

CORPORATION STATEMENT

If a corporation, answer the following:

1. When incorporated? December 29, 1977
2. Where incorporated? California

3. Is the corporation authorized to do business in California? Yes () No ()

If so, as of what date? December 29, 1977

4. The corporation is held: Publicly () Privately ()

5. If publicly held, how and where is the stock traded?

n/a

6. List the following:

	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
(a) Number of voting shares:	<u>10,000</u>	<u>2,000</u>	<u>2,000</u>
(b) Number of non-voting shares:	<u>0</u>	<u>0</u>	<u>0</u>
(c) Number of shareholders:			<u>3</u>
(d) Value per share of Common Stock:			
Par	\$ <u>1.00</u>		
Book	\$ <u>1.00</u>		
Market	\$ <u>1.00</u>		

7. Furnish the name, title, address, and the number of voting and non-voting shares of stock held by each officer and director, and each shareholder owning more than 5% of any class of stock.

Robert E. Pate, President 500 shares
Rt 1, Box 128, Mobile, AL

William H. Pate, Jr., Vice President 500 shares
P O Box 134, Pensacola, FL 32591

Cooper Stevedoring Company, Inc. 1000 shares
P O Box 1565, Mobile, AL 36601

SPD

10006130

CORPORATION STATEMENT

COOPER STEVEDORING COMPANY, INC.

If a corporation, answer the following:

1. When incorporated? October 7, 1946
2. Where incorporated? Alabama; Mobile County
3. Is the corporation authorized to do business in California? Yes () No ()
If so, as of what date? July 18, 1972
4. The corporation is held: Publicly () Privately ()
5. If publicly held, how and where is the stock traded?

6. List the following:

	<u>Authorized</u>	<u>Issued</u>	<u>Outstanding</u>
(a) Number of voting shares:	<u>400,000</u>	<u>204,000</u>	<u>204,000</u>
(b) Number of non-voting shares:	<u>none</u>	<u>none</u>	<u>none</u>
(c) Number of shareholders:			<u>3</u>
(d) Value per share of Common Stock:			
Par	<u>\$ 1.00</u>		
Book	<u>\$ 9.35 as of September, 1977 (unaudited)</u>		
Market	<u>\$ Substantial</u>		

7. Furnish the name, title, address, and the number of voting and non-voting shares of stock held by each officer and director, and each shareholder owning more than 5% of any class of stock.

Ervin S. Cooper Chairman of Board Cooper Stevedoring Co. 118 N. Royal 1102 Commerce Bldg. P.O. Box 1566 Mobile, Ala. 36602 (108,000 shares)	Angus R. Cooper President Cooper Stevedoring P.O. Box 3424 New Orleans, La. 70177 (48,000 shares)	David J. Cooper Executive Vice Pres. Cooper Stevedoring 118 N. Royal 1102 Commerce Bldg. P.O. Box 1566 Mobile, Ala. 36602 (48,000 shares)
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FINANCIAL DATA

FINANCIAL STATEMENT

Attach a complete report, prepared in accordance with good accounting practice, reflecting your current financial condition. The report must include a balance sheet and income statement. You must be prepared to substantiate all information shown.

Financial information shall be treated confidential, except in any litigation or arbitration proceedings between prospective lessee or sublessee and District. District may furnish this information to another governmental agency requesting the information.

(attached)

PROPOSED METHOD OF FINANCING DEVELOPMENT

New or additional development on District tidelands in excess of \$25,000 shall be financed in the following manner:

SPD

10006132

COOPER STEVEDORING COMPANY, INC.

COMMERCE BUILDING, MOBILE, ALABAMA

36001

Post Office Box 1566
Cable Address-COOPSTEV

Phone (205) 432-3894
TWX 810 741-7808

STATEMENT OF ASSETS & LIABILITIES

STEVEDORING OPERATIONS

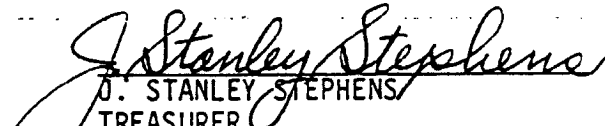
SEPTEMBER 30, 1977

CURRENT ASSETS.....	\$ 4,592,956
FIXED ASSETS.....	1,625,715
OTHER ASSETS.....	494,209
CURRENT LIABILITIES.....	3,554,647
LONG TERM NOTES.....	1,250,358
STOCKHOLDERS EQUITY.....	1,907,875

* * * * *

SALES	
NINE MONTHS ENDED 9/30/77.....	\$ 15,912,657
EARNINGS BEFORE TAXES	
NINE MONTHS ENDED 9/30/77.....	1,103,013

COOPER STEVEDORING COMPANY, INC.


J. STANLEY STEPHENS
TREASURER

(SEAL)

SPD
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PORTS OF OPERATION: MOBILE, PASCAGOULA, NEW ORLEANS, HOUSTON, ST. LOUIS, LONG BEACH, LOS ANGELES

CUT 003050

REFERENCES

List four persons or firms with whom you have conducted business transactions during the past three years. At least two of the references named are to have knowledge of your debt payment history. At least one reference must be a financial institution.

REFERENCE No. 1

Name: C. M. A. Rodgers, III
Firm: American National Bank & Trust Company
Title: Chairman of the Board and Chief Executive Officer
Address: 130 St. Joseph Street
Mobile, AL
Telephone: 205/433-0511

Nature and Magnitude of purchase, sale, loan, business association, etc.:

substantial relationship

REFERENCE No. 2

Name: B. Franklin King
Firm: First National Bank of Mobile
Title: Vice President
Address: 31 N. Royal Street
Mobile, AL
Telephone: 205/438-8319

Nature and magnitude of purchase, sale, loan, business association, etc.:

substantial relationship

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REFERENCE NO. 3

Name: E. Frank Smith
Firm: Commercial Guaranty Bank of Mobile
Title: Chairman of the Board & Chief Executive Officer
Address: 61 St. Joseph St.
Mobile AL
Telephone: 205/432-8832

Nature and magnitude of purchase, sale, loan, business
association, etc.:

substantial relationship

REFERENCE NO. 4

Name: Richard N. McCook
Firm: The Sumitomo Bank of California
Title: Vice President and Manager
Address: P O Box 110
Long Beach, CA 90801
Telephone: 213/432-0931

Nature and magnitude of purchase, sale, loan, business
association, etc.:

California operating accounts

METHOD OF OPERATION

Describe your proposed operation on the District's tidelands. Discuss any optional services and uses which you will seek permission to provide.

PACO TERMINALS, INC. wishes to engage in stevedoring operations and related services in the Port of San Diego.

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ESTIMATED CONSTRUCTION COST

Furnish a detailed construction cost estimate for new or additional development on tidelands that will cost in excess of \$25,000. Include a schedule of approximate dates that each significant improvement is expected to be completed.

none

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ESTIMATE OF GROSS RECEIPTS

Show your estimate of the expected average annual gross receipts to be derived from each use or service and for each significant optional use or service which you plan to provide. This data will be used by the District to analyze lease application or sublease consent. The time period covered should not be construed to represent the term of a lease or sublease that may be granted or consented to by the District.

1. During the first five operating years.

2. During the second five operating years.

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EXPERIENCE STATEMENT

Enumerate in detail the duration and extent of your business experience with special emphasis upon experience with business of the type which you propose to conduct on tidelands. Also state in detail the pertinent experience of the persons who will be directly involved in development and management of the business.

PACO TERMINALS, INC. operations on the tidelands will be managed and developed by principals of Pate Stevedore Company and Cooper Stevedoring Company, Inc., namely; Robert Pate, 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 in various ports on the Atlantic, Gulf and Pacific Coasts and the Mississippi River. Their expertise and the expertise of their staff includes all types of cargo handling and terminal management.

SPD
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OTHER INFORMATION

Please provide any other information which will be helpful in evaluating your requests.

100-510

GARY E. EARLY

CERTIFIED PUBLIC ACCOUNTANT

Post Office Box Two Twenty-Seven

PENSACOLA, FLORIDA 32591

Telephone 434-0211

Member
American Institute of
Certified Public Accountants

Member
Florida Institute of
Certified Public Accountants

January 18, 1978

Mr. William Garrett
Marine Operations Manager
Port of San Diego
San Diego, CA

RE: Mr. William H. Pate, Jr.

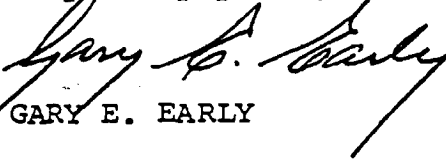
Dear Mr. Garrett:

I have been associated, on a business as well as a personal basis, with the above captioned individual for a period of thirteen years.

The purpose of this letter is to verify that Mr. Pate has a net worth in excess of \$500,000.00, without including the value of closely held corporate stocks.

Per the client's request, I am not, at this time, submitting Personal Financial Statements.

Very truly yours,



GARY E. EARLY

GEE:fab

SPD

10006151

GARY E. EARLY
CERTIFIED PUBLIC ACCOUNTANT
Post Office Box Two Twenty-Seven
PENSACOLA, FLORIDA 32591
Telephone 434-0211

Member
American Institute of
Certified Public Accountants

Member
Florida Institute of
Certified Public Accountants

January 18, 1978

Mr. William Garrett
Marine Operations Manager
Port of San Diego
San Diego, CA

RE: Mr. Robert E. Pate

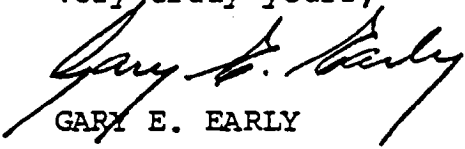
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The purpose of this letter is to verify that Mr. Pate has a net worth in excess of \$500,000.00, without including the value of closely held corporate stocks.

Per the client's request, I am not, at this time, submitting Personal Financial Statements.

Very truly yours,



GARY E. EARLY

GEE:fab

SPD

10006152

COOPER STEVEDORING COMPANY, INC.

