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May 26, 2011

Frank Melbourn
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

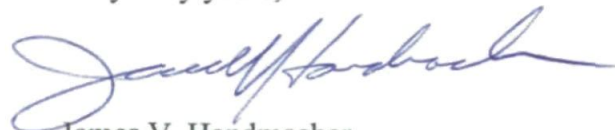
2011 MAY 27 A 9:45
SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

Re: San Diego Bay Shipyard Sediment Site
Comments to TCAO R9-2011-001 and DTR

Dear Mr. Melbourn,

Enclosed are the original and 12 copies of comments on the TCAO and DTR submitted on behalf of Designated Party Campbell Industries. These materials were also submitted to you electronically. I certify that the electronic submittal is a true and accurate copy of the enclosed signed original.

Very truly yours,



James V. Handmacher

Enclosures

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(admitted Pro Hac Vice)
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7 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
8 SAN DIEGO REGION

9 IN THE MATTER OF:
10 TENTATIVE CLEANUP AND ABATEMENT
ORDER NO. R9-2011-0001
11 (SHIPYARD SEDIMENT SITE)

DESIGNATED PARTY CAMPBELL
INDUSTRIES COMMENTS ON DRAFT
TECHNICAL REPORT

12 **1. San Diego Marine Construction Company (subsequently Star & Crescent)**
13 **did not sell its leasehold to MCCSD, a wholly owned subsidiary of Campbell Industries in**
14 **July 1972.**

15 In Finding 6 of the Draft Technical Report, in the first sentence of the second paragraph
16 of Section 6.3.1, it states, "San Diego Marine Construction Company (subsequently Star &
17 Crescent) sold its leasehold to MCCSD, a wholly owned subsidiary of Campbell Industries in
18 July 1972." This statement is incorrect. San Diego Marine Construction Company
19 (subsequently Star & Crescent) sold the business and assets of its Marine Division to MCCSD, a
20 wholly owned subsidiary of Campbell Industries in July 1972. The minutes of the first meeting
21 of Directors of MCCSD approving that transaction are attached for inclusion in the
22 administrative record. The purchase did not include the leasehold. San Diego Marine
23 Construction Company surrendered its leasehold to the San Diego Unified Port District (SAR
24 163149), and the Port District entered into a new lease with MCCSD (SAR 174131).

1 **2. Refusal or failure to respond to State Water Board inquiries is not a basis for**
2 **naming Campbell Industries as a Discharger.**

3 In Finding 6 of the Draft Technical Report, in the third paragraph of Section 6.3.1, it
4 states, "The stock of Campbell Industries was acquired by Marco Holdings, Inc. ("MARCO"), a
5 Washington corporation, in 1979. Marco Holdings, Inc. is a wholly-owned subsidiary of Marine
6 Construction and Design Company, a Washington Corporation." In the subsequent paragraph in
7 Section 6.3.1 of Finding 6 in the DTR, it states:

8 On February 19, 2004 the San Diego Water Board issued Investigative Order R9-
9 2004-0026 directing MARCO to submit a historical site assessment report that
10 completely documented all leasehold information and activities in the vicinity of the
BAE Systems leasehold that may have affected water quality, including chemical
and waste handling and storage activities, discharges, and monitoring data.

11 That statement is incorrect. MARCO is defined in the preceding paragraph as Marco Holding,
12 Inc. That company is not mentioned in Investigative Order R9-2004-0026 (SAR 193136).

13 The subsequent paragraph in Section 6.3.1 of Finding 6 in the DTR recites the contents of
14 a letter from H. Allen Fernstrom on behalf of MARCO, now defined as Marine Construction and
15 Design Co. The letter first states that Marine Construction and Design Co. had conducted an
16 internal search and had no records of any operations of its or Campbell Industries operations
17 within the Southwest Marine leasehold. There is no evidence that statement was inaccurate at
18 the time it was written in 2004. Marine Construction and Design Co. has never operated at the
19 Southwest Marine leasehold. Even today Campbell Industries has not located any records of the
20 operations of its subsidiary at the Southwest Marine leasehold.

21 The letter then states that Marine Construction and Design Co. has no California
22 operations or offices. That statement was true then and remains accurate today. It then states
23 that Campbell Industries terminated all California operations in 1999 at Eight Avenue and
24 Harbor Drive (the former Campbell Shipyard), and all available records from California-based

1 operations pertain to that Campbell Shipyard. That statement is also correct.

