VALUES REPORTED AS MG/KG DRY WEIGHT

Transect Number	Distance From Pier (Feet)	Sediment Depth			
		Depth 1 ft	Depth 2 ft	Depth 3 ft	Depth 4 ft
0	0	-	-	-	-
0	40	-	-	-	-
0	80	-	-	-	-
0	120	2,410	2,360	1,440	-
0	160	1,010	744	699	-
1	0	2,280	2,020	-	-
1	40	2,260	1,970	-	-
1	80	1,030	1,480	1,770	1,070
1	120	1,390	1,740	1,030	399
1	160	1,280	1,780	671	102
2	0	1,540	2,050	1,120	-
2	40	63	-	-	-
2	80	57	-	-	-
2	120	166	-	-	-
2	160	513	15	-	-
3	0	7,040	6,240	4,940	1,850
3	40	1,260	-	-	-
3	80	475	-	-	-
3	120	172	-	-	-
3	160	241	-	-	-
4	0	11,500	15,100	53,000	-
4	40	8,390	22,700	470	-
4	80	1,740	116	-	-
4	120	338	20	-	-
4	160	650	13	-	-
5	0	37,200	82,100	89,900	-
5	40	5,520	1,200	42,800	71
5	80	10,200	759	53	-
5	120	-	-	-	-
5	160	2,090	-	-	-
6	0	13,700	58,100	22,200	1,990
6	40	-	1,220	17	-
6	80	150	8	-	-
6	120	525	28	-	-
6	160	50	9	-	-
7	0	8,080	14,500	6,220	942
7	40	1,690	4,340	90	50
7	80	632	68	-	-
7	120	487	-	-	-
7	160	191	10	-	-
8	0	2,670	6,910	5,410	155
8	40	3,240	5,500	191	77
8	80	1,450	142	61	-
8	120	1,450	87	-	-
8	160	328	27	-	-

TABLE 1 Continued

Transect Number	Distance From Pier (Feet)	Sediment Depth			
		Depth 1 ft	Depth 2 ft	Depth 3 ft	Depth 4 ft
9	0	5,480	3,280	198	108
9	40	3,170	2,150	31	-
9	80	1,250	52	-	-
9	120	523	19	36	-
9	160	367	-	-	-
10	0	4,030	4,220	805	74
10	40	1,840	565	293	84
10	80	2,180	294	-	-
10	120	989	59	-	-
10	160	337	-	-	-
11	0	1,480	2,210	723	108
11	40	1,250	613	70	-
11	80	794	29	-	-
11	120	-	63	-	-
11	160	660	204	23	-
12	0	2,030	742	61	-
12	40	2,300	806	70	61
12	80	332	7	-	-
12	120	116	-	-	-
12	160	781	70	-	-
13	0	1,810	382	64	56
13	40	1,470	146	21	-
13	80	1,390	405	6	13
13	120	178	14	27	16
13	160	197	12	10	-
14	0	1,600	1,700	223	130
14	40	1,560	571	127	47
14	80	939	17	-	-
14	120	670	841	16	-
14	160	283	36	29	26
15	0	1,960	891	76	15
15	40	2,120	837	216	89
15	80	86	281	1,210	14
15	120	745	51	18	-
15	160	1,290	533	73	26
16	0	2,120	828	266	-
16	40	1,620	1,110	151	138
16	80	1,650	640	124	76
16	120	1,300	229	40	24
16	160	749	1,380	65	44
17	0	3,060	-	-	-
17	40	2,140	3,030	348	110
17	80	2,090	727	114	116
17	120	2,240	1,950	104	39
17	160	1,874	1,620	125	40
18	0	5,810	427	166	-
18	40	4,360	5,230	119	52
18	80	3,190	2,380	119	61
18	120	2,580	1,380	37	22
18	160	2,170	1,260	80	21
18	200	2,180	1,500	106	18
18	240	1,530	1,310	58	24

TABLE 1 Continued

Transect Number	Distance From Pier (Feet)	Sediment Depth			
		Depth 1 ft	Depth 2 ft	Depth 3 ft	Depth 4 ft
18	280	1,520	559	4,770	19
18	320	1,320	1,150	127	19
19	0	17,300	7,430	2,800	-
19	40	8,960	11,300	162	140
19	80	10,300	3,520	132	80
19	120	13,100	9,350	87	44
19	160	6,870	3,640	25	28
19	200	2,450	3,270	24	11
19	240	2,820	827	31	17
19	280	1,820	612	31	13
19	320	1,920	167	24	13
20	0	22,900	987	136	-
20	40	14,000	248	53	63
20	80	152	-	-	-
20	120	1,290	-	-	-
20	160	-	-	-	-
20	200	559	38	25	-
20	240	1,330	50	-	-
20	280	156	15	-	-
20	320	535	76	65	-
21	0	5,320	3,840	-	-
21	40	2,550	27	28	-
21	80	1,470	-	-	-
21	120	60	-	-	-
21	160	344	-	-	-
21	200	537	18	-	-
21	240	899	86	-	-
21	280	502	-	-	-
21	320	861	110	-	-
22	0	984	2,710	-	-
22	40	2,260	5,690	-	-
22	80	52	-	-	-
22	120	767	-	-	-
22	160	969	189	-	-
23	0	905	2,250	214	156
23	40	1,840	177	-	-
23	80	739	-	-	-
23	120	253	21	-	-
23	160	741	57	-	-
24	0	1,320	255	274	-
24	40	1,620	-	-	-
24	80	1,660	394	-	-
24	120	618	99	-	-
24	160	432	109	-	-

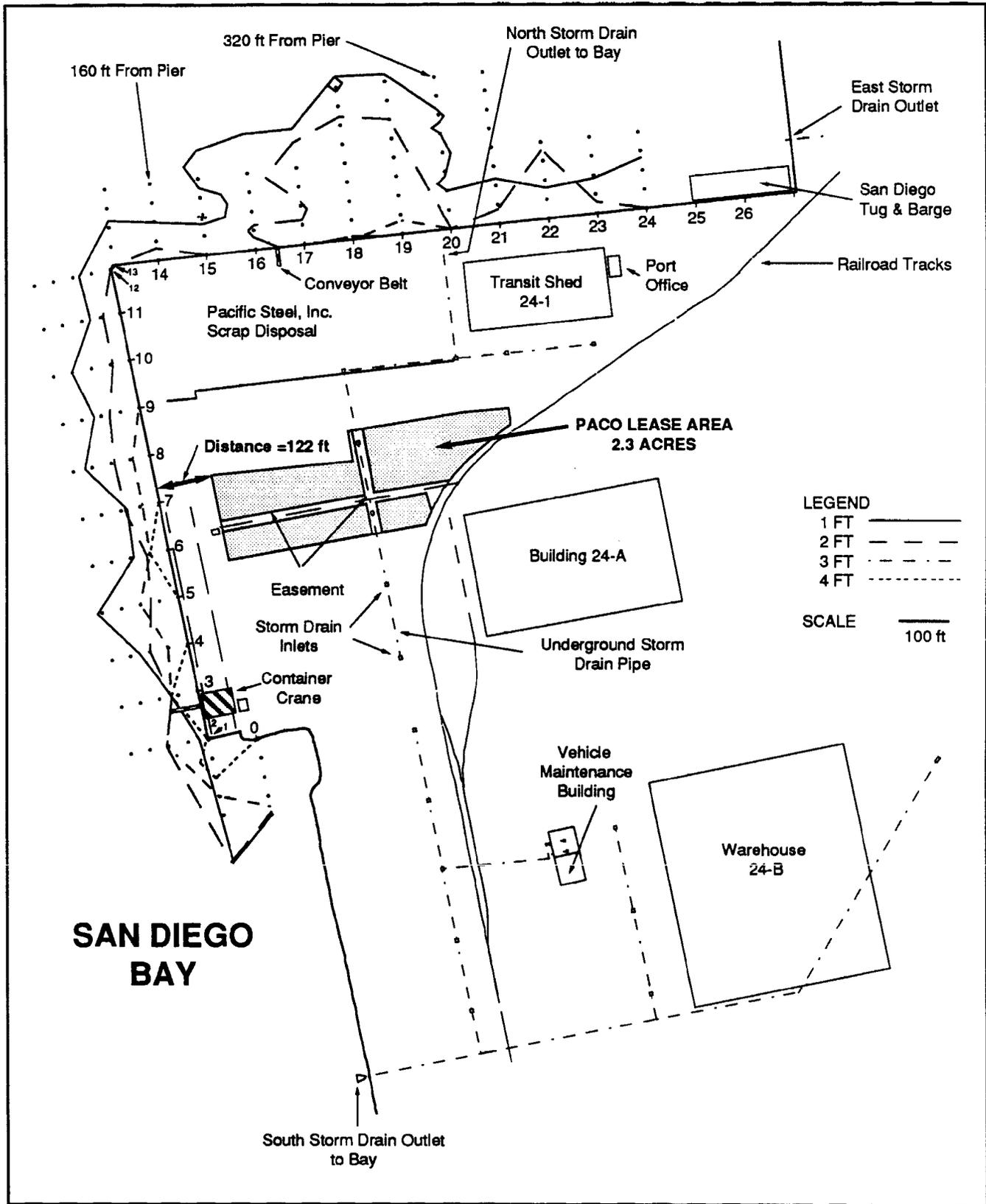


FIGURE 2. MAP OF 1000 MG/KG COPPER CONCENTRATION AT SEDIMENT DEPTHS OF 1, 2, 3, AND 4 FT.

**PACO TERMINALS INC.
CLEANUP AND ABATEMENT ORDER 85-91
ADDENDUM NO. 1**

**PROGRESS REPORT 1
COVERING THE PERIOD FEBRUARY 4 TO MARCH 31, 1988**

Pursuant to Directive 3, page 12 of the Order the following topics are addressed in this progress report.

- a). "the percent completion of the cleanup project"

In accordance with the schedule proposed in the CLEANUP PLAN FOR COPPER CONTAMINATED SEDIMENTS AT THE 24TH STREET MARINE TERMINAL submitted February 4, 1988 the actual cleanup of the site is not scheduled to begin until October 1988.

- b). "the status of requests for permits and their expected approval dates"

A proposal to conduct a dredge spoil bioassay test to obtain a permit for ocean disposal of dredge sediments was submitted to the U.S. Army Corps of Engineers and the EPA on March 18, 1988. Comments were received from the agencies on April 8, 1988 requesting additional information and modifications to the original proposal. The requested information and changes were submitted to the ACOE and the EPA on April 25, 1988. Copies of all correspondence and proposals have been sent to Mr. David Barker at the RWQCB. We have requested the ACOE and EPA review and approve the revised proposal within one week of receipt or approximately May 4, 1988.

- c). "any anticipated deviation from the time schedule submitted in accordance with Directive 2 of Addendum No. 1"

The bioassay test proposal approval originally scheduled to occur on April 18, 1988 is now expected approximately May 4, 1988.

Directive 4 of the Order required Paco to submit a post-cleanup sampling plan to verify that cleanup standards specified in the Order had been attained. This sampling plan is to be submitted prior to December 3, 1988. The Cleanup Plan submitted to the RWQCB on February 4, 1988 suggested that this effort be enhanced to include a sampling plan to develop a more detailed map of the potential dredge site as well as provide a baseline against which cleanup can be evaluated. Paco proposed submittal of the enhanced plan on February 29, 1988 rather than December 3, 1988 as indicated in the Order. Submittal of the plan was delayed to allow 1) comments received from the ACOE and the EPA on the bioassay proposal and dredge site description to be incorporated into the sampling plan and 2) to take advantage of new techniques and information obtained during conduct of a similar sampling program to characterize the vertical distribution of contaminants at Convair Lagoon conducted during March-April 1988. We presently anticipate submitting the sampling plan prior to May 18, 1988 well in advance of the December 3, 1988 date specified in the Order.

Paco has diligently pursued meeting the schedules and commitments proposed in the Cleanup Plan of February 4, 1988. Presently approval of the bioassay test is approximately 3, and the submittal of the enhanced dredge site mapping program is approximately 11, weeks behind the proposed schedule. We do not presently anticipate that these delays will have a significant impact on the overall cleanup schedule. Paco will attempt to get back on schedule during the next quarter. Progress Report 2 will update and discuss this effort.

State Fines Teledyne \$75,000, Paco \$50,000 for Bay Pollution

By DAVID FRANKEL/Staff Writer

State pollution officials on Monday fined Teledyne for \$75,000 and Paco for \$50,000 for polluting San Francisco Bay with toxic chemicals.

The companies own the Regional Water Quality Control Board used to try to clean up the bay, but the companies have been fined for polluting the bay.

The regional board agreed to demand not a proposed fine against Paco Thursday if Regional City is willing to pay the company's offer to clean up the bay, a decision that required at least one spokesman for a local environmental group.

Last week, the board's staff proposed a \$75,000 fine against Paco for polluting the bay with toxic chemicals. The fine is the highest ever levied by the board.

The board's staff also proposed a \$50,000 fine against Paco for polluting the bay with toxic chemicals. The fine is the highest ever levied by the board.

By Monday, the regional board had agreed to demand not a proposed fine against Paco Thursday if Regional City is willing to pay the company's offer to clean up the bay, a decision that required at least one spokesman for a local environmental group.

"To find this to be a disposal because the bay is supposed to be the primary for pollution and it is not allowed to be there, it is a violation of the law," said John Lawrence, the attorney representing Paco, and the settlement with the state board included the "right number" for the bay.

"It should be noted that we have never taken a position that we feel that Paco is a guilty party and there is no violation to the law," said John Lawrence, the attorney representing Paco, and the settlement with the state board included the "right number" for the bay.

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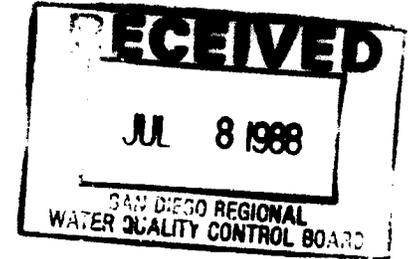
LA Jones
Chas 158
Paco Teledyne Ryan
Paco
(1 copy each)

STATE WATER RESOURCES CONTROL BOARD

PAUL R BONDERSON BUILDING
901 P STREET
P.O. BOX 100
SACRAMENTO, CALIFORNIA 95801
(916) 322-0215



JUL 06 1988



Mr. John J. Lormon
Counsel
707 Broadway, Suite 1700
San Diego, CA 92101-5311

Dear Mr. Lormon:

PACO TERMINALS, INC.

You have requested copies of State or Regional Board policies or guidelines with respect to landowner and public agency liability for cleanup actions. Enclosed are a memorandum, dated April 13, 1988, from William R. Attwater, Chief Counsel, to all Regional Board Executive Officers which contains form findings for use by a Regional Board when the Regional Board holds a property owner liable for cleanup of pollution caused by a third party, and a memorandum, dated May 8, 1987, from William R. Attwater to the Regional Board Executive Officers, summarizing the principles applicable to inclusion of landowners in orders and briefly explaining the legal basis for these principles.

In addition to the two memoranda, I have also included copies of the State Board orders which are referenced in the memoranda. The State Board orders include WQ 86-2, 11, 15, 16, and 18 and WQ Order Nos. 87-5 and 87-6.

Ms. Jennifer Soloway will be advising the San Diego Regional Board in my absence. Please feel free to contact her at (916) 324-2864.

Sincerely,

Sheila K. Vassey
Sheila K. Vassey
Staff Counsel

Enclosures

*7/11
LHD 7-12
JTB
PACO*

JUL 06 1986

cc: Ladin Delaney, Executive Officer ✓
David Barker, Senior Water Resources
Control Engineer
San Diego Regional Water Quality
Control Board
9771 Clairemont Mesa Blvd., Suite B
San Diego, CA 92124-1331

Jennifer Soloway, Staff Counsel
Office of the Chief Counsel
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95801

Memorandum

Date : APR 13 1988

All Regional Board Executive Officers


William R. Attwater
Chief Counsel

From : STATE WATER RESOURCES CONTROL BOARD

Subject: FORM FINDINGS FOR REGIONAL BOARD ORDERS

Attached is a copy of form findings to be used by Regional Boards in cases where a Board holds a property owner liable for cleanup of pollution which was not caused by that owner. Also attached is a memorandum explaining the forms and another memorandum summarizing the principles involved when naming landowners in orders.

This issue will be included on the agenda for the May meeting of the Executive Coordinating Committee.

Attachments

cc: Fresno, Redding, and Victorville
Regional Board Offices

Dale Claypoole, Chief
Program Control Unit

JSS0loway/mgliatto 4/13/88

CUT 003733

Memorandum

Date : MAR 22 1968

James L. Easton
Executive Director


William R. Attwater
Chief Counsel

From : STATE WATER RESOURCES CONTROL BOARD

Subject: FINDINGS FOR WASTE DISCHARGE REQUIREMENTS APPLICABLE TO NON-CULPABLE PROPERTY OWNERS

In most cases, it is proper for a Regional Board to name a property owner on a waste discharge requirements order or a cleanup and abatement order, even though the property owner did not directly cause the discharge of waste on the property (e.g. the tenant or a prior owner caused it). A number of State Board orders have clarified the circumstances under which a non-culpable property owner should be held responsible for cleanup. (State Board Orders Nos. 86-2 and 86-11.) Two recent orders have limited this responsibility under special circumstances. (State Board Orders Nos. 87-5 and 87-6.)

The attached memorandum from William R. Attwater to all Regional Board Executive Officers, summarizes the elements which a Regional Board must show to hold a non-culpable property owner responsible under a Regional Board order. State Board member Ruiz has suggested that it would help the Regional Boards if they had a model "finding" containing these essential elements. This memorandum is in response to her request.

These model findings should not be rigidly applied. They provide guidance and may be changed as necessary to conform to the special facts in each case. I will transmit the findings to the Regional Boards if you or Board Member Ruiz so desire. In addition, they could be added to the Administrative Procedures Manual. The model findings are as follows:

MAR 22 1998

FORM A

" (owner's name) (the "Owner") has been (was) the owner of real property located at (address or location description) (the "Property"). Although Owner has not directly caused the discharge or threat of discharge of waste on the Property, Owner, during the time (he, she, it) owned the Property, knew or should have known of the existence of the discharge or threat of discharge. Additionally, during the time (he, she, it) owned the Property, Owner had some measure of control over the Property."¹

The following additional finding should be used in cases where the land owner is only secondarily liable because the owner is a certain type of government agency:

FORM B

"Owner is a government agency which has a legal duty to protect the environment. Therefore, Owner is responsible for compliance with this order only if the party who directly caused the waste discharge fails to timely comply with this order and Owner fails

¹ If the Regional Board cannot prove "measure of control" based on the evidence, use this Form A, but delete the last sentence and also use Form C which states that the owner is only secondarily liable.

to promptly use its governmental powers to remedy the waste discharge."

The following additional finding should be used in cases where the land owner is only secondarily liable because the Regional Board cannot show that the owner had a measure of control over the property. When using this Form C, delete the last sentence from Form A:

FORM C

"During the time (he, she, it) owned the Property Owner did not have any control over the Property because (insert explanation). Therefore, Owner is responsible for compliance with this order only if the party who directly caused the discharge of waste fails to timely comply with this order."

Attachment

Memorandum

To : Regional Board Executive Officers

Date : MAY 09 1957

/s/ W. R. Attwater

William R. Attwater
Chief Counsel

From : STATE WATER RESOURCES CONTROL BOARD

Subject: INCLUSION OF LANDOWNERS IN WASTE DISCHARGE REQUIREMENTS AND ENFORCEMENT ORDERS

Attached is a memo explaining many of the issues addressed in State Board orders regarding the inclusion of landowners in waste discharge requirements and enforcement orders. Also included in the memo is a brief explanation of the legal basis for decisions. By no means are all of the possible situations which may confront you addressed by State Board orders or the memo. However, to the extent that the State Board has already dealt with some of these questions, it is important that there be substantial consistency by the Regional Boards.

The basic principles involved in naming landowners in orders can be summarized in a few key points:

1. Anyone who owns land on which a discharge is occurring is a discharger under Porter-Cologne.
2. Any discharger can be named in waste discharge requirements and made generally responsible for what goes on with regard to the property.
3. Enforcement orders can be issued to a landowner only if the cleanup involves something about which the landowner knew or should have known and over which he or she had some measure of control.
4. If the landowner is another public entity which has the legal duty to protect the environment, it is proper to name the agency in waste discharge requirements but it should only be made the subject of enforcement actions after it is clear that the actual discharger will not comply and that the public entity is not moving quickly to rectify the situation.
5. Findings of each element of a landowner's responsibility must be supported by substantial evidence.

MAY 08 1967

In addition, it may be advisable to make enforcement more feasible by assigning sites to a landowner which recognizes that the landowner, in many cases, must wait to see whether the grant has the feasible task before assuming the responsibility for doing it.

Attachment

Memorandum

To : Regional Board Executive Officers

Date : MAY 6 8 1987

/s/ W. R. Attwater

William R. Attwater
Chief Counsel

From : STATE WATER RESOURCES CONTROL BOARD

Subject: INCLUSION OF LANDOWNERS IN WASTE DISCHARGE REQUIREMENTS AND ENFORCEMENT ORDERS

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MAY 08 1957.

In addition, it may be advisable to make enforcement orders more realistic by assigning duties to a landowner which recognize that the landowner, in many cases, must wait to see whether the tenant does the required task before assuming the responsibility for doing it.

Attachment

Memorandum

To : State Board Members

Date : MAY 04 1987



William R. Attwater
Chief Counsel

From : STATE WATER RESOURCES CONTROL BOARD

Subject: RESPONSIBILITY FOR CLEANUP

QUESTION

What is the proper basis for holding someone responsible for the cleanup of a site which threatens to pollute or is polluting a water source?

ANSWER

In general, the law imposes the duty to protect the public from a condition of pollution or nuisance on a site on those who are aware or should be aware of the problem and who are in a position to do something about it. There are, however, many subtleties in the business of assessing responsibility and such determinations are highly dependent on the facts of each case.

DISCUSSION

The Porter-Cologne Water Quality Act paints with a broad brush when it comes to assessing responsibility for the cleanup of polluted sites. Section 13304 of the Water Code provides that any person "who has discharged or discharges waste" or any person "who has caused or permitted, causes or permits, or threatens to cause or permit" the discharge of waste into water or where it might get into water may be ordered to clean it up by the Regional Board.

The word "discharge" is not defined in the Water Code nor does the case law offer any precise definition. The State and Regional Boards have consistently taken a broad view of the word's meaning and have applied it to indirect as well as direct releases of pollution causing substances. Thus, allowing an existing source of contamination to spread from the soil to nearby ground water is as much a discharge as pouring a barrel of the stuff into a sump. (See, for example, Zoecon Corporation Order No. WQ 86-2 and Stuart Petroleum Order No. WQ 86-15.)

In an opinion of the Attorney General issued in 1955, the term "discharge" is discussed.

"The term 'discharge' is not defined in the act but is apparently used in two senses in Water Code Section 13054: (1) as a verb meaning, 'to emit; to give outlet to; to pour forth', and (2) as a noun meaning either, 'A flowing or issuing out,' or 'that which is emitted' (Webster's New International Dictionary 742 [2d ed. unab. 1951])."

The opinion goes on to apply that analysis to an abandoned mine which continued to discharge tainted water after it was closed down.

"It is immaterial that the mining operations may have terminated before either purchased his present interest because the discharge for which they are accountable is the existing and continuing drainage from their holdings, not the now discontinued mining." (26 Ops.Atty.Gen. 88.)

In light of the broad Porter-Cologne coverage and the general use of the word "discharge," the State Board has adopted a series of orders dealing with several permutations of the landlord-tenant and owner-former/owner dicotomies. Each of the State Board orders has been based, at least in part, on the line of California cases which has assigned increasing responsibility to landowners for most bad things that happen on their property. Among the leading cases are Uccello v. Laudenslayer (44 Cal.App.3d 504, 118 Cal.Rptr. 741), a 1975 case involving the landlord's knowledge of a vicious dog owned by his tenants, Copfer v. Golden (1955, 135 Cal.App.2d 623, 288 P.2d 90), assessing the liability of a former owner for injuries which occur after the sale, and Sewell v. Loverde (1969), 70 Cal.2d 666, 75 Cal.Rptr. 889), concerning the ability of a landowner to pass along certain responsibilities to a tenant through lease provisions. These and other cases all point in one direction: A landowner may be held accountable for what transpires on the property he or she owns but the courts will look to how much the landlord knew about what was happening on the property and how much control the landowner had over the dangerous condition or activity. No bright-line standards have been drawn by the courts. Each case differs slightly from the others and the courts take pains to look to those distinctions.

For example, in the Uccello case, the plaintiff won the legal point and achieved reversal of a non-suit. A later case, Lundy v. California Realty (1985, 170 Cal.App.3d 813, 26 Cal.Rptr. 575) held that Uccello applied on the law but found that the facts failed to show that the landlord knew about the danger posed by the dog on the premises.

California courts have not, as yet, dealt with the situation where the landowner responsibility is judged in light of the exercise of the state's police power function. The cases have uniformly considered the competing rights of two or more private parties. The public policy questions considered by the courts have involved how fault and compensation are apportioned among a handful of individuals. A few federal cases have begun to look at the question of how the generalized rights of the public and the taxpayers can be reconciled with the occasional unfairness visited on individual landowners.

In U.S. v. Mirabile (15 ELR 20994, DC EPA 1985) a federal court relieved a secured creditor from liability for the costs of cleaning up polluted land it had recently acquired through foreclosure. But in U.S. v. Maryland Bank and Trust Company (632 F.Supp. 573, DC Md 1986) another court held a bank responsible for EPA's costs of a site cleanup even though the bank only owned the property through foreclosure. The only real difference between the two cases is that the Maryland bank had owned the property about four times as long as the Pennsylvania bank. In one case the court sought to protect the interests of lenders who may have all the equity in a piece of property wiped out by a cleanup bill. The other court wanted to reimburse EPA for the cost of cleanup.

Both cases are statutory interpretation exercises. The recent Superfund amendments, known as SARA (Superfund Amendments and Reauthorization Act of 1986), attempt to deal with the problem created by the language of Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) which led to the conflicting judicial interpretations laid out above. Among other things, the amendments include what is known as the "innocent landowner defense." A purchaser of land will not be held accountable for the costs of cleanup if he or she did not know and had no reason to know that a hazardous substance was deposited there. A public entity has no responsibility if it takes the property by escheat or condemnation. An owner is not liable if the property passes by inheritance or bequest. The exceptions have a few exceptions but the most important aspect of the new rules is that a bank or other lender is put on notice that inquiry into the past and proposed uses of the property is important before a mortgage is granted.

To date the State Board has not been asked to deal with the rather sticky "mortgagor as landowner" issue. State Board orders have dealt, however, with a wide variety of factual settings. Beginning in 1984 with the Logsdon Order (No. WQ 84-6), the State Board dealt with the naming of landowners in cleanup and abatement orders. There the landlords claimed not to know what was happening on the property they leased to a wood preserving company. They also claimed to be unable to do anything to prevent it. The facts supported the Regional Board on both issues. The petitioners were shown to be well aware of the nature of the wood preserving business based on earlier involvement at another site. Furthermore, the lease gave the landlords the right and ability to enter the property to prevent the very sort of thing that was going on there.

Order No. WQ 85-7 (Exxon) found the State Board overruling the Regional Board on the inclusion of an oil company in a leaking tank cleanup. Exxon was only involved in the distribution of fuel to the service station and was not responsible for the inspection or maintenance of the tanks into which the fuel was poured. The only evidence connecting Exxon with the ownership of the site was some personal property tax records which, on closer inspection, showed Exxon's holdings on the site to consist of some furniture, some tools, a credit card imprinter, and two used pumps.

Five State Board orders were issued on the general topic of landowner responsibility during 1986. The first, Order No. WQ 86-2 (Zoecon) considered the plight of a company which had recently acquired a property from prior owners who had discharged a variety of hazardous chemicals into the ground. The Regional Board looked to the current owner to clean up the site even though others were likely to be far more culpable. The State Board upheld the Regional Board action. Because there was an actual movement of waste from soil to water on the site, a continuing discharge existed for which the current owner could be held responsible.

State Board Order No. WQ 86-11 (Southern California Edison) approved the inclusion of a landowner in waste discharge requirements issued to the operator of two solar power plants. No cleanup was involved and the order recognized the importance of including the ultimately responsible party in the requirements issued to the less permanent user of the site. The order approved the Regional Board decision to distinguish between the day-to-day responsibilities of the site user and the underlying responsibility of the landowner.

In Order No. WQ 85-15 (Stuart Petroleum) the issue was whether an absentee/sublessor could be held to account for a site cleanup along with the on-site operator (sublessee) and the property owner. The conclusion was that, given sufficient proof that the sublessor knew of the activities on the site and that it had the power under the lease agreements to regulate the activity, the inclusion in the order was proper.

The next order adopted by the State Board, No. WQ 86-15 (Stinnes-Western), considered a petition from a former landowner who felt that there was not enough proof that the discharge was caused during its time in possession to include it in a cleanup order. The Board applied the standard it set up in the Exxon order and found that there was substantial evidence in the record to support the Regional Board's conclusion.

The last of the 1986 orders, No. WQ 86-18 (Vallco Park), sustained a cleanup order issued by the Regional Board to both the current and former tenants of a site and to the landowner. The latter appealed contending that it was unable to regulate the on-site activities of the tenants. The State Board found that

MAY 04 1987

the record supported the Regional Board decision and that the landowner had sufficient recourse under the lease agreement to regulate the conduct of the tenants. Furthermore, the State Board recognized that the Regional board intended to look to the landowner for cleanup only if the two principle parties defaulted on their responsibilities.

The most recent order adopted by the State Board, No. WQ 87-5 (U.S. Forest Service), dealt for the first time with the naming of another regulatory agency/landowner in waste discharge requirements. The Board took special care to tell the Regional Board that any enforcement action should be taken first against the lessee and only as a last resort against the Forest Service. However, the inclusion of the federal agency in the waste discharge requirements was found to be entirely proper.

As can be seen from the orders issued by the Board, a distinction has been made between the issuance of waste discharge requirements and cleanup and abatement orders. The former may properly be issued to landowners without regard to their actual involvement in the discharge; the latter are subject to the restrictions discussed above. Two Board orders (Southern California Edison and U.S. Forest Service) involve waste discharge requirements and each specifically says that the Regional Board should be careful in assessing responsibility for site cleanup. But each order makes it clear that waste discharge requirements may be issued based on the ownership of the land and need not consider the other factors.

CONCLUSION

There is near total consistency between the way that the State Board has dealt with the various ownership/responsibility questions, the case law within California, and the current federal approach to apportioning liability in such things as Superfund cleanups. The basic principle is legally supportable and makes good sense as a matter of public policy. So long as the owner of a piece of land is aware of what is happening on the land (or should be expected to be aware) and has the power to regulate the conduct of which he or she is aware, the landowner, not the public treasury, should bear the costs of cleaning up pollution and nuisances that occur on the land.

cc: James L. Easton

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
ZOECON CORPORATION)
)
For Review of Order No. 85-67 of the)
California Regional Water Quality)
Control Board, San Francisco Bay)
Region. Our File No. A-397.)
_____)

ORDER NO. WQ 86-2

BY THE BOARD:

On May 15, 1985, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) adopted waste discharge requirements (Order No. 85-67) for a five-acre industrial site in East Palo Alto. Both Zoecon Corporation, the current owner of the property, and Rhone-Poulenc, Inc., a former owner of the site, were named as dischargers in the requirements. On June 14, 1985, the State Board received a petition from Zoecon Corporation (petitioner) asserting that Zoecon was improperly named as a discharger in the order.

I. BACKGROUND

Before discussing the issue raised on appeal, it is helpful to briefly review the history of the site.

Prior to 1926, the property in question was occupied by Reed Zinc Company whose activities are unknown. From 1926 to 1964 the site was occupied by Chipman Chemical Company for the production and formulation of pesticides and herbicides including sodium arsenite compounds. In 1964, Rhodia Inc. acquired Chipman and its operations. In 1971 the Chipman operation was shut

down and the following year the property was sold to Zoecon Corporation. Rhodia subsequently changed its name to Rhone-Poulenc, Inc. in 1978. Zoecon has occupied the site from 1972 to the present for the purpose of formulating and manufacturing insect control chemicals.

Sodium arsenite was formulated by Chipman and Rhodia in an underground tank located along a railroad spur. Some of the wastes from this process were disposed of in a shallow sludge pond located on the northeast portion of the property. Contaminated surface runoff from the site has discharged and still poses a potential to discharge onto adjoining land including a non-tidal marsh.

Zoecon Corporation contends that the chemicals used in their manufacturing and formulating operations are unrelated to the contaminants found on the site. Chipman Chemical Company and Rhodia, Inc. are known to have produced arsenical pesticides at that site and the Regional Board found that they are the probable source of the contaminants found in the soil and ground water both onsite and on adjacent properties. Zoecon Corporation has legal title to the site where the contaminants are concentrated however and the Regional Board therefore concluded that the petitioner has certain legal responsibility for any investigation or remedial action.