CORPORATE OFFICES - COMMERCE BUILDING - MOBILE, ALABAMA

David J. Cooper
PRESIDENT

November 18, 1983

PORT OF SAN DIEGO
Marine Operations Department

Mr. William J. Garrett
Manager, Marine Operations
Port of San Diego
3165 Pacific Highway
San Diego, California 92101

NOV 28 1983
RECEIVED

Dear Bill:

We at Cooper Stevedoring have enjoyed the fine relationship we have had with the Port of San Diego. As you know, Cooper Stevedoring and Pate Stevedore have a joint venture company named PACO Terminals. PACO is a healthy, thriving company in the Port of San Diego and looks forward to a bright future in your Port. As you also probably know, Cooper Stevedoring has recently merged with T. Smith & Son, Inc. of New Orleans. This will in no way change our relationship with PACO. It will make PACO even stronger through Cooper's new strength.

The union of Cooper Stevedoring and T. Smith & Son will certainly strengthen the position of all affiliates. These two companies have operated successfully since the early part of this century with very similar management philosophies, the highest standards of service and hard earned, highly prized reputations for integrity. The combination of Cooper and Smith changes neither the management philosophy nor the management itself. The same holds true for our joint venture with Pate in San Diego. It provides stronger resources to continue our role in innovativeness and leadership in the industry.

I am taking the liberty of enclosing recent news releases concerning the merger, along with brochures on Smith and Cooper.

I hope this letter will answer any questions you may have concerning the recent merger of Cooper Stevedoring and if you have any questions at all, please don't hesitate to call me.

OFFICES IN PRINCIPAL U. S. PORTS

SPD
10005541

CUT 003061

Mr. William J. Garrett
November 18, 1983
Page Two

Cooper/T. Smith through its joint venture in
PACO Terminals looks forward to many more years of
mutual cooperation and success in the Port of San
Diego. We value your friendship.

Sincerely,



David J. Cooper

DJC/ph

Enclosures

SPD
10005542

The Journal of Commerce

AND COMMERCIAL

Second Class Postage Paid at New York, N.Y. Publication Identification No.

THE JOURNAL OF COMMERCE, Monday, November 14, 1983

MARITIME BRIEFS

Stevedore Merger Completed

The merger of two major stevedoring companies — Cooper Stevedoring Co. Inc. and T. Smith and Son Inc. — has been completed with the announcement that the new entity will henceforth be known as Cooper/T. Smith Stevedoring, according to Angus Cooper, chairman and chief executive officer.

The merger was announced in August. The company has offices in 26 locations on the Atlantic, Gulf and Pacific coasts, as well as inland waterways.

Two Big Stevedore Firms In Gulf Announce Merger

By BILL MONGELLUZZO
Journal of Commerce Staff

NEW ORLEANS — Two large Gulf Coast stevedoring firms, Cooper Stevedoring Co. Inc. of Mobile and T. Smith and Son Inc. of New Orleans, have agreed to merge their corporations and subsidiaries.

Although the details of the merged company still must be worked out, it has been announced that the new firm will be directed by an office of chairman.

Angus R. Cooper is chief executive officer of the office of chairman. The office also consists of James E. Smith, president and chief executive officer of T. Smith and Son and its subsidiary Crescent Towing; David J. Coopgr, president and chief executive officer of Cooper Stevedoring; and Lawrence A. Merrigan, chief financial officer.

Both Cooper and T. Smith are family run stevedoring firms founded more than 75 years ago on the Gulf Coast. Both have expanded operations throughout the 20th century to a number of ports.

Cooper maintains operations in 26 ports on all three U.S. coasts and on the inland

waterways. Cooper has 21 different satellite companies.

T. Smith, founded in New Orleans in 1885, also maintains operations in Baton Rouge, Houston, Galveston, Freeport, Port Arthur and Beaumont.

In addition to their stevedoring services, both firms perform midstream loading of bulk vessels in the Mississippi River. During the U.S. coal export boom of 1981, firms such as Cooper and T. Smith rose to prominence in coal exports from the Gulf Coast region. As midstreamers, the operators also handle grain, grain products and ores.

Both firms likewise handle heavy-lift cargoes, steel, all types of general cargo and containers. T. Smith's subsidiary, Crescent Towing and Salvage Co., operates tug service on the lower Mississippi River and in Mobile.

Company officials now are working to finalize details of the operation of the merged corporation. Angus Cooper said, "We look forward to joining forces with T. Smith as it affords the opportunity for two premier and soundly managed companies in the maritime industry to join hands."

THE JOURNAL OF COMMERCE, Tuesday August 16, 1933 3B

SPD
10005543

AGENDA SHEET

DATE: March 6, 1978SUBJECT: Granting Lease to Paco Terminals, Inc.NO. 3FACTUAL BACKGROUND:

The proposed lease to Paco Terminals, Inc., is summarized as follows:

Location: 24th Street Marine Terminal (see attached plat)

Area: 100,000 sq. ft.

Use: Receiving, handling, and storage of copper concentrate and other commodities approved in writing by the Port Director.

Term: 10/1/78-2/1/89 (10 years, 4 months including seven 1-year options)

Rent:

A. Land:

100,000 sq. ft. @ 17¢ psfY = \$17,000

B. Pavement:

100,000 sq. ft. @ 5¢ psfY = \$ 5,000/year*

C. Supplemental Rent:

Payment, if any, will be based upon multiplying the applicable wharfage rate for copper concentrate that will be in effect on each February 1 commencing 1979 times 137,750 short tons less actual tons of bulk cargo stevedored by Paco across District marine facilities for each one-year period of the lease.

*Not subject to rent adjustment.

Next
Rent Review: 4/1/81 (CPI Adjustment)

Paco Terminals, Inc., is a newly formed California corporation owned 25% by Robert E. Pate, 25% by William H. Pate, Jr., and 50% by Cooper Stevedoring Company, Inc. Cooper Stevedoring Company, Inc., is a family-owned corporation of Ervin S. Cooper, Angus R. Cooper, and David J. Cooper. The Pates and Coopers have been active for many years in the stevedoring business throughout the Gulf states for three generations. They also have operations in various ports along the Atlantic and Pacific coasts and the Missouri River.

By a separate agenda item, staff is recommending that the District enter into a Terminal Operator's Agreement with Paco to cover their use of District facilities including the container crane. This agreement is discussed in a separate agenda sheet.

ACTION TAKEN:

CUT 003065

Subject: Granting Lease to Paco Terminals, Inc.

FACTUAL BACKGROUND (Continued):

Amax, Inc. (Amax), a major U.S. extractor and processor of metals, has entered into a contract with Mitsui to deliver to Japan a minimum of 137,750 short tons per year of copper concentrate from Amax's mines in New Mexico. Amax has also entered into a stevedoring contract with Paco to handle the copper concentrate. Paco has chosen the Port of San Diego as its transpacific shipping point.

Staff has reviewed the potential environmental consequences of the required leasehold improvements and determined that they are categorically exempted from the provisions of CEQA under Resources Agency Guideline Section 15101, Class 1, Existing Facilities, "... the operation...of existing...facilities, mechanical equipment, involving negligible or no expansion or use beyond that of previously existing..." and Class 11, Accessory Structures, "...construction or placement of minor structures accessory (appurtenant to) existing... industrial... facilities....", and further that tenancy provisions have no effect on the environment, as per Section 15060.

ANALYSIS:

The Paco/Amax three-year contract coincides with the Amax/Mitsui contract. It is for this reason the lease term is for an initial 3-year, 4-month period with seven additional 1-year options. Amax and Paco, however, believe that the Amax/Mitsui contract will be extended for a one- to seven-year period.

The lease and rent provisions of the lease meet Board policy requirements. The basic land rent (17¢ per square foot per year) is based upon the Board adopted industrial rental rates in the National City area. The 5¢ per square foot per year rate is for District installed paving and represents that rate required to amortize the District's investment in pavement.

The supplemental rent is structured so that Paco must ship a minimum of 137,750 short tons in of bulk commodities across District wharves or pay the District an additional rent based upon any short fall. This rent will be measured by multiplying the applicable wharfage rate for copper concentrate at the beginning of each shipping year starting February 1, 1979, times the tonnage short fall. This special rental provision will induce Paco to make active use of the lease premises and District-owned marine terminal facilities.

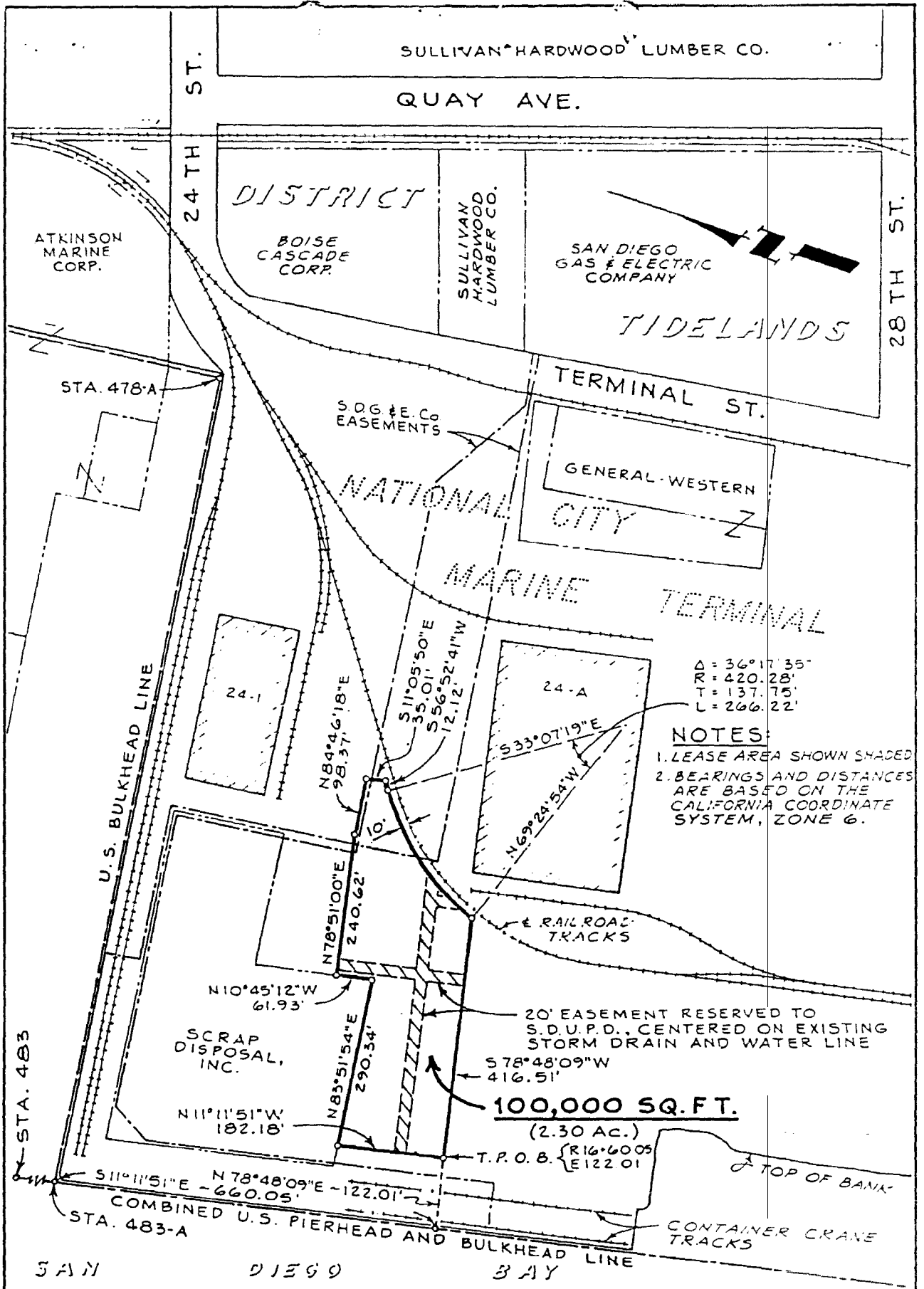
The minimum tonnage requirement according to Paco will probably be exceeded each year. Their operations will add measurably to long-shoremen jobs and require an additional 12 to 24 ship calls a year in San Diego.