2 After reciting the contents of this letter, the paragraph ends with the statement, "MARCO
3 was not responsive to the directives of the San Diego Water Board's Investigative Order and
4 their lack of responsiveness forms part of the basis for the San Diego Water Board's
5 determination that MARCO should be named as a discharger in the Cleanup and Abatement
6 Order." This statement is erroneous in four respects. First, MARCO defined as Marco
7 Holdings, Inc. was not under any directive from the San Diego Water Board, as discussed above.
8 Second, MARCO if defined as Marine Construction and Design Co. truthfully responded to the
9 Investigative Order based on the information available to it at the time. Third, Campbell
10 Industries has been an active participant in the mediation proceedings with Timothy Gallagher
11 which led to the drafting of the pending TACO and DTR, and voluntarily provided most of the
12 evidence of its history at the Site recited in Section 6.3.1. It has not refused or failed to respond
13 to any inquiry by the San Diego Water Board. Finally, the TCAO and DTR do not name
14 MARCO (however defined) as a Discharger in the Cleanup and Abatement Order.

15 Paragraphs 4 and 5 in Section 6.3.1 should be deleted. Not only are portions of these
16 paragraphs inaccurate, but there is no basis or need for the San Diego Water Board to use refusal
17 or failure to respond as a factor in naming Campbell Industries as a Discharger in the Cleanup
18 and Abatement Order.

19 Dated May 26, 2011

MORTON MCGOLDRICK, P.S

20
21 By: 
22 JAMES V. HANDMACHER
23 Attorneys for Designated Party CAMPBELL
24 INDUSTRIES

MCCSD

Minutes of
First Meeting of Directors
Held June 29, 1972

The first meeting of directors of MCCSD (the "Company") was held at the offices of Jenkins & Perry, Suite 2000, United States National Bank Building, San Diego, California on June 29, 1972 at 10:00 a.m.

Present at the meeting were:

David Small
George J. Soares
Joseph E. Penacho

constituting all the directors of the Company and a quorum thereof. Robert M. Stander and David S. Lane were present at the invitation of the directors.

Mr. Soares called the meeting to order and presided as Chairman of the meeting and at the request of the Chairman, David S. Lane acted as Secretary of the meeting and kept the minutes thereof.

The Chairman presented to the meeting the Articles of Incorporation of the Company stating that the same had been filed in the office of the Secretary of State on June 23, 1972 and that a certified copy thereof was filed in the office of the Clerk of San Diego County on June 28, 1972. A copy of the Articles of Incorporation was ordered to be filed in the minute book of the Company.

The Chairman presented to the meeting the proposed form of By-Laws for the regulation and management of the affairs of the Company and, after full discussion and upon motion duly made and seconded, it was unanimously:

RESOLVED that the form of By-Laws presented to the meeting is hereby adopted as the By-Laws of the Company.

The Chairman directed that a copy of the By-Laws just adopted be filed with the minutes of this meeting and made a part of the permanent records of the Company.

The Chairman stated that it was now in order to appoint officers of the Company and after full discussion and upon motion duly made and seconded, it was unanimously:

RESOLVED that the following persons are hereby appointed to hold the offices set forth opposite their respective names and to serve in such offices at the pleasure of the directors:

<u>Name</u>	<u>Office</u>
George J. Soares	President
Joseph E. Penacho	Vice President
Robert M. Stander	Secretary
David Small	Treasurer

The Chairman submitted the proposed form of stock certificate and corporate seal and, after full discussion and upon motion duly made and seconded, it was unanimously:

RESOLVED that the form of stock certificate presented at this meeting is hereby approved as the form of stock certificate for shares of Common Stock, par value \$1.00 per share, a copy of said certificate to be filed with the minutes of this meeting.

RESOLVED that the form of corporate seal presented to this meeting is hereby adopted as the corporate seal of the Company, impression of said corporate seal to be affixed to the minutes of this meeting adjacent to this resolution.

The Chairman proposed that the officers designate the principal office of the Company and, after full discussion and upon motion duly made and seconded, it was unanimously:

RESOLVED that the principal office of the Company shall be located at Foot of Sampson Street, San Diego, California.

The Chairman proposed that the Company select the fiscal year of the Company and, after full discussion and upon motion duly made and seconded, it was unanimously:

RESOLVED that the fiscal year of the Company shall be the fiscal year ending on the last day of June of each year.