In fact, initial site investigations were conducted in 1981 by Zoecon. They revealed heavy metal contamination of the soil and ground water (including arsenic, lead, cadmium, selenium and mercury) in excess of background levels. The Regional Board adopted a cleanup and abatement order and several subsequent revisions to it, requiring both Rhone-Poulenc, Inc. and Zoecon Corp. to determine the lateral and vertical extent of heavy metals and organic compounds in the soil and ground water both on and off-site. The

cleanup and abatement order also required the dischargers to submit and implement remedial measures to mitigate the contamination.

The two companies did not recommend similar mitigation alternatives since they have differing opinions about the appropriate level of cleanup. Therefore, the waste discharge requirements do not require the implementation of a specific mitigation plan but, instead, establish a required level of clean up.

II. CONTENTIONS AND FINDINGS

1. Contention: Petitioner contends that it cannot be classified as a "discharger" under applicable sections of the Water Code because Zoecon never discharged, deposited or in any way contributed to the contamination of the property.

Finding: Waste discharge requirements were adopted by the Regional Board pursuant to Water Code §13263(a) which states, in pertinent part, that "the regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge or material change therein...." Petitioner argues that there is no factual or legal basis for the contention that there is an ongoing "discharge" of waste at the site such that waste discharge requirements may be issued.

Factually, petitioner argues that the soil and ground water contamination is in a relatively steady state due to the low mobility characteristic of arsenic in soils. Petitioner also points out that one consultant has estimated that at current flow rates it will take 1,000 years for the contaminated ground water to discharge to San Francisco Bay which is

about 2,000 feet west of the site.¹ Even if this calculation is accurate, such movement of contamination, albeit slow, is still a discharge to waters of the state that must be regulated. In addition, ground water quality in the shallow zone has been degraded and existing and potential beneficial uses of currently uncontaminated ground water in the vicinity of the site within the shallow and deep aquifers could be adversely affected if the spread of contamination remains uncontrolled. Therefore, we must conclude that there is an actual movement of waste from soils to ground water and from contaminated to uncontaminated ground water at the site which is sufficient to constitute a "discharge" by the petitioner for purposes of Water Code §13263(a).

We note also that although the petitioner argues that the contamination is in a relatively steady state, the petitioner's suggested remedial action plan actually calls for the excavation of all on-site soils having arsenic concentrations in excess of 500 ppm and the installation of a ground water extraction and treatment system to remove contaminants from the shallow ground water aquifer. This remedial plan, which is more stringent in its recommendations than the one proposed by Rhone-Poulenc, supports our contention that a discharge is continuing to occur which must be abated.

Petitioner cites U. S. v. Occidental Petroleum Corp., Civ. No. S-79-989 MLS (E.D. Cal. 1980) in support of its argument that the term "discharge" as used in the Porter-Cologne Act is the act of depositing a contaminant and not the continuous leaching of the contaminant into ground water. We note, first of all, that this case has no value as precedent. It is an unpublished

¹ Evaluation of Corrective Measure Plans for the 1990 Bay Road Site, East Palo Alto, California by Woodward-Clyde Consultants, November 27, 1984, p. 24-25.

decision and could not be cited or relied on in a court of law. (Cal. Rules of Court, Rule 977.) In addition, it is a federal, as opposed to California, court decision. Furthermore, the situation reviewed in that case is not analogous to the issue before us today. In the Occidental Petroleum case, the court was construing Water Code §13350 which concerns the imposition of penalties rather than the initial issuance of waste discharge requirements. Finally, unlike the situation in the Occidental Petroleum case, here the waste discharge requirements were imposed on Zoecon not because it had "deposited" chemicals on to land where they will eventually "discharge" into state waters, but because it owns contaminated land which is directly discharging chemicals into water. For all of these reasons, we decline to follow the reasoning of this case.

Petitioner also relies on the California Superior Court opinion in People ex rel. Younger v. Superior Court 16 Cal.3d 34, 127 Cal.Rptr. 122 (1976). We do not find this decision, however, to be inconsistent with the Regional Board's determination that property owner is a discharger for purposes of issuing waste discharge requirements when wastes continue to be discharged from a site into waters of the state. In Younger the Court was concerned with the proper interpretation of Water Code §13350(a)(3), which imposes a \$6,000 per day penalty for each day in which a deposit of oil occurs. The Court held that this section imposes liability for each day in which oil is deposited in the waters of the state, not for each day during which oil remains in the water. In reaching this conclusion, the Court placed great reliance upon the

fact that Harbors and Navigation Code §151² provides an adequate remedy for the cost of oil spill cleanup. The Court surmised, therefore, that the purpose of §13350(a)(3) was not to address the concerns of the State regarding the problems engendered by the size of an oil spill, the length of time the spill persists, or the costs of cleanup, but rather to provide an effective deterrent to those individuals who continuously cause oil spills. (Id., 16 Cal.3d at 44.)

Water Code §13263(a) speaks to the issue of prescribing requirements for a "proposed discharge, existing discharge, or material change therein." Civil penalties are not at issue in the case before us today. An enforcement action is not being taken and there is no provision analogous to the Harbors and Navigation Code section relied on for the reasoning in the Younger case. The Younger case dealt simply with the issue of imposing liability for each day in which oil remains in waters of the state and as such is clearly distinguishable from the issue before us now. Finally, the Younger case interprets the word "deposit" as used in Water Code §13350(a)(3). The petitioner seems to imply that this term is synonymous with the word "discharge" as used in Water Code §13263(a) which we are considering today. Yet Water Code §13350(a)(2) speaks to causing or permitting waste to the "deposited" where it is "discharged" into the waters of the state. Clearly, the words must mean different things or the Legislature would not have used both terms in §13350(a)(2).

² Under this section, any person who intentionally or negligently causes or permits any oil to be deposited in waters of the state is liable for a maximum civil penalty of \$6,000 and for all actual damages, in addition to the reasonable costs actually incurred in abating or cleaning up the oil deposit.

We note that the petitioner cites an Attorney General's opinion defining "discharge" which arose from problems at abandoned mines in the State (26 Ops.Atty.Gen. 88, Opinion No. 55-116, (1955)). Petitioner argues that the decision is not on point because the conditions factually are quite different than in this instant case. The reasoning of the Opinion nonetheless is consistent with our conclusions herein. We note also that the opinion states:

"In the case of harmful drainage from inoperative or abandoned mines, the dischargers are the persons who now have legal control of the property from which such drainage arises. If the fee of the land where the mine is located is owned separately from the mineral rights, both the owner of the mineral rights in whose tunnels and shafts or dumps the water has picked up the material which has tainted it, and the owner of the fee from whose land the tainted water is permitted to pour out, are dischargers within the contemplation of the Dickey Act. By failing to take action which is within their legal power to halt the defilement of the drainage or to render it harmless by treatment before it departs their property, both are responsible for the deleterious discharge. It is immaterial that the mining operations may have terminated before either purchased his present interest because the discharge for which they are accountable is the existing and continuing drainage from their holdings, not the now discontinued mining." (Id. at p. 90-91.)

This is consistent with the conclusion in 27 Ops.Atty.Gen. 182 Opinion No. 55-236 (1956) regarding issuance of waste discharge requirements for inactive, abandoned or completed operations. The opinion concluded:

"The person upon whom the waste discharge requirements should be imposed to correct any condition of pollution or nuisance which may result from discharges of the materials discussed above are those persons who in each case are responsible for the current discharge. In general, they would be the persons who presently have legal control over the property from which the harmful material arises, and thus have the legal power either to halt the escape of the material into the waters of the State or to render the material harmless by treatment before it leaves their property. Under this analysis, the fact that the persons who conducted the operations which originally produced or exposed the harmful material have left the scene does

not free from accountability those permitting the existing and continuing discharge of the material into the waters of the State." (Id. p. 185.)

Although both of these opinions interpret the Dickey Water Pollution Act which has been superseded by the Porter-Cologne Act, the relevant wording and intent of the statutes remains the same. In fact, in 63 Ops.Atty.Gen. 51, 56 (1980), it states:

"The legislative history of the Porter-Cologne Act clearly indicates that the previous Attorney General opinions on dirt run-off, mine tailing run-off and the responsibility of the present owner were intended to be incorporated in the definition of 'waste' under the Porter-Cologne Act."³

2. Contention: The petitioner also argues that it is inequitable to impose requirements on Zoecon when the actual discharger is known and capable of performing the clean up.

³ Section 36 of the bill that enacted the Porter-Cologne Act (Stats. 1969, Ch. 482) provided:

"This act is intended to implement the legislative recommendations of the final report of the State Water Resources Control Board submitted to the 1969 Regular Session of the Legislature entitled 'Recommended Changes in Water Quality Control', prepared by the Study Project-Water Quality Control Program."

The cited report contained the following comment, at page 24 of Appendix A to the report, about the definition of waste in Water Code Section 13050(d):

"It is intended that the proposed definition of waste will be interpreted to include all the materials, etc. which the Attorney General has interpreted to be included in the definitions of 'sewage', 'industrial waste', and 'other waste' [under the Dickey Act]."

Even without this indication of legislative intent to adopt specific opinions of the Attorney General as part of legislation, under general rules of statutory construction, it is presumed that an interpretation of a statute in an opinion of the Attorney General has come to the attention of the Legislature, and if that interpretation were contrary to the intent of the Legislature, the Legislature would have adopted corrective language in amendments on the subject. (California Correctional Officers' Assn. v. Board of Administration (1978) 76 Cal.App.3d 786, 794.)

Finding: We hasten to point out that neither the waste discharge requirements nor this order speak to the issue of apportioning responsibility between Zoecon and Rhone-Poulenc for the clean up of the site. There are other forums that provide a more appropriate setting for the resolution of that matter. In fact, we understand that Zoecon has initiated legal action in San Mateo Superior Court to get Rhone-Poulenc to compensate Zoecon for the damages and to declare Rhone-Poulenc responsible for the contamination.⁴ In addition, liability will be apportioned among all potentially responsible parties as part of the Department of Health Services' development of a remedial action plan. (Health & Safety Code §25356.3)

Issues regarding indemnity, the application of the doctrine of caveat emptor⁵ or possible misrepresentation at the time of the sale of the property can not, and should not, be resolved by this Board. However, we do want to point out that we disagree with the petitioner's contention that as a policy matter requiring a present landowner to share responsibility for discharges of waste that began under a prior owner will undercut efforts to promote prompt disclosure and clean up of contaminated sites. The petitioner argues that this will encourage dischargers to conceal their actions in order to shift responsibility on to innocent purchasers of contaminated property. On the

⁴ Reporter's Transcript, California Regional Water Quality Control Board, San Francisco Bay Region, Proceedings Regarding Rhone-Poulenc and Zoecon Corporation - Waste Discharge Requirements, May 15, 1985, Page 29; Zoecon Corp. v. Rhone-Poulenc, Inc., Cal. Superior Court, County of San Mateo, No. 260687.

⁵ Under the general rule of caveat emptor (let the buyer beware) in the absence of an express agreement, the vendor of land is not liable to his vendee for the condition of the land existing at the time of transfer.

contrary, we believe that our determination that present property owners are also responsible for waste discharges will encourage potential buyers to more thoroughly examine the condition of property which they may acquire. Zoecon states that it purchased the property in 1972 and conducted an environmental audit of it in 1980. If the audit had taken place prior to the purchase of the property, it is most probable that this matter would not be before us today.

In addition, the petitioner characterizes itself as the "mere landowner" in the situation. Yet it is this very role that puts Zoecon in the position of being well 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.

Petitioner's final argument concerns the alleged inequity in imposing waste discharge requirements on the basis of site ownership when the actual discharger is known and can perform the clean up. Zoecon cites State Dept. of Environmental Protection v. Exxon, 376 A.2d 1339 (NJ Superior Court, Chancery Division 1977). We do not speak here to that Court's application of New Jersey statutes since we question the comparability to the California statutory scheme. We do note however that the New Jersey court's conclusion regarding application of the common law nuisance doctrine would probably not be applied by a California court. This is because California Civil Code §3483 provides that every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefore in the same manner as the one who first created it.⁶

⁶ Common law governs in California only to the extent that it has not been modified by statute. [Victory Oil Co. v. Hancock Oil Co. 125 Cal.App.2d 222, 229, 270 P2d 604 (1954)]

We find that our decision today is in many ways analogous to our long standing policy of naming a landlord in waste discharge requirements if necessary and appropriate to the circumstances before the Regional Board. This is consistent with the recent trend in California cases that is contrary to the traditional rule of landlord's nonliability subject to certain exceptions. In Rowland v. Christian (1968) 69 C.2d 108, 70 Cal.Rptr. 97, 443 P.2d 651, California repudiated the traditional classification of duties governing the liability of an owner or possessor of land and substituted the basic approach of foreseeability of injury to others. See, e.g. 3 Witkin, Summary of California Law (8th Ed. 1980 Supp.) Section 453A, Uccello v. Lauderslayer (1975) 44 Cal.App.3d 504, 118 Cal.Rptr. 741.

The court in Uccello held that an enlightened public policy requires that a landlord owes a duty of care to correct a dangerous condition created by a tenant, where the landlord has actual knowledge of the condition and an opportunity and the ability to obviate it. "To permit a landlord in such a situation to sit idly by in the face of the known danger to others must be deemed to be socially and legally unacceptable." (44 Cal.App.3d at 513.)

For all of the above reasons, we conclude that the petitioner is a discharger of waste who was appropriately named in the Regional Board's waste discharge requirements.

3. Contention: Petitioner argues that it has been unconstitutionally denied due process and equal protection of the law in that it is the only property owner named as a discharger despite the fact that adjacent properties are also contaminated.

Finding: Unrefuted testimony before the Regional Board indicates that the vast majority of the contaminated area is now owned by Zoecon. A

small portion of the contaminants have migrated off the site onto adjacent properties. Given the magnitude of the contamination found on the five-acre site which is the subject of the waste discharge requirements relative to the amount of contaminants on adjacent property, we find that it was appropriate for the Regional Board to exercise its discretion pursuant to Water Code §13269 and not issue waste discharge requirements for adjacent property at this time. We note that such a waiver of requirements may be terminated at any time. If additional fact finding should reveal more extensive off-site contamination, the Regional Board should, of course, reconsider its decision to waive requirements for adjacent properties.

III. CONCLUSIONS

After review of the record and consideration of the contentions of the petitioner, and for the reasons discussed above, we conclude:

Zoecon Corporation was properly named as a discharger in Order No. 85-67 (Waste Discharge Requirements for Rhone-Poulenc, Inc. and Zoecon Corporation, East Palo Alto, San Mateo County) by the California Regional Water Quality Control Board, San Francisco Bay Region.

IV. ORDER

IT IS HEREBY ORDERED THAT the petition is denied.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 20, 1986.

Aye: Raymond V. Stone
Darlene E. Ruiz
E. H. Finster
Eliseo M. Samaniego
Danny Walsh

No: None

Absent: None

Abstain: None

Raymond Walsh

Raymond Walsh
Interim Executive Director

wastewater. Accordingly, the blowdown discharge is classified as designated waste. The evaporation ponds are classified as Class II surface impoundments pursuant to Title 23, California Administrative Code, Chapter 3, Subchapter 15.

The facility and ponds are owned by Luz Solar Partners II and operated by Luz Engineering Corporation. The underlying land is owned by Southern California Edison.

II. CONTENTION AND FINDING

Contention: Petitioner raises only one issue. Petitioner contends that the waste discharge requirements should not name Southern California Edison Company as a discharger, with a continuing responsibility to ensure compliance with the applicable waste discharge requirements. Edison urges the waste discharge requirements be amended to state that the owners "recognize an ultimate responsibility for wastes discharged to the property."

Finding: Petitioner argues that it is merely the landowner and should not be held responsible for day-to-day compliance with the waste discharge requirements. Petitioner does indicate an ultimate responsibility for wastes discharged to the property. There is agreement that the Porter-Cologne Water Quality Control Act does not require that a landowner be named in waste discharge requirements issued to a lessee. Typically, however, the Regional Boards have named the landowner in such situations. We have upheld such actions in the past. There are several reasons to justify inclusion of a landowner in waste discharge requirements. The existence of nuisance conditions on the leased premises at the time the lease is made or renewed or the creation by the tenant of dangerous conditions on the premises of which the

landlord has actual knowledge or the ability to abate may serve as bases for imposing liability on the landlord. Additionally, inclusion of the landlord in requirements serves to put the landlord on notice of the tenant's activities and will help to insure access to the site. We most recently reaffirmed this approach of naming a landowner in Board Order No. WQ 86-2, In the Matter of the Petition of Zoecon Corporation and will now proceed to do so again.

Petitioner furnishes scant legal authority for its proposition that it should not be named in waste discharge requirements. Petitioner notes, as we have already stated, that the Porter-Cologne Act does not require that a landlord be named in waste discharge requirements. Petitioner further argues that when the Legislature intended to place liability on the property owners instead of the discharger, it has done so. Water Code Section 13305 is cited in the petition as an example. However, a review of other sections of the Porter-Cologne Water Quality Control Act lead us to conclude that landowners may be named. The very fact that the Porter-Cologne Act has been interpreted to authorize the inclusion of lessors in waste discharge requirements led to the adoption of Section 13270 in 1974. Section 13270 explicitly prohibits a Regional Board from requiring a report of waste discharge and from issuing requirements to any lessor public agency which leases land to another public agency or to any public utility regulated by the Public Utilities Commission, unless the lease from the lessor public agency contains restrictions which unreasonably limit the ability of the lessee to comply with waste discharge requirements. Obviously, the Legislature could have prohibited the Regional Boards from requiring a report of waste discharge and from issuance of requirements from all lessors, but chose not to do so.

Additionally, we note the series of memoranda and letters issued by the Office of the Chief Counsel on this issue.¹ These opinions have concluded that, under both the exceptions to the common law rule of landowner nonliability and the more recent California cases applying negligence principles, a landowner-lessor may be held jointly liable with a lessee for waste discharges occurring on the leased premises during the term of the lease.² Petitioner cites no authority for the proposition that the waste discharge requirements should be amended to delete a provision that the owner has a continuing responsibility for ensuring compliance with the waste discharge requirements, and to insert instead a more limited provision that the owners do recognize an ultimate responsibility for wastes discharged to the property.³ We feel such an amendment to be inappropriate. We agree with the Regional Board that "ultimate responsibility for wastes" cannot be separated from a "continuing responsibility for ensuring compliance with applicable waste

¹ See, e.g. letters dated February 24, 1976 and April 30, 1976 to attorneys for the U. S. Department of Agriculture; memo dated May 27, 1981 to Executive Officer, Region 9; memo dated September 10, 1981 to Executive Officer, Region 7; memo dated February 21, 1984 to Region 9, and memo dated June 25, 1984 to Executive Officer, Region 1.

² Case law in support of this conclusion is substantial. See Becker v. IRM Corp. (1985) 38 Cal.3d 454, 213 Cal.Rptr. 212, citing with approval discussion in 3 Witkin, Summary of California Law (8th Ed.) Section 453A, Brennan v. Cockrell Investments (1973), 35 Cal.3d 796, 111 Cal.Rptr. 122. See also Uccello v. Laudenslayer (1975) 44 Cal.App.3d 504, 118 Cal.Rptr. 741, Levy-Zentner Co. v. Southern Pacific Transportation Co. (1977) 74 Cal.3d 762, 794; 142 Cal.Rptr. 1, 21; Stoiber v. Honeychuck (1980) 101 Cal.3d 903, 162 Cal.Rptr. 194 Rosales v. Stewart (1980) 113 Cal.3d 162, 169 Cal.Rptr. 660, and Swanberg v. O'Mectin (1984) 157 Cal.App.3d 325, 203 Cal.Rptr. 701.

³ Petitioner does attempt to argue that it is not a "discharger" as defined in the federal Water Pollution Control Act. The Water Code Section 13373 incorporation of the federal definition of this term is limited on its face to Chapter 5.5 of the Porter-Cologne Act, and as such, is inapposite in the current situation which does not involve an National Pollutant Discharge Elimination System (NPDES) permit.

discharge requirements". Indeed, many of the more current cases cited in footnote No. 2 support the general proposition that a landowner has an ongoing duty to make sure the premises are kept in a reasonably safe condition. A landlord "has an affirmative duty to exercise ordinary care to keep the premises in a reasonably safe condition and therefore must inspect them or take other proper means to ascertain their condition. And if, by the exercise of reasonable care, he would have discovered the dangerous condition, he is liable." Swanberg v. O'Mectin (1984) 157 Cal.App.3d 325, 331, 203 Cal.Rptr. 701, 704, citing 4 Witkin Summary of Cal. Law (8th Ed. 1974) Torts §592, p. 2860.

Petitioner is concerned that it is held responsible for day-to-day compliance with the waste discharge requirements. The implication is that the petitioner will have to be as involved in the operation of the facility as the lessee. We disagree. The waste discharge requirements clearly place the responsibility for day-to-day compliance on the lessee. For example, the lessee alone is responsible for monitoring (Prov. 11.1), notification of unauthorized discharges (Prov. 11.2), closure requirements (Prov. 11.5), and submittal of construction plans (Prov. 11.6). As the Regional Board notes, petitioner has not asserted an inability to periodically inspect the premises, a reasonable method to fulfill its responsibilities under the waste discharge requirements.

Accordingly, we find that the Regional Board acted properly and responsibly in naming the landowner in the waste discharge requirements.

III. REQUEST FOR HEARING

Request: Petitioners have requested a hearing to present evidence of (1) legal issues and (2) factual evidence regarding operation of the facility.

Finding: The request for a hearing is denied. Our regulations (Title 23, California Administrative Code, Section 2050(b)) regarding hearings for the purpose of presenting additional evidence require that a request for a hearing shall be supported by a statement that additional evidence is available that was not presented to the Regional Board or that evidence was improperly excluded. If evidence was not presented to the Regional Board, the reason shall be explained.

Petitioners allege that there is evidence not presented to the Regional Board "due to the rapid manner in which the Board closed discussion on the matter, perceived by Edison representatives at the hearing as a decision on the part of the Board not to hear any additional argument on the subject." Our review of the record in this matter shows that petitioner had ample and numerous opportunities to present evidence to the Regional Board. Edison submitted written comments in a letter dated December 4, 1985 to the Regional Board requesting changes in the tentative waste discharge requirements identical to the changes requested in the petition before us. Edison representatives met with Regional Board staff to discuss the tentative order on December 10, 1985. Edison representatives were also present and spoke at the January 9, 1986 Regional Board meeting. While petitioner may "perceive" that the Regional Board had decided not to receive additional evidence, the record shows otherwise. When ample opportunity was available to present evidence at the Regional Board level, we can and will decline to reopen the matter. We further note, as regarding legal argument, that petitioner again has had more than ample opportunity to present such material. As explicitly set forth in

our regulations, legal arguments shall be presented as a statement of points and authorities as part of the petition (Title 23, California Administrative Code, Section 2050(a)(7)).

IV. SUMMARY AND CONCLUSIONS

1. The petitioner is properly named in waste discharge requirements.
2. Since petitioner had ample opportunity to present additional evidence earlier, a hearing in this matter is inappropriate.

V. ORDER

IT IS HEREBY ORDERED that the petition in this matter is denied.

CERTIFICATION

The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 17, 1986.

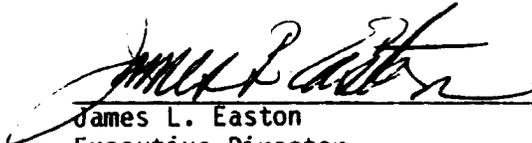
Aye: W. Don Maughan
Darlene E. Ruiz

Eliseo M. Samaniego
Danny Walsh

No: None

Absent: E. H. Finster

Abstain: None



James L. Easton
Executive Director

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
JOHN STUART, DOING BUSINESS AS STUART)
PETROLEUM)
)
For Review of Cleanup and Abatement)
Order Dated February 11, 1986,)
California Regional Water Quality)
Control Board, Central Valley Region.)
Our File No. A-424.)
_____)

ORDER NO. WQ 86-15

BY THE BOARD:

On February 11, 1986, the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Regional Board), using the authority delegated to him by the Regional Board, issued a cleanup and abatement order. The order concerned underground contamination caused by gasoline which the Executive Officer believed had come from a service station in Glenville (Kern County) known as Jerry's Automotive. The order directed the property owner, Paul Arnold, the lessee John Stuart doing business as Stuart Petroleum, and the operators and sublessees Jerry L. and Patricia M. Pitts, to begin taking remedial action and set up a schedule for compliance and reporting. Among the actions required by the order were providing alternative drinking water supplies, investigating the extent of the problem, and undertaking both immediate and long-term cleanup.

On March 10, 1986, the State Water Resources Control Board (State Board) received a petition from John Stuart doing business as Stuart Petroleum seeking review of the cleanup and abatement order. On July 10, 1986, the State Board received a request for stay and on August 1, 1986, the State Board

gasoline sources near the station. Wells in the immediate vicinity of the station and downgradient from the station have become contaminated with gasoline. Solely on this basis it is reasonable to conclude that the gasoline station is the source of the pollution.

In October 1985, Kern County Health Department retained IT Corporation (IT) to investigate the presence of gasoline in ground water in Glenville. A draft ground water contamination assessment was released in May 1986 (Project No. 240030). The technical approach to accomplish the study objectives included the following field activities:

a. Performing soil borings to investigate vadose zone characteristics and to locate possible sources of gasoline constituents in the ground water system.

b. Performing a vapor probe survey to estimate the boundary of the free product plume.

c. Ground water sampling of wells to investigate ground water quality at the site.

d. Surveying well casing elevations and measuring water level elevations to determine hydraulic gradients and ground water flow directions.

All of these activities have provided information which is consistent with the finding that the underground tanks at the service station are the source of ground water pollution.

The soil samples from borings around the gasoline tanks showed high concentrations of benzene, ethyl benzene, toluene, and xylene (BETX) which is considered evidence of gasoline contamination. The vapor probe survey also found high hydrocarbon concentrations in the vicinity of the underground gasoline tanks.

Water level elevations taken in April 1986 show that Well No. 6 is actually hydraulically downgradient from the tanks. This condition may change at other times depending on pumping rates of surrounding wells and Well No. 6, but free product from the tanks can reach Well No. 6.

The final point raised by the petitioner on this issue is their assertion that the underground tanks do not leak. Several Petrotite leak detection tests were run on the tanks. These tests did not detect any leakage. While the results of these tests must certainly be considered in determining whether the tanks are the source of pollution, we find that such results are not sufficient to offset the evidence pointing the other way. It should be noted that this type of leak detection test can generate inaccurate results if proper procedures are not followed or if incorrect calculation of the temperature compensation occurs. There is also the possibility that the existing tanks or interconnecting piping may have leaked in the past and were subsequently repaired. A final possibility is that the pollution was caused by spills and not by leakage. According to County officials, at least one major spill incident has occurred at the station.

2. Contention: Petitioner, as lessee and sublessor of the property, is not responsible for any contamination which might have originated on the property.

Finding: Petitioner contends that neither the terms of the leases nor the legal doctrine of strict liability make him responsible for what happens on the property. He is mistaken on both counts.

Water Code Section 13304 contains the following language:

It is not the province of this Board to assign rights and duties between various third parties based on their mutual contractual obligations. Those issues must be decided elsewhere. However, we are obliged to examine the two leases in this case to determine whether there is a threshold of responsibility to the public which can be imposed on the petitioner.

On January 11, 1984, the petitioner leased the property from Paul Arnold for one year with an option for another, at \$250 per month plus a percentage of gasoline sales. The renewal option was exercised. Among other things the lease provided that the petitioner would comply with all statutes, ordinances, and requirements of all authorities and would be responsible for maintenance and repairs to the premises, including "plumbing and heating installations and any other system or equipment upon the premises." The petitioner subleased the property to Pat Littrell for most of 1984, then, on December 4, 1985, entered into a one-year sublease with Jerry Pitts. The sublease called for rent at \$450 per month. Although some of the terms of the sublease were similar to those in the lease, many terms are different. For one thing, the sublessor was not made fully responsible for maintaining and repairing the premises.

Petitioner has cited several cases in support of his position that he should not be held responsible. On close examination none is compelling. Glen R. Sewell Sheet Metal, Inc. v. Loverde (1969) 70 Cal.2d 666, 75 Cal.Rptr. 889

³ (FOOTNOTE CONTINUED)

business, in recent years and legislative responses (e.g. Health and Safety Code §25280 et seq.) have called further attention to the issue.

In some instances criminal penalties have been imposed despite the lack of actual knowledge. People v. Travers (1975) 52 Cal.App.3d 111, 124 Cal.Rptr. 728; Aantex Pest Control v. Structural Pest Control Board (1980) 108 Cal.App.3d 696, 166 Cal.Rptr. 763.

not relevant. Responsibility for a problem created in the past is. The landowner has assured the Regional Board in writing that he will permit access to the property for the purposes of cleaning up the problem.

The petitioner argues that either Arnold, as the property owner, or Pitts, as the station operator, or both should be responsible, not him. He claims he "never did take physical possession of the premises" (Petitioner's Response, p. 12) and "does not now have any legal interest whatsoever in the subject premises" (p. 17). From those two literal truths he would have us infer that he never did have a legal interest. He confuses the legal distinction between the assignment of a lease where the lessee divests himself of all further benefits and burdens and a sublease where the lessee wears two hats and no direct contract exists between the lessor and the sublessee. (Witkin, Summary of California Law, Eighth Edition, p. 2163.) At all times during the lease period, petitioner had an important legal interest in the property and derived income from it. It is disingenuous for petitioner to argue that he had nothing at stake in the property. Accordingly, we find the action of naming the petitioner, along with the lessor and the sublessees, as a party responsible for the cleanup to be appropriate and proper.

III. CONCLUSIONS

The cleanup and abatement order issued by the Executive Officer was appropriate and proper. While the evidence of the source of gasoline contamination is not conclusive, it is a sufficient basis for the order. The contractual position of the petitioner as a lessee and sublessor of the service station give him enough legal control over the property to hold him responsible for what took place there.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
STINNES-WESTERN CHEMICAL CORPORATION)
)
For review and petition for stay of)
Order No. 86-34, Waste Discharge)
Requirements of the California)
Regional Water Quality Control Board,)
San Francisco Bay Region.)
Our File No. A-438.)
_____)

ORDER NO. WQ 86-16

BY THE BOARD:

On May 21, 1986, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) adopted waste discharge requirements (site cleanup requirements) Order No. 86-34, to address pollution problems at a chemical packaging and distribution facility. The order names Great Western Chemical Company, the current landowner, and Stinnes-Western Chemical Corporation, a successor in interest to a previous landowner, as responsible parties. On June 20, 1986, the State Board received a petition from Stinnes-Western (petitioner) requesting review and stay of the Regional Board Order. Since we will address the petition for review on its merits, we do not need to reach the issues of the stay request.

I. BACKGROUND

Great Western Chemical Company currently owns and operates a chemical packaging and distribution facility in the City of Milpitas in Santa Clara County. The previous landowner, Western Chemical and Manufacturing Company, bought the undeveloped land in 1969 and constructed a chemical packaging

December 1982 to determine if solvent tanks or piping had leaked. Organic solvents were detected in the soil and groundwater on-site. High concentrations of chlorinated solvents and toluene are present in the soil and groundwater near the underground and above ground tanks. For example, soil core samples at the tank farm contained 11,000 parts per billion (ppb) TCE; 6,800 ppb TCA; 2,100 ppb PCE and other organic solvents.

Additional studies have shown that a solvent plume extends laterally from the tank area off site more than 2,250 feet to the northwest and vertically for a depth less than 60 feet from the ground surface. Significant groundwater pollution has occurred. As shown in the following table, pollutant concentrations have exceeded Department of Health Services action levels by large margins throughout the plume. The maximum historical concentrations are listed in the table. The results from the date of February 20, 1985 are shown as a typical example:

consider Stinnes-Western, as a successor in interest, to be ultimately responsible for any action of Western Chemical.

II CONTENTION AND FINDINGS

1. Contention: There is insufficient evidence in the record to establish that Western Chemical, (petitioner's predecessor in interest) discharged waste.

Finding: Our review of the Regional Board record shows a number of different factors which, taken as a whole, lead us to conclude that petitioner was properly named a responsible party.

At the outset, we note that all parties agree that Western Chemical and Great Western handled the same chemicals at the site. These are the same chemicals which have been found in soils and groundwater at the site.

Underground Tank Leakage

This groundwater and soil contamination may have occurred several different ways, or combination of ways. One way is leakage of the underground tanks. Very high concentrations of chemicals are found in soils and groundwater immediately downgradient of the underground tank farm. Soil borings adjacent to the underground tanks show concentrations of both toluene and volatile organics. Similarly, our experience with underground tanks has shown that many of them leak.¹ While petitioners allege that the tanks were

¹ For example, a recent report by the Environmental Protection Agency (EPA) estimates 35% of underground motor fuel tanks leak. While the underground tanks here are not motor fuel tanks, the leakage percentage is probably very similar. See "Underground Motor Fuel Storage Tanks: A National Survey." Volume 1, EPA 560/5-86-013, May 1986.

one-third of the outstanding common stock of Western Chemical. Great Western submitted the sworn declaration of Jack Hartsook, a former employee of Western Chemical.