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.

The lease agreement must be submitted to the Federal Maritime Commission for their review. The lease will become effective when the Federal Maritime Commission determines that it is not subject to their review or approves the lease.

PORT DIRECTOR'S RECOMMENDATION:

Adopt ordinance granting lease to Paco Terminals, Inc.



$\Delta = 36^{\circ}17'35''$
 $R = 420.28'$
 $T = 137.75'$
 $L = 266.22'$

- NOTES:**
1. LEASE AREA SHOWN SHADED
 2. BEARINGS AND DISTANCES ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM, ZONE 6.

20' EASEMENT RESERVED TO
 S.D.U.P.D., CENTERED ON EXISTING
 STORM DRAIN AND WATER LINE

100,000 SQ. FT.
 (2.30 AC.)

T.P.O.B. { R16°40'05"
 E122 01

REVISED:
 DRAWN BOHNENKAMP
 CHECKED [Signature]
 REVIEWED [Signature]

SAN DIEGO COUNTY PORT DISTRICT
 TIDEWAND LEASE
 WITHIN CORPORATE LIMITS OF NATIONAL CITY

DATE 14 FEB. 1978
 SCALE 1" = 20'
 REF. 85-2517
 100081000 NO.

SPW 250
 1 of 1

CUT 003067
 CUT 002007

AGENDA SHEET

DATE: March 6, 1978SUBJECT: Terminal Operators Agreement with
PACO TERMINALS, INC.NO. 4FACTUAL BACKGROUND:

By separate agenda item, staff is recommending that PACO TERMINALS be granted a lease on the 24th Street Marine Terminal in order to handle bulk copper concentrate and other approved commodities. In order for them to make use of District owned facilities and operate properly on the Marine Terminals facilities, it is recommended that we enter into this agreement with them.

ANALYSIS:

History of this newly formed California corporation has been provided in the lease agenda. Pate Stevedoring, a partner in this firm, is well versed in the handling of bulk copper concentrate in the Gulf area, and Cooper Stevedoring, the other partner, is already in business on the West Coast. The benefits of this agreement to the local waterfront community will be many.

They have executed the Agreement and provided the necessary "Proof of Insurance," as directed by the District.

The Agreement must be submitted to the Federal Maritime Commission for their review. The Agreement will become effective when the Federal Maritime Commission determines that it is not subject to their review or approves the agreement.

PORT DIRECTOR'S RECOMMENDATION:

By resolution, grant a Terminal Operators Agreement to PACO TERMINALS, INC.

ACTION TAKEN:

3/14/78: Res. 78-94.

SPD

10006104

Paco Terminals, Inc.

2720 Terminal Street
National City, California 92050

September 26, 1979

California Regional Water Quality
Control Board - San Diego Region
6154 Mission Gorge Road, Suite 205
San Diego, CA 92120

Attention: Dave Barker

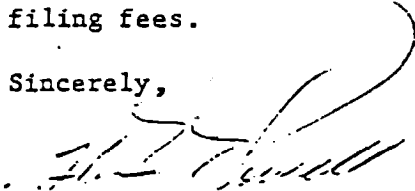
Subject: National Pollutant Discharge Elimination System Application
for Permit To Discharge Wastewater

Dear Mr. Barker:

Please find enclosed completed application for subject permit. Hope everything is completed satisfactorily.

Also enclosed is our check no. 190 in the amount of \$250.00 to cover filing fees.

Sincerely,



Glenn M. Howell
Operations Manager

GMH:crw

RECEIVED

OCT 7 1979

SAN DIEGO REGIONAL
WATER QUALITY CONTROL BOARD

WQB

00003457

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION



6154 Mission Gorge Road
(Mail: Suite 205/Enter: Suite 106)
San Diego, California 92120
Telephone: (714) 255-5114

December 7, 1979

Mr. Glenn Howell
Operations Manager
Paco Terminals, Inc.
P. O. Box 1584
National City, California 92050

Dear Mr. Howell:

Re: Adoption of Order No. 79-72

Enclosed is a copy of Order No. 79-72 (NPDES Permit No. CA0107930), which was adopted by this Regional Board on November 26, 1979 to establish requirements for the waste discharge from Paco Terminals, Inc. to San Diego Bay. Compliance with the requirements of Order No. 79-72 will involve considerable effort on the part of Paco Terminals, Inc. Staff of this Regional Board will be making frequent inspections to ensure that compliance is achieved, and will be pleased to work with you and assist you in any way possible at all times.

Please note the enclosed monitoring program required by Order No. 79-72. Monitoring reports shall be furnished, under penalty of perjury, containing the required information at the frequency designated in the monitoring program. Failure to submit the required monitoring reports constitutes a violation of the Order and is a misdemeanor under Division 7, Chapter 4, Article 4, Section 13268 of the California Water Code.

The monitoring data must be submitted on the enclosed form. You should furnish all information required to complete the form. On receipt of the report, we will review it and transmit a new blank form to be used for the next required report with our acknowledgment and comments. A copy of our standard letter of acknowledgment, containing instructions for filling out the form, is also enclosed.

Please call Mr. Michael P. McCann at the above number if you have any questions or if we can be of any assistance to you.

Very truly yours,

LEONARD BURTMAN
Executive Officer

Enclosures

cc: EPA, Permits Branch, San Francisco
SWRCB, Legal Division, Sacramento

WQB
00003444

INTER-STAFF COMMUNICATION

Date: May 9, 1979

To: DON L. NAY - Port Director
From: WILLIAM J. GARRETT - Manager, Marine Operations
Subject: Paco Terminals - Water Quality Control Board

Reference is made to the letter you received from Mr. Leonard Burtman dated April 18, 1979, and Mr. Firle's letter to Paco Terminals dated April 23, 1979.

To update the present status of this problem, please be advised that Paco Terminals has contacted the San Diego Regional Water Quality Control Board (WQCB) regarding this matter. Paco is presently awaiting their response to a request to visually check the areas in question again, and potentially avoid a permit procedure.

Respectfully,

WILLIAM J. GARRETT

cc: G.J. Gallina
T.E. Firle
D.E. Hillman

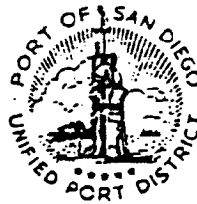
RECEIVED

MAY 9 1979

SAN DIEGO UNIFIED
PORT DISTRICT
Property Department

SPD

10002095



PORT OF SAN DIEGO
AND LINDBERGH FIELD AIR TERMINAL

(714) 291-3900 • P.O. Box 488, San Diego 92112

June 19, 1979

RECEIVED

JUN 21 1979

SAN DIEGO REGIONAL
WATER QUALITY CONTROL BOARD

Mr. Leonard Burtman
Executive Officer
California Regional Water
Quality Control Board
6154 Mission Gorge Road, Suite 205
San Diego, CA 92120

SUBJECT: NPDES Permit Application for
Copper Concentrate Operations
24th Street Marine Terminal

Dear Mr. Burtman:

This is in response to your June 15, 1979 letter regarding application for a National Pollutant Discharge Elimination System (NPDES) permit for copper concentrate loading operations by PACO Terminals, at the Port's 24th Street Marine Terminal.

Regarding the appropriateness of District initiation of the NPDES permit application, it seems clear from the EPA's Supplementary Instructions for Standard Form C - Manufacturing and Commercial, that where an activity or wastewater system is owned by one person but leased to another person for operation, it is the responsibility of the operator to obtain the permit.

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 District tenants.

If a permit is required, it seems appropriate that as the operator and the applicant, PACO Terminals should apply for the NPDES permit as provided for in the Federal Water Pollution Control Act, as amended.

Yours truly,

DOM L. NAY
Port Director

WQB

00003459

DLN/tc

CUT 003076

SUBJECT: PACO INDUSTRIES

FROM: DAVID B...

DATE: NOVEMBER 13, 1979

On November 13, 1979 I inspected Paco Industries.

Tarps are used to cover copper ore piles and would seem to prevent wind blown particulate matter from the copper ore stored from getting into San Diego Bay.

Paco Industries uses water for dust control.

Drainage from this operation can mix with copper ore and flow to storm drains flowing to San Diego Bay. The discharges has installed a Lurlog wrapping around each drain... leading to a storm drain. 50

Lurlog wrapping is supposed to act as a filter. The efficacy of the ~~000#000~~ wrappings will be determined by Regional Board staff as part of the Water Pollution Control Plan approval process.

Paco Terminals, Inc.