The Chairman asked Mr. Lane to review for the directors the letter of June 19, 1972 from William N. Jenkins to Harrison & Watson concerning the agreement in principal for Campbell Industries to purchase all of the business and assets of the Marine Division of San Diego Marine Construction Co. Mr. Lane reminded the directors that this Company had been formed with the purpose of becoming a wholly-owned subsidiary of Campbell to purchase the business and assets of San Diego Marine Construction Co. Mr. Lane then presented to the directors a draft of the proposed purchase agreement and reviewed for the directors the principal terms and provisions thereof. After full discussion and upon motion duly made and seconded, it was unanimously:

RESOLVED that the President of the Company is hereby authorized and directed to execute and deliver, on behalf of the Company, the purchase agreement between the Company, San Diego Marine Construction Co., a California corporation, and Campbell Industries, a California corporation, which will provide for the purchase and acquisition of the business and assets of the Marine Division of San Diego Marine Construction Co. by the Company on or about July 1, 1972 and that in exchange therefor the Company will (i) deliver cash in the amount of approximately \$750,000 (less certain receivables), (ii) execute and deliver a promissory note in the principal amount of \$750,000, (iii) assume certain obligations and liabilities of the Marine Division of San Diego Marine Construction Co.; and the Secretary of the Company is hereby authorized and directed to affix the corporate seal to said purchase agreement and attest the same and cause a counterpart of said purchase agreement when signed by all parties hereto to be filed with the minutes of this meeting.

RESOLVED that the proper officers of the Company are hereby authorized and directed to take all action necessary or appropriate to cause the Company to purchase all of the business and assets, subject to the liabilities of the Marine Division of San Diego Marine Construction Co., a California corporation, at a price equal to \$1,500,000 plus all liabilities assumed.

RESOLVED that in payment of the purchase price of the business and assets of the Marine Division of San Diego Marine Construction Co., the Company shall (i) pay cash in the amount of \$750,000 (less certain disclosed accounts receivable), (ii) execute and deliver a promissory note in the principal amount of \$750,000 payable in three equal installments and bearing interest at the rate of 6% per annum and (iii) assume all liabilities and obligations of the Marine Division of San Diego Marine Construction Co. disclosed on the balance sheet of that Company on May 31, 1972, subject to such changes and adjustments as shall occur in the ordinary course of business between the date of that balance sheet and the closing date.

RESOLVED that the officers of the Company are hereby authorized to take all such other and further action as shall in their sole judgment be necessary or appropriate in order to carry into effect the intent of the foregoing resolutions.

The Chairman stated that in order to finance the purchase of the business and assets of San Diego Marine Construction Co. the directors should consider the sale and issuance of 50,000 shares of Common Stock, par value \$1.00 per share, at the price of \$5.00 per share, to Campbell Industries, a California corporation, and that the additional funds needed to purchase the assets of San Diego Marine and to provide working capital should be borrowed from institutional lenders. After full discussion and upon motion duly made and seconded, it was unanimously:

RESOLVED that upon qualifying the Common Stock to be sold hereunder with the California Corporations Commissioner, if appropriate and necessary, and upon receipt of the consideration therefor, the proper officers of the Company are hereby authorized and directed to sell and issue 50,000 shares of Common Stock of the Company, par value \$1.00 per share, at the price of \$5.00 per share, or in the aggregate, \$250,000, to Campbell Industries for cash.

RESOLVED that George J. Soares, President and Robert M. Stander, Secretary be and they are

hereby authorized and empowered for and on behalf of and in the name of the Company and as the Company's act and deed (i) to borrow money from such banks (the "Bank") on such terms as shall be required by the Bank and to sign and deliver such promissory notes and other evidences of indebtedness for money borrowed or advanced as the Bank shall require; (ii) to contract for the issuance by the Bank of letters of credit and to execute such guaranties therefor and agreements for repayment to the Bank as the Bank shall require; (iii) to mortgage, pledge, convey, grant, assign, transfer and deliver by such instruments in writing or otherwise as may be demanded by the Bank, any of the property of the Company to secure the payment of said notes, guaranties, agreements and other evidences of indebtedness and (iv) to perform all acts and execute and deliver all instruments in writing which the Bank may deem necessary to carry out the purposes of this resolution; provided that the aggregate amount of all sums so borrowed and credit so established shall not at any time exceed the principal sum of \$2,000,000 outstanding and unpaid. This resolution will continue in full force and effect until the Bank shall receive official notice in writing from the Company of the revocation hereof by resolution duly adopted by the Board of Directors of the Company.

RESOLVED that the proper officers of the Company are hereby authorized to take all such other and further action as shall in their sole judgment be necessary and appropriate in order to carry into effect the intent of the foregoing resolutions.

RESOLVED that the notice required by Section 25102(h) of the California Corporations Code shall be filed with the California Corporations Commissioner by the Secretary of the Company not later than one day after which such securities are issued.

There being no further business to come before the meeting,
upon motion duly made and seconded, the meeting was ADJOURNED.

David S. Lane
Secretary

REVIEWED AND APPROVED:

James P. Pinch
George J. Lomas
Robert M. Standen
David Small