Two declarations specifically mention a spill of PCE, estimated by Hartsook to have occurred in 1974, and to be from 500-600 gallons, and by Cluff to be from 300-400 gallons. Cluff indicates that the leakage was into a concrete containment area, and was then pumped back into drums. As noted earlier, the concrete above ground sump does not have double containment and now has cracks in the concrete and a possible separation in the wall joints.

As we will discuss further in regard to other discharges of chemicals onto the concrete slab, concrete is not impermeable. Spillage will inevitably result in some solvent reaching the ground through the concrete. The permeability of the concrete greatly increases when cracks are present. Cracks are certainly present now, and we note that at least small cracks are always present in concrete.³ Thus, we find that the acknowledged spill of PCE inevitably resulted in some unquantified amount of material reaching the ground.

The Hartsook declaration also makes reference to several drumming practices of Western Chemical which would have resulted in the discharge of chemicals. Specifically, Hartsook declares that during the drumming process, wherein 54 gallon drums located on a flat concrete slab were filled with chemicals, some dripping or runoff from the hose would go onto the concrete

³ See, e.g. William B. Kayes, "Construction of Linings for Reservoirs, Tanks and Pollution Control Facilities.", John Wiley and Sons, 1977 and "Petrology of Concrete Affected by Cement--Aggregate Reaction", Duncan McConnell et al., Geological Society of America, November 1950, p. 232, et seq.

absorbed by absorbent clay. "Any spill so small that it could not be absorbed would escape through evaporation" (Cluff at paragraph 16.)

In our view, what these declarations essentially say is that discharge of chemicals did occur, in numerous instances during the drumming process and due to leaking drums and because of the acknowledged PCE spill. We do not believe this material could have all "evaporated". Further, because of the nature of concrete and the "containment" system used by Western Chemical, some subsurface discharge would inevitably have occurred.

Additional Considerations

In our review of the record, we note several other factors supporting the naming of Stinnes-Western as a discharger. The Regional Board, in its response, has explicitly referred to chemical handling practices standard to the industry at the time Western Chemical owned the site. The Regional Board states that it has found these past standard practices to be insufficient to protect the environment from chemical pollution. The Regional Board further notes that typically chemical handling practices in the past did unknowingly allow adverse environmental impacts to occur.⁴

We take administrative notice of the Regional Board's experience and expertise in this area. The Regional Board has regulated similar companies for

⁴ Indeed, the Regional Board cites the Cluff and Johns declarations, arguing that the environmentally unsafe handling practices are still thought to be appropriate by Cluff ("Insignificant volumes of solvent may escape from the system"). Further, the Regional Board notes the Johns declaration at paragraph 11, which does not deny the PCE spill, but alleges that no such spill "resulted in an adverse environmental impact". As we noted earlier, given the very low action levels for these chemicals, today we are concerned with any discharge.

"preponderance of the evidence" test, the Regional Board should have applied. However, given our own review of the record and the facts in this case, and the conclusion we reached above, we believe the appropriate question is the standard of review we should apply when reviewing a Regional Board action.

As all parties acknowledge, we dealt with this very issue in previous Board Order No. WQ 85-7. In the Matter of the Petition of Exxon Company, USA (hereafter Exxon).

In Exxon we addressed the question of what standard of review we should apply when reviewing a Regional Board action. We discussed whether we should uphold a Regional Board action if there is any possible basis for the action or whether we should exercise our independent judgment as to whether the action was reasonable. We concluded that while we can independently review the Regional Board record, in order to uphold a Regional Board action, we must be able to find that the action was based on substantial evidence. In Exxon we determined that the mere disputed payment of taxes for possibly three years was not sufficient or substantial evidence upon which to base a finding of responsibility given Exxon's unrefuted explanation that the payments had been erroneously made.

Clearly, this is not the situation here. Our finding above that Stinnes-Western is properly named a responsible party is based on numerous facts and the record as a whole. As we did in Exxon, we reviewed the record and in this case, determined that there is substantial evidence to name petitioner.

This is consistent with the test we set forth in Exxon. We note further that Exxon also dealt with a groundwater pollution problem with disputed ownership and liability issues. In Exxon we stated at 11-12:

Our review of the record, discussed above, and the Regional Board's judgment, has convinced us that there is a requisite reasonable factual basis for naming Stinnes-Western as a responsible party. In weighing the evidence, we particularly take notice that this case involves petitioner's predecessor in interest, who actively engaged in chemical packaging activities on the site. We believe there is credible and reasonable evidence that spills did occur while the prior landowner both owned and occupied the site.

Furthermore, we take notice of the public policy considerations in such a case. As we discussed in Exxon, fewer parties named in an order may well mean no one is able to clean up a demonstrated water quality problem. To the extent possible, we believe that multiple parties should properly be named in cases of disputed responsibility. This is consistent with the federal approach as articulated in the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 USC §9601 et seq.). CERCLA provides that present owners and operators and owners and operators at the time of disposal of hazardous substances are responsible parties for purposes of allocating costs in a cleanup.

Our approach today, and historically, is also consistent with state policy. The Governor's Task Force on Toxics, Waste and Technology, May 1986, Final Report specifically recommends that the state explicitly define "responsible party" in the same way as CERCLA for the purpose of site cleanup. The Report notes, at p. 104 that this would help reduce the substantial uncertainty over who may be held responsible for cleanup costs.

3. Contention: The Regional Board improperly failed to allow petitioner the opportunity to inspect the site and review the proposed remedial plan.

III. SUMMARY AND CONCLUSIONS

1. Significant groundwater contamination has occurred both on and off the site.

2. Looking at the Regional Board record as a whole, we conclude that petitioner was properly named a discharger. A number of factors support this conclusion, including:

a. Soil contamination of chemicals known to be stored in the underground tanks has been found adjacent to the tanks.

b. Chemical discharges occurred above ground. Spills happened during the drumming process and because of leaking drums. A large PCE spill occurred. Concrete would not have contained these spills.

c. Historical standard practices of the chemical industry as noted by the Regional Board have generally been insufficient to protect the environment from chemical pollution.

d. Any spills during rainfall would have led to discharges.

e. It is reasonable to assume that the large chemical plume began prior to December 1978.

3. Using the test we set forth in a previous Board order, we find that the Regional Board action was based on substantial evidence.

4. The Regional Board should make any changes it believes necessary in the time schedule due to the limited site access previously available to petitioner.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
VALLCO PARK, LTD.)
)
For Review of Orders Nos. 86-48 and)
86-49 of the California Regional Water)
Quality Control Board, San Francisco)
Bay Region. Our File No. A-441.)
_____)

ORDER NO. WQ 86-18

BY THE BOARD:

On June 18, 1986, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) adopted Orders Nos. 86-48 and 86-49. These orders established waste discharge requirements (site cleanup requirements) for two properties in Cupertino, Santa Clara County. The subjects of Order No. 86-48 were Siemens Components, Inc., a manufacturer of semiconductors, and the landowner, Vallco Park, Ltd., the petitioner. Order No. 86-49 was issued to petitioner as the landowner and to Intersil, Inc., also a semiconductor manufacturer. The petitioner objected to its inclusion in both orders and filed a timely petition on July 18, 1986.

I. BACKGROUND

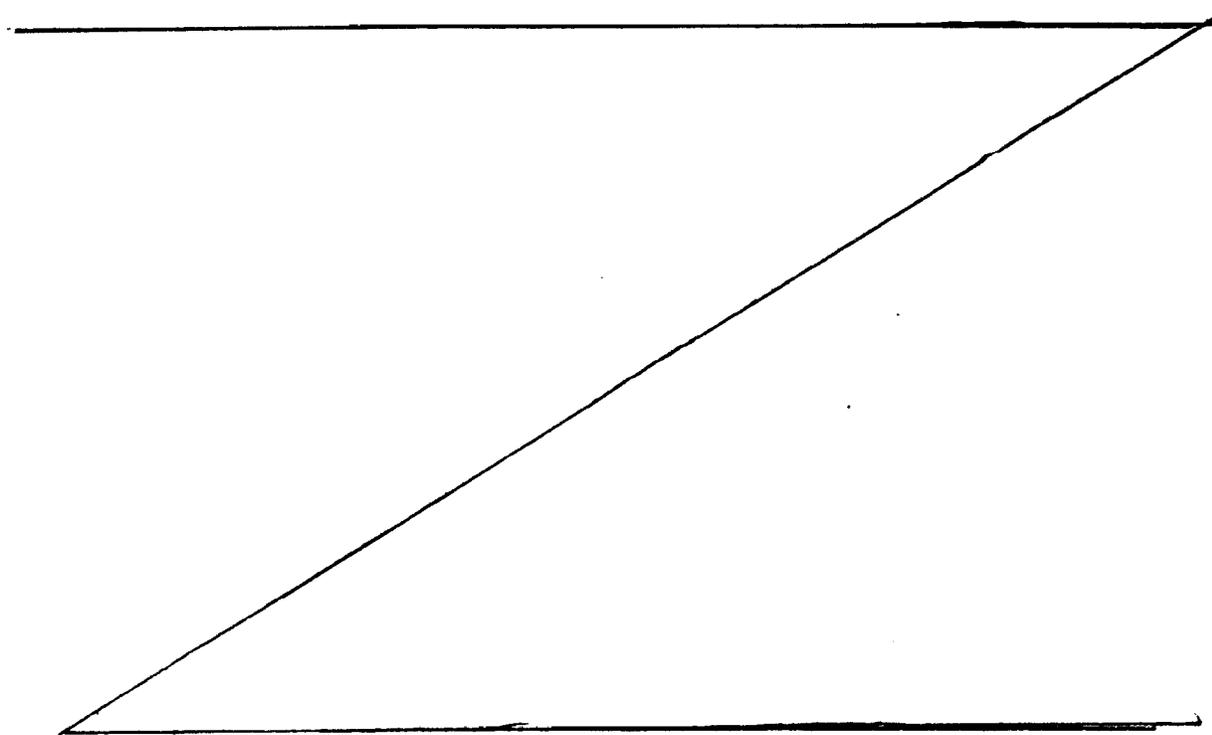
The petitioner owns a parcel of land in an industrial park in Cupertino. In 1970, petitioner leased a portion of the parcel to Intersil, Inc. for a term of twenty years. In 1974 petitioner leased another part of the land to Siemens Components, Inc. for sixteen years with an option for another ten. In each lease the tenant agreed to various conditions including a provision that the premises could not be used in violation of the "laws,

such a situation, petitioner contends that, by being named, it could be liable if cleanup fails. We agree with the latter point. If the lessee fails to clean up the Regional Board should, as between the landowner and the public, place responsibility on the landowner. Naming the landowner in the requirements assures such responsibility.

Of course, it should be noted that the lessees have assumed primary responsibility and are in fact carrying out the cleanup activities. Given this state of affairs, the Regional Board should continue to look to the lessees regarding cleanup and only involve the landowner if the lessees fail to comply with the orders.

III. SUMMARY AND CONCLUSION

It is proper to name a landowner as a discharger in site cleanup requirements.



STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
UNITED STATES DEPARTMENT OF)
AGRICULTURE, FOREST SERVICE)
)
For Review of Resolution No. 86-201 of)
the California Regional Water Quality)
Control Board, Central Valley Region.)
Our File No. A-457.)
_____)

ORDER NO. WQ 87-5

BY THE BOARD:

On October 24, 1986, California Regional Water Quality Control Board, Central Valley Region (Regional Board) adopted waste discharge requirements (NPDES No. CA0081906) regulating discharges from a mining project located within the Plumas National Forest. Both the mine operator, Calgom Mining, Inc., and the United States Forest Service were named as dischargers. The Forest Service filed a timely petition challenging its designation as a discharger on November 19, 1986.

I. BACKGROUND

Calgom Mining, Inc. operates a gold mine near Canyon Dam in the vicinity of Lake Almanor. It uses a heap-leach process which consists of ore crushing, agglomeration with lined surface, and spraying. The leachate from the pile is recycled. After all mineral values are removed through a series of carbon pads. The solution is returned to the leach pads.

87-5 Forest

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
UNITED STATES DEPARTMENT OF)
AGRICULTURE, FOREST SERVICE)
)
For Review of Resolution No. 86-201 of)
the California Regional Water Quality)
Control Board, Central Valley Region.)
Our File No. A-457.)
_____)

ORDER NO. WQ 87- 5

BY THE BOARD:

On October 24, 1986, California Regional Water Quality Control Board, Central Valley Region (Regional Board) adopted waste discharge requirements (NPDES No. CA0081906) regulating discharges from a mining project located within the Plumas National Forest. Both the mine operator, Calgom Mining, Inc., and the United States Forest Service were named as dischargers. The Forest Service filed a timely petition challenging its designation as a discharger on November 19, 1986.

I. BACKGROUND

Calgom Mining, Inc. operates a gold mine near Canyon Dam in the vicinity of Lake Almanor. It uses a heap-leach process which consists of ore crushing, agglomeration with lime, piling the ore on a clay and artificially-lined surface, and spraying a dilute cyanide solution over the pile. The leachate from the pile is collected in a sump and recycled over the ore pile. After all mineral values are leached from the ore pile, the solution is passed through a series of carbon adsorption columns where the mineral values are removed. The solution is drained from the columns and is returned to the leach pads.

The Forest Service prepared an environmental review of the project and issued a finding that no significant impact would result from the project. The finding was based on the assumption that the mining company would adhere to the proposed method of operation and would comply with the requirements of all regulatory agencies. No discharge was allowed.

As a result of intense storms in February of 1986, the holding capacity of the leachate ponds was exceeded and process water containing cyanide and possibly metals had to be treated and discharged. After that episode, the mining company modified its operation to reduce the amount of process water and rainfall runoff that would have to be contained and applied for this NPDES permit to treat and discharge process water, if necessary, during periods of extremely high rainfall and runoff. The permit sets limits for such a discharge. While only Calgom Mining, Inc. was named as a discharger under the earlier permit, the revised permit names both Calgom and the Forest Service.

II. CONTENTION AND FINDING

Contention: The Forest Service (petitioner) raises only one issue: is it proper to name, in the waste discharge requirements issued to its permittee, a governmental entity which owns and manages the land on which a discharge occurs? The petitioner argues that it is not only legally inappropriate to name it as a discharger under such circumstances, but it is bad policy which makes quick and certain enforcement less likely to occur.

Finding: This Board has consistently taken the position that a landowner who has some ability to control what takes place on his or her land

can be held accountable for discharges which occur on the property. In Order No. WQ 86-18 (Vallico Park, Ltd.), Order No. WQ 86-15 (Stuart Petroleum), Order No. WQ 86-11 (Southern California Edison Company), Order No. WQ 86-2 (Zoecon Corporation), and other earlier orders, we upheld the decision of the Regional Board to name in waste discharge requirements or cleanup and abatement orders the owner of the land on which the discharge occurred. In each case, the landowner did not take an active role in the discharge but, in each case, the landowner was in a position to prevent the discharge and knew or should have known that the discharge was taking place.¹

Here there is no question that the petitioner knew what was going on in the mining operation. The permit specifically issued by the petitioner to the mining company discussed the operation in great detail as did the accompanying environmental document. The petitioner was also, by its own admission, in a good position to control how the mining operation was conducted. In the petition, it is stated:

"...our own laws, regulations, policies and procedures provide the Forest Service with the regulatory responsibility and authority to ensure that second parties using National Forest lands under permit, contract, easement, right of way or other instrument of occupancy are in compliance with federal, state and local laws. This includes regulatory authority to ensure their compliance with federal or state water quality permits and/or waste discharge requirements."

Thus, the three elements at which we look to determine that a landowner can be held accountable are satisfied in this instance: ownership,

¹ Actual knowledge of a discharge may be required when a reasonable person would not have suspected that a problem could arise from the land use involved. However, a landowner can be held accountable, even without actual knowledge, where the activity permitted on the property might be expected, by a reasonable and prudent landowner, to result in a discharge.

knowledge of the activity, and the ability to regulate it. Under California law, the Regional Board acted properly.

The petitioner has also argued that since federal regulations require the operator to obtain a permit (40 Code of Federal Regulations Section 122.21(b)), the landowner is not to be included in the permit. The conclusion does not follow from the premise. Clearly a landowner who plans no discharge need not apply for a permit. But if the landowner, or someone with permission to use his or her land, wants to discharge, a permit must be obtained. The regulations deal only with who must apply, not who may be named.²

As we have noted in many previous orders, even though the law permits the naming of a landowner in waste discharge requirements, it is not mandatory. In previous cases, we have reviewed the Regional Board's ability to determine the relative advantages and disadvantages of including a landowner in the order. What we must determine is whether the Regional Board's exercise of discretion is appropriate in this case. This is a close question.

There are both good and bad consequences which may result from including the Forest Service in an order. The Regional Board urges the fact that compliance is more likely since the Forest Service, by having more at stake, will hold its lessee more accountable. Enforcement capability may also be increased. On the other hand, naming the Forest Service may regrettably create an adversarial situation and hinder cooperation. On balance and given

² When the Legislature adopted Water Code Section 13270, which exempts from waste discharge requirements most leases by one public agency to another, federal agencies were not included. Leases of the type at issue here (between a federal agency and a private party) could have been exempted but were not. Inclusio unius est exclusio alterius.

our prior orders regarding who should be considered responsible parties, we find that the Regional Board acted appropriately.

Because the petitioner is a responsible public agency which is well equipped to require compliance of the mining company, it would be unwise to seek enforcement of the waste discharge requirements against the Forest Service until it becomes clear that Calgom will not comply. The Forest Service deserves the opportunity to exercise its own authority before the Regional Board holds it responsible for any violations of the requirements. While we conclude that the Forest Service was properly named, we also conclude that the Regional Board should only look to the Forest Service regarding enforcement should Calgom fail to comply with the waste discharge requirements.

III. CONCLUSION

It is proper for the Regional Board to name the United States Department of Agriculture, Forest Service as a discharger in an NPDES permit issued to Calgom Mining, Inc. which operates a gold mine on Forest Service land. It is permissible to name a landowner in waste discharge requirements when the landowner knows of the discharge and is in a position to prevent or regulate it. Those standards apply to the Forest Service in this case and the Regional Board has exercised its discretion in a reasonable way. However, the Regional Board should not seek enforcement of the waste discharge requirements against the Forest Service unless Calgom fails to comply.

IV. ORDER

IT IS HEREBY ORDERED THAT the petition is denied.

CERTIFICATION

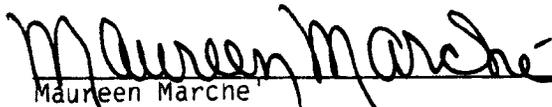
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 16, 1987.

AYE: W.D. Maughan
D.E. Ruiz
E.H. Finster
D. Walsh
E.M. Samaniego

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marche
Administrative Assistant to the Board

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of)
)
PRUDENTIAL INSURANCE COMPANY OF)
AMERICA)
)
For Review of Order No. 86-90 of the)
California Regional Water Quality)
Control Board, San Francisco Bay)
Region. Our File No. A-460.)
_____)

ORDER NO. WQ 87-6

BY THE BOARD:

On November 19, 1986, the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Board) issued waste discharge requirements to Micro Power Systems, Inc., Fairchild Semiconductor Corporation, and Prudential Realty Group.¹ At issue was the cleanup of volatile organic chemicals found in the soil and ground water under a site used to manufacture, test, and assemble semiconductors. The site, located in the City of Santa Clara, is owned by Prudential and leased to Micro Power. Fairchild was the tenant immediately before Micro Power. All three businesses were named as dischargers in the Regional Board order and were required to perform various tasks according to a time schedule.

On December 12, 1986, Prudential filed a timely petition asking that its duties under the waste discharge requirements be distinguished from those of the other two dischargers.

¹ The name "Prudential Realty Group" appears in the Regional Board order and was used in the original petition. However, a request to correct the name to Prudential Insurance Company of America was received on January 21, 1987 and that name has been used in all matters concerning the petition since that date.

cleanup and abatement order,² it argues that it is an abuse of the Regional Board's discretion and beyond its jurisdiction to require the landowner to meet the same deadlines as the other dischargers in conducting monitoring and completing investigative reports.

Based on the specific and unique facts of this case, we agree with petitioner's argument that it should only bear secondary responsibility for the cleanup. Those facts include: (a) the petitioner did not in any way initiate or contribute to the actual discharge of waste, (b) the petitioner does not have the legal right to carry out the cleanup unless its tenant fails to do so, (c) the lease is for a long term, and (d) the site investigation and cleanup are proceeding well.

The Regional Board order contains a time schedule for the submission of a number of technical reports. The first report was due on March 1, 1987 and the last is due on April 4, 1989. Remedial measures implementing recommendations contained in those reports are also contemplated in the time schedule.³ There is nothing improper about making the petitioner responsible for doing anything in the time schedule which the other responsible dischargers fail to do. But the logical fallacy in the Regional Board order has been identified by the petitioner. If Micro Power and Fairchild are to turn in a report on June 1, 1987, Prudential will not necessarily know until June 2 that

² Although the Regional Board order is entitled "waste discharge requirements", we will treat it as a cleanup and abatement order in this discussion and will modify its designation in our order.

³ We do not address the merits of the Regional Board order. Both Micro Power and Fairchild have filed petitions with us seeking review of the order. Both petitions are currently being held in abeyance at the request of the petitioners.

sufficient time from the date of any non-compliance to carry out the order with regard to that task.

III. CONCLUSION

For the reasons discussed above, we conclude that the order of the Regional Board assigning exactly the same duties to all three dischargers is, under these limited circumstances, unfair. The Regional Board can, without undue difficulty or expense, set a slightly different standard of performance for a landowner where, as here, the tenants are primarily responsible for complying with the order and the landlord is restricted by lease conditions from overseeing the work until violations of the order have occurred. The order will be modified to reflect that distinction.

IV. ORDER

IT IS HEREBY ORDERED THAT:

The waste discharge requirements issued by the Regional Board in Order No. 86-90 are hereby amended as follows:

1. In paragraphs B.2., C.1, and C.2, the word "discharger" is deleted and the phrase "Micro Power Systems, Inc. and Fairchild Semiconductor Corporation" is inserted in its place.

2. In paragraphs B.2, C.1, and C.2, the following sentence is inserted:

"Within 60 days of the Executive Officer's determination and actual notice to Prudential Insurance Company that Micro Power Systems, Inc. or Fairchild Semiconductor Corporation has failed to comply with this paragraph, Prudential Insurance Company of America, as landowner, shall comply with this provision."

SAN DIEGO UNIFIED PORT DISTRICT

(26)

Document No. **18283**

Filed **JUN 21 1985**

Office of the Clerk

Cross Ref. # 22219

26

SAN DIEGO UNIFIED PORT DISTRICT

LEASE TO

MAURICIO AND SONS, INC.

OF PROPERTY LOCATED AT

2420 SHELTER ISLAND DRIVE

SAN DIEGO, CALIFORNIA

FOR 9 YEARS 6 MONTHS

COMMENCING JUNE 1, 1985

AND ENDING NOVEMBER 30, 1994

586150

ORIGINAL

CUT 007777

EXCERPT

Lessee must perform the necessary maintenance work within ten (10) days after written notice from Lessor. Further, if at any time Lessor determines that the premises are not in the condition described, Lessor may require Lessee to file and pay for a faithful performance bond, to assure prompt correction without additional notice. The amount of this bond shall be adequate, in Lessor's opinion, to correct the unsatisfactory condition. Notwithstanding, Lessor shall not be required at any time to maintain or to make any improvements or repairs whatsoever on or for the benefit of the leased premises. The rights reserved in this section shall not create any obligations or increase any obligations for Lessor elsewhere in this Lease.

15. PERFORMANCE BOND: No major construction shall be commenced upon the demised premises by Lessee until Lessee has secured and submitted to Lessor performance bonds in the amount of the total estimated construction cost of improvements to be constructed by Lessee. In lieu of said performance bonds, the Port Director of Lessor may at his sole discretion accept the performance and labor and material bonds supplied by Lessee's contractor or subcontractors, or performance guarantees, or other satisfactory evidence that said construction will be timely completed. Said bonds must be issued by a company qualified to do business in the State of California and be in a form acceptable to Lessor.

16. TAXES AND UTILITIES: This lease may result in a taxable possessory interest and be subject to the payment of property taxes. Lessee agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Lessee or the leased premises by reason of this lease or of any buildings, machines, or other improvements of any nature whatsoever erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the leased premises. Lessee shall also pay any fees imposed by law for licenses or permits for any business or activities of Lessee upon the leased premises or under this lease, and shall pay before delinquency any and all charges for utilities at or on the leased premises.

17. CONFORMANCE WITH RULES AND REGULATIONS: Lessee agrees that in all activities on or in connection with the leased premises and in all uses thereof, including the making of any alterations or changes and the installation of any machines or other improvements, it will abide by and conform to all rules and regulations prescribed by the San Diego Unified Port District Act, any ordinances of the City in which the leased land is located, including the Building Code thereof, and any ordinances and general rules of the Lessor, including tariffs, and any applicable laws of the State of California and Federal Government, as any of the same now exist or may hereafter be adopted or amended.

18. NON-DISCRIMINATION: Lessee agrees not to discriminate against any person or class of persons by reason of sex, color,

WILLIAM HILLYER
OSCAR F. IRWIN
WESTCOTT GRISWOLD
NORMAN R. ALLENBY
HENRY J. KLINKER
BROWN B. SMITH
JAMES G. EHLERS
JAMES E. DRUMMOND
PETER J. IPPOLITO
GARY S. HARDKE
HOWARD A. ALLEN
ROBERT J. HANNA
KENT W. HILDRETH
JONATHAN S. DABBIERI
HOWARD E. SUSMAN
ROBERT L. ZAJAC

HILLYER & IRWIN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
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MURRAY T. S. LEWIS
DONALD L. CUPIT
MARK G. BUDWIG
LESA CHRISTENSON
MARK D. MARTIN
DOROTHY J. ALMOUR
CARY R. BOND
STEVEN C. SAYLER
DEB C. PEDERSDOTTER
STEPHEN M. BRIGANDI

IN REPLY REFER TO
OUR FILE 8481.22

July 27, 1988

Ladin H. Delaney
Executive Officer
California Regional Water Quality
Control Board, San Diego Region
9771 Clairemont Mesa Blvd., Suite B
San Diego, CA 92124-1331

RECEIVED

JUL 29 1988

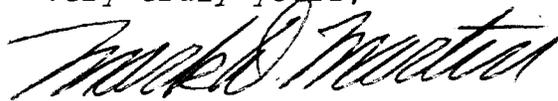
Re: Cleanup and Abatement Order 88-86
(Mauricio and Sons, Inc.)
Request for Public Hearing on August 29, 1988

Dear Mr. Delaney:

The San Diego Unified Port District hereby requests a public hearing to be held on the above-entitled matter, at the August 29, 1988 Regional Board meeting, commencing at 9:00 a.m., in Room B109 at the State Office Building, 1350 Front Street, San Diego. This written notice is given pursuant to your July 5, 1988 letter to Mr. Don Nay, Director, San Diego Unified Port District.

If you have any questions concerning this matter, please contact myself, or Howard Susman.

Very truly yours,



Mark D. Martin
Howard E. Susman

HILLYER & IRWIN

MDM/bjb
CERTIFIED MAIL
RETURN RECEIPT REQUESTED
cc: San Diego Unified Port District

AKS
DIB

LATHAM & WATKINS

ATTORNEYS AT LAW

701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
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PAUL R. WATKINS (1899-1973)
DANA LATHAM (1898-1974)

CHICAGO OFFICE

SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 876-7700
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LOS ANGELES OFFICE

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2466
TELEPHONE (213) 485-1234
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NEW YORK OFFICE

53RD AT THIRD, SUITE 1000
885 THIRD AVENUE
NEW YORK, NEW YORK 10022-4802
TELEPHONE (212) 906-1200
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ORANGE COUNTY OFFICE

680 TOWN CENTER DRIVE
TWENTIETH FLOOR
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TELEPHONE (714) 540-2335
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WASHINGTON, D.C. OFFICE

1001 PENNSYLVANIA AVE., N.W., SUITE 1300
WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637-2200
TELECOPIER (202) 637-2201

July 27, 1988

HAND DELIVERED

Ladin H. Delaney
Executive Officer
California Regional Water
Quality Control Board
9771 Clairemont Mesa Blvd.
Suite B
San Diego, California 92124-1331



Re: Cleanup and Abatement Order Nos.
88-70, 88-78, 88-79 and 88-86

Dear Mr. Delaney:

Latham & Watkins is acting as legal counsel for Shelter Island Boatyard, Kettenburg Marine Corporation, Bay City Marine Incorporated and Mauricio & Sons, Inc. concerning the referenced Cleanup and Abatement Orders. Pursuant to your letters dated June 30 and July 5, 1988 transmitting the Cleanup and Abatement Orders to our clients, the purpose of this letter is to request a public hearing concerning Cleanup and Abatement Order Nos. 88-70 (Shelter Island Boatyard), 88-78 (Kettenburg Marine Corporation), 88-79 (Bay City Marine Incorporated), and 88-86 (Mauricio & Sons, Inc.). Additionally, we request that you immediately provide us with any and all documentation which you have compiled regarding these cleanup and abatement orders and which you relied upon in issuing each of the orders, or which you intend to rely upon in the public hearing on this matter.

While we anticipate that it may be productive to meet with your staff and explore informally how the issues raised in these orders may be constructively resolved, in the event that a mutually acceptable approach cannot be agreed upon we request you to identify all documents, witnesses and

SD6\d\lm\boatyard.ltr

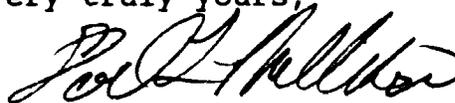
Handwritten notes:
OK 7/27
DB
File - 1 copy each
shipped

Ladin H. Delaney
July 27, 1988
Page 2

other evidence you intend to rely upon in the public hearing, and to make your witnesses available so that we may interview them in advance of the hearing.

My colleague, Allen Haynie, who is working with me on these matters, will be contacting you to make arrangements for our promptly obtaining the documents requested, and to arrange an early meeting with your staff.

Very truly yours,



David L. Mulliken
of LATHAM & WATKINS

cc: Roy F. Hobbs
J. Thompson Fetter
David Lloyd
Anthony Mauricio

WILLIAM HILLYER
OSCAR F. IRWIN
WESTCOTT GRISWOLD
NORMAN R. ALLENBY
HENRY J. KLINKER
BROWN D. SMITH
JAMES G. EHLENS
JAMES E. DRUMMOND
PETER J. IPPOLITO
GARY S. HARDE
HOWARD A. ALLEN
ROBERT J. HANNA
KENT W. HILDRETH
JONATHAN S. DANBIERI
HOWARD E. SUSMAN
MICHAEL E. LYON
ROBERT L. ZAJAC

HILLYER & IRWIN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
CALIFORNIA FIRST BANK BUILDING
530 B STREET - 14TH FLOOR
SAN DIEGO, CALIFORNIA 92101-4479

TELEPHONE 619-234-6121
TELECOPIER 619-234-3954

July 27, 1988

CURTIS HILLYER (1872-1951)
CHARLES J. INGBER
STEVEN M. HILL
MICHAEL F. MILLERICK
MURRAY T. S. LEWIS
DONALD L. CURT
MARK G. BUDWIG
LESA CHRISTENSON
MARK D. MARTIN
DOROTHY J. ALMOUR
CARY R. BOND
STEVEN C. SAYLER
DEB C. PEDERSOOTTER

IN REPLY REFER TO
OUR FILE

8481.14
8481.19
8481.20
8481.21
8481.22



Mr. David T. Barker
California Regional Water
Quality Control Board
San Diego Region
9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331

**RE: San Diego Unified Port District; Water
Quality Enforcement**

Dear Mr. Barker:

Mark Martin and I wish to thank you and Jim Munch for visiting with us yesterday morning regarding the several outstanding RWQCB compliance orders to which the Port is or may become a party.

As I indicated, the Port is concerned about the language in the compliance orders for Shelter Island Boatyard, Kettenberg Marine, Bay City Marine, and Mauricio & Sons. Specifically, the requirement that the Port use its "governmental authority" to obtain compliance with NPDES permits, was unclear. This will confirm your clarification in this morning's meeting that the Board would not seek to involve the Port District so long as the primary parties to the orders perform the required cleanup. The above-mentioned "governmental authority" is merely reference to the Port District's rights as lessor of the tidelands.

We also discussed the situation involving Paco Terminals, Inc. Enclosed for your reference is a copy of the claim of Paco Terminals, Inc. filed with and against the Port District. We look forward to notification from your copy service that a complete set of the Board's files relating to Paco Terminals has been prepared for our use at our expense.