2720 Terminal Street
National City, California 92050

November 26, 1979

California Regional Water Quality
Control Board - San Diego Region
6154 Mission Gorge Road - Suite 205
San Diego, CA 92120

Attention: Leonard Burtman, Executive Officer

Reference: Water Pollution Control Plan

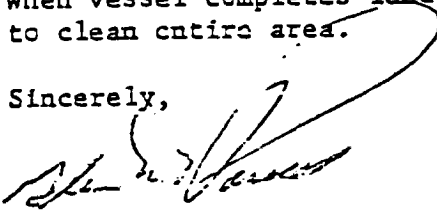
Dear Sir:

The following will outline our Control Plan at 24th Street Terminals as concerns the handling of copper concentrate ore.

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.

Sincerely,


Glenn M. Howell
Operations Manager

GMH:crw

WQ
0000340
12/5
MM ✓
DIB PLEASE CHECK FOR DISCHARGES!
PC ACKNOWLEDGE TO DISCH. ON ACCEPTANCE OF WQ CONTROL PLAN.
SEEMS ADEQUATE

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

May 29, 1986

Mr. William Garrett
PORT OF SAN DIEGO
P. O. Box 488
San Diego, California 92112

Dear Bill:


Several months ago we discussed the A.P.C.D.'s request that we apply for a "Permit to Operate" at the 24th Street Terminal. I have enclosed a copy of our Startup Authorization dated May 29, 1986. As you can see, they have placed a total of eight conditions on us.

All of these items have been for the past six years, and will continue to be, part of our best management practices. I would ask your assistance in enforcing Item No. 5.

I will keep you advised regarding the issuance of the Permit to Operate.

Sincerely yours,

PACO TERMINALS, INC.


Glenn M. Howell
Vice President

GMH:crw

CUT 003082

TO: David Barker, Senior Engineer, RWQCB
FROM: Paco Terminals, Inc.
DATE: February 18, 1988
RE: Paco's Preliminary Response to Staff Request for
Information Under Order No. 88-27

On February 8, 1988 the California Regional Water Quality Control Board, San Diego Region, issued the above referenced order which required an Administrative Civil Liability (ACL) complaint be issued against Paco Terminals Inc.

In order to ascertain the appropriate civil monetary liability that will be requested in the ACL Complaint pursuant to California Water Code Sections 13323 et seq, and Sections 13350 or 13385, the RWQCB staff has asked that Paco provide certain information.

STAFF REQUEST:

Specifically the staff request includes the following:

- (1). The dates on which copper ore was loaded out of the Paco Terminal facility for 1985 through the present.
- (2). The last day that copper ore concentrate was stored at the Paco facility.
- (3). The number of days that copper was on site at the Paco facility.
- (4) The Best Management Practices employed by Paco to prevent the discharge of copper ore to San Diego Bay.

PACO'S REPLY:

In reply to the staff's request Paco provides the following:

(1). Enclosed as Attachment A to this paper is a log establishing the days on which copper ore was loaded out of the Paco Terminal facilities. As indicated herein the total number of loading days is 66.

(2). The last day that copper ore was at the Paco facility was December 29, 1986.

(3). Copper ore, to the best of our knowledge, was present in varying amounts at the Paco facility at all times during 1985 through December 29, 1986.

(4). Paco's Best Management Practices (BMP) for restricting the release of copper ore to San Diego Bay are set out in Attachment B.

WQB
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PERIOD COVERED:

The information we have provided covers the period from March 1, 1985 through December 29, 1986. We believe this appropriate for two reasons. First, under California Code of Civil Procedure Section 338 an action commenced under the Porter - Cologne Water Quality Control Act (Water Code) shall be commenced within three years from the date of discovery of the facts constituting grounds for the complaint. We understand that the ACL complaint will be filed on or after March 1, 1988. Second, the copper was last loaded-out and cleaned up on December 29, 1986.

RAIN DAYS:

The RWQCB staff has obtained rain fall information for San Diego covering the period of 1985 - 1986. This information was obtained from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, San Diego Station; however, it is not clear that this station is an accurate reflection of the amount of rain that fell at the Paco facility in National City. The staff has suggested that the total number of days on which .1 of an inch or more of rain was recorded are days of potential discharge of copper at the Paco facility. The total number of days between March 1, 1985 and December 29, 1986 on which .1 of an inch of rain or more fell is 34.

Paco believes that all rain days that occurred between December 20, 1985 and December 29, 1986 should not be included in the total number of rain days involved in these calculations. On December 20, 1985 Paco installed a bolted steel storm drain cover over all storm drains at the Paco facility. In addition, Paco's BMP of storing the stockpiled copper on a slab that sloped landward in a line approximately 150 feet from the pierface prevented copper concentrate from escaping into the Bay. Further, there are no days during this time frame when .1 of an inch of rain fell and at the same time loading operations were occurring. Therefore, copper was not temporarily stored on the pierface side of the facility during these rain days.

The total number of days with .1 of an inch or more of rain fall between March 1, 1985 and December 20, 1985 is 14. Paco believes that this is the maximum number of days to assess for purposes of the ACL calculations.

Paco believes that the use of .1 of an inch as a criteria for determining when a discharge of copper occurred is inappropriate. We know of no standard or established guidelines which supports the use of .1 of an inch. Minimally, an accumulation of .2 of

an inch or more seems to be necessary to produce the quantity of rain that would accumulate and/or carry the copper ore into the storm drain. Applying the standard .2 of an inch would result in a total of 8 rain days on which discharges may have occurred at the Paco facility.

Rain totaling .2 of an inch or more occurred on two days during which copper ore loading operations were taking place, i.e. March 27 and April 17, 1985. It is appropriate to reduce the total number of days of loading operations by two because these were also rain days. This leaves a balance of 66 days on which loading operations occurred. The statutory requirement of assessing liability "for each day" in which a discharge occurred precludes doubling of the fine for purposes of assessing a penalty under Section 13350 or 13385. In addition, Section 13385 provides that a "single operational upset" shall be treated as a single violation.

POTENTIAL DAYS OF DISCHARGE:

Paco believes that during the relevant time frame the total number of days during which copper ore was loaded is 66; and, the total number of days when .2 of an inch of rain fell is 8. The maximum total number of days on which a discharge may have occurred is 74.

There are many variables which contribute to a conclusion that no discharge occurred on some of these days. For example, the BMP activities include restricted storage and load-out placement of the copper; watering of the copper as it was being loaded; and, immediate cleanup of copper residue by use of equipment and manual labor. These efforts increased production time and costs and were continually maintained by Paco. We believe these factors justify a reduction in the total number of days of possible discharge. We would appreciate the opportunity to discuss this matter with the staff prior to the ACL Complaint being issued.

CIVIL LIABILITY SHOULD BE DETERMINED PURSUANT TO WATER CODE SECTION 13350:

Paco questions the appropriateness of applying Section 13385 for establishing civil liability in this case. The alleged discharges necessarily occurred prior to the enactment of this statute which went into effect on February 1, 1988. Since there is no provision including retroactive provisions in this statute, Paco believes that it is inappropriate to apply the terms of this statute to its case. Thus, for purposes of discussing the amount of any civil liability we will focus our comments on the provisions of Section 13350 of the Water Code.

WUB
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CRITERIA FOR DETERMINING THE AMOUNT OF ADMINISTRATIVE CIVIL LIABILITY UNDER SECTION 13350:

California Water Code Section 13327 provides that the regional board in determining the amount of civil liability as established in Section 13350, shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, and whether the discharge is susceptible to cleanup or abatement.

The Board has not been able to demonstrate any current or existing harm that is resulting from the presence of copper in the vicinity of the 24th Street Terminal. Rather the concern is a prospective one. Indeed this lack of harm may justify leaving the copper in its present location. However, the Board has determined that a cleanup and abatement action is appropriate. Accomplishing the cleanup and abatement of the 24th Street facility will necessitate the expenditure of a considerable but, as yet undetermined, amount of money. The costs of this cleanup must be considered before administrative civil liability is assessed.

Section 13327 requires that the regional board consider, with respect to the violator, the ability to pay and the effect on the ability of the company to continue in business. Paco has indicated on numerous occasions that it has only finite economic resources. The company believes that the best use of these resources would be to apply them to any cleanup and abatement effort as opposed to civil liability assessments. The company would like to accomplish the appropriate environmental resolution of this matter and continue on with its stevedoring business. The monetary amount of the ACL assessment will be critical in determining what monies are available to accomplish the cleanup and whether Paco can survive these expenses.

NO WAIVER:

The fact that Paco has provided this letter and related information is not meant to be construed as an admission of liability or responsibility on the part of Paco for the discharge of copper concentrate to San Diego Bay. Nor can this communication be construed as a limitation or waiver of any rights or legal arguments which the company may have concerning this matter.

CONCLUSION:

The company wishes to comply and cooperate in good faith with the staff's requirements in order to accomplish an ACL resolution. Likewise, the company wants to work with the Board to accomplish the cleanup and abatement resolution as soon as possible. The company appreciates the Board's continuing cooperation in these matters.

Attachments

WQB
00003067

PACO VESSEL LOADING DATES
FOR COPPER ORE

<u>VESSEL</u>	<u>LOADING DATES IN 1985</u>	<u>TOTAL</u>
Saint Nicolas	3/27*- 3/28	2
Sanko Dignity	4/14 - 4/17*	4
Luzon	4/30 - 5/1	2
Sunny Island	5/9 - 5/10	2
Golden Rose	7/8 - 7/9	2
Sanko Sapphire	7/10 - 7/12	3
Sanko Platanus	8/24 - 8/27	4
Scarlett Carrier	9/23 - 9/26	4
Hoerda	10/8 - 10/9	2
Glorious Spica	12/19 - 12/20	2
Paramount	12/26 - 12/28	3
		<hr/>
	TOTAL 1985	30

* Days on which .2 of an inch or more of rain fell.

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PACO VESSEL LOADING DATES
FOR COPPER ORE

<u>VESSEL</u>	<u>LOADING DATES IN 1986</u>	<u>TOTAL</u>
Hoegh Dyke	1/9 - 1/12	4
Sanko Peace	1/22 - 1/23	3
Sanko Stare	1/24 - 1/25	2
Paramount	2/17 - 2/19	3
Sanko Prelude	3/17 - 3/18	2
Hakuko Maru	4/23 - 4/25	3
Seiwa Maru	5/28 - 5/30	3
Bright Skies	7/6 - 7/7	2
Seika Maru	7/14 - 7/16	3
Zhao Yang Hai	8/19 - 8/20	2
Sanko Lily	8/27 - 8/29	3
Atlantic Hero	10/27 - 10/28	2
Geiko Humanity	11/12 - 11/13	2
Bleu Taurus	12/11 - 12/12	2
Gazania	12/28 - 12/29	2
	TOTAL 1986	38
	Totals for 1985 and 1986	68
	Minus two (2) rain days	-2
		66
		=====

WQB
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CLEANUP AND ABATEMENT
ORDER NO. 85-91

The Water Pollution Control Plan for PACO Terminals Inc., identifies the following measures to be taken to prevent the discharge of copper concentrate ore into San Diego Bay.