Handwritten notes:
8/15
8/14
PACO
TBM
[unclear]

HILLYER & IRWIN

A PROFESSIONAL CORPORATION

Mr. David T. Barker

July 27, 1988

Page 2

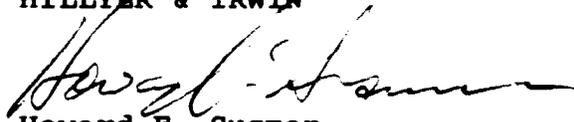
Coincidentally, yesterday afternoon we received a visit from attorney Bruce McGowin, representing Wausau Insurance Company. Mr. McGowin acknowledged his visit with you, and briefly inquired about the background and status of the Paco Terminals situation. I informed Mr. McGowin (as I informed you) that the Port is willing to cooperate in every appropriate way (including the identification of any Port employees who operated cranes at the Paco site). However, the Port will not serve as the "deep pocket" for cleanup costs occasioned by the activities of others, except as required by law.

Finally, I wish to confirm our understanding that the RWQCB has no direct interest in discharges from underground storage tanks surrounding San Diego Bay, so long as such discharges do not enter the Bay itself. The Board does, and will, consult with the San Diego County Department of Health Services, as appropriate, regarding such matters.

We look forward to working with you in the future. Please feel free to contact me should you wish to discuss any of these matters.

Sincerely yours,

HILLYER & IRWIN



Howard E. Susman

HES:dlr

cc: Joe Patello

2SX63

PACO TERMINALS, INC.

2720 Terminal Street
P.O. Box 2026
National City, CA 92050-0451

Port of San Diego
Office: (619) 474-4623
Telex: 183148

District Clerk
San Diego Unified Port District
P.O. BOX 488
San Diego, CA 92112

For District Clerk Use Only

Document No: 22369

RE: The Claim of Paco Terminals,
Inc., Against the San Diego
Unified Port District

Filed: JUN 17 1988

Dear District Clerk:

Paco Terminals, Inc. (Paco) hereby presents this claim to the San Diego Unified Port District (Port) pursuant to Section 900 et. seq. of the California Government Code.

1. CLAIMANT:

Paco Terminals, Inc.
2720 Terminal Street
P. O. BOX 2026
National City, CA 92050-4628

Tele. No. (619) 474-4628

NOTICES:

Notices relating to this claim should be sent to:

John J. Lormon, Counsel
Lormon & Wolf
707 Broadway, Suite 1700
San Diego, CA 92101-5311

RECEIVED

JUN 17 1988

SAN DIEGO UNIFIED
PORT DISTRICT
Office of the Clerk

2. Date/Time of Incident:

The incidents in this case are based on allegations of discharges of environmental contaminants including but not limited to copper ore into San Diego Bay adjacent to the 24th Street Marine Terminal, National City, California, and to other real and personal property in the vicinity of the 24th Street Marine Terminal. Paco has and continues to incur expenses and suffer liabilities and damages in responding to these allegations.

It is alleged that there have been continued and repeated discharges of these contaminants. These discharges are alleged to have occurred on various unspecified dates during the lease period (i.e. October 1, 1978 through and including January 31, 1988). Additionally, these discharges by the Port allegedly continue to the present time and through unknown dates in the future. Paco expressly denies any and all responsibility for said discharges and resulting harm.

In addition, the Port's unfair business practices relating to any and all agreements which Paco has entered into with the Port from 1978 through the present, including renewals or the exercise of options for these agreements, have caused and continue to cause Paco to incur harm.

3. Location:

San Diego Unified Port District, 24th Street Marine Terminal, National City, California and surrounding real and personal properties including portions of San Diego Bay.

4. Description of Incident Resulting in Claim:

Paco leased approximately a 100,000 square foot portion of the Port's 24th Street Marine Terminal, National City, California. This lease commenced on October 1, 1978 with options extended to January 31, 1989. Paco terminated this lease effective January 31, 1988.

This lease and a separate Terminal Operator Agreement (Agreement) with the Port required Paco to perform bulk ore unloading, loading and related activities. Paco undertook such activities pursuant to its lease, the Agreement and other arrangements with the Port. Paco's activities were conducted pursuant to the Port's authority and oversight, under the Port's direction and/or control, or pursuant to the Port's failure to exercise such oversight, direction and/or control, and with equipment, facilities and supervisory personnel provided by the Port.

The Regional Water Quality Control Board (RWQCB), San Diego Region contends that discharges of bulk ore emanated from the 24th Street Marine Terminal during the course of Paco's unloading, loading and related activities dealing with bulk ore products. The RWQCB claims that these discharges caused or threaten to cause waste to be discharged or deposited into the waters of the state. Further, that these alleged discharges and deposits created or threaten to create a condition of pollution or nuisance. According to the RWQCB the accumulation of these alleged discharges into San Diego Bay and surrounding locations may continue to be released at any time. Paco expressly denies that it caused or permitted any such discharges or deposits of bulk ore.

Any and all written agreements which Paco has entered into with the Port relating to Paco's operations at the 24th Street Marine Terminal have resulted from the Port's monopoly powers, use of unfair business practices and by restraint of trade practices. The terms and conditions of the Port lease and the Agreement and all renewals contain exculpatory-type provisions in the Port's favor that are unreasonable on their face. These terms and conditions result from the following: an improper use of the Port's monopoly power over all non-federal government lands on

San Diego Bay; by means of unfair business practices in that no meaningful opportunities to bargain for different terms and conditions in the lease or the Agreement was ever provided to Paco; and, by conspiracy in that the five city members of the Port established terms and conditions in the subject documents that restrained trade.

In addition to the environmental and natural resources which have allegedly been damaged and the harm to Paco from the Port's unfair business practices, third party claims for personal and property harms allegedly have resulted and may result. For example, the Port has made allegations that Paco is liable for harm to its real and personal property as a result of Paco's unloading, loading and related activities at the 24th Street Marine Terminal. (See Port letters dated February 5, 1988 and March 7, 1988 included as Attachments A & B to this claim). Paco expressly denies that it has harmed any real or personal property or any person as a result of its actions or inactions at the 24th Street Marine Terminal including harm to San Diego Bay and/or surrounding properties or people.

**5. Persons Having First-Hand Knowledge of Incident:
Witnesses (Name/Address/Phone):**

At the present time Paco does not know all of the people or the specific persons having first-hand knowledge; however, certain Port Commissioners, Directors, Officers and employees during relevant times have first-hand knowledge of the Paco operations and the RWQCB allegations and orders all resulting in liability to Paco.

At this time Paco references the witnesses as Does one (1) through five hundred (500).

6. Describe Property Damage or Personal Injury Claimed:

Based on what Paco now knows, the items of damage include but are not limited to the following: money damages and special damages both in the past and on a continuing basis in defending and dealing with the alleged harm to San Diego Bay; environmental and natural resources liabilities; harm resulting from the Port's unfair business practices; and, claims asserted by other parties including the Port all to Paco's detriment.

Paco's claim further includes legal and equitable indemnification and/or contribution by the Port for any and all costs, expenses, liabilities and damages paid or assessed against Paco in the past, at the present or in the future.

7. Owner and Location of Damaged Property or Name/Address of Person(s) Injured:

The property that is damaged includes but is not limited to RWQCB's specified portions of San Diego Bay adjacent to the 24th Street Marine Terminal, National City, California, and

surrounding real and personal property, as well as money and special damages incurred by Paco.

Based on information and belief, Paco believed that relevant portions of San Diego Bay and the 24th Street Marine Terminal are owned by the Port. In addition, other surrounding real and personal properties may be owned by the Port or private parties including Paco.

The name and address of the injured person is the same as set out in Item 1 herein for the Claimant.

The damaged real and personal property is located, but not limited to, in, on, under and/or around San Diego Bay in the vicinity of the 24th Street Marine Terminal, National City, California.

8. Amount of Damages Claimed as of the date of presentation of the claim; Jurisdiction over the Claim:

(1). The damages claimed exceed \$10,000.

(2). The jurisdiction for this claim rests in the Superior Court.

9. Additional Information:

Any additional information concerning these matters may be obtained from John J. Lormon, Counsel to Paco.

Dated: June 16 1988

Claimant: 
Robert E. Pate, President
Paco Terminals, Inc.

JUN 1 '88 13:44 FT PACO TERMINAL
JUN 01 '88 15:29 COOPER/T. SMITH MOBILE 431-6152

PAGE 001
P. 4



Port of San Diego

and Lindbergh Field Air Terminal

(619) 291-3400 • P.O. Box 488, San Diego, California 92112

February 5, 1988

Robert E. Pate, President
Paco Terminals, Inc.
c/o Cooper Stevedoring Co., Inc.
Post Office Box 1566
Mobile, AL 36601

Dear Mr. Pate:

By letter dated January 7, 1988, you were notified that Paco's lease covering approximately 100,000 square feet of land at the 24th Street Marine Terminal in National City would expire January 31, 1988. The letter stated the District would not accept possession of the leased premises until the surplus material (e.g., copper concentrate) was removed from the leased premises and adjacent tidelands.

An inspection of Paco's leasehold was conducted on February 1, 1988. The inspection revealed that an unacceptable amount of surplus material remains on Paco's leasehold and adjacent tidelands. You are again notified that the District requires that all surplus material be removed from the leased premises and adjacent tidelands. Such removal is an obligation of Paco pursuant to Paragraph 37 of its lease. Also, during the period of time employed to remove the surplus material, Paco is obligated to continue to pay the District, as required by and in accordance with Paragraph 37 of said lease.

Please contact me if you have any questions or if I may be of any assistance.

Sincerely,

DIRK I. MATHIASSEN
Senior Property Manager
Property Department

DIM/lao

22369

Attachment A

5

CUT 007788



Port of San Diego

and Lindbergh Field Air Terminal

(619) 291-3800 • P.O. Box 466, San Diego, California 92112

March 7, 1988

Paco Terminals, Inc.
c/o Cooper Stevedoring Company, Inc.
Post Office Box 1566
Mobile, AL 36601

SUBJECT: Paco Terminals, Inc. Leasehold - 24th Street Marine Terminal
National City, California

Dear Sir:

On January 31, 1988, your lease expired for 100,000 square feet at the 24th Street Marine Terminal, National City, California. A showing the leasehold is attached for your reference.

Your lease for this area included the following paragraphs which relate to the removal of surplus material and maintenance and repair of improvements:

Paragraph 14 of the lease, "Maintenance and Repair", states in part, "As part of the consideration for the leasing thereof, Lessee shall maintain and repair the leased premises and all improvements of any kind which have been or may be erected, installed or made thereon in good and substantial repair and condition, including without limitation the painting thereof. . . ."

Paragraph 37 of the lease, "Removal of Materials", states in part, "Lessee hereby agrees that upon the expiration of this lease or the sooner termination as herein provided, it will remove within sixty (60) days all ships, vessels, barges, hulls, debris, surplus and salvage materials from the land area forming a part of or adjacent to the leased premises, so as to leave the premises in as good condition as when first occupied by Lessee . . ."

In order to comply with the terms of your lease, the following work has been accomplished:

1. All residual copper concentrate, both on and adjacent to the leasehold, must be removed to the satisfaction of the Regional Water Quality Control Board (RWQCB) and the County Department of Health Services (CDOHS). Paco must contract with a reputable testing company to take cores of the asphalt pavement and underlying soil in order to determine the depth and quantity of possible penetration of the copper concentrate into the asphalt and underlying soil. The testing company shall also take samples of dust from the storm drains in the area and test the dust for residual copper. Quantity and location of cores and storm drain dust samples shall be approved by District's Engineer.

Attachment B

2. The container crane rails and Marathon Le Tourneau bridge crane turning plates are severely corroded and pitted as the result of the electrolytic action of the copper concentrate. People's Operations have also destroyed the surrounding asphalt. Replacing crane rails and turning plates and removing and replacing asphalt between the container rails shall be performed.
3. The area of missing pavement, indicated on the attached plat and marked by paint in the field, must be repaired. Compacting of underlying soil, sawcutting existing asphalt to neat lines, and constructing new asphalt concrete pavement in accordance with specification provided to Pace on December 14, 1967, shall be performed.
4. The copper concentrate has also severely damaged the reefer outlets. The metal frames, lids, and the electrical equipment within the reefer outlets have all been substantially damaged. Replacement of the electrical equipment, metal frames, and lids is required.
6. Clean lighting towers and lights.
8. Clean electrical switchgear.
7. Repair railroad tracks at car stop near north restroom.
8. Repair railroad track where cars were unloaded.
9. Clean copper concentrate from container crane running gear and wheels.
10. Truck scales shall be cleaned and restored to working order.
11. Repair and clean maintenance building.
12. Repair railroad tracks located in-between container crane rails.

Please provide this office with a schedule as to when you propose to accomplish the above tasks.

John E. B. Wilbur
 JOHN E. B. WILBUR
 Chief Engineer

JEB/w/b
 5393.hp
 Attachment
 cc: D. I. Mathiasen
 B. Garratt (Marine Operations)
 T. E. Firls
 K. E. White
 H. Peters

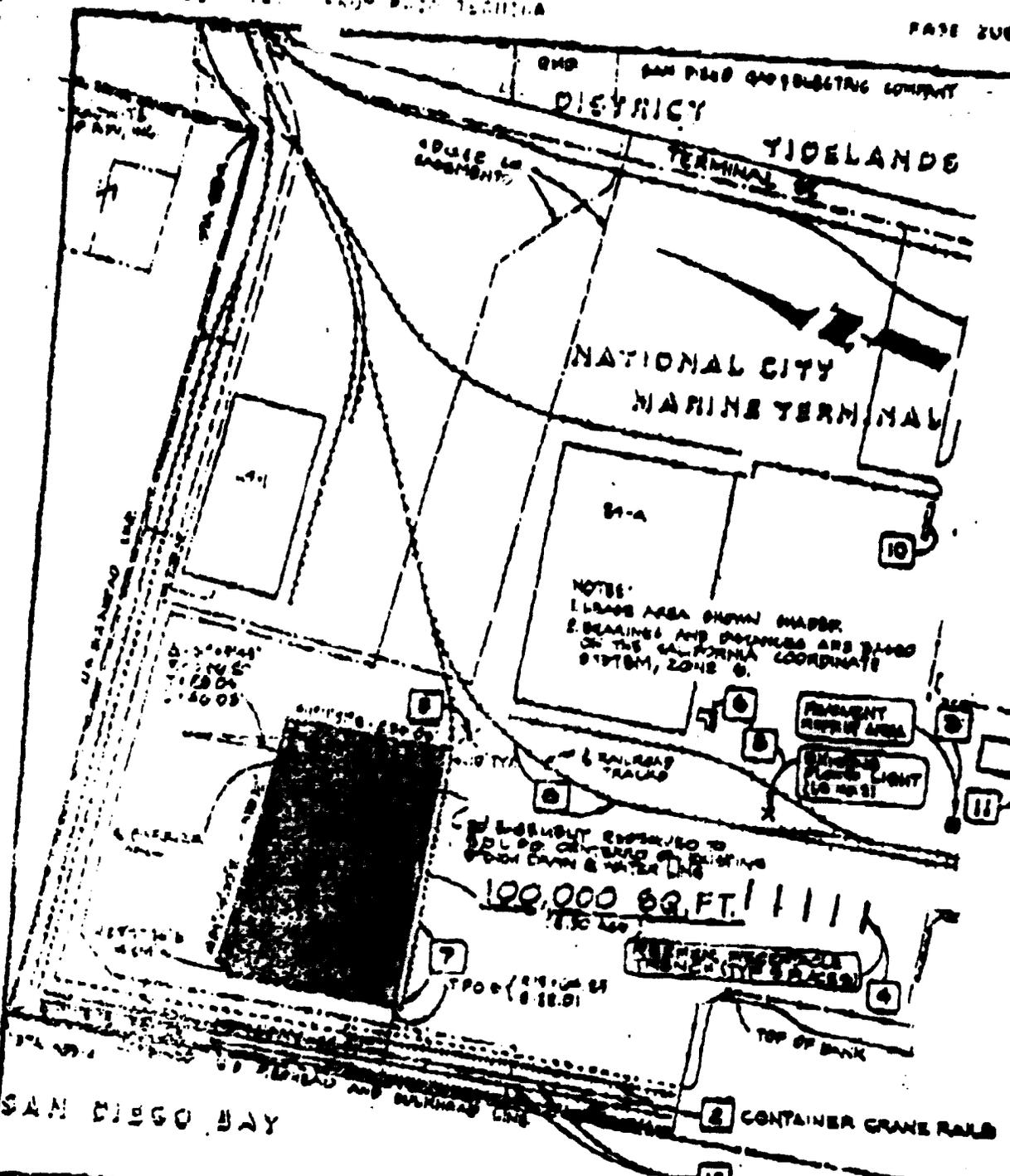
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MAR 23 1968 11:26

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END



DRAWN BY
 CHECKED BY
 REVIEWED BY
 APPROVED BY

SAN DIEGO UNIFIED PORT DISTRICT
 TIDELAND LEASE
 WITHIN CORPORATE LIMITS OF NATIONAL CITY
PACO TERMINALS, INC.

SAN DIEGO UNIFIED PORT DISTRICT
 TITLE 15.00
 SEC. 15.00 - 15.01
 DRAWING NO.

MAR 23 1965 11125

END

22369

8

PORT DISTRICT LEASEHOLDS
WITH POSSIBLE WASTE CONTAMINATION

1. Tonga Fuels, Inc. Facility at 2385 Shelter Island Drive
Underground storage tank petroleum contamination. The underground storage tanks have been removed. Tenant has undertaken efforts at cleanup, utilizing Converse Environmental Consultant. Former tenant was Union Oil co.
2. Nalco Plumbing & Heating, Co. Site at 1420 Tidelands Ave., National City
Report by Kleinfelder Environmental Consultants indicates some areas of staining of the surface soil likely the result of petroleum hydrocarbon contamination. The report indicates that "the total volume of the soils appears minimal, and probably does not exceed 10 cubic yards." Two underground storage tanks are present; whether there is any contamination is not known.
3. Paco Terminals, Inc., 24th Ave. Marine Terminal, National City
Copper concentrate discharged in Bay.
4. J-MAC and Dixieline Lumber Co. Site at 3040 Tidelands Ave., National City
Petroleum hydrocarbon contamination as a result of underground storage tanks.
5. Airport Fuel Farm.
Petroleum hydrocarbon contamination as a result of underground storage tanks. Tenants, former tenants, or operators include Arco, Lockheed Air Terminal, Chevron U.S.A., Inc., Texaco, Shell Oil, Jimsair, Union Oil Co., and Aircraft Services Int.
6. NASSCO. Parcel South of 19th Street on Tidelands Ave., National City.
Surface hydrocarbon contamination noted in report by Applied Hydrogeologic Consultants. The amount of contamination according to the report appears to be limited to under 7-8 cubic yards of soil.
7. Foot of Crosby Street
Petroleum hydrocarbon contamination from underground storage tanks, or above-ground storage tanks. Tenants, former tenants, or operators include Union Oil Co., Sam Crivello as operator for Union Oil, Zan-C, Inc., FG& H Petroleum Co., Inc. and Crowley Constructors. Crowley Constructors is the most recent lessee and has not utilized the storage tanks.
8. In addition, the Port District has received Clean up and Abatement Orders addressed to Shelter Island Boat Yard, Kettenberg Marine, Bay City Marine, and Mauricio and Sons. Current assignee of Mauricio and Sons is Nielsen Beaumont Marine, Inc.

ATKINSON MARINE -
8481.12/MDM1

~~FILE~~
UNDERGROUND
TANKS DE

Cleanup Abatement Order No. 88-86 Mauricio & Sons.

P-468 501 869

Mr. Anthony Mauricio
1864 National Avenue
San Diego, CA 92113

Hand delivered

7/5/88

For return to sender, place
over top of envelope to
return address.

P-468 501 869

MAIL

Items 1 and 2

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

8771 Clairemont Mesa Blvd., Suite 8
San Diego, California 92124-1331
Telephone: (619) 285-5114

James P.

July 5, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Anthony Mauricio, President
Mauricio and Sons, Inc.
1864 National Avenue
San Diego, California 92113

Dear Mr. Mauricio:

Enclosed is a copy of Cleanup and Abatement Order No. 88-86. This Cleanup and Abatement Order is issued to Mauricio and Sons, Inc. under the authority of California Water Code Section 13304 for discharging waste in violation of Order No. 85-03, NPDES No. CA0107719, *Waste Discharge Requirements for Mauricio and Sons, Inc., San Diego County.*

You are hereby notified that you have the right to a public hearing before the Regional Board concerning Cleanup and Abatement Order No. 88-86 on August 29, 1988. If you desire to have a public hearing at the Regional Board's August 29 meeting, you must notify this office of your request for the public hearing in writing by July 29, 1988. If no written request for a public hearing is received by July 29, then a public hearing will not be scheduled. The August 29 Regional Board meeting will begin at 9:00 a.m. in Room B109 of the State Office Building, 1350 Front Street, San Diego.

I strongly urge a prompt and complete response to each directive of Cleanup and Abatement Order No. 88-86. Both my staff and I will be happy to work with you toward achieving compliance with the Cleanup and Abatement Order. If you have any questions concerning this matter please call Mr. James Munch at the above number.

Very truly yours,

LADIN H. DELANEY
Executive Officer

JBM:bdk

cc: Mr. Jeremy Johnstone, Environmental Engineer
c/o Water Management Division (W-4)
Environmental Protection Agency
215 Fremont Street
San Francisco, California 94105

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Telephone: (619) 265-5114

**Certified Mail-Return Receipt Requested**

P 959 506 195

October 17, 1988

Mr. David L. Mulliken
Latham and Watkins
Attorneys at Law
701 B Street, Suite 2100
San Diego, California 92101-8197

Dear Mr. Mulliken:

CLEANUP AND ABATEMENT ORDER NOS. 88-70, 88-79, 88-78, 88-86

As you know, a hearing before the Regional Board was requested by Shelter Island Boatyard, Bay City Marine Inc., Kettenburg Marine Corporation, and Mauricio and Sons Inc., in order to contest the findings of the subject Cleanup and Abatement Orders which were previously issued by the Regional Board Executive Officer. After taking testimony from Regional Board staff and representatives of the four boatyards at its regularly scheduled meeting on October 3, 1988, the Regional Board continued the hearing to November 21, 1988, the next scheduled board meeting date.

The Regional Board intends to conclude the hearing on the Cleanup and Abatement Orders at its November 21 board meeting.

At the October 3 Regional Board meeting Senior staff engineer David Barker gave a staff presentation regarding the boatyard Cleanup and Abatement Orders. The substance of Mr. Barker's October 3 testimony was contained in the findings of the subject Cleanup and Abatement Orders. We do not intend to repeat Mr. Barker's presentation at the November 21 meeting; however, he will make brief introductory remarks and update the Board on issues related to the Cleanup and Abatement Orders that have occurred since the October 3 meeting. Staff engineer James Munch and Environmental Specialists Peter Michael, Christopher Sandall, and Deborah Jayne, who participated in site inspections and sampling, will be present at the November 21 meeting and will be called by the Regional Board to testify if necessary.

In order to expeditiously conclude the hearing on the boatyard Cleanup and Abatement Orders, the boatyards are required to submit to the Regional Board, no later than November 3, 1988,

1. A list of all witnesses whose testimony the boatyards intend to introduce on November 21; and
2. The written testimony of each witness. Each witness will be given five minutes to summarize his or her written testimony at the hearing on November 21.

The boatyards will be given a total of thirty (30) minutes for cross-examination of Regional Board staff. Cross-examination will be restricted to matters covered on direct testimony, unless otherwise authorized by the Regional Board chairman. Additional time for cross-examination may be allowed, at the discretion of the Chairman, upon a demonstration by the boatyards that additional cross-examination is necessary, relevant, and not redundant.

Members of the public, other than the boatyards and their representatives, will be given five (5) minutes to give oral testimony. Interested members of the public are encouraged, but not required, to submit their testimony in writing to the Regional Board.

The hearing on November 21 will be limited to the validity of the findings in the four Cleanup and Abatement Orders previously issued to the boatyards in this matter. The Regional Board will conduct another hearing(s) in the future to consider whether the remedial action alternative identified by the boatyard(s) is appropriate and to make appropriate amendments to the Cleanup and Abatement Orders. All interested persons will be notified of this future hearing or hearings.

I would now like to address the Best Management Practices plan analysis report and the sediment cleanup alternative analysis report required under the directives of the Cleanup and Abatement Orders. At the October 3, hearing you reported that work would be initiated on these reports and that the required reports would be submitted by November 1, 1988. As you may know, the sediment cleanup alternative analysis report is required to include a detailed analysis of the lateral and vertical extent of the contaminated sediment associated with various cleanup levels for each boatyard. During a meeting with Woodward Clyde consultants on October 12, 1988, it was determined that such an assessment could require the collection of additional samples and that there was insufficient time for sample collection and analyses prior to November 1. In view of the fact that a time extension appears necessary to allow Woodward Clyde consultants to properly evaluate the various alternative cleanup levels, I request that

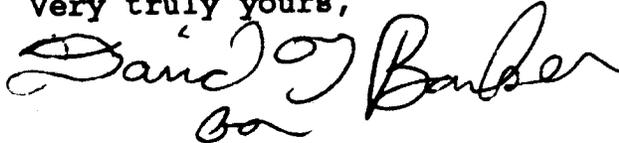
Mr. David Mulliken

-3-

you review the requirements for completion of the sediment cleanup analysis report and provide me with a revised time schedule for completion of the report. Regarding the Best Management Practices plan analysis report, I appreciate your cooperation in preparing this report and request that you inform Mr. David Barker of my staff of any delays that will prevent the submittal of this report by November 1.

If you have any questions or wish to discuss these matters further please contact Mr. David Barker of my staff at the above number.

Very truly yours,



LADIN H. DELANEY
Executive Officer

DTB:cg

cc: Mr. William Roberts
General Partner
Shelter Island Boatyard
2330 Shelter Island Drive
San Diego, Ca 92106

Mr. David Lloyd, President
Bay City Marine, Inc.
4960 North Harbor Drive
San Diego, Ca 92106

Mr. Thomas Fetter, President
Kettenburg Marine Corp.
2810 Carleton Street
San Diego, Ca 92106

Mr. Anthony Mauricio,
President
Mauricio and Sons, Inc.
1864 National Ave
San Diego, Ca 92113

Mr. John V. Foley
Regional Board Chairman
Moulton Niguel Water District
27500 La Paz Rd
Laguna Niguel, Ca 92677-1098

Mr. Howard Susman
Hillyer & Meyer
Attorneys at Law
California First Bank Bldg
530 B Street - 14th Floor
San Diego, Ca 92101-4479

Ms. Sheila Vassey
Office of Chief Counsel
State Water Resources Control
Board
P.O. Box 100
Sacramento, Ca 95801-0100

Mr. Don Nay
S.D. Unified Port District
P.O. Box 488
San Diego, Ca 92112

CUT 007768

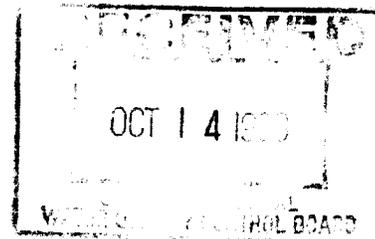
STATE WATER RESOURCES CONTROL BOARD

PAUL R. BONDERSON BUILDING
 901 P STREET
 P.O. BOX 100
 SACRAMENTO, CALIFORNIA 95801



(916) 322-0215

OCT 12 1988



Mr. David B. Hopkins
 Mr. Mark D. Martin
 Hillyer & Irwin
 530 B Street
 San Diego, CA 92101

Dear Messrs. Hopkins and Martin:

CLEANUP AND ABATEMENT ORDERS NOS. 88-70, 88-78, 88-79, AND 88-86

This is to confirm my representation to you on October 3, 1988, at the meeting of the California Regional Water Quality Control Board, San Diego Region, that the San Diego Unified Port District would be given the opportunity for a hearing and the opportunity to present any available defenses prior to amendment of the above-referenced enforcement orders to include the Port District as a discharger.

Please contact me at (916) 322-0215 if you have any questions regarding this matter.

Sincerely,

Sheila K. Vassey
 Sheila K. Vassey
 Staff Counsel

cc: Jack Foley, Chairman
 Ladin Delaney, Executive Officer ✓
 San Diego Regional Water Quality
 Control Board



LETTER OF TRANSMITTAL

TO: SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD DATE: October 12, 1988
9771 Clairemont Mesa Blvd., Suite B PROJECT NO: 8853235T
San Diego, CA 92124-1331

ATTENTION: Ladin H. Delaney

SUBJECT PROJECT: Commercial Basin Boatyards- Cleanup & Abatement Orders

IN ANSWER TO THE REQUEST OF: Mr. Delaney

WE ARE TRANSMITTING: HEREWITH UNDER SEPARATE COVER

THE FOLLOWING: Exhibits for Public Hearing of October 3, 1988.

- 1) Aerial Photo
- 2) Kettensburg Marine Plot Plan
- 3) Shelter Island Boatyard Plot Plan

FOR YOUR: APPROVAL FILES
 COMMENTS INFORMATION
 DISTRIBUTION USE

REMARKS: _____

PLEASE NOTIFY US IF ENCLOSURES LISTED ARE NOT RECEIVED.

COPIES TO:

Very truly yours,

By Barry Graham

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
October 3, 1988

ITEM: 9(d)

SUBJECT: ENFORCEMENT
CLEANUP AND ABATEMENT ORDER NO. 88-86
MAURICIO AND SONS, INCORPORATED
SAN DIEGO COUNTY

DISCUSSION: On April 22, 1985, this Regional Board adopted Order No. 85-03, NPDES No. CA0107719, **Waste Discharge Requirements for Mauricio and Sons, Inc., San Diego County**. Order No. 85-03 renewed existing waste discharge requirements and established additional waste discharge requirements prohibiting the discharge of various boat repair wastes to San Diego Bay. The facility is located on the shoreline of the Commercial Basin portion of San Diego Bay at 2420 Shelter Island Drive on land owned by the San Diego Unified Port District in the City of San Diego.

By letter dated February 4, 1988, Mr. Anthony Mauricio, Jr. President, Mauricio and Sons, Inc. reported that the company's facility at 2420 Shelter Island Drive had been sold to Nielson and Beaumont Marine, Inc. The letter stated that Mauricio and Sons, Inc. would be responsible for any NPDES permit violations to February 5, 1988, and that Nielson and Beaumont Marine would be responsible from that day forward. The NPDES permit violations discussed in this order occurred prior to February 5, 1988. Accordingly the Regional Board has named Mauricio and Sons, Inc. as the party responsible for compliance with directives of Order No. 88-86.

Mauricio and Sons, Inc. has a sedimentation sump just adjacent to the tideline and beneath the marine railway which receives runoff from storm events as well as miscellaneous water flows from the work area. The purpose of this sump is to remove, by gravity settling, particulate matter such as paint chips from the miscellaneous work area water flows. Overflow water from the sump is discharged to San Diego Bay. The sump is periodically inundated by bay water during periods of unusual high tides.

On February 2, 1988, Regional Board staff collected a sediment sample from the above mentioned sump. Additionally, on February 2, 1988, Regional Board staff and California Department of Fish and Game staff collected eight bay sediment samples from a portion of Commercial Basin directly fronting the Mauricio and Sons facility. The sump sediment

ITEM: 9(d)

DISUCSSION: (Continued)

sample and the eight bay sediment sample analysis results show very elevated concentrations of copper, mercury, and tributyltin with respect to background concentrations. Furthermore, the eight bay sediment analysis results show that the concentrations of copper, mercury, and tributyltin decrease markedly with distance from the Mauricio and Sons facility. Based on the foregoing, Regional Board staff concluded that the elevated concentrations of copper, mercury, and tributyltin are the result of discharges of boat repair wastes from Mauricio and Sons, Inc.

On July 5, 1988, the Executive Officer issued Cleanup and Abatement Order No. 88-86 to Mauricio and Sons, Inc.

ISSUE: Does Mauricio and Sons, Inc. or the San Diego Unified Port District have any objections to Cleanup and Abatement Order No. 88-86?

RECOMMENDATION: Staff will make a presentation on this item.

WILLIAM HILLYER
OSCAR F. IRWIN
WESTCOTT GRISWOLD
NORMAN R. ALLENSBY
HENRY J. KLINKER
BROWN B. SMITH
JAMES G. EHLERS
JAMES E. DRUMMOND
PETER J. IPPOLITO
GARY S. HAROKE
HOWARD A. ALLEN
ROBERT J. HANNA
KENT W. HILDRETH
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MARK G. BUDWIG
LESA CHRISTENSON
MARK D. MARTIN
DOROTHY J. ALMOUR
CARY R. BOND
STEVEN C. SAYLER
DEB C. PEDERSDOTTER
STEPHEN M. BRIGANDI

August 25, 1988

IN REPLY REFER TO
OUR FILE
8481.20

California Regional Water Quality
Control Board, San Diego Region
9771 Clairemont Mesa Blvd., Suite B
San Diego, CA 92124-1331

AUG 26 1988

Attention: James Munch

Re: Cleanup and Abatement Order No. 88-78
(Kettenberg Marine)
Cleanup and Abatement Order No. 88-70
(Shelter Island Boatyard)
Cleanup and Abatement Order No. 88-86
(Mauricio & Sons, Inc.)
Cleanup and Abatement Order No. 88-79
(Bay City Marine, Inc.)