"a. The storage pad at Berth Four, 24th Street Terminal is constructed in such a manner that the pad slopes landward in a line approximately 150 feet from the pierface. Concentrates, once removed from the railcars will be stored in stockpiles behind the slopeline which will be clearly identified. This will eliminate the possibility of any run off of concentrates over the pierface into the bay. By placing the concentrates a greater distance from the bay, the possibility of concentrate being blown into the bay will be further reduced.

b. By storing the concentrate as described in paragraph a, all run off water from the stockpiled concentrates will flow landward and will be contained in the storage pad area. Storm drains on the pad will be sealed and closed with the exception of a twelve inch riser pipe, the open end of which will be covered with polyester filtration cloth. This type of drainage system will allow water to flow into the storm drain only after it has reached sufficient depth to allow settling of the concentrates. The filtration cloth will further reduce the possibility of discharge of contaminants.

c. Concentrates will only be placed on the shipside of the slopeline during actual loading operation as the concentrates are being place on board ship. It is expected that there will be a maximum of five 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 pierface. This 20 foot safety zone will ensure that concentrates are kept back from the pierface to eliminate the possibility of spillage into the bay as concentrates are being handled on the dock. This safety zone will be clearly identified.

e. Concentrates, once unloaded and stockpiled at the facility, will be completely covered with nylon reinforced polyethylene tarps which will be held in place by rubber ties. Tarps will be positioned and secured to prevent any blowing of the stockpiled concentrates. The tarps will remain over the concentrates at all times and will only be removed immediately before vessel loading.

f. Once tarps are removed from the concentrate in preparation for loading, and at all times during the loading operation,

WQB
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Industries, Inc. will maintain on hand a manned 3,000 gallon water truck. This truck is capable of spraying a 40 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. 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 run off into the bay.

g. During loading operations, concentrates will be released from the clam bucket in to the ship's hold in such a manner that concentrates will not be spilled into the water.

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 cleanup operations since this is the most thorough cleanup method. In no event will water be used to clean concentrate 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."

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INTER-STAFF COMMUNICATION

Date: December 5, 1986To: GABRIEL J. GALLINA, Assistant Port DirectorFrom: WILLIAM J. GARRETT, Manager, Marine OperationsSubject: PACO Terminals, Inc. Lease; 24th Street Marine Terminal

Regarding our upcoming meeting on Wednesday, December 10, 1986, at 2:00 P.M., with Mr. Glenn Howell of PACO, and Mr. Richard Murray of Cooper T. Smith (Executive Vice President), the following information is provided.

This is a 3 year 4 month lease commencing October 1, 1978 and expiring January 31, 1982 with seven one-year options to renew. Total term would be through January 31, 1989, if all options were renewed.

Besides their basic rental on the lease, they have a minimum tonnage requirement to meet of 124,740 metric tons per-lease-year. Appropriate wharfage would be charged if the minimum was not met.

The following is a listing of their tonnages since they have started:

1st year ending 1/31/80 - 148,785.35 M/T
2nd year ending 1/31/81 - 259,544.91 M/T
3rd year ending 1/31/82 - 541,086.99 M/T
4th year ending 1/31/83 - 456,227.38 M/T
5th year ending 1/31/84 - 105,244.95 M/T
6th year ending 1/31/85 - 196,804.00 M/T
7th year ending 1/31/86 - 290,277.22 M/T

As you can see, they fell short of the minimum tonnage in the lease year ending January 31, 1984, all other years were well in excess.

With the arrival of two vessel during this month, they will completely deplete their inventory of Copper Concentrate with no further shipments planned. It is their intent to totally clean the dock area of all Concentrate after the second vessel leaves.

At least for the 1987 time frame, they are looking at possible spot shipments only with regard to Copper exports.

ORIGINAL SIGNED BY WILLIAM J. GARRETT
WILLIAM J. GARRETT

INTER-STAFF COMMUNICATION

Date: February 2, 1987To: DIRK I. MATHIASSEN, Associate Property Manager, Property DepartmentFrom: WILLIAM J. GARRETT, Manager, Marine OperationsSubject: PACO Terminals, Inc. Lease - 24th Street Marine Terminal

Reference is made to your request regarding the tonnage shipped by PACO during their lease year ending January 31, 1987. You will note the tonnage figures have been converted to metric, per our Tariff No. 1-F.

Tonnage Requirement Under The Lease	-	137,500 S/T
Metric Equivalent	-	124,740 M/T

A total of twelve (12) vessels handled 197,790.52 metric tons during the above-referenced period.

C. SIGNED BY WILLIAM J. GARRETT
WILLIAM J. GARRETT

Copy to G. J. Gallina

a report to...

February 23, 1978

THE BOARD OF PORT COMMISSIONER



subject: MAJOR NEW CARGO FOR 24TH STREET

Earlier this year, the Board was advised that serious interest from a large organization had been shown in shipping copper concentrates to the Orient via the 24th Street Marine Terminal. This evolution involves the transportation of copper ore concentrates to the 24th Street Terminal by open gondola car, the discharge of that heavy material to paved open storage, and the transportation by large skip-loaders to a position on the apron beneath the container crane. This latter movement is accomplished, of course, only when a ship is on berth. The container crane will be fitted with a bucket which will transport the material from the apron into the vessel's holds. A large metal plate will be placed on the apron to contain the granular material during the transfer.

The Port staff has been working on this movement, which is now estimated to consist of not less than 125,000 tons per year. This material is quite valuable--at \$800 per ton, the total shipment per year would have a value of \$100 million. The evolution will require a great number of longshoremen man hours for all of its phases. The 125,000-ton per annum figure may also be exceeded.

The location which has been selected for the storage of this material is that part of the container yard most adjacent to the scrap iron storage operation. This will maintain good capability to handle containers with ease on the remainder of the presently paved area. No dislocations of any current operations are expected. The longshoremen's activity at the 24th Street area will increase dramatically with the commencement of this operation.

Representatives of the shipping organization have been in San Diego this week and have been advised that it will be necessary for the lease and the terminal operators agreement to be approved by the Federal Maritime Commission before this operation can start. They are quite anxious to get moving with the shipments.

The cargo is presently moving from Arizona to a Gulf port, and then to Japan.

The arrangement contemplated is a four-year lease with several one-year options on the part of the shipper. The lease will provide that the company will pay a rental for the use of the improved property, plus a wharfage of 50¢ per ton on a minimum of 125,000 tons per year, whether or not that amount is shipped. Financially, the arrangement will be of significance to the Port. From the employment standpoint, it should be even more beneficial to the community.

We are prepared to recommend to the Board of Port Commissioners the granting of a lease and the execution of a terminal operators agreement for this operation. Appropriate agenda sheets and further details will be provided at an early meeting--probably March 7.



DON L. NAY
Port Director

DLN:mrs

**Certified
Copy**

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

PUBLIC HEARING

**TO CONSIDER AMENDMENT OF CLEANUP AND ABATEMENT
ORDER 85-91 TO INCLUDE SAN DIEGO UNIFIED PORT DISTRICT
AS A RESPONSIBLE PARTY FOR COMPLYING WITH CLEANUP
AND ABATEMENT ORDER 85-91**

TRANSCRIPT OF PROCEEDINGS

SAN DIEGO, CALIFORNIA

FEBRUARY 27, 1989

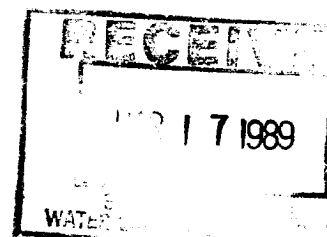
LUCAS, BRIANDI & VAN DEUSEN

**CERTIFIED SHORTHAND REPORTERS
1101 CHAMBER BUILDING • 110 WEST "C" ST.
SAN DIEGO, CALIFORNIA 92101**

(619) 239-4151

REPORTED BY: LEONARD J. DANIELS, CSR NO. 3376

**LUCAS, BRIANDI, LEWIS & VAN DEUSEN
SUITE 705 CHAMBER BUILDING - 110 WEST C STREET
SAN DIEGO, CALIFORNIA 92101
(619) 239-4151**



CUT 003329

1 CHAIRMAN FOLEY: ITEM NUMBER 14, THE PUBLIC
2 HEARING WHICH IS CONTINUED FROM THE JANUARY 23RD MEETING.
3 I'D LIKE TO MENTION ON ITEM NUMBER 14 THIS IS A
4 CONTINUATION. I'LL DISPENSE WITH READING ALL THE PREAMBLE
5 TO A PUBLIC HEARING EXCEPT THAT I'D LIKE TO ADDRESS --

6 MR. DELANEY: MR. CHAIRMAN, IF I COULD
7 INTERRUPT FOR ONE MINUTE. THE HEARING WAS CLOSED AT THE
8 LAST MEETING AND IT WAS -- WRITTEN RECORD WAS HELD OPEN FOR
9 A PERIOD OF 15 DAYS. STAFF IS RECOMMENDING THAT WE REOPEN
10 THE PUBLIC HEARING THIS MORNING. THE RECORD SHOULD SHOW IT
11 ISN'T A CONTINUATION BUT REOPENING THE PUBLIC HEARING.

12 MRS. STOCKWELL: WHAT IS THE STAFF'S REASONING
13 FOR THAT, PLEASE?

14 MR. DELANEY: I'M SORRY?

15 MRS. STOCKWELL: WHAT IS THE STAFF'S REASONING
16 FOR REOPENING?

17 MR. DELANEY: RECOMMENDATION OF OUR STAFF
18 COUNSEL IS THAT WE REOPEN THE HEARING TO GIVE EACH PARTY A
19 SPECIFIED PERIOD OF TIME TO PRESENT, SAY, 15 MINUTES TO
20 PRESENT THEIR SIDE OF THE ARGUMENTS AND THEN A FIVE MINUTE
21 REBUTTAL PERIOD TO ALLOW OTHERS TO TESTIFY.