Dear Mr. Munch:

This will confirm our telephone conversation earlier this month in which you indicated that the hearing on the above-entitled orders has been continued from August 29, 1988 to October 3, 1988. You indicated that the time and place of the hearing will be the same, unless we are notified differently prior to the hearing.

If you have any questions, please feel free to contact me.

Very truly yours,



Mark D. Martin
Hillyer & Irwin

MDM/bjb
cc: San Diego Unified Port District

CUT 007773

WILLIAM HILLYER
OSCAR F. IRWIN
WESTCOTT GRISWOLD
NORMAN R. ALLENBY
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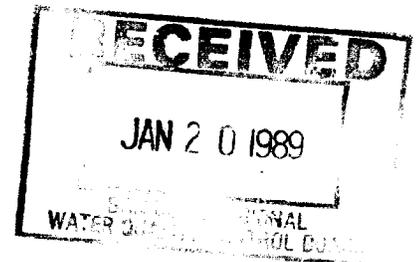
CURTIS HILLYER (1872-1951)
ROBERT L. ZAJAC
CHARLES J. INGBER
STEVEN M. HILL
MICHAEL F. MILLERICK
MURRAY T. S. LEWIS
DONALD L. CUPIT
MARK G. BUDWIG
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MARK D. MARTIN
DOROTHY J. ALMOUP
CARY R. BOND
STEVEN C. SAYLER
DEB C. PEDERSDOTTER
STEPHEN M. BRIGANDI
DENNIS O. SEYMOUR JP

IN REPLY REFER TO
OUR FILE

December 15, 1988

Regional Water Quality Control Board
San Diego Region
9771 Clairemont Mesa Blvd., Ste. B
San Diego, CA 92124

ATTN: Ladin H. Delaney, Executive Officer



**RESPONSE OF THE SAN DIEGO UNIFIED PORT DISTRICT
IN OPPOSITION TO THE REQUEST OF PACO TERMINALS, INC.
TO ADD THE PORT DISTRICT AS A RESPONSIBLE PARTY
UNDER CLEANUP AND ABATEMENT ORDER 85-91**

I.

INTRODUCTION

The San Diego Unified Port District ("the Port District") opposes the request of PACO TERMINALS, INC. ("PACO") to the Regional Water Quality Control Board ("the Board") to add the Port District as a responsible party under Cleanup and Abatement Order 85-91.¹ That Order names PACO as the responsible party

¹ PACO's Submission is entitled "Liability of the San Diego Unified Port District for Alleged Copper Discharges at the 24th Street Marine Terminal, National City, California." In this Response, it shall be referred to "PACO's Submission."

PACO's Submission was made to this Board on September 1, 1988. The Port District did not receive a copy until
(footnote continued)

for abatement and cleanup of copper concentrate discharges caused by PACO's operations as lessee and terminal operator at the Port District's 24th Street Marine Terminal, in violation of requirements imposed upon PACO by NPDES Permits 79-72 and 84-50.²

PACO's request should be denied. Naming a public agency/landowner as an additional responsible party for cleanup is unprecedented. In this case it raises serious legal and public policy questions. Most significantly, adding the Port District to the Order at this late date is not likely to facilitate or expedite cleanup. On the contrary, it is likely to delay cleanup.

(footnote continued from previous page)

October 14, 1988. This written Response is made pursuant to a request to the Port District's counsel by the Board's Executive Director and staff at a November 3, 1988 meeting.

In addition to this written Response, the Port District reserves its right to participate in the public hearing on this question that the Board has noticed for January 23, 1989, and to present evidence and argument at that hearing. Counsel for the Port District welcomes conferring with the Board's staff and Executive Director concerning issues appropriate for the presentation of written or oral evidence and additional argument at the hearing.

² Apparently because the Cleanup and Abatement Order results from violations of those NPDES permits, PACO has requested the Board to add the Port District retroactively to the permits, as well as adding the Port District as a responsible party under the Cleanup and Abatement Order. The Port District concurs with PACO's apparent contention that it is inappropriate to name the Port District as a responsible party under the Cleanup and Abatement Order when it was not subject to the permit requirements. Nevertheless, the Port District is unaware of any circumstance in which a party has been named retroactively to the requirements of an existing NPDES permit. In fact, to do so would raise serious due process concerns. Furthermore, in this case, it would be a meaningless act since PACO has ceased operations at the site and there are no further copper concentrate loading activities taking place there.

The Port District is unaware of any State Board action naming a public agency/landowner to a cleanup and abatement order directed at discharges of a private operator/tenant. State Board Orders and Chief Counsel Opinions concerning that possibility suggest that a public agency/landowner should not be named as a responsible party under cleanup and abatement orders except in order to utilize its governmental powers to expedite and facilitate abatement. Abatement is not at issue here since PACO has terminated its lease at the site and no further commercial activities involving copper concentrate are taking place there. Thus, there are no further activities which would be the proper subject of an abatement order.

Even if State Board Orders and Chief Counsel Opinions concerning public agency/landowner liability can be interpreted to include liability for cleanup, it is clear that they contemplate only secondary liability for cleanup on the part of the public agency. Those State Board Orders and Chief Counsel Opinions have cautioned that the public agency landowner should not be named when the private operator/tenant is in compliance with the Cleanup and Abatement Order. The purpose underlying the broad extension of environmental liability to private party non-operating landowners is to avoid public liability for the cleanup. That purpose is hardly served when the landowner to which the liability is extended is itself a public agency. The public agency landowner should be named, if at all, only "as a last resort."

PACO apparently acknowledges that the current status of State Board Orders and Chief Counsel Opinions regarding

nonoperator public agency/landowner liability would result in denying PACO's request. However, PACO seeks to avoid that entire line of authority by characterizing the Port District as an operator of the facility. To do so, PACO stresses the Port District's "ownership" of the storm drains at the site, which apparently led this Board initially to consider the Port District as the appropriate party to apply for the NPDES permit, and the presence of Port personnel at the site. However, PACO's characterization ignores the facts which establish that PACO was the operator responsible for discharge. The Port District was no more active in the operation than the usual landowner. It should therefore be treated as a nonoperating public agency/landowner under State Board precedent.

Specifically, PACO ignores that:

1. Although there was discussion between the Port District and this Board concerning the possibility of the Port District applying for the NPDES permit, this Board, the Port District, and PACO all eventually agreed in 1979 that PACO should apply for that permit. Eventually, PACO did apply for and receive that permit. The Port District was not even named in the permit.

2. All discharges covered by Cleanup and Abatement Order 85-91 occurred during the period of PACO's permit, since the baseline for cleanup under that Order is the 1979 level of copper concentrate. Therefore, none of the cleanup is attributable to any period of confusion during which it had been considered that the Port District might have been the proper permit applicant.

3. The environmental assessment for the facility was prepared by PACO. That assessment, and subsequent representations by PACO, led the Port District and this Board to believe there would be no discharge either directly into the bay or indirectly through the storm drains as a result of PACO's activities at the site. In addition,

in that environmental assessment, PACO undertook to take all necessary steps to prevent discharge, both over the pier face and through the storm drains.

4. PACO's agreements with the Port District make PACO responsible for preventing discharge, by complying with state laws and regulations, and for cleanup.

5. PACO controlled all copper concentrate storing and loading activities at the facility, including, unloading the copper concentrate from railroad cars, placing the copper concentrate in the storage area, determining the best management practices for preventing discharge of the copper concentrate either directly over the pier face or indirectly through the storm drains, transporting the copper concentrate to the loading crane, outfitting the loading crane with a clamshell bucket (which apparently permitted additional discharge during the loading process), and hiring longshoremen and commercial crane operators who accomplished the actual loading operation.

It is clear from this larger picture that the Port District's "ownership" of the storm drains does not convert it from a nonoperating public agency/landowner into a facility operator. To the extent that any discharge took place through the storm drains, it is attributable to PACO's failure to implement the required best management practices plan to prevent discharge.

PACO's supplemental argument that the requirement that PACO obtain Port District approval for improvements to implement the plan to prevent discharge into the storm drains also does not convert the Port District into a facility operator. Provisions requiring lessor approval are common, and should not be utilized by this Board as a means of converting a nonoperating landowner into an operator.

In short, despite PACO's lengthy protestations, the Port District is merely a nonoperating landowner and, because it is a public agency, should not be named as a responsible party to the cleanup provisions of PACO's Order, particularly when, as here, PACO is in compliance with the Order.

Finally, it is apparent to the Port District that the real motivation behind PACO's request to add the Port District as a responsible party under the Cleanup and Abatement Order is to permit PACO to attempt to abdicate its primary responsibility for cleanup under the Order, to shift primary cleanup responsibility to the public, and, possibly, to attempt to involve this Board in the ultimate apportionment of liability between PACO and the Port District. This Board has already specifically found that it was PACO's operations which caused the discharges of copper concentrate into San Diego Bay. This Board has also already found that PACO acted negligently in its failure to implement best management practices to prevent those discharges. In addition, this Board has concluded that PACO may have been criminally liable for those discharges, and, at the very least, should be held civilly liable for those discharges. In fact, this Board has already assessed, and PACO has already paid, a civil penalty in the amount of \$50,000.00.

Now, PACO essentially is suggesting to this Board that its long prior history of non-compliance is attributable to the Port District's failure to exercise greater control over PACO. In this context, PACO's request that its lessor be named as a responsible party for PACO's own activities as lessee sounds distressingly like the child who is convicted of murdering his

parents pleading to the court for mercy on the grounds that he is an orphan.

If this Board names the Port District as an additional responsible party, PACO is likely to attempt to abdicate its cleanup responsibilities to the Port District. In that event, the primary result of granting PACO's request will be to delay the cleanup while the Port District and PACO determine their respective legal rights, obligations and remedies.

If PACO does not intend to attempt to abdicate its cleanup responsibilities to the Port District, then its only motive for seeking to add the Port District as a responsible party is to attempt to gain an advantage in determining the apportionment of liability for cleanup between PACO and the Port District. PACO has already filed a government claim against the Port District for costs related to cleanup and obviously intends to pursue civil litigation against the Port District.³

The purpose of this Board is not to become involved in that apportionment issue. It is not the proper forum for determining apportionment of liability. PACO is a large and sophisticated enterprise that is fully capable of pursuing any rights it may have in the proper forum. During the term of its lease, PACO shipped approximately 1.5 billion of copper concentrate through this facility. On information and belief, in addition to pursuing a possible claim against the Port District, it has

³ The Port District submits that it bears no responsibility for cleanup as between the Port District and PACO. As discussed above, the discharges were entirely attributable to PACO's activities. In addition, PACO's agreements with the Port District require PACO to insure and indemnify the Port District for any costs or liabilities incurred as a result of PACO's activities.

asserted a claim for environmental liability against one of the mobile crane operators it hired at the site and, through its attorneys Gray, Cary, Ames & Frye, has filed a civil action for reimbursement of its response costs against twenty-four of its insurers. It is the Port District's belief that it is also covered under many of these insurance policies.

Against this background, and because there is no clear authority for this Board imposing joint and several liability, adding the Port District to the Order will inevitably and unnecessarily involve this Board in apportionment issues. Rather than dealing with apportionment questions, the purpose of this Board is to accomplish rapid cleanup without the expenditure of public funds. That purpose will be most clearly served by denying PACO's request. The cleanup should then go forward on schedule. If PACO is correct that the Port District bears some ultimate responsibility for cleanup costs (which the Port District denies), PACO's appropriate remedy is through a government claim and civil litigation, not through burdening this Board with extraneous issues that will do nothing to advance cleanup.

PACO's request should be denied.

II.

DISCUSSION

A. PACO's Request To Add The Port District As A Responsible Party Would Be Contrary To State Board Decisions And Policy Concerning Public Agency/Landowner Liability For Enforcement.

PACO cites several State Board Decisions holding landowners responsible for the discharges of their operator/tenants. However, PACO either ignores or glosses over the State Board's additional requirements for maintaining an enforcement action against a public agency/landowner.

Those requirements are not present here. In fact, this case presents an excellent illustration of the importance of those factors, and the necessity for exercising extreme caution in naming non-operating public agencies in enforcement actions.

As authority for naming the Port District to this enforcement order, PACO first erroneously relies on State Board cases naming private party landowners to waste discharge requirements or to NPDES permits related to the operations of their tenants. The Chief Counsel of the State Board has indicated in memoranda to both the State Board Members and to Executive Directors of the Regional Boards that it is permissible to name landowners to waste discharge requirements and NPDES permits regulating discharges from their tenants' operations based solely on the landowner's ownership of the land. Memo from William R. Attwater, Chief Counsel State Board, to All Regional Board Executive Officers (April 13, 1988), copy attached hereto as Exhibit 1; memo from William R. Attwater,

Chief Counsel State Board, to James L. Easton (March 22, 1988), hereinafter cited as March 22, 1988 Attwater memo, copy attached hereto as Exhibit 2; memo from William R. Attwater to Regional Board Executive Officers (May 8, 1987), hereinafter May 8, 1987 Attwater memo, copy attached hereto as Exhibit 3.

Nevertheless, those cases are inapplicable here. It is well established that "the Porter-Cologne Water Quality Control Act does not require that a landowner be named in the waste discharge requirements issued to a lessee." Order No. WQ 86-11 (Southern California Edison Company). In this case, the Port District was not named in the NPDES permits which PACO violated. PACO offers no authority for retroactively naming any party, much less a public agency, to permits or discharge requirements. To do so raises obvious due process concerns.

To name a private non-operating landowner in an enforcement action related to its operating tenant's activities, the State Board requires there to be "substantial evidence" that the landowner knew or should have known about that its tenant's business activities carried the potential for discharge and that the landowner had the ability to control the discharge. In this case, the Port District knew of the potential for discharge. However, PACO had repeatedly assured the Port District in its negotiations and in its Environmental Assessment that discharges could be eliminated or sufficiently controlled by such measures as covering the stored copper concentrate with tarps, grading the storage site and barricading both the pier face and the storm drains. Environmental Assessment, attached hereto as

Exhibit 4. The Port District had every reason to believe that PACO would live up to these representations.

Similarly, the Port District did not have any substantial ability to control the discharges. PACO was responsible for activities regarding the handling of the copper concentrate. In addition, PACO was responsible for maintaining the lease premises, cleaning debris, and complying with all state and federal laws and regulations. The Port District's power was limited to entering and inspecting the premises, and approving improvements. Lease Agreement and Terminal Operator Agreement attached as Exhibits 1 and 2 to Paco's Submission. Like most commercial landowners, the Port District, presumably could attempt to declare PACO in default of its agreements.

The Port District is aware that several State Board Orders have premised private landowner liability on mere awareness of the general commercial nature of a tenant's activities, and similarly normally limited powers to "control" the operations of the tenant. The Port District submits that those orders may be overly broad in their interpretation of a non-operating landowner's enforcement liability and reserves its right to contest those decisions in the event that this Board grants PACO's request.

Even those decisions concerning private liability for enforcement frequently include a provision that the Regional Board look to the landowner for cleanup only if the tenants default on their responsibilities. E.g., Order No. WQ 86-18 (Vallco Park). Under that standard, the Port District should not be named here because PACO has represented that it is in

compliance with the Cleanup and Abatement Order. In fact, this Board has found as recently as November 21, 1988 that PACO is in substantial compliance. Addendum 2 to Cleanup and Abatement Order No. 85-91, at paragraph 7 (Exhibit 5).

The Port District submits that its knowledge and control of PACO's operation were not sufficient to warrant imposing liability on the Landlord for the Tenant's discharges. See Order No. WQ 85-7 (Exxon). Moreover, even if other State Board decisions imposing broad commercial landowner liability are correct in so far as they apply to private landowners, they should not be applied to the Port District, which is a public agency. The apparent purpose of casting a broad net of private liability for environmental enforcement is to assure that "the landowner, not the public treasury, should bear the cost of cleaning up the pollution." May 8, 1987 Attwater memo at page 5 (Exhibit 3). That policy would not be served by stretching to include a public agency landowner in an enforcement action.

State Board precedent establishes that public agencies should be named in enforcement actions only if it is established "by substantial evidence" that the actual discharger (in this case PACO) will not comply with the enforcement order and that the public agency is not utilizing its governmental powers quickly to rectify the situation. March 22, 1988 Attwater Memo at pages 2 and 3 (Exhibit 2.)

Again, these factors are not present here. Most significantly, PACO is complying with the Cleanup and Abatement Order. In Addendum 2 to Cleanup and Abatement Order 85-91, issued on November 21, 1988, (Exhibit 5) this Board specifically

found that "Paco Terminals has to date complied with the terms and conditions of" the Cleanup and Abatement Order. Since PACO is in compliance, State Board precedent requires that PACO's request to add the Port District be rejected.

In addition, the Port District submits that the second additional requirement that a public agency should be included in an enforcement order only if it has "failed to utilize its governmental powers" to address the problem contemplates that non-operating public agencies should be responsible only for abatement provisions of enforcement orders, but not to cleanup provisions. An agency's "governmental powers" are not particularly useful to accomplish cleanup, except by the use of public funds. That expenditure of public funds is inconsistent with the purpose underlying the broad extension of landowner liability, that "the landowner, not the public treasury, should bear the costs of cleaning up the pollution." May 8, 1987 Attwater memo at 5 (Exhibit 3.) Naming a public agency to an enforcement order should only be used as "a last resort." Id.

On the other hand, a state agency's "governmental powers" may be quite useful to help accomplish abatement of an existing discharge. Utilizing the powers of all governmental agencies involved to ensure future compliance with environmental requirements is consistent with fostering cooperation among various agencies. Such cooperation has been recognized as a high priority that could be jeopardized by adding public agencies to cleanup orders. In State Board Order No. WQ 87-5 (U.S. Department of Agriculture, Forest Service) the State Board added the public agency landowner to the discharge requirements

in order to help assure the private party tenant's compliance. However, it also warned that adding the public agency to an enforcement order "may regrettably create an adversarial situation and hinder cooperation" among governmental agencies which all have an obligation to protect the environment. That same distinction would militate in favor of naming public agencies to abatement orders only, but not to cleanup orders in those situations, such as this, where the agency is not the commercial operator of the discharging facility.

An atmosphere of cooperation currently exists between and the Port District and environmental enforcement authorities. For example, the Port District earlier this year funded a \$284,000 project, directed by the County Department of Environmental Health Services, to study health risks posed to people who consume fish and shell fish caught in San Diego Bay. Furthermore, the Port District has been serving with the Regional Water Quality Control Board as part of the San Diego Interagency Water Quality Panel. 1987 Cal.Stats.Chapt. 820 (Assembly Bill 158), as amended by Assembly Bill 2325 (1988). This spirit of cooperation should not be jeopardized by adding the Port District to the cleanup provisions of an enforcement order.

B. Granting PACO's Request To Add The Port District As A Responsible Party Would Jeopardize Cleanup And Improperly Involve This Board In Apportionment Issues.

This Board has nothing to gain by adding the Port District as an additional responsible party under the Cleanup Order. As

previously discussed, PACO is currently in compliance with the Order. Compliance should be this Board's primary concern. PACO surely has not indicated to this Board that it intends to cease compliance if the Port District is not named.

However, the Port District questions whether PACO will continue to comply if the Port District is named. There is no clear authority for this Board to issue joint and several liability orders. Therefore, naming multiple parties for the same cleanup raises significant risks that the cleanup will be delayed while the various parties determine their respective rights and obligations.

That scenario will inevitably involve this Board in the resolution of apportionment issues so that the cleanup may proceed. The State Board has determined that this is not the proper forum for resolving apportionment questions. State Board Order No. WQ 86-2 (Zoecon Corporation).

In this case, PACO has already instituted procedures to have the apportionment issue heard in the proper forum. PACO has already filed a government claim against the Port District for reimbursement of PACO's response costs related to the Cleanup and Abatement Order. Filing a government claim is a prerequisite to filing civil litigation against the Port District, a governmental agency. Government Code § 900 et. seq. Under Zoecon, supra, those civil proceedings between PACO and the Port District should be permitted to take their course.

Furthermore, Paco's attorneys have filed a lawsuit in Superior Court against 24 insurers for reimbursement of all of Paco's cleanup costs. Paco Terminals, Inc. v. American Home

Assurance Company, et al., San Diego Superior Court Case No. 602586, copy of complaint attached hereto as Exhibit 6. The Port District believes it is an additional insured under the insurance policies, adding further complication should the Regional Board name the Port District to the Cleanup and Abatement Order. Furthermore, the Port District is informed and believes that Paco has made a demand against Cabrillo Crane Company, a mobile crane company apparently hired by Paco to load copper concentrate onto the ships. Paco obviously has the sophistication and knowledge to proceed with claims for contribution. As the State Board has determined, however, the Regional Board is not the proper forum for resolving these apportionment issues. Therefore, adding the Port District to the Cleanup and Abatement Order at this time is clearly contrary to State Board and Regional Board policy.

The Port District submits that one of the reasons that State Board orders have placed even private landowners only in positions of secondary liability (Order No. WQ-18 (Vallco Park)) and has concluded that public agencies should be only secondarily liable and should be looked to "only as a last resort," May 8, 1987 Attwater Memo at 5, (Exhibit 3) is to avoid becoming involved in the difficult legal questions of joint and several liability and/or apportionment of liability. Simply, when the primary operating tenant is in compliance with the Cleanup Order, this Board has nothing to gain by naming the landowner as an additional party to the Order.

Finally, PACO's enforcement history before this Board certainly provides no reason for granting its request that

another responsible party be added to the Cleanup Order. First, the Cleanup Order itself states that the discharges at issue are a result of PACO's operations. Cleanup and Abatement Order No. 85-91, paragraph 19. This Board has also concluded that the discharges are a result of inherent weaknesses in PACO's Water Pollution Control Plan and inadequate implementation of that Plan by PACO. Id.

In addition, this Board has already determined that there is sufficient evidence of PACO's culpability in violating the permit requirements that it directed the Executive Officer to issue a complaint for Administrative Civil Liability to PACO proposing liability in the amount of \$200,000. Executive Officer Summary Report, April 25, 1988, Item 23. (Exhibit 7.) Regional Board Order 88-27 concluded that PACO may be civilly and criminally liable for its failures to follow its Water Quality Control Plan. Ultimately, the Complaint authorized by Order No. 88-27 was not issued because PACO voluntarily agreed to pay a civil liability penalty of \$50,000 and a three year annuity of \$25,000 per year to fund certain studies relating to environmental issues in San Diego Bay. PACO submission pages 2 - 3.

Order No. 88-27 was issued based upon a long documented record before this Board of the inadequacy of PACO's Water Quality Control Plan and its repeated non-compliance with the Plan. Now, PACO comes to this Board essentially asking for relief from its obligations under the Cleanup and Abatement Order under the theory that the Port District, as PACO's lessor, did not adequately control PACO's activities and compliance.

This Board should have none of it. PACO's argument essentially states that it should be relieved of liability because someone else should have prevented it from acting unlawfully.

C. The Port District Was Not The Operator Of The Copper Concentrate Loading Activities.

1. PACO's Attempt To Mischaracterize The Port District

As previously shown, State Board precedent dictates that the Port District, as a non-operating public agency/landowner, should not be named in this enforcement action. Nevertheless, PACO seeks to avoid that precedent by attempting to characterize the Port as an operator of the facility.

The history of the copper concentrate loading operation clearly establishes that PACO, and not the Port District, was the operator. PACO conceived the idea of shipping copper concentrate through San Diego and approached the Port District. PACO represented that it had vast experience in loading copper concentrate. PACO assured the Port District from the outset that there would be no discharge of copper concentrate as a result of its operations. PACO also assured the Port District that it would design measures to prevent any possible discharge and assumed responsibility in its agreements with the Port District for implementing those measures. Finally, PACO either hired or supervised all personnel involved in the loading process. Against all of the facts, PACO's assertion that the Port District, and not PACO, was the operator of the facility is a complete fabrication.

2. The Development of The Copper Concentrate Loading Project Establishes That PACO is The Operator

PACO TERMINALS, INC. was incorporated as a California corporation on January 6, 1978. (Exhibit 8.) From all appearances, PACO was formed for the specific purpose of conducting the copper concentrate operation in San Diego.

PACO approached the Port District concerning the Project. In the lessee questionnaire response submitted by PACO to the Port District, PACO stated:

"PACO TERMINALS, INC's operations on the tidelands will be managed and developed by principals of Pate Stevedor Company and Cooper Stevedoring Company, namely: Robert Page, William Pate, Angus R. Cooper, II, and David J. Cooper....These two companies have been in the stevedoring business for three generations and have operations at various ports on the Atlantic, Gulf and Pacific Coasts and the Mississippi River. Their experience includes all types of cargo handling and terminal management." Exhibit 8.

In 1983, prior to the renewal of PACO's NPDES Permit, Cooper Stevedoring Company merged with T. Smith & Son, Inc., another large stevedoring company. PACO represented to the Port District that this merger made PACO even stronger. (Exhibit 9.)

The concept of storing and shipping copper concentrate through the 24th Street Marine Terminal initiated with PACO's principals and the mining companies, not with the Port District. Representatives of Pate, Cooper and Amax, Inc. a copper mining company, approached the Port District in late 1978 and stated that Amax wanted to ship copper concentrate through the Port of San Diego. Amax insisted that the concentrate be loaded by Pate

and Cooper through their planned new venture, PACO, rather than through existing stevedor companies that already operated in San Diego. Agenda Sheet, March 6, 1978 (Exhibit 10). Copper had previously been shipped through the Port of San Diego on only one other occasion.

Prior to execution of any lease agreements, PACO prepared an environmental assessment of the project Exhibit 4. The environmental assessment was signed by ROBERT E. PATE as President of PACO. It states that the "operation per se, does not create spoils, [and] that [the] cargo is very expensive and all attempts will be made to reclaim the same." Environmental Assessment at page 2.

Exhibit B to PACO's environmental assessment states "tarpaulins will be in regular use, and timber will be stockpiled to construct timber barriers if necessary." It continues:

"Although applicant from its past experience does not believe the following is necessary, it will, if deemed advisable by the appropriate authorities, do any of the following:

1. Keep material covered with tarpaulins at all times, except when material is being moved.
2. Keep timber barriers in place.
3. Place timber barriers around storm drain. There are two openings of the storm drain on the leased premises. The storm drain runs into the bay.
4. Place a strainer device around drains which will allow water to pass, but will retain particles.
5. Use tarpaulin when ships are being unloaded as between dock and ship."

Also, PACO indicated on the checklist of Environmental Effects that the project would not affect the water quality of the bay. (Exhibit 4 at page 6, ¶ 27.)

The Port District relied on PACO's environmental assessment and its protection plans.

"Your project description is the basis for environmental review and defines the project. All mitigating measures which you intend to include will be required as conditions, if the project is approved."
PACO's submission, Exhibit 21.

3. PACO's Agreements With The Port District Established That PACO Controlled All Areas of Potential Discharge and is Responsible For Environmental Compliance and Any Cleanup

Based on PACO's representations, including those concerning its environmental responsibility, the Port District granted a lease and terminal operator agreement to PACO (PACO's Submission, Exhibits 1 and 2). The lease area was 100,000 square feet. For part of the lease term PACO also occupied an additional 100,000 square feet. PACO's submission at page 4. Additionally, PACO was provided up to 50,000 additional square feet under month-to-month agreements on an as-needed basis.

Under these agreements, PACO occupied the entire area where copper concentrate was stored and loaded. PACO was the only entity handling copper concentrate at the 24th Street Marine Terminal. PACO's lease obligations specify that it is responsible for environmental compliance.

Paragraph 17 of the lease requires PACO to abide by all laws, regulations and rules. These encompass environmental

laws, including requirements under the Porter-Cologne Water Quality Control Act and the Clean Water Act.

Paragraph 14 of the lease requires PACO to "keep the premises in a clean and sanitary condition."

Paragraph 38 of the lease requires PACO to remove all debris from the premises and "adjacent to the leased premises, so as to leave the same in as good condition as when first occupied by [PACO]."

Under the terminal operator agreement, PACO was responsible for "the handling, storing and delivering of merchandise and cargo." (Paragraph IV A.) PACO was also required to provide adequate personnel and equipment to perform the terminal operator's services. (PACO's Submission, Exhibit 2, pages 2 and 3.)

Both the lease and the terminal operator agreement required PACO to defend and hold harmless the Port District for any liability related to PACO's occupancy and operations. (Lease Paragraph 20; Terminal Operator Agreement Paragraph VII.)

4. PACO's Responsibilities Included Obtaining Any Necessary Environmental Permits

PACO attempts to make much of the fact that there was initial correspondence between this board and the Port District concerning the Port District applying for an NPDES Permit. However, the background of the relationship between PACO and the Port, including the environmental assessment, which culminated in PACO's lease and terminal operator agreement, all establish that PACO had the responsibility for obtaining any necessary

environmental permits. Also, none of PACO's protestations can change the fact that PACO ultimately applied for and obtained the NPDES Permit and did not live up to the requirements of that permit. See Exhibits 13 and 14.

After PACO had submitted its draft environmental assessment to the Port in February 1978, both PACO's representative, F. M. Keeling, and Michael Needham, then of the Port District Environmental Management Section, contacted this Board concerning the project. See Exhibits 11 and 12.

PACO's own submission establishes that Mr. Needham replied to this Board that:

in the process of preparing his [PACO's] project description, we requested that he [PACO] establish the extent to which the commodity may need to have special measures in order to assure there will be no potential pollution problems. It is our standard procedure to point out to any applicant that he is responsible under his lease to comply with all applicable anti-pollution regulations.

PACO's Submission, Exhibit 5.

Mr. Needham's letter then goes on:

We intend to continue to exercise source control for our marine terminal commodities which obviates the need for any discharge permits, etc. For the designated area for PACO, the lease will require that any potential pollutants are source controlled. Thus, the commodity will be handled without pollutant discharge either into the atmosphere or into San Diego Bay.

PACO attempts to characterize this statement as the Port District's undertaking to assure that there will be no discharge into the bay. In fact, that language, especially as against the entire background of the relationship between PACO and the Port,

is clear that the Port District is merely passing on to this Board PACO's assurances to the Port District that PACO would control the product such that there would be no discharges.

Nevertheless, in response to Mr. Needham's March 1, 1978 letter (PACO Submission, Exhibit 5), this Board requested the Port District to apply for an NPDES Permit on March 10, 1978. (PACO Submission, Exhibit 8). The letter state "the application must be received 180 days before the discharge or potential discharge may commence."

It is unclear from Port District records or current Port District personnel (Mr. Needham no longer being with the Port District) when this correspondence was received at the Port and whether it was transmitted to PACO. It is apparent that it was not acted upon. One explanation is that the Port believed PACO's assurances that there would be no discharge or potential discharge and, therefore, that no permit was required. However, future events established that Port District's reliance on PACO was misplaced.

On April 18, 1979, this Board wrote to the Port District to advise that PACO's handling of the copper concentrate at the site caused "at least three potential modes of discharge." This Board renewed its request that an NPDES Permit be obtained. (PACO's Submission, Exhibit 9.)

In response, on April 23, 1979, the Port District's Coordinator for Environmental Management wrote to PACO's Manager requesting that he contact this Board to accomplish "whatever is necessary to bring this matter to an expedient resolution."

That letter went on to note the Port District's position that PACO had not complied with its environmental obligations.

Early in 1978, prior to the approval of the tenancy, PACO stated firmly to the Port that all necessary measures would be taken (both as to containment and operations) to prevent any pollutions entering the environment. As it appears that this has not been satisfactorily achieved, please keep the Port advised as to progress on this matter.

PACO contacted this Board and requested that the staff "visually check the areas in question again, potentially [to] avoid a permit procedure." (Board Interstaff Memo, May 9, 1979, Exhibit 13.) PACO was unable to convince this Board that no permit was necessary. In early June, 1979, PACO then apparently took the position with this Board that the Port District should be the proper applicant for the permit, and that PACO would merely "assist" the Port District in applying for the permit. PACO's Submission, Exhibit 11, memo of the telephone conversation apparently reporting PACO's position to this Board. As a result, the Board sent a new set of applications to the Port District (PACO's Submission, Exhibit 12).

The Port District immediately replied to the Board that PACO, and not the Port District, should obtain the permit. Letter from Port Director to Board Executive Officer, June 19, 1979 (Exhibit 14.) The letter states: "PACO Terminals, is the operator of the copper concentrate loading activity, and under their existing lease agreement, they are required by the District to comply with all applicable antipollution regulations. This is standard procedure for all Port District tenants....If a permit is required, it seems appropriate that as

the operator and the applicant, PACO should apply for the NPDES Permit as provided for in the Federal Water Pollution Control Act, as amended."

PACO, in fact, applied for the permit on September 26, 1979. (Exhibit 11.) During the permit approval stage, this Board was aware of the steps to be undertaken by PACO to control discharge of the copper concentrate. A Regional Board memo from David Barker dated November 13, 1979 states:

The discharger has installed a burlap wrapping around each drain opening to a storm drain. The burlap wrapping is supposed to act as a filter. The efficiency of the burlap wrapping will be determined by the Regional Board staff as part of the Water Pollution Control Plan approval process. (Exhibit 15.)