22 THE HEARING WAS CLOSED LAST TIME AFTER ONLY THE TWO
23 PRINCIPAL PARTIES WERE ALLOWED TO TESTIFY AND WE DIDN'T
24 HAVE AN OPPORTUNITY TO LET ANYONE ELSE THAT MAY HAVE WISHED
25 TO TESTIFY TO DO SO AT THAT HEARING. SO WE FEEL THAT WE

1 HAVE TO REOPEN AT LEAST FOR THAT.

2 MRS. STOCKWELL: I THOUGHT THAT'S WHAT THE 15
3 DAYS WAS FOR, THAT NOT ONLY THE TWO PARTIES INVOLVED BUT
4 ANYONE ELSE COULD SUBMIT WRITTEN COMMENTS WITHIN THOSE 15
5 DAYS.

6 MS. VASSEY: WELL, FOR ONE THING, MEMBERS OF
7 THE PUBLIC DO HAVE A RIGHT TO PRESENT NOT ONLY WRITTEN BUT
8 ORAL COMMENTS AT A HEARING. MY PRINCIPAL REASON FOR
9 RECOMMENDING REOPENING THE HEARING WAS THAT THE PARTIES,
10 THE PRINCIPAL PARTIES, DID NOT HAVE THE OPPORTUNITY, FOR
11 EXAMPLE, TO CROSS-EXAMINE, WHICH IS IMPORTANT, AND IN
12 ADDITION, THERE WAS SOME CONFUSION ABOUT WHETHER THE RECORD
13 WAS HELD OPEN STRICTLY FOR ORAL ARGUMENT OR FOR ACTUAL
14 EVIDENTIARY TYPES OF MATERIALS, AND MR. LORMAN HAS ARGUED
15 STRENUOUSLY THAT IT WOULD BE A DENIAL OF HIS DUE PROCESS
16 RIGHTS IF HE WAS NOT ALLOWED TO REBUT ADDITIONAL EVIDENCE
17 INTRODUCED BY THE PORT DISTRICT, AND RATHER THAN GET INTO A
18 BIG DISPUTE ABOUT THAT, I WOULD RECOMMEND REOPENING FOR A
19 SHORT PERIOD OF TIME TO LET THE PARTIES WRAP UP THEIR
20 CASES.

21 MR. LORMAN: MR. CHAIRMAN, JOHN LORMAN FOR
22 PACO. I DO NOT HAVE, NOTWITHSTANDING THAT LETTER, SINCE I
23 WORKED MY MAY THROUGH PLANNING FOR TODAY ANY ADDITIONAL
24 WITNESSES I WANT TO INTRODUCE. I SEE JAY POWELL HERE.
25 THERE MAY BE SOME PUBLIC TESTIMONY, BUT I DON'T ON MY

1 BEHALF HAVE ANYTHING OTHER THAN A SUMMARY TYPE
2 PRESENTATION, AND DEPENDING ON WHAT THE PORT DOES,
3 DEPENDING WHAT THE RULING IS IF THEY PUT ON WITNESSES, I
4 WOULD RESERVE THE RIGHT TO CROSS-EXAMINE THOSE WITNESSES,
5 BUT I DON'T HAVE ANY WITNESSES TO PUT ON TODAY MYSELF.

6 CHAIRMAN FOLEY: OKAY. IS THERE A
7 REPRESENTATIVE FROM THE PORT DISTRICT THAT WISHES TO MAKE
8 COMMENTS ON ORGANIZATION OF THE HEARING IF WE REOPEN IT?
9 DO YOU HAVE ADDITIONAL WITNESSES, SIR?

10 MR. HOPKINS: I HAVE ADDITIONAL WITNESSES
11 HERE.

12 CHAIRMAN FOLEY: HOW MANY?

13 MR. HOPKINS: I HAVE TWO PEOPLE HERE, BUT THEY
14 ARE HERE ONLY BECAUSE I RECEIVED NOTICE ON FRIDAY THAT THIS
15 HEARING WAS BEING REOPENED AND THAT WE HAD BETTER GET OUR
16 ACTS TOGETHER AND GET DOWN HERE. IT WAS OUR UNDERSTANDING
17 THAT THE HEARING WAS CLOSED AS OF FEBRUARY 7TH AND WE ARE
18 PREPARED TO STAND ON THE RECORD OF THAT HEARING UNLESS THIS
19 BOARD THINKS THAT THERE'S SOME PROBLEM WITH THE EVIDENCE
20 THAT THE PORT DISTRICT HAS SUBMITTED.

21 ALSO MR. FURLEY AND MR. HUTTON ARE HERE IF THE PORT
22 DISTRICT HAS ANY -- I'M SORRY -- IF THIS BOARD HAS ANY
23 QUESTIONS OF THEM ABOUT ANY OF THESE MATTERS.

24 MS. VASSEY: IN LIGHT OF THE PARTIES'
25 STATEMENTS, PERHAPS WE COULD REOPEN IT SIMPLY TO ALLOW

1 MEMBERS OF THE PUBLIC TO MAKE STATEMENTS.

2 CHAIRMAN FOLEY: THAT DID NOT HAVE AN
3 OPPORTUNITY AT THE LAST HEARING AND THEN CLOSE THE HEARING?
4 WE'VE RECEIVED -- HAS EVERY BOARD MEMBER RECEIVED THE INPUT
5 FROM BOTH MR. LORMAN AND THE PORT DISTRICT FURNISHED US
6 PRIOR TO THE 15TH? THEY WERE MAILED OUT.

7 OKAY. WELL THEN, WHAT WE'LL DO TODAY IS WE'LL
8 REOPEN THE HEARING FOR PURPOSES OF RECEIVING TESTIMONY FROM
9 INTERESTED PARTIES, OTHER INTERESTED PARTIES THAN THE
10 CLAIMANTS AND SO FORTH, AND WE'LL GO AHEAD AND ALLOW A
11 LIMIT OF 10 MINUTES AT THE MAXIMUM FOR THAT PERSON OR
12 INDIVIDUAL. WE'LL CONCLUDE THE HEARING AND THEN WE'LL
13 ALLOW DISCUSSION FROM MEMBERS. IS THAT ACCEPTABLE TO THE
14 BOARD?

15 MS. FORSTER: YES.

16 CHAIRMAN FOLEY: OKAY. ALL RIGHT. LET ME
17 POINT OUT THAT ANY PERSON TESTIFYING ON THIS MATTER WILL
18 STATE HIS NAME, ADDRESS AND WHOM THEY OR HE OR SHE
19 REPRESENTS. WE MAY ASK QUESTIONS AT ANY TIME. THEY MAY BE
20 CROSS-EXAMINED, AND I'M GOING TO ASK ANYONE WHO INTENDS TO
21 TESTIFY TO PLEASE TAKE THE OATH AT THIS POINT IN TIME.

22 (ALL WITNESSES SEVERALLY SWORN)

23 CHAIRMAN FOLEY: THANK YOU VERY MUCH. MEMBERS
24 OF THE PUBLIC? I DON'T HAVE ANY SLIPS. SO YOU'LL HAVE TO
25 INTRODUCE YOURSELVES.

1 MR. POWELL: THANK YOU, MR. CHAIRMAN. I DID
2 SUBMIT A SLIP. I PUT THE WRONG AGENDA ITEM DOWN. I DO
3 HAVE A STATEMENT I'D LIKE TO DISTRIBUTE AND IT WILL BE
4 BRIEF. I WILL NOT TAKE MUCH TIME OF THE BOARD HERE THIS
5 MORNING.

6 WE BASICALLY -- MY NAME IS JAY POWELL AND I'M
7 REPRESENTING THE ENVIRONMENTAL HEALTH COALITION, 1844
8 FOURTH AVENUE. WE'RE NOT HERE TO TAKE SIDES, BUT WE DO
9 WANT TO SEE THAT THE REAL PROBLEM, THE POLLUTION OF SAN
10 DIEGO BAY, IS DEALT WITH EFFECTIVELY, AND FOR US THE ISSUES
11 ARE WHAT WILL GET THE CLEANUP UNDERWAY AND COMPLETED AND
12 WHAT WILL PREVENT FURTHER DISCHARGES INTO THE BAY FROM THE
13 SITE.

14 WHILE PACO HAS DUTIFULLY REPORTED AS A CONDITION BY
15 THIS BOARD A STORM DRAIN APPEARS TO BE DISCHARGING COPPER,
16 THERE STILL HAS BEEN NO ACTUAL CLEANUP OF THE AREA OR THE
17 LOADING AREA. THAT DISCHARGES OF COPPER TO THE BAY WERE
18 OCCURRING TO THE BAY WAS EVIDENT EARLY IN THE OPERATION OF
19 THIS FACILITY, AND OUR RECORDS SHOW THAT THE MUSSEL WATCH
20 PROGRAM RECORDED EXCESSIVE CONCENTRATIONS OF COPPER IN '83.

21 WHILE THE REGIONAL BOARD COMMENCED SOME CORRECTIVE
22 ACTIONS IN 1984, THE PERMIT WAS RENEWED, THE COPPER IS
23 STILL IN THE BAY AND WE SEE NO DEFINITIVE DATES SET FOR ITS
24 REMOVAL. THIS IS FIVE YEARS WITHOUT A GRAIN OF COPPER
25 REMOVED FROM THE BAY.

1 THE STAFF HAS VERY THOROUGHLY ANALYZED A COMPLEX
2 CASE AND WE BELIEVE THEIR ANALYSIS AND RECOMMENDED FINDINGS
3 ACCURATELY SET FORTH THE FACTS. WE DO HAVE ONE CONCERN
4 WITH THE ANALYSIS REGARDING LEGAL RESPONSIBILITY OF THE
5 PORT DISTRICT TO, QUOTE, PROTECT THE ENVIRONMENT.