On November 26, 1979, PACO submitted its Control Plan to the Board which included:

1. Protection of storm drains from run off. These drains are covered with a water filtration material (doublewrap) to prevent any discharge (sample of material enclosed).

2. Stockpiles are covered with a nylon reinforced polyethylene material and held in place using rubber tires.

NOTE: Stockpiles are located approximately 60' - 70' from water line.

3. When material is loaded onboard vessel, we are using water trucks for dust control to prevent blowing of material into the bay. We use 20' x 40' SAVE-ALL TARPS made of net and nylon reinforced polyethylene to prevent dropping material into the bay.

When vessel completes loading, we use street sweepers (brush & water) to clean entire area. (Exhibit 16.)

The Regional Board granted the NPDES Permit and established waste discharge requirements for PACO on November 26, 1979. (Exhibit 12.)

In addition, PACO assumed responsibility for all other environmental obligations such as Air Pollution Discharge Permits. See Exhibit 17.

In conclusion, any confusion concerning the permit was finally resolved in favor of PACO obtaining the permit and being the only party named under the permit. Although a permit might have been obtained more quickly had this confusion not existed, the absence of the permit did not contribute in any way to the discharges at the site or exacerbate the current cleanup problem. The baseline for the Cleanup and Abatement Order is the 1979 level of copper concentrate that existed as of the time that PACO obtained its permit. In addition, the proceedings before this Board involving PACO have established that PACO lived in regular violation of the permit requirements in any event. The problem at the site was not a delay in setting the permit requirements; it was that PACO's Plan proved inadequate and that PACO regularly violated the permit requirements.

Finally, PACO also tries to make too much of a hand-written Board staff memo stating that PACO is the proper applicant for the permit "given no discharge through storm drains." PACO submission, Exhibit 17. Nothing PACO says can change the fact that any discharge of copper concentrate from storm drains was caused by PACO's failure to comply with its obligations to prevent the substance from entering the storm drains in the first place. Under any theory, PACO is the appropriate primary

responsible party under this Order. PACO has other available remedies it may pursue against the Port District for proper apportionment of liability.

5. PACO Controlled All Aspects of the Copper Concentrate Storage and Loading Operation

In a final attempt to characterize the Port District as an operator, PACO stresses the Port District's personnel and activities at the site. However, the facts are that PACO controlled all aspects of the operation.

PACO removed the copper concentrate from the railroad cars. PACO placed the material on the leasehold area and/or an adjacent area which it leased on an as-need basis from the Port. For loading, PACO would move the material with front-end loaders to the area near the Port District's container crane. PACO supplied and fitted the crane with a clamshell bucket which, apparently, did not sufficiently contain the material. The Port rented the container crane to PACO. The container crane was operated by, and all loading operations were performed by, longshoremen hired by PACO and operating under PACO's direction. Additionally, PACO utilized mobile cranes for loading copper concentrate which were rented by PACO from crane companies in the San Diego area. The Port District believes that those crane operators were employees of those crane companies. However, the Port District had no control over either those crane operators or the operators hired by PACO to operate the Port District's crane.

As previously discussed, it was PACO's responsibility to cover the mounds of copper concentrate with tarps to prevent

windblown discharge and water runoff. In addition, PACO was responsible for preventing discharge through the storm drains. PACO, from the outset, assured the Port that PACO's filter method would prevent discharge from entering the storm drain. When this method failed, it eventually became necessary to cover the drains.

PACO now complains that the Port District should be a responsible party because the Port District's approval was required for making changes to the storm drains. Port personnel initially expressed concerns over sealing the drains without any sump or other filtration device, since the ponding of water could lead to pavement deterioration and resulting penetration of the copper concentrate into the surrounding ground and groundwater, leading to possible damage to the site and electrical equipment and eventually causing another potential means of discharge into the bay. However, there is no evidence that these legitimate concerns of the Port District delayed PACO's compliance or significantly contributed to the present cleanup problem. At most, this presents an apportionment issue not properly before this Board.

PACO also complains that Port District personnel controlled the site. The only Port employees routinely present at the site were an electrician and a mechanic. Their purpose was merely to repair any problems that might occur with the container crane. Of course, any malfunction of the crane's electrical system would not result in any discharge; it would only require a shutdown of the crane and delay in a loading operation. As previously discussed, all other personnel at the site were

either employees of PACO or employees of parties with which PACO contracted. They had no connection with the Port District.

PACO also suggests that the discharges over the pier face were obviously the Port District's responsibility since PACO's leasehold ended 120 feet from the pier face. However, PACO entirely managed and controlled the loading operation. Exhibit B to PACO's counsel's February 18, 1988 Submission to this Board to attempt to avoid the assessment of the Administrative Civil Liability specifically discusses PACO's BMP for dealing with discharges over the pier face.

C. "Concentrates will only be placed on the shipside of the slopeline during actual loading operation as the concentrates are being placed on board ship. It is expected that there will be a maximum of five (5) working days per month during which the concentrates would be placed on the shipside of the slopeline. At all other times the concentrates will be stored on the landside of the slopeline.

D. At no time will concentrates be stored or placed within 20 feet of the pier face. This twenty foot safety zone will ensure that concentrates are kept back from the pier face to eliminate the possibility of spillage into the bay as concentrates are being handled on the dock. This safety zone will be clearly identified.

* * *

F. ...at all times during the loading operation, PACO INDUSTRIES, INC. will maintain on hand a manned three thousand gallon water truck. This truck is capable of spraying a forty foot wide path of water and will constantly patrol the entire dock area, spraying water as frequently as necessary to wet down the concentrates, thereby preventing it from being blown by the wind. The spraying of water on the shipside of the slopeline will be in the minimum amounts necessary to prevent blowing of concentrates. In no event will amounts of water be added to concentrates in this area which will permit runoff into the bay.

H. At the completion of loading concentrates on board ship, any concentrate residue remaining on the dock will be

immediately cleaned up with front-end loaders and by hand with shovels and brooms. There will be an emphasis on manual labor (shovels and brooms) in clean up operations since this is the most thorough clean up method. In no event will water be used to clean concentrate or residue from the storage pad on the ship side of the slopeline. Any remaining concentrates will be stockpiled landside of the slopeline and placed under the tarps as described above." (Exhibit 18.)

Obviously, PACO was representing to this Board that it has control of the loading operations irrespective of the termination line of its actual lease space.

Finally, PACO's submissions suggests that the Port District should be named as a responsible party because it benefited from the loading operations and encouraged PACO to move large quantities of copper concentrate through the facility. In fact, the rental provisions of PACO's lease were premised on PACO moving 137,500 short tons (124,740 metric tons) of copper concentrate at the facility per year. Any greater cargo movement did not cause PACO's leasehold payments to the Port District to be increased, and greater shipments obviously accrued primarily to PACO's benefit. In fact, PACO exceeded the minimum tonnage requirements in almost every year of the lease. In the year one of its lease (ending January 21, 1980) PACO handled 148,785.35 metric tons; in year two 259,544.91 metric tons; in year three 541,086.99 metric tons; in year four 456,227.38 metric tons; in year five 105,244.95 metric tons; in year six 196,804 metric tons; in year seven 290,277.22 metric tons. Exhibits 19 and 20.

This is not to suggest that the Port District did not benefit at all from PACO's greater volume. However, any benefit

to the Port District's benefit was primarily indirect - - through greater Port activity generating jobs and other economic benefit to San Diego County, consistent with the Port District's expectation in its role as a government agency upon embarking on the project.

The minimum tonnage requirement according to PACO will probably be exceeded each year. Their operations will add measurably to long-shoremen jobs and require an additional 12 to 24 ship calls a year in San Diego.

Staff believes this proposed lease is in the interest of the Port of San Diego. It will add measurably to the maritime commerce of the area. (Exhibit 10). See also Exhibit 21.

Thus, primary beneficiary of PACO's lease and its large product movement was PACO itself on the Port District's information and belief, the value of the million metric tons of copper concentrate handled by PACO at the facility was approximately \$1.5 billion. Exhibit 21 (value approximately \$800 per ton).

III.

CONCLUSION

For all the reasons stated here, PACO's request to add the Port District as a responsible party under Cleanup and Abatement Order 85-91 should be denied.

DATED: December 15, 1988

HILLYER & IRWIN

By:



David B. Hopkins

Mark D. Martin

HILLYER & IRWIN

Attorneys for

SAN DIEGO UNIFIED PORT DISTRICT

1

Memorandum

Date : APR 13 1988

All Regional Board Executive Officers


William R. Attwater
Chief Counsel

From : STATE WATER RESOURCES CONTROL BOARD

Subject: FORM FINDINGS FOR REGIONAL BOARD ORDERS

Attached is a copy of form findings to be used by Regional Boards in cases where a Board holds a property owner liable for cleanup of pollution which was not caused by that owner. Also attached is a memorandum explaining the forms and another memorandum summarizing the principles involved when naming landowners in orders.

This issue will be included on the agenda for the May meeting of the Executive Coordinating Committee.

Attachments

cc: Fresno, Redding, and Victorville
Regional Board Offices

Dale Claypoole, Chief
Program Control Unit

JSSO:oway/mgliatto 4/13/88

Memorandum

Date : MAR 22 1968

James L. Easton
Executive Director


William R. Attwater
Chief Counsel

From : STATE WATER RESOURCES CONTROL BOARD

Subject: FINDINGS FOR WASTE DISCHARGE REQUIREMENTS APPLICABLE TO NON-CULPABLE PROPERTY OWNERS

In most cases, it is proper for a Regional Board to name a property owner on a waste discharge requirements order or a cleanup and abatement order, even though the property owner did not directly cause the discharge of waste on the property (e.g. the tenant or a prior owner caused it). A number of State Board orders have clarified the circumstances under which a non-culpable property owner should be held responsible for cleanup. (State Board Orders Nos. 86-2 and 86-11.) Two recent orders have limited this responsibility under special circumstances. (State Board Orders Nos. 87-5 and 87-6.)

The attached memorandum from William R. Attwater to all Regional Board Executive Officers, summarizes the elements which a Regional Board must show to hold a non-culpable property owner responsible under a Regional Board order. State Board member Ruiz has suggested that it would help the Regional Boards if they had a model "finding" containing these essential elements. This memorandum is in response to her request.

These model findings should not be rigidly applied. They provide guidance and may be changed as necessary to conform to the special facts in each case. I will transmit the findings to the Regional Boards if you or Board Member Ruiz so desire. In addition, they could be added to the Administrative Procedures Manual. The model findings are as follows:

FORM A

" (owner's name) (the "Owner") has been (was) the owner of real property located at (address or location description) (the "Property"). Although Owner has not directly caused the discharge or threat of discharge of waste on the Property, Owner, during the time (he, she, it) owned the Property, knew or should have known of the existence of the discharge or threat of discharge. Additionally, during the time (he, she, it) owned the Property, Owner had some measure of control over the Property."¹

The following additional finding should be used in cases where the land owner is only secondarily liable because the owner is a certain type of government agency:

FORM B

"Owner is a government agency which has a legal duty to protect the environment. Therefore, Owner is responsible for compliance with this order only if the party who directly caused the waste discharge fails to timely comply with this order and Owner fails

¹ If the Regional Board cannot prove "measure of control" based on the evidence, use this Form A, but delete the last sentence and also use Form C which states that the owner is only secondarily liable.

to promptly use its governmental powers to remedy the waste discharge."

The following additional finding should be used in cases where the land owner is only secondarily liable because the Regional Board cannot show that the owner had a measure of control over the property. When using this Form C, delete the last sentence from Form A:

FORM C

"During the time (he, she, it) owned the Property Owner did not have any control over the Property because (insert explanation). Therefore, Owner is responsible for compliance with this order only if the party who directly caused the discharge of waste fails to timely comply with this order."

Attachment

To : Regional Board Executive Officers

Date : MAY 08 1957

/s/ W. R. Attwater

William R. Attwater
Chief Counsel

From : STATE WATER RESOURCES CONTROL BOARD

Subject: INCLUSION OF LANDOWNERS IN WASTE DISCHARGE REQUIREMENTS AND ENFORCEMENT ORDERS

Attached is a memo explaining many of the issues addressed in State Board orders regarding the inclusion of landowners in waste discharge requirements and enforcement orders. Also included in the memo is a brief explanation of the legal basis for decisions. By no means are all of the possible situations which may confront you addressed by State Board orders or the memo. However, to the extent that the State Board has already dealt with some of these questions, it is important that there be substantial consistency by the Regional Boards.

The basic principles involved in naming landowners in orders can be summarized in a few key points:

1. Anyone who owns land on which a discharge is occurring is a discharger under Porter-Cologne.
2. Any discharger can be named in waste discharge requirements and made generally responsible for what goes on with regard to the property.
3. Enforcement orders can be issued to a landowner only if the cleanup involves something about which the landowner knew or should have known and over which he or she had some measure of control.
4. If the landowner is another public entity which has the legal duty to protect the environment, it is proper to name the agency in waste discharge requirements but it should only be made the subject of enforcement actions when it is clear that the actual discharger will not comply and that the public entity is not moving quickly to rectify the situation.
5. Findings of each element of a landowner's responsibility must be supported by substantial evidence.

In addition, it may be advisable to make enforcement orders more realistic by assigning them to a landlord. With regard to the landlord, in many cases, must wait to see whether the tenant does the required work before assuming the responsibility for doing it.

Attachment

Memorandum

To : Regional Board Executive Officers

Date : MAY 08 1987

/s/ W. R. Attwater

William R. Attwater
Chief Counsel

From : STATE WATER RESOURCES CONTROL BOARD

Subject: INCLUSION OF LANDOWNERS IN WASTE DISCHARGE REQUIREMENTS AND ENFORCEMENT ORDERS

Attached is a memo explaining many of the issues addressed in State Board orders regarding the inclusion of landowners in waste discharge requirements and enforcement orders. Also included in the memo is a brief explanation of the legal basis for decisions. By no means are all of the possible situations which may confront you addressed by State Board orders or the memo. However, to the extent that the State Board has already dealt with some of these questions, it is important that there be substantial consistency by the Regional Boards.

The basic principles involved in naming landowners in orders can be summarized in a few key points:

1. Anyone who owns land on which a discharge is occurring is a discharger under Porter-Cologne.
2. Any discharger can be named in waste discharge requirements and made generally responsible for what goes on with regard to the property.
3. Enforcement orders can be issued to a landowner only if the cleanup involves something about which the landowner knew or should have known and over which he or she had some measure of control.
4. If the landowner is another public entity which has the legal duty to protect the environment, it is proper to name the agency in waste discharge requirements but it should only be made the subject of enforcement actions after it is clear that the actual discharger will not comply and that the public entity is not moving quickly to rectify the situation.
5. Findings of each element of a landowner's responsibility must be supported by substantial evidence.

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In addition, it may be advisable to make enforcement orders more realistic by assigning duties to a landowner which recognize that the landowner, in many cases, must wait to see whether the tenant does the required task before assuming the responsibility for doing it.

Attachment

Memorandum

To : State Board Members

Date : MAY 04 1987


William R. Attwater
Chief Counsel
From : STATE WATER RESOURCES CONTROL BOARD

Subject: RESPONSIBILITY FOR CLEANUP

QUESTION

What is the proper basis for holding someone responsible for the cleanup of a site which threatens to pollute or is polluting a water source?

ANSWER

In general, the law imposes the duty to protect the public from a condition of pollution or nuisance on a site on those who are aware or should be aware of the problem and who are in a position to do something about it. There are, however, many subtleties in the business of assessing responsibility and such determinations are highly dependent on the facts of each case.

DISCUSSION

The Porter-Cologne Water Quality Act paints with a broad brush when it comes to assessing responsibility for the cleanup of polluted sites. Section 13304 of the Water Code provides that any person "who has discharged or discharges waste" or any person "who has caused or permitted, causes or permits, or threatens to cause or permit" the discharge of waste into water or where it might get into water may be ordered to clean it up by the Regional Board.

The word "discharge" is not defined in the Water Code nor does the case law offer any precise definition. The State and Regional Boards have consistently taken a broad view of the word's meaning and have applied it to indirect as well as direct releases of pollution causing substances. Thus, allowing an existing source of contamination to spread from the soil to nearby ground water is as much a discharge as pouring a barrel of the stuff into a sump. (See, for example, Zocon Corporation Order No. WQ 86-2 and Stuart Petroleum Order No. WQ 86-15.)

In an opinion of the Attorney General issued in 1955, the term "discharge" is discussed.

"The term 'discharge' is not defined in the act but is apparently used in two senses in Water Code Section 13054: (1) as a verb meaning, 'to emit; to give outlet to; to pour forth', and (2) as a noun meaning either, 'A flowing or issuing out,' or 'that which is emitted' (Webster's New International Dictionary 742 [2d ed. unab. 1951])."

The opinion goes on to apply that analysis to an abandoned mine which continued to discharge tainted water after it was closed down.

"It is immaterial that the mining operations may have terminated before either purchased his present interest because the discharge for which they are accountable is the existing and continuing drainage from their holdings, not the now discontinued mining." (26 Ops.Atty.Gen. 88.)

In light of the broad Porter-Cologne coverage and the general use of the word "discharge," the State Board has adopted a series of orders dealing with several permutations of the landlord-tenant and owner-former/owner dicotomies. Each of the State Board orders has been based, at least in part, on the line of California cases which has assigned increasing responsibility to landowners for most bad things that happen on their property. Among the leading cases are Uccello v. Laudenslayer (44 Cal.App.3d 504, 118 Cal.Rptr. 741), a 1975 case involving the landlord's knowledge of a vicious dog owned by his tenants, Copfer v. Golden (1955, 135 Cal.App.2d 623, 288 P.2d 90), assessing the liability of a former owner for injuries which occur after the sale, and Sewell v. Loverde (1969), 70 Cal.2d 666, 75 Cal.Rptr. 889), concerning the ability of a landowner to pass along certain responsibilities to a tenant through lease provisions. These and other cases all point in one direction: A landowner may be held accountable for what transpires on the property he or she owns but the courts will look to how much the landlord knew about what was happening on the property and how much control the landowner had over the dangerous condition or activity. No bright-line standards have been drawn by the courts. Each case differs slightly from the others and the courts take pains to look to those distinctions.

For example, in the Uccello case, the plaintiff won the legal point and achieved reversal of a non-suit. A later case, Lundy v. California Realty (1985, 170 Cal.App.3d 813, 26 Cal.Rptr. 575) held that Uccello applied on the law but found that the facts failed to show that the landlord knew about the danger posed by the dog on the premises.

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California courts have not, as yet, dealt with the situation where the landowner responsibility is judged in light of the exercise of the state's police power function. The cases have uniformly considered the competing rights of two or more private parties. The public policy questions considered by the courts have involved how fault and compensation are apportioned among a handful of individuals. A few federal cases have begun to look at the question of how the generalized rights of the public and the taxpayers can be reconciled with the occasional unfairness visited on individual landowners.

In U.S. v. Mirabile (15 ELR 20994, DC EPA 1985) a federal court relieved a secured creditor from liability for the costs of cleaning up polluted land it had recently acquired through foreclosure. But in U.S. v. Maryland Bank and Trust Company (632 F.Supp. 573, DC Md 1986) another court held a bank responsible for EPA's costs of a site cleanup even though the bank only owned the property through foreclosure. The only real difference between the two cases is that the Maryland bank had owned the property about four times as long as the Pennsylvania bank. In one case the court sought to protect the interests of lenders who may have all the equity in a piece of property wiped out by a cleanup bill. The other court wanted to reimburse EPA for the cost of cleanup.

Both cases are statutory interpretation exercises. The recent Superfund amendments, known as SARA (Superfund Amendments and Reauthorization Act of 1986), attempt to deal with the problem created by the language of Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) which led to the conflicting judicial interpretations laid out above. Among other things, the amendments include what is known as the "innocent landowner defense." A purchaser of land will not be held accountable for the costs of cleanup if he or she did not know and had no reason to know that a hazardous substance was deposited there. A public entity has no responsibility if it takes the property by escheat or condemnation. An owner is not liable if the property passes by inheritance or bequest. The exceptions have a few exceptions but the most important aspect of the new rules is that a bank or other lender is put on notice that inquiry into the past and proposed uses of the property is important before a mortgage is granted.

To date the State Board has not been asked to deal with the rather sticky "mortgagor as landowner" issue. State Board orders have dealt, however, with a wide variety of factual settings. Beginning in 1984 with the Logsdon Order (No. WQ 84-6), the State Board dealt with the naming of landowners in cleanup and abatement orders. There the landlords claimed not to know what was happening on the property they leased to a wood preserving company. They also claimed to be unable to do anything to prevent it. The facts supported the Regional Board on both issues. The petitioners were shown to be well aware of the nature of the wood preserving business based on earlier involvement at another site. Furthermore, the lease gave the landlords the right and ability to enter the property to prevent the very sort of thing that was going on there.

Order No. WQ 85-7 (Exxon) found the State Board overruling the Regional Board on the inclusion of an oil company in a leaking tank cleanup. Exxon was only involved in the distribution of fuel to the service station and was not responsible for the inspection or maintenance of the tanks into which the fuel was poured. The only evidence connecting Exxon with the ownership of the site was some personal property tax records which, on closer inspection, showed Exxon's holdings on the site to consist of some furniture, some tools, a credit card imprinter, and two used pumps.

Five State Board orders were issued on the general topic of landowner responsibility during 1986. The first, Order No. WQ 86-2 (Zoecon) considered the plight of a company which had recently acquired a property from prior owners who had discharged a variety of hazardous chemicals into the ground. The Regional Board looked to the current owner to clean up the site even though others were likely to be far more culpable. The State Board upheld the Regional Board action. Because there was an actual movement of waste from soil to water on the site, a continuing discharge existed for which the current owner could be held responsible.

State Board Order No. WQ 86-11 (Southern California Edison) approved the inclusion of a landowner in waste discharge requirements issued to the operator of two solar power plants. No cleanup was involved and the order recognized the importance of including the ultimately responsible party in the requirements issued to the less permanent user of the site. The order approved the Regional Board decision to distinguish between the day-to-day responsibilities of the site user and the underlying responsibility of the landowner.

In Order No. WQ 85-15 (Stuart Petroleum) the issue was whether an absentee/sublessor could be held to account for a site cleanup along with the on-site operator (sublessee) and the property owner. The conclusion was that, given sufficient proof that the sublessor knew of the activities on the site and that it had the power under the lease agreements to regulate the activity, the inclusion in the order was proper.

The next order adopted by the State Board, No. WQ 86-15 (Stinnes-Western), considered a petition from a former landowner who felt that there was not enough proof that the discharge was caused during its time in possession to include it in a cleanup order. The Board applied the standard it set up in the Exxon order and found that there was substantial evidence in the record to support the Regional Board's conclusion.

The last of the 1986 orders, No. WQ 86-18 (Vallco Park), sustained a cleanup order issued by the Regional Board to both the current and former tenants of a site and to the landowner. The latter appealed contending that it was unable to regulate the on-site activities of the tenants. The State Board found that

MAY 04 1987

the record supported the Regional Board decision and that the landowner had sufficient recourse under the lease agreement to regulate the conduct of the tenants. Furthermore, the State Board recognized that the Regional Board intended to look to the landowner for cleanup only if the two principle parties defaulted on their responsibilities.

The most recent order adopted by the State Board, No. WQ 87-5 (U.S. Forest Service), dealt for the first time with the naming of another regulatory agency/landowner in waste discharge requirements. The Board took special care to tell the Regional Board that any enforcement action should be taken first against the lessee and only as a last resort against the Forest Service. However, the inclusion of the federal agency in the waste discharge requirements was found to be entirely proper.

As can be seen from the orders issued by the Board, a distinction has been made between the issuance of waste discharge requirements and cleanup and abatement orders. The former may properly be issued to landowners without regard to their actual involvement in the discharge; the latter are subject to the restrictions discussed above. Two Board orders (Southern California Edison and U.S. Forest Service) involve waste discharge requirements and each specifically says that the Regional Board should be careful in assessing responsibility for site cleanup. But each order makes it clear that waste discharge requirements may be issued based on the ownership of the land and need not consider the other factors.

CONCLUSION

There is near total consistency between the way that the State Board has dealt with the various ownership/responsibility questions, the case law within California, and the current federal approach to apportioning liability in such things as Superfund cleanups. The basic principle is legally supportable and makes good sense as a matter of public policy. So long as the owner of a piece of land is aware of what is happening on the land (or should be expected to be aware) and has the power to regulate the conduct of which he or she is aware, the landowner, not the public treasury, should bear the costs of cleaning up pollution and nuisances that occur on the land.

cc: James L. Easton

SAN DIEGO UNIFIED PORT DISTRICT
P. O. Box 488
San Diego, California 92112
(714) 291-3900

RECEIVED

MAR 1 1978

ENVIRONMENTAL
MANAGEMENT.

Resolution R 77-40
Attachment C

Tomas E. Firle, Coordinator
Environmental Management

INITIAL STUDY

B. Emmett

o ENVIRONMENTAL ASSESSMENT o

Project Title: PACO TERMINALS, INC.

_____. (UPD # 7740-31)

Location: Terminal 24, Port of San Diego

APPLICANT

PREPARER OF EA

PACO TERMINALS, INC.

(name of organization)
Robert E. Pate

(authorized person)
President

(title)
c/o Pate Stevedoring Company

(address)
1248 Conception Street

Mobile, Alabama 36601

phone: (205) 457-4571

PACO TERMINALS, INC.

(name of organization preparing EA)
Robert E. Pate

(authorized person)
President

(title)
c/o Pate Stevedoring Company

(address)
1248 Conception Street

Mobile, Alabama 36601

phone: (205) 457-4571

for
UPD
use

I. PROJECT INFORMATION

1. Project Description: Describe what is proposed, the need, what is to be accomplished, the major features and actions necessary to complete the project. This description should be self-explanatory and provide for a comprehensive but specific understanding of the proposal. List all mitigating measures which have already been included by the applicant; note that approval will be conditioned on their implementation. - See Exhibit "A"

Bulk facility to handle copper concentrate at Terminal 24, Port of San Diego.

Estimated construction costs: N/A Construction to start: N/A
Completion date: N/A

2. Describe the project area, including distinguishing natural and man-made characteristics. Portion of Terminal 24, Port of San Diego, open space-aved. Industrial marine operation classification. Nearby facilities to leased area include a scrap yard, warehouse, and container crane

Attach a site plan, property plat, and vicinity map. On the site plan, at minimum identify the outlines of proposed and existing structures, parking, paving, landscaping, undeveloped area and schematically show the major features of a representative portion of adjacent parcels. The site plan can be a properly modified existing drawing or an adequately and carefully executed sketch; avoid unnecessary detail. As vicinity map use appropriate portion of U.S.G.S. 7.5-minute quadrangle map. All maps or other attachments must be fully xerox reproducible and shall not exceed 14" x 18", 8-1/2" x 11" preferred.

3. Describe the type of on-site commercial or industrial activities:

(a) Bulk handling facility for copper concentrate.

See also Exhibit "A"

UPD Master Plan's Site Use Classification: Industrial Marine Operations.

(b) Present/projected employees: 0 / unkn

(c) Present/projected customers (clients): 0 / 1+ (average per day)

(d) Explain projections for (b) and (c): Assuming normal operations, 5 employees during unloading operations - 3 to watch over cargo, 8-10 while loading ship.

One major customer, others expected.

4. (a) Total land area: 100,000 sq.ft.; total water area: -0- sq.ft.

(b) What is the existing/proposed square footage of land area for:

structures: small trailer / 500 sq.ft.; paving: 99,500 sq.ft.

landscaping: N/A / sq.ft.; undeveloped: N/A / sq.ft.

(c) What is the predominant/maximum height: Backhoe / 13 ft.

(d) Existing/proposed parking: On site: X / ; Street parking: N/A /
Other parking used: /.

(e) Existing/proposed slips (piers): N/A / ;

 slips long wide; slips long wide

(f) What is extent of grading, excavation, fill? N/A cubic yards.

describe: Copper concentrate will be piled in piles between 10' to 12' high.

(g) Will there be any dredging/fill of water areas? N/A ; cubic yards

describe

How do you intend to dispose of spoils? Operation per se does not create spoil

Cargo is very expensive and all attempts will be made to reclaim the same.

Do you have sediment chemistry and biological reconnaissance data? No

(h) What steps are being taken to minimize erosion or siltation during both the construction and operational phase of the project? As to any run off of copper concentrate due to rain, angle of repose is between 90°-120°. Tarpaulin will be used regularly, and certainly in case of heavy rain. See other side.

4. (f) Estimated that there will be an average of 10,000 to 20,000 wet metric tons at Terminal.

(h) Timber will be at job site to be used for timber barriers if necessary. See also Exhibit "B".

(i) What steps are being taken to mitigate traffic, noise, dust, and other impacts during construction? N/A

(j) How is the design of the project coordinated with the design of the surroundings? Describe project appearance. Attach sketch of elevations and/or landscaping plan, if available. Discuss any signs. Appearance is compatible with surrounding area, see also Exhibit "A"

for
UPD
use

II. ENVIRONMENTAL BACKGROUND INFORMATION

1. Describe the environmental conditions of the site and surrounding area. Indicate land use, topographical features, plant, animal, and marine life. Describe both land and water traffic patterns, and peak and congestion problems, as applicable. Leased space will be a portion of Terminal 24, Port of San Diego. Surrounding area is classified as Industrial Marine Operations.

2. Is there any public access to the bay over your project site? N/A If yes, describe. If the site is a service facility, indicate if controlled access is available for your clients, customers, or the public. _____

3. Who will be the primary beneficiaries of your project? How will the public be affected? Commercial facility - benefit will inure to Paco and Port of San Diego; indirectly, increase American exports.

4. Will the project bring more people to the area, enable additional people to use the area, or require additional service businesses? Minimal effect. Project does have indirect potential of more fully developing the shipping facilities of the Port of San Diego.

5. (a) What is the estimated number of daily motor vehicle trips (round trips)?
now N/A after completion 10 trips

(b) What is the estimated average round trip mileage for each daily vehicle trip generated by the site's activities? now N/A after completion 20

(c) Explain your estimates for (a) and (b): Assume 10 employees average living average of 10 miles from Terminal 24. Estimated that 1,600 railroad cars will be utilized during 12 month period. Under ideal arrangement, 10-12 cars will be unloaded per working day.

6. (a) How will the project affect adjoining areas? Project will create some noise and possibility of dust exist. However, area is industrial (scrap yard next door) and project should be compatible with adjacent area.
- (b) List name and address of controlling interests for all adjacent parcels, including those controlled by public agencies.

UPD Plat # None

UPD Plat #

UPD Plat #

UPD Plat #

7. What measures are proposed to conserve energy (electricity, gas, water, fuel, or other natural or man-made resources)? Operation incorporates inherent simplicity. Principal of applicant has tried conveyor belts, but found same to be ineffective because of cohesive nature of copper concentrate (tends to stick to belt and to itself same).
8. Discuss the fire protection needs of the site. Describe existing/proposed facilities: Generally none, except as to trailer. Fire Department of National City now service area.
9. Discuss any environmental (or community) features of the site or its surroundings which may be affected (or affect) the project. Examine these both from the construction aspect and operational functioning of the site. Project is compatible with existing area. Project will create some noise and possibility of dust exists. However, any dust is similar in consistency to wet talcum powder. Moreover, noise from surrounding area will be louder than that produced by project.

III. SPECIFIC IMPACTS

- 1. How is the land or bay affected? Port has made a report which indicates that pile of copper concentrate 10' to 12' will not damage pavement. Height of equipment will
- 2. Any change in plant or animal life? Probably, none at all.

- 3. How will any body of water be affected? Water quality? New, visible structures in the water? Water not materially affected. Possibility of run off into bay exist but use of tarpaulin regularly and timber barriers when needed will minimize effect

See Exhibit B

- (a) Any run-off into the bay? Possibility as discussed herein.
- (b) How is/will drainage be handled? Use of storm drain on project.
- (c) What materials, other than domestic wastes, are/will be discharged into the sewer system? Trailer has own facility and Port's facilities are nearby.

- 4. What change in water consumption will result? Very rarely, piles of copper concentrate will be sprayed down to prevent dust. Present usage? -0- gal/day.

- 5. What change in electric power consumption will result? Consumption will result from utilization of container crane. See over. Present usage? -0- kwhr/month.

- 6. What change in gas/oil consumption will result? Generally one backhoe and three front end loaders. Present gas usage? -0- oil (type)? -0- supply sources? Regular commercial

See Physical Properties Listed on Exhibit "A"

- 7. How is air quality affected? Quantify emissions from both stationary and mobile sources. Consider also any dust, odors, fumes, chemical vapors, water sprays, etc. Indicate specific mitigations. Copper concentrate is very cohesive and will contain an average water component of between 12% to 12.5%. Dust is similar to wet talcum powder. Tarpaulins will generally be used, and this will help to prevent. If dust is problem, product will be wetted down. Open space eliminates fuming.

- 8. How are views from/to the site affected by the project? Consider nearby proper and surroundings. Describe any project interference with the line of sight to the bay from the nearest public road. Viewer will see piles of drab orange substance from 10' to 12' high. Generally, 10,000 to 20,000 wet metric tons at project. Material will be generally arriving in 10 to 12 cars (approximately 1600 cars per year)

- 9. see other side What change in the sound environment will occur on- or off-site? Consider both construction and operational noise. Indicate specific mitigations. Noise will occur, but will not be excessive to that area.

- 10. What are present/future methods of solid waste disposal and amounts involved?
N/A

- 11. What are the present/future demands on urban support systems (streets, sewers, utilities, restaurants, industrial and commercial support, housing, etc.)?
Minimal effect. Rarely is copper concentrate ever moved by truck

III. SPECIFIC IMPACTS

1. not exceed present structures nearby. For possible run off into bay, see question 3 of this section and Exhibit "B".
5. For container crane, estimated 60,000 per KWH; 300 hours per year.
8. Estimated 125,000 wet metric tons moved in one year.

IV. CHECKLIST OF ENVIRONMENTAL EFFECTS

Check "yes" or "no"

	<u>Yes</u>	<u>No</u>
1. Does the proposal significantly change the present use of the site?	<u> </u>	<u>X</u>
2. Will the project require a change in any Port District or City Plan?	<u> </u>	<u>X</u>
3. Is the proposed use incompatible with existing plans, programs or policies of any governmental agency or jurisdiction?	<u> </u>	<u>X</u>
4. Does the project require any variance from existing codes and ordinances?	<u> </u>	<u>X</u>
5. Will the project require any variance from existing environmental standards (air, water, noise, etc.)?	<u> </u>	<u>X</u>
6. Does the project change any existing features of tidelands, bay, estuary, shoreline?	<u> </u>	<u>X</u>
7. Does the project alter any unique, natural or man-made features?	<u> </u>	<u>X</u>
8. Will the project affect any historic or archaeological areas?	<u> </u>	<u>X</u>
9. Will the project increase the possibility of erosion or sedimentation?	<u> </u>	<u>X</u>
10. Does the project involve soil stability or geological hazards?	<u> </u>	<u>X</u>
11. Will the project affect existing community facilities or services?	<u> </u>	<u>X</u>
12. Will the project require a significant increase in public or private services?	<u> </u>	<u>X</u>
13. Will the project affect traffic or transportation facilities?	<u>X</u>	<u> </u>
14. Will the project affect both on or off-site utility capabilities?	<u> </u>	<u>X</u>
15. Will the project materially alter the character of its surroundings?	<u> </u>	<u>X</u>
16. Will the project have an adverse effect on adjoining communities?	<u> </u>	<u>X</u>
17. Does the project alter the employment base of the community?	<u> </u>	<u>X</u>
18. Will the project alter or limit access to public facilities or recreational resources?	<u> </u>	<u>X</u>
19. Will the project alter the use of existing or proposed public or commercial recreational areas?	<u> </u>	<u>X</u>
20. Does the project involve the demolition or removal of existing improvements?	<u> </u>	<u>X</u>
21. Will the project accelerate the development of adjoining areas?	<u> </u>	<u>X</u>
22. Does the project affect the conservation of any natural resources?	<u> </u>	<u>X</u>
23. Does the project alter the biological habitat of any flora, fauna or endangered species?	<u> </u>	<u>X</u>
24. Will the project alter or eliminate views or vistas?	<u> </u>	<u>X</u>
25. Will the project change the aesthetics of the area?	<u> </u>	<u>X</u>
26. After completion, will the noise environment be different, both on or off site?	<u> </u>	<u>X</u>
27. Could the project affect the water quality of the bay?	<u> </u>	<u>X</u>
28. Will the project contribute adversely to air quality?	<u> </u>	<u>X</u>
29. Will the project substantially increase energy and water use?	<u> </u>	<u>X</u>

VII. BACKGROUND INFORMATION

1. UPD Property Plat #: 7 740 - 31 Dated: _____
Title: _____

2. Pre-Application Project Processing

(a) Have you discussed the proposed project, submitted conceptual plans, presented the proposal to the Board of Port Commissioners or Port Director? If so, when, and in what form? Assistant Port Director. Oral discussion
Chief Engineer of San Diego Port has made report of load factor of pavement.

(b) Have project plans been submitted? N/A When? _____
To whom? _____

(c) Are any other projects at this site currently being processed? N/A
Title: _____ #: _____ Date: _____

(d) Last approved project plans or working drawings:
Title: None #: _____ Approval: _____

3. Prior Environmental Documents (List all for this location)

(a) UPD # None Title: N/A
UPD # _____ Title: N/A
UPD # _____ Title: N/A

(b) Exemptions (# and date): None ; _____

(c) List all environmental consultations or processing contacts with other agencies, firms or individuals in connection with this project. Give agency, name, phone, date, subject and result of consultation.

Bruce Warren - California Coastal Commission. February 23, 1978. Mr. Warren expressed doubt that permit would be needed, but wanted to review the same to to sure. 280-6992

Peter Micheal - Regional Water Control Board. February 23, 1978. Informal contact wherein Mr. Micheal stated he desired to review matter.

Paul H. Sidhu - Air Pollution Control District - February 23, 1978. Informal contact where Mr. Sidhu stated that he did not think project would be problem, but reserved the right to review his initial reaction under Rule 50.

4. Permits

(a) Permits required: List all other public agencies which have approval or permit authority related to this project, e.g., City building permits, Coastal permit, WQCB, APCD, Army Corps, EPA, FAA, Coast Guard, etc. Specify agency and type of permit required. (Omissions may invalidate or cause delay of this environmental review at a later time). N/A

(b) PRIOR permits issued for this site:

- (1) Last Coastal Zone Permit: Control # N/A Analyst _____
Title _____ Date _____
Conditions? _____ If yes, explain: _____
- (2) WQCB: File No. _____ Analyst _____
Subject _____ Date _____
- (3) APCD: File No. _____ Analyst _____
Authority to construct _____ Date _____
Permit to operate _____ Date _____
- (4) U.S. Army Corps of Engineers: Public Notice No. _____
Subject _____ Date _____

(c) Regulatory Agencies:

(1) Indicate any permits applied for or in effect for operation or use. Give sufficient detail to make agency contact, i.e., supply assigned title, file numbers, date, phone number, name of person who issues or processed the permit. N/A

(2) Variances: Indicate any variances which are in effect, applied for or under consideration for the project site or operations. Give agency, date, contact person, phone, conditions of variance and expiration date.

N/A

VIII. APPLICANT'S CONCLUSIONS

1. Explanations to Checklist of Environmental Effects, Section IV: For "yes" items explain adequately why the effect should NOT be considered a "significant adverse environmental impact". A "yes" answer was given for the question of whether the project would affect traffic or transportation facilities. The reason for this response is that applicant estimates that 1,600 railroad cars will move onto job site during each 12 month period. This should not produce a "significant adverse environmental impact" because existing facilities will be used and will be for the specific purpose for which designed, i.e. railroad lines and terminals already exist.

2. Statement of Environmental Impact:

The project will have NO significant adverse environmental impact.

The project COULD have significant adverse environmental impacts. An Environmental Impact Report should be prepared by the Port District at applicant's expense after consultation on scope, implementation, and fees.

3. I am aware of the provisions of the California Coastal Act of 1976 and have consulted with _____ (print name) of the coastal staff on _____ (date) concerning this proposal, w expressed the following concerns: (if none, insert "none") _____

F. M. Keeling, attorney for applicant, contacted Mr. Warren. Mr. Warren expressed doubt that there was any concern, but wanted to check matter out.

IX. CERTIFICATION

1. PREPARER's Certification: This Environmental Assessment was prepared by me for/as the applicant and I hereby certify that the statements furnished above and in the attached exhibits present adequate data and disclose all relevant information to determine environmentally significant impacts, as required for the Port District's Initial Study. It has been prepared to the best of my ability, and the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

PACO TERMINALS, INC.

By: *Robert E. Pate* Feb 27 1978
 As its President (signature) (date)

ROBERT E. PATE President
 (print name) (position)

President (205) 457-4571
 (affiliation) (telephone)

Post Office Box 843
 (address)

Mobile Alabama 36601
 (city) (state) (zip code)

2. Certification of APPLICANT's Information: I hereby certify that the project-related facts, statements, and information furnished above and in the attached exhibits, and in any other form to the preparer of this Environmental Assessment or to the Port District are true and correct to the best of my knowledge and belief. I am authorized to accept and commit implementation of the mitigation measures, if any, and the project as represented in the "Project Description". I understand that non-compliance with any of the mitigating conditions or changes in the project as described shall be grounds to invalidate any/or all project approvals or permits regardless of the stage of project development or operation. The applicant shall hold the Port District harmless of any cost or damages resulting from consequences of non-compliance or unapproved project changes.

PACO TERMINALS, INC.

By: *Robert E. Pate* Feb 27 1978
 (signature of applicant or authorized agent) (date)

ROBERT E. PATE PRESIDENT
 (print name) (title)

PACO TERMINALS, INC. (205) 457-4571
 (organization) (telephone)

Post Office Box 843
 (address)

Mobile Alabama 36601
 (city) (state) (zip code)

○ EVALUATION ○

for
UPD
use

TO BE COMPLETED BY THE SAN DIEGO UNIFIED PORT DISTRICT

X. ENVIRONMENTAL EVALUATION

1. Environmental Assessment Form Checklist:

Attachments

(a) EA received for checking on: 2/1/75

Site Plan

Filing Fee:

Vicinity Map

Deposited on 2/1/75 by

Property Plat

Address, signature verification by

Draft Coastal Appl.

EA Entries:

Draft Army Corps A

complete

deficient: #'s

Additional informational pages about:

(b) EA accepted as "complete" for processing on 2/4/75 by

EA rejected as incomplete on 2/1/75 by
Preparer/applicant notified on 2/1/75 by

Additional information required on 2/1/75
Response received on 2/1/75

(c) The following agencies have been identified as (possible) "responsible agencies" or "jurisdictions by law":

Coastal Commission

Army Corps

SD City

APCD

EPA

Chula Vista

WQCB

USFW

Coronado

F/G

NMFS

Imperial Beach

State Lands Commission

U.S. Navy

National City

Coast Guard

SD County

2. Environmental Review:

(a) Specific concerns or questions were raised on the following information items submitted in Sections I-IX above:

Item #	Question/Concern	Explanation
I 4f	Height of copper concentrate piles	10-12' high
I 4h	Spillage runoff into bay	Timber barriers, tarps
III 3(a)	" " " "	" " "
III 7	Dust, potential air quality impacts	Tarps will completely cover
VI 1	Alternatives considered	Conveyors, hopper cars
VIC 3(c)	Agency pre-project consultation	APCA, WDCB, CCC

(b) The yes/no determinations for the following items in the Checklist of Environmental Effects, Section IV, are considered to have been incorrectly placed and should be changed:

Item	From	To	Rationale
—			
—			
—			

(c) In addition to the review and evaluation of Sections I-IX, the following was considered:

Will the PROPOSAL result in:

	Yes	Maybe
1. Substantial air emissions, or deterioration of ambient air quality, including emission of objectionable odors or sustained dust?	—	—
2. Substantial changes in water movements, direction, speed, flushing characteristics, or water quality?	—	—
3. Changes in the diversity of plant or animal species?	—	—
4. Reduction of the numbers of any rare or endangered plant or animal species?	—	—
5. Introduction of different species of plants or animals to the detriment of the existing flora and fauna?	—	—
6. Substantial effects due to light and glare, or changes in noise environment?	—	—
7. Introduction or change in the level of potentially hazardous substances to which humans or the environment could be exposed cumulatively or by accident?	—	—
8. Substantially increased demands on energy, fuels, water or waste disposal requirements?	—	—
9. A substantial change in quantity or quality of public or commercial recreational opportunities?	—	—

Explanation for any "yes" or "maybe" answers: _____

(d) Mandatory Findings of Significance (Guidelines 15082.).

A project shall be found to have a significant effect on the environment if

- (a) The project has the potential to degrade the quality of the environment, substantially reduce the habitat of a fish and wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory.
- (b) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
- (c) The project has possible environmental effects which are individually limited but cumulatively considerable. As used in the subsection, "cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.
- (d) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

Yes Maybe

Do any of these findings apply?
 Give the rationale for any yes or maybe answer, to assist in the preparation of a mandatory EIR.

(e) The following have been directly notified/consulted about the project:

Agency	Person	Phone	Disposition	Da
CCC	Wilt Phelan	(714) 780-4992	Prob. no permit required	7/1
PWSACB	D. Lee Michael	(714) 286-5114	Discharge Requirements: No water contact; No discharge	7/1
APCD	Paul Sidhu	(714) 565-3938	May need Bile. 50 permit	7/1

NFI=no further interest; ND/IS=document reqst; C=concerned about

XI. DETERMINATION

MANAGEMENT AND MARINE OPERATIONS DEPARTMENTS

1. The ENVIRONMENTAL REVIEW COMMITTEE of the San Diego Unified Port District at its meeting on February 27, 1978 reviewed and considered above proposal entitled, "PACO STEVENSON'S OPERATION, 24th Street Marine (UPD # 7740-31)".

Terminal
On the basis of the proceedings at this meeting and the Initial Study (above information, but not limited to it), the Environmental Review Committee found:

- The proposal could NOT have a significant adverse effect on the environment and directed the preparation and processing of a ~~Negative Declaration~~ Category 1 Exemption under the Resources Guidelines Section 15101, Class 1,
- The proposal COULD have a significant adverse effect on the environment UNLESS the following specific mitigation measures are included in the project, which then would NOT have a significant environmental impact. Only upon acceptance of these mitigations by the applicant, the preparation and processing of a Negative Declaration is directed. (See item 2 below).
Existing Facilities, which reads in part "...the operation and maintenance of facilities, mechanical equipment, involving negligible new expansion of use beyond that of previously existing..." and Class II, Accessory Structures, which reads in part "...construction or placement of minor structures accessory (appurtenant to) existing industrial facilities..."
- The proposal MAY have a significant adverse effect on the environment and an Environmental Impact Report is required.

TOMAS E. FIRLE, Chairman
Environmental Review Committee

(date)

2. APPLICANT's Acceptance of Project Representation and Mitigation Measures

I, _____ (print name), as applicant or authorized agent understand and accept above mitigations to become mandatory conditions if the project is approved as mitigated, by the Board of Port Commissioners. I will notify the San Diego Unified Port District immediately in writing of any changes of the proposed project. I acknowledge that project changes may require additional evaluation.

Accepted for the Applicant by:

(signature)

(position)

(address)

(date)

EXHIBIT "A"

Applicant desires to operate a bulk handling facility to handle copper concentrate and such other commodities as the Port Director of San Diego may from time to time approve. The answers to the applicable questions contained herein relate solely to copper concentrate as opposed to any other commodity.

Applicant will lease approximately 100,000 square feet of paved open space comprising a portion of Terminal 24, Port of San Diego. The copper concentrate will be moved to site by open railroad cars. At site, copper concentrate will be unloaded by a backhoe, and cars will then be broom swept (or will be cleaned by a similiar method). Front end loaders will then move copper concentrate into piles of approximately 10 feet to 12 feet high.

Upon arrival of ship, front end loaders will move the copper concentrate to the container crane at Terminal 24. Clam buckets attached to the crane will load the copper concentrate into the ship. Additionally, operation may be reversed.

As to the possibility of dust or any run off of materials into bay, tarpaulins will be in regular use. Additionally, timber will be stored at facility to construct timber barriers when needed. If dust becomes a problem, copper concentrate will be sprayed with water. Applicant believes that spraying process will be rarely, if ever, needed.

Need for project is to further the Port of San Diego and American exports. Since project involves no construction on job site, little, if any, action is needed except to obtain equipment. 10' x 50' mobile home will be leased from Port of San Diego as an office for the operation.

EXHIBIT "A"

PHYSICAL PROPERTIES OF COPPER CONCENTRATE

Copper concentrate is a rendered product from chalcopyrite with the following chemical composition:

Cu	(Copper)	25%
Au	(Gold)	0.005 Ounces/Dry Short Ton
Ag	(Silver)	4.5 " " " "
Fe	(Iron)	22%
S	(Sulfur)	26%
Si	(Silicon)	14%
Pb	(Lead)	0.11%
Zn	(Zinc)	2.5%
Bi	(Bismuth)	0.015%
As	(Arsenic)	0.01%
Sb	(Antimony)	0.02%
Hg	(Mercury)	0.2 ppm
Ni	(Nickel)	0.003%
F	(Flourine)	500 ppm
H ₂ O	(Water)	12%

EXHIBIT "A"

PHYSICAL PROPERTIES:

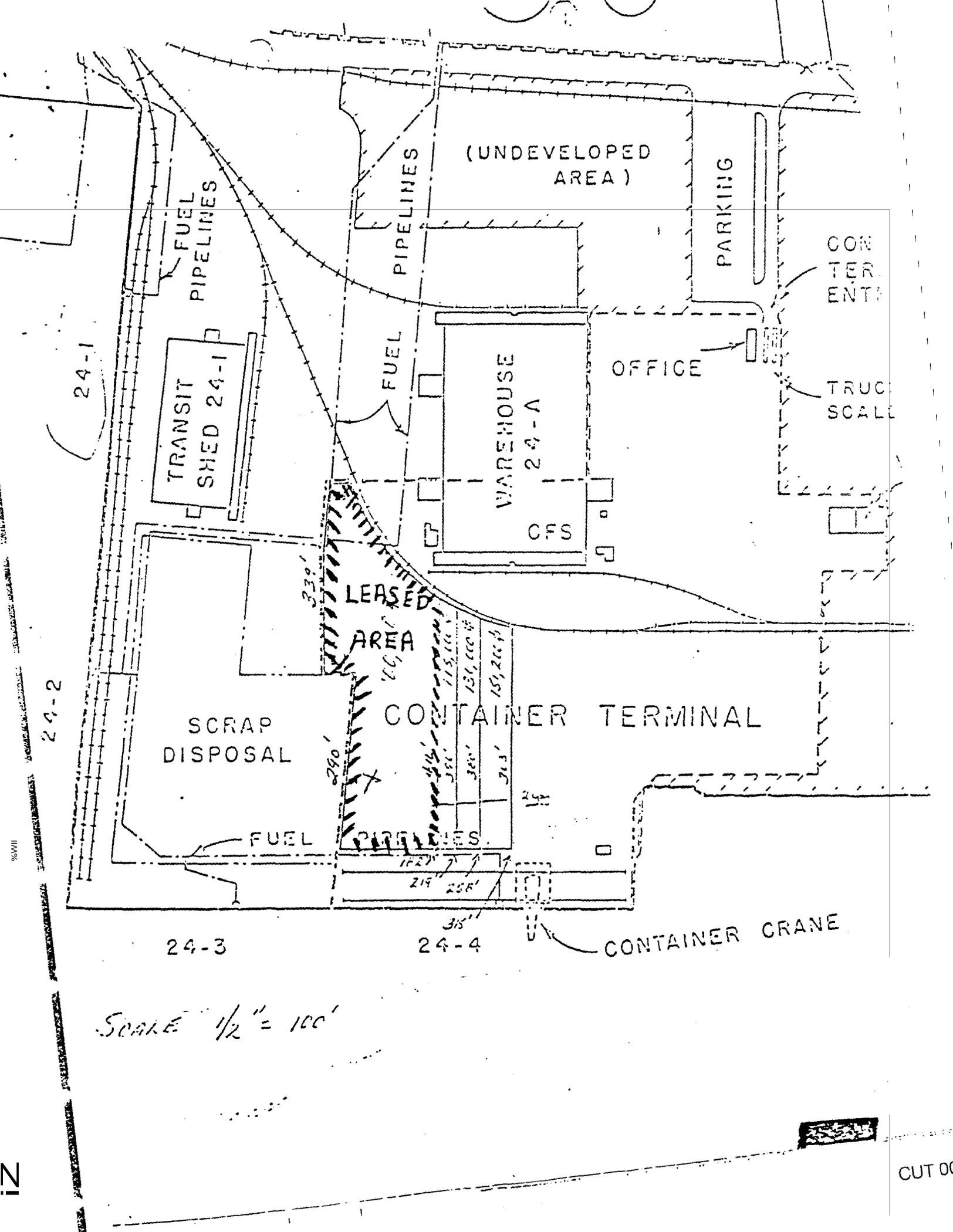
- 1) Because of high moisture content wetting is rarely, if ever, necessary.
- 2) Stored material generates heat, approximately 110^o F and caking occurs.
- 3) Because of caking and high cohesiveness, dust generation is negligible.
- 4) Appearance is dull orange in color and granular.

EXHIBIT "B"

Any run off of copper concentrate into Bay is slight. Cargo is very expensive, and applicant has the duty to protect the same at all times. Tarpaulins will be in regular use, and timber will be stockpiled to construct timber barriers if necessary. Leased premise is very flat.

Although applicant from its past experience does not believe the following is necessary, it will, if deemed advisable by the appropriate authorities, do any or all of the following:

1. Keep material covered with tarpaulins at all times, except when material is being moved.
2. Keep timber barriers in place.
3. Place timber barriers around storm drain. There are two openings of the storm drain on the leased premises. Storm drain runs into bay.
4. Place a strainer device around drains which will allow water to pass, but will retain particles.
5. Use tarpaulin when ships are being unloaded as between docks and the ship.



SCALE 1/2" = 100'

CUT OFF

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 2 TO CLEANUP AND ABATEMENT ORDER NO. 85-91

PACO TERMINALS, INC.
NATIONAL CITY
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that

1. On December 12, 1985, the Regional Board Executive Officer issued Cleanup and Abatement Order No. 85-91, Paco Terminals, Inc., National City, San Diego County. Order No. 85-91 contained findings establishing that copper ore loading and storage operations at Paco Terminals, Inc. had resulted in discharges of inorganic copper ore to San Diego Bay. The inorganic copper ore consisted of a rendered form of cupric ferrous sulfide ore known as chalcopyrite. The discharges of copper ore to San Diego Bay were in direct violation of discharge prohibitions contained in Order Nos. 79-72 and 84-50, Waste Discharge Requirements for Paco Terminals, Inc., National City, San Diego County. Order No. 85-91 directed Paco Terminals to submit a report identifying the lateral and vertical extent of copper ore in sediments near Paco Terminals and cost estimates associated with three cleanup alternatives to remove the copper ore from San Diego Bay.
2. On November 13, 1987, the Regional Board Executive Officer issued Addendum No. 1 to Cleanup and Abatement Order No. 85-91, Paco Terminals, Inc., San Diego County. Addendum No. 1 to Order No. 85-91 directed Paco Terminals to reduce the sediment copper concentration in San Diego Bay to less than 1000 mg/kg by January 3, 1989.
3. At the Regional Board meeting on November 16, 1987, the Regional Board directed that the following finding be included in Cleanup and Abatement Order No. 85-91:

"Paco Terminals, Inc. and its officer and employees understand that failure to comply with any of the terms and conditions of Cleanup and Abatement Order No. 85-91 and Addendum No. 1 thereto may result in enforcement proceedings pursuant to applicable sections of the California Water Code. Although Paco Terminals, Inc. and its officers and employees agree to be bound by the terms and conditions of Cleanup and abatement Order No. 85-91 and Addendum No. 1 thereto, such agreement and compliance by Paco Terminals, Inc. and its officers and employees should not be considered or construed as an admission of any civil or criminal liability."
4. On February 4, 1988, Westec Services inc., submitted a report entitled "Cleanup Plan For Copper Contaminated Sediments at the 24th Street Marine Terminal." The report indicated that the cleanup operation would be completed by August 21, 1989, in three stages. The processes of mapping the dredge site and applying for a permit for ocean disposal of the sediment were to begin on February 8, 1988, and be completed by August 8, 1988. The

process of preparing bids for dredging was to begin on August 8, 1988, with actual dredging to begin on November 28, 1988. Dredging was to be done in four stages with post-dredging sampling to be done following each stage. The first stage was to dredge the area north of the storm drain followed by dredging the area west of the pierface. Each of these stages was to take 15 weeks. Six weeks of sediment sampling was to be done in the area north of the storm drain while dredging took place west of the pierface. If areas with excess copper were found north of the storm drain following the initial dredging, then these areas would be dredged following the initial dredging of the area west of the pierface. The sampling and re-dredging procedure was to have been repeated for the area west of the pierface.

5. By letter dated October 17, 1988, Westec Services, Inc., submitted "Revision No. 1 to Paco Terminals Cleanup Plan for Sediments at the 24th Street Marine Terminal." The revised cleanup operation is divided into five parts as follows:
 - 1) complete mapping of the dredge site by January 3, 1989,
 - 2) complete bioassay testing to determine the toxicity of the material by June 6, 1989;
 - 3) receive a permit for ocean disposal by August 8, 1989;
 - 4) complete initial removal of contaminated sediments by May 15, 1990; and
 - 5) conduct post-dredging survey to verify removal of contaminated sediments and submit report to Regional Board by June 30, 1990.
6. On August 22, 1988, the Army Corps of Engineers (ACOE) and the Environmental Protection Agency (EPA) approved the bioassay plan submitted by Westec. However, EPA reportedly withdrew its approval on September 12, 1988, and expressed concerns regarding the specific area (i.e., horizontal and vertical distribution of the dredge sediments) to be dredged. This has made it necessary to complete the mapping of the dredge site before the bioassay testing could be performed and a permit obtained. The original cleanup plan discussed in Finding No. 4 envisioned the mapping of the site being done independent of both the bioassay and permit application processes. The cleanup plan contained in the October 17, 1988, report delays final cleanup by 11 months as compared to the original cleanup plan submitted on February 4, 1988. Implementation of the October 17, 1988, cleanup plan would result in a delay of 17 months as compared to the schedule required by Addendum No. 1 to Cleanup and Abatement No. 85-91.
7. Paco Terminals has to date complied with the terms and conditions of Addendum No. 1 to Cleanup and Abatement Order No. 85-91. However, experience indicates that regulatory review and approval has been a lengthy process resulting in delays beyond the control of Paco Terminals.
8. The revised time schedule proposed by Paco Terminals in their October 17, 1988 report is based, in part, on estimates of the time required for regulatory review and approval of various aspects of the cleanup project. If the regulatory review process is shorter than that envisioned in the revised time schedule, then cleanup might be completed ahead of schedule. Conversely, if regulatory review requires more time than provided for by the revised time schedule which was incorporated into this order, then Paco Terminals may

not be able to comply with the time schedule contained in this addendum. Consequently, it may be necessary to lengthen or shorten the time schedule to reflect actual time spent by regulatory agencies in reviewing and approving various aspects of the cleanup project.

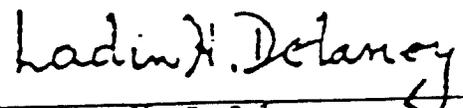
9. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED That, pursuant to California Water Code Section 13304:

1. Directive Nos. 1 and 4 of Addendum No. 1 to Cleanup and Abatement Order No. 85-91 are hereby rescinded.
2. Paco Terminals, Inc. shall reduce the sediment copper concentration in the affected portion of San Diego Bay to a sediment copper concentration less than 1000 mg/kg by May 15, 1990.
3. Paco Terminals, Inc. shall achieve compliance with Directive No. 2 of this Order in accordance with the following time schedule:

<u>Requirements</u>	<u>Completion Date</u>
a. Submit revised Bioassay Plan with Sediment Map to ACOE and EPA	January 17, 1989
b. Submit Draft Bioassay Report to ACOE and EPA	April 25, 1989
c. Submit Dredge Permit Application to ACOE and EPA	June 13, 1989
d. Prepare Detailed Dredge Specifications	August 22, 1989
e. Select Dredge Contractor (sign contract)	September 19, 1989
f. Submit a Post-Cleanup Sampling plan to the Regional Board	October 17, 1989
g. Dredge Affected Area of San Diego Bay	May 15, 1990
h. Conduct Post-Dredging Survey to verify Removal of Material and submit Report to Regional Board	June 30, 1990

I, Ladin H. Delaney, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Addendum adopted by the California Regional Water Quality Control Board, San Diego Region, November 21, 1988.



Ladin H. Delaney
Executive Officer

ORIGINAL FILED BY
MARIA REELEY OFFICE

SEP 9 - 1988

ROBERT D. SUMMALL
CLERK SAN DIEGO COUNTY

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(619) 699-2720

Attorneys for Plaintiff
PACO TERMINALS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

PACO TERMINALS, INC.,)

Plaintiff,)

vs.)

AMERICAN HOME ASSURANCE)
COMPANY; AMERICAN MARINE)
UNDERWRITERS, INC.;)
ANGELINA CASUALTY COMPANY;)
ARKWRIGHT-BOSTON MANUFACTURERS)
MUTUAL INSURANCE COMPANY;)
EMPLOYERS INSURANCE OF WAUSAU;)
FIDELITY & CASUALTY COMPANY)
OF NEW YORK; FIRST STATE INSURANCE)
COMPANY; HIGHLANDS INSURANCE)
COMPANY; INSTITUTE OF LONDON)
UNDERWRITERS COMPANIES;)
INTEGRITY INSURANCE COMPANY;)
INTERNATIONAL INSURANCE COMPANY;)
NATIONAL UNION FIRE INSURANCE)
COMPANY OF PITTSBURGH, PA.;)
NEW YORK MARINE MANAGERS; OLD)
REPUBLIC INSURANCE COMPANY; RANGER)
INSURANCE COMPANY; SOUTHERN)
AMERICAN INSURANCE COMPANY;)
ST. PAUL INSURANCE COMPANY)
OF ILLINOIS; STONEWALL)
INSURANCE COMPANY; TEXAS)
MARINE UNDERWRITERS AGENCY, INC.;)
COMPANY OF ILLINOIS;)
TRINITY ASSOCIATES, INC.; TWIN)
CITY FIRE INSURANCE COMPANY;)

CIVIL ACTION NO. 602536

FIRST AMENDED COMPLAINT
FOR DECLARATORY RELIEF,
BREACH OF CONTRACT,
BREACH OF IMPLIED COVENANT
OF GOOD FAITH AND FAIR
DEALING, BREACH OF
STATUTORY DUTIES, AND
BREACH OF FIDUCIARY DUTIES
(COMPENSATORY AND PUNITIVE
DAMAGES)

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3 UNDERWRITERS OF LLOYDS; UNITED)
4 STATES FIRE INSURANCE COMPANY;)
DOES 1 through 25, inclusive,)

5 Defendants.)
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7 Plaintiff PACO TERMINALS, INC., alleges:

8 GENERAL ALLEGATIONS

9 1. The plaintiff PACO TERMINALS, INC. (PACO) is a
10 corporation organized and existing under the laws of California and
11 doing business in San Diego, California.

12 2. PACO leased the 24th Street Marine Terminal in
13 National City, California, from the Port of San Diego from
14 October 1, 1978, through January 31, 1988. PACO conducted
15 stevedoring operations at this location which involved receiving,
16 handling, shipping, and storing of copper concentrate. These
17 operations began March 1979 and continued through December 1986.

18 3. The California Regional Water Quality Control Board
19 (Regional Board) and the San Diego Unified Port District (Port
20 District) have made claims against PACO charging that its
21 stevedoring operations have resulted in discharge or spillage of
22 copper concentrate so as to damage the San Diego Bay, the
23 tidelands, the 24th Street Terminal, and property in the general
24 area of the terminal. The Regional Board has issued various
25 cleanup orders and a complaint for civil liability. The Port has
26 demanded repair and replacement of the terminal, testing and
27 cleanup of adjacent asphalt and soil, and repair and replacement of
28 property near the terminal.

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3 4. As a result of these claims, PACO has faced and will
4 face significant exposure to liability for damages to property, and
5 has faced and will face substantial costs for testing, for cleanup
6 and repairs, for civil penalties, for criminal penalties, for
7 consultants, and for legal counsel. PACO has expended or committed
8 approximately \$500,000 to date. Additional damages exclusive of
9 defense costs and testing expenses are currently estimated to be a
10 maximum of \$177,000,000 and a minimum of \$473,000.

11 5. The defendants are insurance companies doing
12 business in San Diego County who have issued insurance policies
13 insuring PACO. PACO has notified the defendants in a timely manner
14 of the claims and actions against it, but they have either denied
15 coverage or refused to accept coverage. None have undertaken the
16 defense of these claims and actions, although PACO has complied
17 with all relevant policy provisions.

18 6. American Home Assurance Company has a duty to
19 defend and indemnify PACO under the terms of: (a) Marine
20 Bumbershoot Policy, No. WKP002, effective January 1, 1981, to
21 January 1, 1982; (b) Stevedore's, Wharfinger's, and Warehousemen's
22 Legal Liability Policy, No. 42676, effective January 1, 1983, to
23 January 11, 1984; (c) Stevedore's, Terminal Operator's,
24 Warehousemen's, Charterer's, and Ship Repairer's Legal Liability
25 Policy, No. JP-CERS-85-205, effective July 5, 1985, to October 1,
26 1985; (d) Stevedore's, Terminal Operator's, Warehousemen's,
27 Charterer's, and Ship Repairer's Legal Liability Policy, No. 68766,
28 effective October 1, 1986, to October 1, 1987; and (e) Bumbershoot

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3 Liability Policy, No. 68765, effective October 1, 1986, to October
4 1, 1987.