6 STAFF COUNSEL STATES THAT THE PORT DISTRICT IS
7 PRIMARILY ENGAGED IN A COMMERCIAL ENTERPRISE. THE PORT
8 DISTRICT ALSO HAS THE STATUTORY RESPONSIBILITY TO PROMOTE
9 OTHER ACTIVITIES ON THE BAY REQUIRING THAT IT PROTECT THE
10 ENVIRONMENT. WHILE WE DO NOT BELIEVE THAT EXPLANATION, THE
11 CONCLUSION OF THE -- WE WOULD HOPE THAT THE BOARD AND ALL
12 PARTIES WOULD RECOGNIZE THAT THE PORT DISTRICT HAS A LEGAL
13 RESPONSIBILITY TO PROTECT THE ENVIRONMENT.

14 IN CONCLUSION, WE HOPE THE QUESTIONS THE BOARD WILL
15 PLACE TO YOUR STAFF ARE WHICH ACTION WILL BEST ACHIEVE THE
16 EXPEDITIOUS CLEANUP AND ABATEMENT OF THIS CONTINUING
17 DISCHARGE TO THE BAY AND WHEN MIGHT WE EXPECT TO SEE THE
18 ACTUAL CLEANUP OPERATIONS COMMENCED AND CONCLUDED. THANK
19 YOU VERY MUCH.

20 CHAIRMAN FOLEY: THANK YOU, MR. POWELL.
21 QUESTIONS?

22 MS. FORSTER: ARE YOU AN ATTORNEY?

23 MR. POWELL: NO, MA'AM. I'M HERE SPEAKING ON
24 BEHALF OF OUR ORGANIZATION AS A MEMBER OF THE INTERESTED
25 PUBLIC.

1 CHAIRMAN FOLEY: IS THERE ANYONE ELSE THAT
2 WISHES TO ADDRESS THE BOARD AT THIS TIME?

3 MR. LORMAN, YOU UNDERSTAND WE'RE GOING TO CLOSE THE
4 PUBLIC HEARING BASED ON THE EVIDENCE AND THE PUBLIC
5 TESTIMONY.

6 ANY FURTHER QUESTIONS BY MEMBERS OF THE BOARD?
7 WE'LL DECLARE THE PUBLIC HEARING CLOSED AND AT THIS POINT
8 IN TIME I'LL ASK FOR THE PLEASURE OF THE BOARD.

9 MR. DELANEY: MR. CHAIRMAN, IF I COULD
10 INTERRUPT. THE STAFF HAS PREPARED A TENTATIVE RESOLUTION,
11 ADDENDUM NUMBER 3, ORDER NUMBER 85-91. WITH THE BOARD'S
12 INDULGENCE, I WOULD SUGGEST YOU CALL UPON MR. BARKER FOR A
13 VERY BRIEF PRESENTATION OF THAT BEFORE THE BOARD COMPLETES
14 ITS DELIBERATIONS.

15 MR. BARKER: MEMBERS OF THE BOARD, FOR THE
16 RECORD, MY NAME IS DAVID BARKER. I'M A SENIOR ENGINEER
17 WITH THE WATER QUALITY CONTROL BOARD.

18 THE MATTER BEFORE YOU TODAY, AS YOU KNOW, IS TO
19 DETERMINE WHETHER OR NOT TO INCLUDE THE PORT DISTRICT IN
20 CLEANUP AND ABATEMENT ORDER 85-91 AS A PRIMARY RESPONSIBLE
21 PARTY OR A SECONDARY RESPONSIBLE PARTY, AND YOU'VE HEARD
22 EVIDENCE ON BOTH SIDES OF THAT ISSUE AT THE BOARD MEETING
23 IN JANUARY.

24 BASICALLY THERE ARE THREE ELEMENTS THAT SHOULD BE
25 CONSIDERED BY YOU TO DETERMINE WHETHER A LAND OWNER, WHICH

1 THE PORT DISTRICT IS IN THIS CASE, CAN BE HELD ACCOUNTABLE
2 FOR DISCHARGES, AND THOSE THREE ELEMENTS ARE OWNERSHIP OF
3 THE LAND, KNOWLEDGE OF THE ACTIVITY AND THE ABILITY TO
4 REGULATE IT. IT'S STAFF'S POSITION THAT ALL THREE OF THESE
5 ITEMS ARE PRESENT IN THIS CASE.

6 THERE'S A TENTATIVE ADDENDUM THAT WE PREPARED,
7 ADDENDUM NUMBER 3 TO ORDER 85-91, WHICH CONTAINS FINDINGS
8 IN THIS REGARD. BASICALLY I'LL QUICKLY SUMMARIZE THE
9 FINDINGS.

10 PACO LEASED LAND OWNED BY THE PORT DISTRICT FROM
11 MARCH 1978 THROUGH JANUARY 1989. THE PORT DISTRICT AT ALL
12 RELEVANT TIMES RETAINED EXCLUSIVE CONTROL OVER 120 FEET OF
13 LAND BETWEEN THE END OF PACO TERMINAL'S LEASEHOLD AND THE
14 PIER FACE. THE PORT DISTRICT OWNED A CONTAINER CRANE WHICH
15 WAS LEASED BY PACO TERMINALS FOR THE LOADING OF COPPER ORE
16 TO VESSELS, AND THAT PROBLEMS WITH THE OPERATION OF THIS
17 CRANE RESULTED IN DISCHARGES OF COPPER TO THE BAY.

18 I'D LIKE TO REMIND THE BOARD THAT WE IMPOSED
19 ADMINISTRATIVE CIVIL LIABILITIES ON PACO BACK IN APRIL OF
20 1988. SOME OF THE DISCHARGES WHICH THE BOARD IMPOSED THE
21 LIABILITY ON WERE DUE TO RELEASES OF COPPER FROM THIS
22 LOCATION, AND THE EVIDENCE BEFORE YOU TODAY SUGGESTS THAT
23 THE PORT DISTRICT HAD A ROLE IN THE OPERATION OF THE
24 LOADING ACTIVITIES.

25 THE PORT DISTRICT ALSO OWNED AND CONTROLLED THE

1 STORM DRAINS ON PACO TERMINAL'S LEASEHOLD. THE STORM
2 DRAINS ON THE PROPERTY WERE ALSO A VEHICLE FOR RELEASES OF
3 COPPER ORE TO THE BAY AND THE PORT DISTRICT KNEW OF THE
4 POTENTIAL FOR A DISCHARGE OF COPPER ORE TO THE BAY FROM THE
5 LEASED PREMISES AND THE LAND WHICH REMAINED IN THE PORT
6 DISTRICT'S EXCLUSIVE CONTROL.

7 THE REGIONAL BOARD INFORMED THE PORT DISTRICT ON
8 SEVERAL OCCASIONS OF THE POTENTIAL OF A DISCHARGE FROM THIS
9 OPERATION. THE PORT DISTRICT ALSO HAD THE ABILITY UNDER
10 LEASE AGREEMENTS WITH PACO TERMINALS TO CONTROL THE
11 ACTIVITIES THAT ITS TENANT WAS ENGAGED IN ON THE PROPERTY.

12 FINALLY, ANOTHER RELEVANT FACTOR IS PACO TERMINALS
13 HAD TERMINATED ITS LEASE WITH THE PORT DISTRICT. RECENT
14 MONITORING REPORTS TURNED IN BY PACO FOR JANUARY 1989
15 INDICATED THAT THERE ARE -- THERE IS EVIDENCE OF FURTHER
16 DISCHARGES OF COPPER ORE GOING ON INTO THE BAY. SO THIS
17 MOST CERTAINLY WOULD MAKE THE PORT DISTRICT A DISCHARGER
18 NOW.

19 BASED UPON THESE FACTORS, THE STAFF'S RECOMMENDATION
20 IN THE ADDENDUM IS TO NAME THE PORT DISTRICT AS A PRIMARY
21 RESPONSIBLE PARTY, AND THERE'S A DIRECTIVE TO THAT EFFECT
22 ON PAGE 3 OF THE TENTATIVE ADDENDUM AND STAFF RECOMMENDS
23 THE ADOPTION OF THE ADDENDUM.

24 THIS CONCLUDES MY PRESENTATION. ARE THERE ANY
25 QUESTIONS?

1 CHAIRMAN FOLEY: DAVID, I HAVE A QUESTION.
2 ARE WE -- I'LL SAVE IT FOR THE DISCUSSION. THANK YOU VERY
3 MUCH.

4 MR. THEILEN: I HAVE ONE QUESTION. PRIMARY OR
5 SECONDARY OR DOES IT SAY?

6 CHAIRMAN FOLEY: THE STAFF'S RECOMMENDATION,
7 IF I UNDERSTOOD WHAT DAVID JUST SAID, WAS PRIMARY.

8 MR. BARKER: EXACTLY.

9 MR. THEILEN: JUST MAKE THAT CLEAR.

10 MR. BARKER: PRIMARY RESPONSIBILITY BEING THAT
11 THE PORT DISTRICT WOULD BE INCLUDED IN THE ORDER AND WOULD
12 HAVE TO COMPLY WITH THE ORDER ALONG WITH PACO TERMINALS.

13 MR. THEILEN: DOES THAT PRIMARY INCLUDE
14 BEFORE, DURING THE LEASE TIME AND AFTER THE LEASE TIME? IS
15 THAT SPECIFICALLY --

16 MR. BARKER: EXACTLY. BY MODIFYING THE
17 CLEANUP AND ABATEMENT ORDER, THERE IS DIRECTIVES IN THE
18 ORDER THAT PROHIBIT DISCHARGES OF COPPER INTO THE BAY. BY
19 INCLUDING THE PORT DISTRICT IN THE ORDER, THE PORT DISTRICT
20 WOULD HAVE TO BEGIN TAKING MEASURES TO TERMINATE THE
21 DISCHARGES OF COPPER INTO THE BAY THAT OCCUR NOW MOSTLY DUE
22 TO STORM EVENTS.

23 MR. THEILEN: THAT WOULD ALSO COMPLY IF THERE
24 WAS NO LEASE WITH ANYBODY, JUST THEIR OWN LAND, WE'LL SAY
25 IF THERE WASN'T ANY LEASE, THEY WERE JUST DISCHARGING?