5 7. American Marine Underwriter's Inc. has a duty to
6 defend and indemnify PACO under the terms of: Hull, Protection &
7 Indemnity, Charterer's, Wharfinger's, Warehousemen's, and
8 Stevedore's Legal Liability Policy No. JP-CER-84-106, effective
9 January 11, 1984, to July 5, 1985.

10 8. Angelina Casualty Company has a duty to defend and
11 indemnify PACO under the terms of: Hull, Protection & Indemnity,
12 Charterer's, Wharfinger's, Warehousemen's, and Stevedore's Legal
13 Liability Policy, No. JP-CER-84-106, effective January 11, 1984, to
14 July 5, 1985.

15 9. Arkwright-Boston Manufacturers Mutual Insurance
16 Company has a duty to defend and indemnify PACO under the terms of:
17 (a) Excess Bumbershoot Liability Policy, No. 06549, effective
18 January 1, 1984, to January 1, 1985; (b) Excess Bumbershoot
19 Liability Policy, No. MN006533, effective January 1, 1984, to
20 January 1, 1985; (c) Excess Bumbershoot Liability Policy, No.
21 MN094013, effective January 1, 1985, to January 1, 1986; (d) Excess
22 Bumbershoot Liability Policy, No. MN094014, effective January 1,
23 1985, to January 1, 1986; (e) Excess Bumbershoot Liability Policy,
24 No. MN05962, effective November 1, 1985, to October 1, 1986; (f)
25 Excess Bumbershoot Liability Policy, No. MN095061, effective
26 November 1, 1985, to October 1, 1986; (g) Excess Bumbershoot
27 Liability Policy, No. MN095939, effective October 1, 1986, to
28 October 1, 1987; and (h) Excess Bumbershoot Liability Policy, No.

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3 MN095940, effective October 1, 1986, to October 1, 1987.

4 10. Employers Insurance of Wausau has a duty to defend
5 and indemnify PACO under the terms of: Hull, Protection &
6 Indemnity, Charterer's, Wharfinger's, Warehousemen's, and
7 Stevedore's Legal Liability Policy, No. JP-CER-84-106, effective
8 January 11, 1984, to January 5, 1985.

9 11. Fidelity and Casualty Company of New York has a duty
10 to defend and indemnify PACO under the terms of: (a) Excess
11 Bumbershoot Liability Policy, No. WKP0001, effective January 1,
12 1981, to January 1, 1982; (b) Marine Excess Policy, No. EXH100951,
13 effective January 1, 1982, to January 1, 1983; (c) Marine Excess
14 Policy, No. EXH101328, effective January 1, 1983, to January 1,
15 1984; (d) Marine Excess Policy, No. EXH101871, effective January 1,
16 1984, to January 1, 1985; (e) Marine Excess Policy, No. EXH102415,
17 effective January 1, 1985, to January 1, 1986; (f) Marine Excess
18 Policy, No. EXH102416, effective January 1, 1985, to January 1,
19 1986; (g) Marine Excess Policy, No. EXH102960, effective November
20 1, 1985, to October 1, 1986; (h) Marine Excess Policy, No.
21 EXH102961, effective November 1, 1985, to November 1, 1986; (i)
22 Marine Excess Policy, No. EXH103498, effective October 1, 1986, to
23 November 1, 1987; and (j) Marine Excess Policy, No. EXH103499,
24 effective October 1, 1986, to November 1, 1987.

25 12. First State Insurance Company has a duty to defend
26 and indemnify PACO under the terms of: Excess Insurance Policy, No.
27 932024, effective January 26, 1981, to January 1, 1982.

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3 13. Highlands Insurance Company has a duty to defend and
4 indemnify PACO under the terms of: (a) Excess Bumbershoot Liability
5 Policy, No. WKP0001, effective January 1, 1981, to January 1, 1982;
6 (b) Excess Marine Liability Policy, No. H-23020, effective January
7 1, 1982, to January 1, 1983; and (c) Excess Bumbershoot Liability
8 Policy, No. H-22722, effective March 15, 1984, to January 1, 1985.

9 14. Institute of London Underwriters Companies has a
10 duty to defend and indemnify PACO under the terms of: (a)
11 Stevedoring, Wharfinger's, and Terminal Operator's Policy, No.
12 XSK7884, effective January 1, 1979, to January 1, 1980; (b)
13 Umbrella Liability Policy, No. XSK7885, effective January 15, 1979,
14 to January 1, 1980; (c) Stevedore's, Wharfinger's, and Terminal
15 Operator's Policy, No. XSK8112, effective January 1, 1980, to
16 January 1, 1981; (d) Umbrella Liability Policy, No. XSK8113,
17 effective January 1, 1980, to January 1, 1981; (e) Pollution
18 Liability Policy, No. TAP-4001, effective May 17, 1984, to May 17,
19 1985; and (f) Pollution Liability Policy, No. TAP-5003, effective
20 May 17, 1985, to August 11, 1985.

21 15. Integrity Insurance Company has a duty to defend and
22 indemnify PACO under the terms of: Excess Liability Policy, No.
23 XL208336, effective March 19, 1984, to January 1, 1985.

24 16. International Insurance Company has a duty to defend
25 and indemnify PACO under the terms of: (a) Excess Insurance Policy,
26 No. 5220111213, effective January 26, 1981, to January 1, 1982; (b)
27 Excess Insurance Policy, No. 5220056466, effective January 1, 1982,
28 to January 1, 1983; (c) Excess Insurance Policy, No. 5220471078,

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3 effective January 1, 1984, to January 1, 1985; and (d) Excess
4 Insurance Policy, No. 5220537588, effective January 1, 1985, to
5 January 1, 1986.

6 17. National Union Fire Insurance Company of Pittsburgh,
7 Pa. has a duty to defend and indemnify PACO under the terms of: (a)
8 General Liability Policy, No. GLA9184691RA, effective January 1,
9 1983, to January 11, 1984; (b) Umbrella Liability Policy, No.
10 BE1334985, effective January 1, 1984, to January 1, 1985; (c)
11 Comprehensive General Liability Policy, No. GL1578731, effective
12 October 1, 1985, to October 1, 1986, and (d) Comprehensive General
13 Liability Policy, No. GLA1578774, effective October 1, 1986, to
14 October 1, 1987.

15 18. New York Marine Managers has a duty to defend and
16 indemnify PACO under the terms of: (a) Marine Bumbershoot Policy,
17 No. WKP002, effective January 1, 1981, to January 1, 1982; (b)
18 Bumbershoot Liability Policy, No. 82L1959/10, effective January 1,
19 1982, to January 1, 1983; (c) Excess Umbrella Liability Policy, No.
20 84L1959/10, effective January 1, 1984, to January 1, 1985; (d)
21 Excess Umbrella Liability Policy, No. 85L1959/10, effective January
22 1, 1985, to January 1, 1986; (e) Excess Bumbershoot Liability
23 Policy, No. 86L1959/81, effective October 1, 1986, to October 1,
24 1987; (f) Excess Bumbershoot Liability Policy, No. 86L1959/02,
25 effective October 1, 1986, to October 1, 1987.

26 19. Old Republic Insurance Company has a duty to defend
27 and indemnify PACO under the terms of: Multi-Line Liability Excess
28 Policy, No. OZX-14226.

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3 20. Ranger Insurance Company has a duty to defend and
4 indemnify PACO under the terms of: Hull, Protection & Indemnity,
5 Charterer's, Wharfinger's, Warehousemen's, and Stevedore's Legal
6 Liability Policy, No. JP-CER-84-106.

7 21. Southern American Insurance Company has a duty to
8 defend and indemnify PACO under the terms of: Excess Bumbershoot
9 Policy, No. WKP0001, effective January 1, 1981, to January 1, 1982.

10 22. St. Paul Insurance Company of Illinois has a duty to
11 defend and indemnify PACO under the terms of: (a) Marine Liability
12 Bumbershoot Policy, No. 342FA1398, effective January 1, 1983, to
13 January 1, 1984; (b) Marine Liability Bumbershoot Policy, No.
14 342FA1509, effective January 1, 1985, to January 1, 1986; and (c)
15 Marine Liability Bumbershoot, Policy No. 342FA1656, effective
16 November 1, 1985, to October 1, 1986.

17 23. Stonewall Insurance Company has a duty to defend and
18 Indemnify PACO under the terms of: Excess Umbrella Policy, No.
19 56008163, effective January 1, 1982, to January 1, 1983.

20 24. Texas Marine Underwriters Agency, Inc. has a duty to
21 defend and indemnify PACO under the terms of: Hull, Protection &
22 Indemnity, Charterer's, Wharfinger's, Warehousemen's, and
23 Stevedore's Legal Liability Policy, No. JP-CER-84-106.

24 25. Trinity Associates, Inc. has a duty to defend and
25 indemnify PACO under the terms of: (a) Hull, Protection &
26 Indemnity, Charterer's, Wharfinger's, Warehousemen's, and
27 Stevedore's Legal Liability Policy, No. JP-CER-84-106; (b)
28 Pollution Liability Policy, No. TAP-4001, effective May 17, 1984,

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3 to May 17, 1985; and (c) Pollution Liability Policy, No. TAP-5003,
4 effective May 17, 1985, to August 11, 1985.

5 26. Twin City Fire Insurance Company has a duty to
6 defend and indemnify PACO under the terms of: (a) Excess Umbrella
7 Liability Policy, No. TXS-102530, effective January 1, 1983, to
8 January 1, 1984; and (b) Excess Liability Policy, No. TXS-103080,
9 effective January 1, 1984, to January 1, 1985.

10 27. Underwriters of Lloyds has a duty to defend and
11 indemnify PACO under the terms of: (a) Stevedoring, Wharfinger's,
12 and Terminal Operator's Policy, No. XSK7884, effective January 1,
13 1979, to January 1, 1980; (b) Umbrella Liability Policy, No.
14 XSK7885, effective January 15, 1979, to January 1, 1980; (c)
15 Stevedore's, Wharfinger's, and Terminal Operator's Policy, No.
16 XSK8112, effective January 1, 1980, to January 1, 1981; (d)
17 Umbrella Liability Policy, No. XSK8113, effective January 1, 1980,
18 to January 1, 1981; (e) Pollution Liability Policy, No. TAP-4001,
19 effective May 17, 1984, to May 17, 1985; and (f) Pollution
20 Liability Policy, No. TAP-5003, effective May 17, 1985, to August
21 11, 1985.

22 28. United States Fire Insurance Company has a duty to
23 defend and indemnify PACO under the terms of: (a) Bumbershoot
24 Excess Liability Policy, No. 3490055163, effective January 1, 1985,
25 to January 1, 1986; and (b) Bumbershoot Excess Liability Policy No.
26 3490077609, November 1, 1985, to October 1, 1986.

27 29. Does 1 through 25 are additional insurers who
28 provided insurance coverage to PACO during the relevant time period

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3 and with a duty to defend and indemnify PACO for the claims against
4 it. PACO is ignorant of the true names and capacities of these
5 defendants and therefore sues them by fictitious names.

6
7 FIRST CAUSE OF ACTION

8 (Declaratory Relief)

9 30. PACO incorporates here by reference the allegations
10 of paragraphs 1 through 29.

11 31. Plaintiff contends that the defendants are, with
12 respect to each of the policies issued, jointly and severally
13 liable, subject to deductible provisions and policy limits, if any,
14 to defend and indemnify PACO for all liability, including all
15 costs, expenses, and charges incurred to date and in the future.

16 32. Defendants dispute PACO's contentions and contend
17 that they are not liable, either individually or jointly, to defend
18 and indemnify PACO.

19 33. PACO desires a judicial determination and
20 declaration of its and defendants' respective rights and duties
21 under the contracts of insurance and specifically requests this
22 Court to:

23 a. Declare that the claims and actions instituted
24 by the Regional Board and the Port District are covered by the
25 respective policies of the defendants, jointly and severally, and
26 that the defendants have the duty and obligation to defend and
27 indemnify PACO pursuant to those respective policies as to all such
28 claims, suits, actions, and alleged liabilities;

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3 b. Declare that all claims, suits, actions, and
4 liabilities arising or resulting from the alleged pollution of the
5 San Diego Bay in the vicinity of the 24th Street Terminal are
6 covered by the respective policies of the defendants, jointly and
7 severally, and that the defendants have the duty and obligation to
8 defend and indemnify PACO.

9 c. Declare that the defendants must reimburse PACO
10 for all past defense costs and payments of damages, including, but
11 not limited to, monies paid for legal counsel and experts and for
12 civil liabilities;

13 d. Declare that the defendants, jointly and
14 severally, must assume and pay for the defense of all pollution
15 claims, suits, actions, and alleged liabilities of or against PACO
16 arising or resulting from the alleged pollution and that PACO may
17 select counsel of its choosing, at the expense of the defendants,
18 to defend the claims, suits, actions and alleged liabilities;

19 e. Determine the amount of coverage of each
20 policy and whether there are any limits of coverage on a per
21 accident, per occurrence, or aggregate limit basis;

22 34. A determination by this court of the respective
23 rights, duties and liabilities under the policies is necessary and
24 proper at this time so that all the parties can assess their
25 respective positions and responses and to avoid prejudicing PACO's
26 rights.

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3 SECOND CAUSE OF ACTION

4 (Breach of Contract)

5 35. PACO incorporates here by reference the allegations
6 of paragraphs 1 through 29.

7 36. The defendants have breached their contracts of
8 insurance with PACO in many respects, including the following:

9 a. Defendants failed and/or refused to investigate
10 adequately and completely these pollution claims, actions, and
11 charges made against PACO and whether coverage in whole or in part
12 existed;

13 b. Defendants failed and/or refused to defend
14 and/or pay the defense expenses, costs, and charges of PACO
15 relating to these pollution claims, suits, actions, and alleged
16 liabilities;

17 c. Defendants failed and/or refused to indemnify
18 PACO for these pollution claims, suits, actions, and alleged
19 liabilities.

20 37. As a proximate and legal result of the breach of
21 contract by the defendants, PACO has sustained substantial
22 damages, including, but not limited to, attorneys' fees,
23 investigation costs, consultants' fees, testing expenses, and
24 defense costs, together with loss of interest. These damages will
25 continue to be sustained by PACO in the future. The total amount
26 of these damages is unknown at present but will be subject to proof
27 at the time of trial.

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THIRD CAUSE OF ACTION

(Breach of Implied Covenant of Good Faith and Fair Dealing)

38. PACO incorporates here by reference paragraphs 1 through 29.

39. Each of PACO's insurance contracts contained an implied promise that no party to the contract would do anything to injure, frustrate, or interfere with the right of the other party to receive the benefits of the contract. This implied promise imposed a duty of good faith and fair dealing on the parties and a duty to act in a fair and honest manner.

40. Defendants Underwriters of Lloyds, American Marine Underwriters, Employers Insurance of Wausau, Angelina Casualty Company, Ranger Insurance Company, and National Union Fire Insurance Company of Pittsburgh, Pa., together with other undetermined defendants, have breached their duty of good faith and fair dealing owed to the plaintiff in various respects, including:

a. Failing to provide insurance benefits at a time when defendants knew or reasonably should have known PACO was entitled to them;

b. Willfully and in bad faith interpreting their policy provisions and the factual circumstances so as to resolve known ambiguities and uncertainties against plaintiff and to favor their own interests;

c. Failing to act promptly and reasonably upon claims and communications from plaintiff.

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3 d. Misrepresenting insurance policy provisions,
4 coverages and exclusions;

5 e. Relying on exclusions which were deleted from
6 the plaintiff's policy;

7 f. Attempting in bad faith to add supplemental
8 reasons for denying coverage after, for an extended period, relying
9 solely on a pollution exclusion;

10 g. Failing to reasonably investigate the
11 circumstances giving rise to the plaintiff's claim for benefits.

12 41. The wrongful conduct of defendants Underwriters of
13 Lloyds, American Marine Underwriters, Employers Insurance of
14 Wausau, Angelina Casualty Company, Ranger Insurance Company, and
15 National Union Fire Insurance Company of Pittsburgh, Pa., together
16 with other undetermined defendants, caused and continues to cause
17 the plaintiff damages in the form of attorney's fees in defending
18 the claims against it and in prosecuting this action, investigation
19 costs, consultants' fees, testing expenses, and defense costs,
20 together with interest expense and other damages all in amounts
21 currently undetermined but subject to proof at the time of trial.

22 42. Defendants Underwriters of Lloyds, American Marine
23 Underwriters, Employers Insurance of Wausau, Angelina Casualty
24 Company, Ranger Insurance Company, and National Union Fire
25 Insurance Company of Pittsburgh, Pa., together with other
26 undetermined defendants, have acted towards the plaintiff with a
27 conscious disregard of its rights, and with the intent to vex,
28 injure, and annoy the plaintiff such as to constitute oppression,

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3 fraud, or malice under California Civil Code section 3294,
4 justifying punitive and exemplary damages in an amount to be
5 determined by proof at the time of trial sufficient to punish and
6 set an example of the defendants.

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8 FOURTH CAUSE OF ACTION

9 (Breach of Statutory Duties)

10 43. PACO incorporates here by reference paragraphs 1
11 through 29, and paragraphs 41 and 42.

12 44. The plaintiff was at all times mentioned a member of
13 the class protected under California Insurance Code
14 section 790.03.

15 45. The defendants are and at all times mentioned were
16 engaged in the business of insurance and regulated by
17 section 790.03 of the California Insurance Code.

18 46. Defendants Underwriters of Lloyds, American Marine
19 Underwriters, Employers Insurance of Wausau, Angelina Casualty
20 Company, Ranger Insurance Company, and National Union Fire
21 Insurance Company of Pittsburgh, Pa., together with other
22 undetermined defendants, have committed unfair claims practices in
23 violation of their statutory duties contained in California
24 Insurance Code section 790.03 by knowingly committing or
25 committing with such frequency as to indicate a general business
26 practice the following unfair insurance practices:

27 a. Misrepresenting to claimants pertinent facts or
28 insurance policy provisions relating to coverage;

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3 b. Failing to acknowledge and act reasonably
4 promptly upon communications with respect to claims arising under
5 insurance policies;

6 c. Failing to adopt and to implement reasonable
7 standards for the prompt investigation and processing of claims
8 arising under insurance policies;

9 d. Failing to affirm or deny coverage or claims
10 within a reasonable time after proof of loss requirements have been
11 completed and submitted by the insured;

12 e. Failing to provide promptly a reasonable
13 explanation of the basis relied on in the insurance policy, in
14 relation to the facts and applicable law, for the denial of a
15 claim.

16
17 FIFTH CAUSE OF ACTION

18 (Breach of Fiduciary Duties)

19 47. PACO incorporates here by reference paragraphs 1
20 through 29, paragraphs 40 through 42, and paragraph 46.

21 48. By issuing their insurance policy to the plaintiff
22 and accepting premiums, the defendants created a fiduciary
23 relationship between themselves and plaintiff which existed at all
24 relevant times.

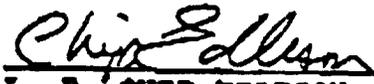
25 49. Defendants Underwriters of Lloyds, American Marine
26 Underwriters, Employers Insurance of Wausau, Angelina Casualty
27 Company, Ranger Insurance Company, and National Union Fire
28 Insurance Company of Pittsburgh, Pa., together with other

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3 undetermined defendants, have breached their fiduciary duties to
4 plaintiff by failing to give at least as much consideration to the
5 welfare of the plaintiff as they gave to their own interests, as
6 shown by the acts and omissions specifically set forth in
7 paragraphs 40 and 46, all to the plaintiff's damage as set forth
8 previously.

9 WHEREFORE, the plaintiff requests a judgment as follows:

- 10 1. For a declaration of the plaintiff's and defendants'
11 respective rights under the identified contracts of insurance as
12 requested;
- 13 2. For policy benefits according to proof;
- 14 3. For punitive damages according to proof;
- 15 4. For costs of suit;
- 16 5. For reasonable attorney's fees;
- 17 6. For prejudgment interest as permitted by law;
- 18 7. For other relief as the court deems proper.

19
20 GRAY, CARY, AMES & FRYE

21
22 By: 

23 L. B. CHIP EDLESON
24 Attorneys for Plaintiff
25 PACO TERMINALS, INC.
26
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1 Paco Terminals, Inc. v. American Home Assurance, et al.
2 Civil Action No. 602586

3 DECLARATION OF SERVICE BY MAIL

4 (C.C.P. §§ 1013a and 2015.5)

5 I, the undersigned, say:

6 I am over eighteen (18) years of age, employed in the County
7 of San Diego, California, in which county the within-mentioned
8 mailing occurred, and not a party to the subject cause. My
9 business address is 1700 First Interstate Plaza, 401 "B" Street,
10 San Diego, California 92101. I am familiar with GRAY, CARY, AMES
11 & FRYE'S practices for collection and processing of correspondence
12 for mailing via the United States Postal Service and that all
13 correspondence will be deposited with the United States Postal
14 Service the same day in the ordinary course of business.

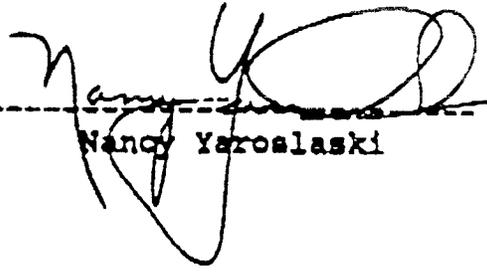
15 I served the attached SUMMONS AND FIRST AMENDED COMPLAINT FOR
16 DECLARATORY RELIEF, BREACH OF CONTRACT, BREACH OF IMPLIED COVENANT
17 OF GOOD FAITH AND FAIR DEALING, BREACH OF STATUTORY DUTIES, AND
18 BREACH OF FIDUCIARY (COMPENSATORY AND PUNITIVE DAMAGES) by placing
19 it in a separate envelope addressed to each such addressee
20 respectively as follows:

21 (SEE EXHIBIT "A")

22 I then sealed each envelope and placed each for collection and
23 mailing (first class mail, postage prepaid, return receipt
24 requested), on September 14, 1988, following ordinary business
25 practices.
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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct and that this Declaration was executed on September 14, 1988, at San Diego, California.



Nancy Yaroslaski

EXHIBIT "A"

American Home Assurance Company
Joseph Wiedemann, President
P. O. Box 720594
Atlanta, GA 30358

American Home Assurance Company
Joseph Wiedemann, President
70 Pine Street
New York, NY 18270

American Marine Underwriters, Inc.
Charles F. Ruland, Vice President
P. O. Box 371043
Buena Vista Station
Miami, FL 33137

Angelina Casualty Company
Michael S. Hanuschak, President
415 South First Street, Ste. 400
P. O. Box 1543
Lufkin, TX 75901-1543

Angelina Casualty Company
Bill Kirk, Agent
600 Vaughn Building
Suite 102
P. O. Box 1257
Austin, TX 78701

Arkwright-Boston
Manufacturers Mutual
Insurance Company
Frederick J. Bumpus, President
225 Wyman Street
P. O. Box 9198
Waltham, MA 02254-9198

Employers Insurance of Wausau
Leon J. Weinberger, President
2000 Westwood Drive
Wausau, WI 54401

The Fidelity & Casualty
Company of New York
John P. Mascotte, Chairman
180 Maiden Lane
New York, NY 10038

First State Insurance Company
Michael Powers, CPCU
60 Battery March Street
Boston, MA 02110

Highlands Insurance Company
600 Jefferson Street
Houston, TX 77002-7392

Integrity Insurance Company
Franklin Maisano, President
Mach Centre Dune
Paramus, NJ 07652

Integrity Insurance Company
Franklin Maisano, President
1350 Avenue of the Americas
New York, NY 10019

International Insurance Company
233 South Wacker Drive
Chicago, IL 60606

National Union Fire Insurance
Company of Pittsburg, PA
50 South Clinton Street
East Orange, NJ 07018

New York Marine Managers, Inc.
Terance N. Deeks, President
123 William Street
New York, NJ 10038

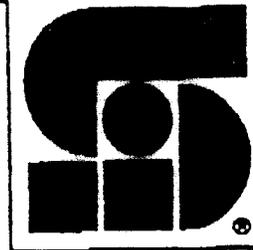
Old Republic Insurance Company
414 West Pittsburgh Street
P. O. Box 789
Greensburg, PA 15601

Ranger Insurance Company
Richard F. Harris, CEO
5333 Westheimer Road
Houston, TX 77001

Southern American Insurance Company
Billy G. Hamm, Vice President
5350 Poplar Avenue
P. O. Box 171377
Memphis, TN 38117

Stonewall Insurance Companies

9800 Centre Parkway, Suite 200
P.O. Box 721404
Houston, Texas 77272
(713) 771-8800



June 8, 1988

Mr. Norman E. Waldrop, Jr., Esq.
Ambrecht, Jackson, Demoy, Crows,
Holmes & Reeves
1300 Annouth Center
P.O. Box 290
Mobile, AL. 36601

RE: Our Reference: 5600 3746
Assured: Cooper Stevedoring, Inc., etal
(Paco Terminals, Inc.)
Excess Umbrella Policy No. 56008163, eff. 1/1/82-83
Alleged Pollution, San Diego Bay

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Gentlemen:

This letter refers to the above-captioned claim pending against Paco Terminals (hereinafter referred to as "PACO"). Stonewall Insurance Company (hereinafter referred to as "Stonewall") received notice of this claim by your letter, & enclosures, dated May 5, 1988.

Stonewall, pursuant to its Excess Umbrella Liability Policy, No. 56008163, eff. 1/1/82-83 has undertaken a review of this claim in order to determine Stonewall's duties and obligations under said policy. In addition, Stonewall has consulted with coverage counsel regarding the issues arising in connection with the above-referenced matter, involving the dumping of Copper Concentrates into the San Diego Bay. By such conduct, Stonewall does not intend to waive its right to deny coverage of the claim. Such conduct by Stonewall and/or its representatives, is subject to all of the terms, provisions, and conditions of its policy. Your attention is specifically drawn to the following matters constituting a reservation of rights as respects potential indemnity for loss.

1. The Stonewall policy provides coverage for liability for damages because of "property damage" as that term is defined by the Stonewall policies. On that basis, Stonewall reserves its right to deny coverage of PACO'S liability for the claim, or a portion of the claim.

2. The Stonewall policy limits coverage to liability for "occurrences" within the policy periods. Our investigation indicates that the aforesaid claim may not involve an "occurrence" as that term is defined in the Stonewall policy, within the effective policy periods. On that basis, Stonewall reserves its right to deny coverage of PACO'S liability for the claim, or a portion of the claim.

June 8, 1988

Mr. Norman E. Waldrop, Jr., Esq.

Page 2

3. The Stonewall policy limits coverage to liability because of property damage, personal injury, and advertising liability. Our investigation indicates that claimants have made certain claims for equitable relief and other damages which do not constitute property damage, personal injury, or advertising liability as those terms are defined in the Stonewall policy. On that basis, Stonewall reserves the right to deny coverage of PACO'S liability for the claim, or a portion of the claim.

4. The Stonewall policy contains the following Following Form exclusion:

I. WITH RESPECT TO POLLUTION EMANATING FROM WATERCRAFT:

This policy, subject otherwise to all its terms, limitations and conditions is extended to cover any loss, damage, cost, liability or expense the Assured shall become liable to pay and shall pay in consequence of the actual or potential discharge, emission, spillage or leakage upon or into the seas, waters, land or air, or oil, petroleum products, chemicals or other substances of any kind or nature whatsoever; provided, however, that notwithstanding anything to the contrary contained in this endorsement or in the Policy to which it is attached, the Assurers shall not be liable to indemnify the Assured:

(A) For any loss, damage, cost, liability or expense paid in consequence of any such actual or potential discharge, emission, spillage or leakage unless proximately caused by fault on the part of the Assured.

(B) 1) For any loss, damage, cost, liability or expense incurred by the Assured under the provisions of any federal, state or local legislation regulating or controlling the discharge, emission, spillage or leakage of oil or any other substance into navigable waters or elsewhere and/or the removal of or liability for such discharge, emission, spillage or leakage. The phrase "federal, state or local legislation" shall include laws or regulations of any foreign

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nation or political subdivision thereof, or of the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands and the Trust Territory of the Pacific Islands.

- 2) For any loss, damage, liability or expense which would have been payable under full insurance according to the terms of a Policy written on the current form issued by the Water Quality Insurance Syndicate. Full insurance for the purposes of this clause shall be deemed to be the statutory requirements as defined in the Clean Water Act of 1970 and amendments thereto and third party property damage liability to the maximum limits available from the W.Q.I.S. or equivalent limits from other underwriters. But this exclusion shall not apply to such portion of any such loss, damage, liability or expense otherwise recoverable hereunder, as it exceeds the limits provided under the W.Q.I.S. policy or equivalent.

- (C) For any fine or penalty arising out of the actual or potential discharge, emission, spillage or leakage upon or into the seas, waters, land or air, of oil, petroleum products, chemicals or other substances of any kind or nature whatsoever.

The insurance afforded by this Endorsement shall not increase the limit of the Assurer's liability under the policy with respect to any one accident or occurrence, which shall be the Sum Insured hereunder.

A series of claims arising from the same accident or occurrence shall be treated as due to one accident or occurrence.

COPY

June 8, 1988
Mr. Norman E. Waldrop, Jr., Esq.
Page 5

cc: New York Marine Managers, Inc.
123 William Street
New York, New York 10038
Attention: Claim Manager
Policy No. 82D1959101

cc: Ms. Kay Payne
W.K.P. Wilson & Son
P.O. Box 2407
Mobile, AL. 36652

cc: Mr. Harold C. Stong
Paco Terminals, Inc.
Mobile, AL. 36633

cc: John Lloyd & Company
P.O. Box 7503-A
Birmingham, AL. 35253

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State of California
California Regional Water Quality Control Board
San Diego Region

Executive Officer Summary Report
April 25, 1988

ITEM:

23

SUBJECT:

ENFORCEMENT
ADMINISTRATIVE CIVIL LIABILITY
PACO TERMINALS, INC., SAN DIEGO COUNTY

DISCUSSION:

At the Regional Board meeting on February 8, 1988, the Regional Board adopted Order No. 88-27, *"An Order Providing for the Referral of Paco Terminals, Inc., San Diego County, to the Attorney General."* Order No. 88-27 directed the Executive Officer to issue a complaint for Administrative Civil Liability to Paco Terminals prior to today's meeting and, unless the Administrative Civil Liability process was satisfactorily concluded, Order No. 88-27 directed the Executive Officer to refer Paco Terminals to the Attorney General.

The Regional Board Executive Officer will issue a complaint the week of April 11, 1988, proposing that liability be imposed on Paco Terminals in the amount of \$200,000. However, it is expected that Paco Terminals may offer to fund a study of water quality in return for a reduction in the amount of Administrative Civil Liability.

ISSUE:

If a hearing is held, should the Regional Board impose Administrative Civil Liability on Paco Terminals by the adoption of Order No. 88-58, *"An Order for the Imposition of Administrative Civil Liability on Paco Terminals, Inc., National City, San Diego County"?*

RECOMMENDATION:

If a hearing is held, the adoption of Order No. 88-58 is recommended.

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LESSEE'S QUESTIONNAIRE

A request to lease San Diego Unified Port District property shall not be considered unless all the information requested in this questionnaire is provided by the proposed lessee. Statements must be complete and accurate. Omissions, inaccuracy or misstatement shall be cause for revocation and/or rejection of the District's consent to lease.

By submission of a request to lease District property, the proposed lessee acknowledges and agrees that the District has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in this questionnaire, and authorizes the release to the District of any and all information sought in such inquiry or investigation.

Return the completed Questionnaire with any additional information or documents to:

Property Department
San Diego Unified Port District
P. O. Box 488
San Diego, CA 92112

(This Questionnaire Contains Thirteen Pages)

PROPOSED LESSEE

Name of proposed lessee exactly as it will appear on any final lease document:

PACO TERMINALS, INC.

Address of proposed lessee for purposes of notice or other communication relating to future leasing with District:

PACO TERMINALS, INC.

c/o Cooper Stevedoring Company, Inc.

P O Box 1566, Mobile, AL 36601

Telephone No. 205/432-3694

Lessee intends to operate the business with which this proposed lease is concerned as a Sole Proprietorship (); Partnership (); Corporation (); or _____.

Explain:

SPD
1000612S

PARTNERSHIP STATEMENT

If a partnership, answer the following: N/A

1. Date of Organization _____
2. General Partnership ()
Limited Partnership ()
3. Statement of Partnership recorded? Yes () No ()

Date	Book	Page	County
------	------	------	--------
4. Has the partnership done business in San Diego County?
Yes () No () When? _____
Where? _____
5. Name, address, and partnership share of each general and limited partner. (If partner is corporation, complete page 4 for corporation)

<u>Name</u>	<u>Address</u>	<u>Share</u>

SPD

10006129