1 MR. BARKER: EXCUSE ME?

2 MR. THEILEN: I'M SAYING IF THERE'S NO LEASE
3 WITH PACO RIGHT NOW ON THAT PROPERTY. IS THAT RIGHT?

4 MR. BARKER: YES. THAT'S MY UNDERSTANDING.

5 MR. THEILEN: SO NOW YOU'RE SAYING THEY HAVE
6 RESPONSIBILITY FOR DISCHARGE WITHOUT A LESSEE ON THEIR
7 PROPERTY?

8 MR. BARKER: EXACTLY.

9 MR. THEILEN: ON ALL OF THEIR PROPERTIES ON
10 SAN DIEGO BAY?

11 MR. BARKER: JUST THIS PROPERTY. THERE'S
12 COPPER THERE BEING RELEASED FROM THE BAY -- INTO THE BAY.
13 PACO IS NO LONGER LEASING THE LAND. THE PORT DISTRICT HAS
14 CONTROL OVER THE LAND.

15 MR. THEILEN: THIS COVERS THE PACO LEASE AREA
16 ONLY THEN?

17 MR. BARKER: THE ISSUE I'M TALKING ABOUT IS
18 JUST THE PACO LEASEHOLD, YES.

19 CHAIRMAN FOLEY: OKAY. THANK YOU VERY MUCH,
20 DAVID. FURTHER QUESTIONS OR DISCUSSION?

21 MS. FORSTER: I HAVE SOME DISCUSSION.

22 CHAIRMAN FOLEY: YES, MRS. FORSTER?

23 MS. FORSTER: I HAVE SOME DISCUSSION BEFORE
24 SOMEONE MOVES THE MOTION. I WAS GOING -- I HAD A BIG FEAR
25 OF NAMING THE PORT PRIMARY BECAUSE OF THE PRECEDENT ALL

1 AROUND THE BAY AND I CONTINUE TO FEEL THAT THE PRIMARY USER
2 OF THE PROPERTY OR THE PERSON LEASING THE LAND SHOULD
3 ALWAYS BE HELD AS THE MAIN RESPONSIBLE PARTY. SO THE
4 LANGUAGE OF THE PORT BEING SECONDARY I THOUGHT WAS FAIR.
5 AND THE REASON THAT I WILL NOW SUPPORT THE STAFF
6 RECOMMENDATION IS THE RUNOFF FROM THE -- THE RUNOFF AFTER
7 PACO WAS THERE AND THE CONTINUING CONTAMINATION, BECAUSE I
8 THINK THAT THE PORT DISTRICT THROUGH THE PUBLICITY AND
9 THROUGH THESE -- THIS PROCESS SHOULD HAVE SHOWN THEIR --
10 SHOULD HAVE SHOWN THEIR POWERS BY GOING OUT AND DOING
11 WHATEVER THEY COULD TO CORRECT THE PROBLEM.

12 THE ONLY FEAR I HAVE IS THAT EVERYTHING WILL COME TO
13 A HALT AND THERE WILL BE THESE BIG LAWSUITS AND MR.
14 POWELL'S QUESTION OF WHETHER THIS WILL ACCELERATE AND MAKE
15 IT HAPPEN OR IF IT WILL ONLY THROW IT INTO THE COURTS FOR
16 ANOTHER FIVE YEARS. I'M REALLY AFRAID OF THE PRECEDENT AND
17 I'M AFRAID OF THE STALL, BUT YES, I UNDERSTAND IN THIS
18 SITUATION, IN THIS PARTICULAR CASE WHY THEY BOTH SHOULD BE
19 PRIMARY. SO -- BUT I JUST WANTED TO MAKE THOSE COMMENTS.

20 I ALSO APOLOGIZE TO MR. LORMAN FOR THE LAST BOARD
21 MEETING BEING SO -- KIND OF SHOOTING FROM THE HIP, THAT I
22 WAS SO UPSET BECAUSE I DIDN'T SEE -- IT WAS LIKE A BORN
23 AGAIN AFTER ALL THE MONTHS OF NOTHING HAPPENING AND THEN
24 YOU BEING SO UP TO DATE AND SO ORGANIZED AND SO
25 PROFESSIONAL. SO I APOLOGIZE.

1 MR. LORMAN: THANK YOU.

2 MS. FORSTER: YOU DID A GOOD JOB AND SO DID
3 THE PORT DISTRICT. IT'S UNFORTUNATE THAT THIS IS THE WAY
4 IT IS RIGHT NOW, BUT THOSE ARE MY COMMENTS.

5 CHAIRMAN FOLEY: YES, MRS. STOCKWELL?

6 MRS. STOCKWELL: WELL, MR. CHAIRMAN, I FEEL
7 THAT THE STAFF HAS CORRECTLY ASSESSED THE SITUATION HERE.
8 I DO NOT FEEL THAT IT'S PRECEDENT SETTING AS FAR AS THE
9 PORT ACTIVITIES IN OTHER PLACES IN THE BAY. I THINK EACH
10 ONE WILL BE HANDLED ON A CASE-BY-CASE BASIS AND THE SAME
11 SORT OF THOROUGHNESS THAT THIS ONE HAS BEEN DONE AND I
12 WOULD MOVE APPROVAL, MR. CHAIRMAN, OF ADDENDUM NUMBER 3 TO
13 ORDER NUMBER 85-91 AND CHANGING THE ORDER ON PAGE 3 TO
14 INSERT THE WORD PRIMARY BEFORE RESPONSIBLE PARTY.

15 MR. THEILEN: WHAT PARAGRAPH?

16 MRS. STOCKWELL: THE ORDER, THERE'S ONLY ONE
17 PART.

18 MR. THEILEN: I WOULD SECOND THAT MOTION.

19 CHAIRMAN FOLEY: IT'S BEEN MOVED AND SECONDED.
20 THE ONLY THING I'LL ALLOW AT THIS POINT IS IF YOU HAVE A
21 PROCEDURAL CORRECTION. I DON'T THINK WE WANT TO HEAR ANY
22 FURTHER -- WE HEARD THE TESTIMONY.

23 MR. HOPKINS: I DO HAVE ONE POINT ONLY BECAUSE
24 IT ADDRESSES A POINT MADE BY ONE OF THE BOARD MEMBERS THAT
25 I DON'T THINK HAD BEEN A SUBJECT BEFORE, AND IT WAS JUST

1 THE POINT WAS JUST MADE THAT THE REASON FOR CHANGING THIS
2 IS -- FOR MAKING THE PORT DISTRICT PRIMARILY RESPONSIBLE,
3 AT LEAST IN THE EYES OF ONE MEMBER, IS THE EXISTENCE OF THE
4 CONTINUING RUNOFF, WHICH IS, AS WE ALL KNOW, JUST CAME TO
5 EVERYONE'S ATTENTION IN JANUARY. THE PORT DISTRICT IS
6 MOVING, HAS MOVED AND WE CAN PRESENT EVIDENCE TODAY OF THE
7 WORK ORDER BEING PUT OUT TO DEAL WITH THAT. I WOULD HATE
8 TO SEE THIS DECISION BEING MADE HANDING THE PORT DISTRICT A
9 LIABILITY FOR A CLEANUP FOR THE ACTIVITIES OF SOMEONE ELSE
10 WHEN AS YOU --

11 CHAIRMAN FOLEY: I THINK WE'RE GETTING INTO --

12 MRS. STOCKWELL: MAY I CLARIFY THAT? MY
13 MOTION WAS NOT BASED ON THE STATEMENT THAT MRS. FORSTER
14 MADE. I HAVE FELT EVEN AFTER THE LAST MEETING THAT THE
15 PORT DISTRICT HAD PRIMARY RESPONSIBILITY.

16 MR. HOPKINS: I ALSO DO HAVE ONE OTHER
17 PROCEDURAL POINT, AND IT MAY BE MOOT DEPENDING ON WHAT THE
18 VOTE IS, BUT ARE THE OTHER MEMBERS OF THE BOARD WHO ARE NOT
19 PRESENT GOING TO HAVE AN OPPORTUNITY TO VOTE ON THIS?

20 CHAIRMAN FOLEY: NO. THAT'S NOT OUR
21 PROCEDURE. THERE'S A QUORUM PRESENT. THANK YOU. WE
22 HAVE --

23 MS. FORSTER: I HAVE TO SAY FOR THE RECORD --

24 CHAIRMAN FOLEY: I'M GOING TO HAVE DISCUSSION.

25 MR. THEILEN: WE HAVE A MOTION ON THE FLOOR,

1 MR. CHAIRMAN.

2 MS. FORSTER: THAT WASN'T MY ONLY REASON. SO
3 I WANT THE RECORD TO SHOW IN CASE THIS GETS TO COURT AND
4 SOMEBODY STARTS TO TALK ABOUT THAT. THIS WAS NOT MY ONLY
5 REASON. IT WAS ALSO A CUMULATIVE DECISION IN READING
6 EVERYTHING OVER ONE TIME AGAIN. SO I SHOULDN'T HAVE MAYBE
7 SAID IT JUST EXCLUSIONARY, BUT I DID.

8 MR. THEILEN: I CALL FOR THE QUESTION, A ROLE
9 CALL VOTE, PLEASE?

10 CHAIRMAN FOLEY: I'D JUST LIKE TO MAKE ONE
11 COMMENT BEFORE THAT AND I'LL DO THAT IMMEDIATELY AFTER. I
12 THINK IT'S IMPORTANT THAT -- IT'S PROBABLY BEEN SAID
13 ALREADY IN A NUMBER OF DIFFERENT WAYS. I THINK MY FEELING
14 IS THAT THERE'S CLEARLY A RESPONSIBILITY AND A DUTY ON THE
15 PART OF THE PRINCIPAL USER, NAMELY PACO, AND ANYTHING TO
16 THE CONTRARY TO THAT GIVES ME HEARTBURN.

17 ON THE OTHER HAND, I ALSO RECOGNIZE THAT WHEN YOU
18 PARTICIPATE IN AN ACTIVITY IN SOME FORM SUCH AS THE PORT
19 DID IN THIS CASE, YOU HAVE AN INHERENT RESPONSIBILITY THERE
20 NOT ONLY AS THE LAND OWNER BUT ALSO A MINOR PARTICIPANT,
21 NAMELY OPERATING A CRANE OR WHATEVER. I WISH WE COULD
22 DISTINGUISH BETWEEN THE TWO, BUT I'M NOT SURE WE CAN, BUT I
23 DO BELIEVE THE PRIMARY RESPONSIBILITY IS WITH THE OPERATOR
24 OF THAT TERMINAL. I BELIEVE THE PORT HAS A LEGITIMATE AND
25 LEGAL RESPONSIBILITY, AS WELL. I HOPE THAT THEY'RE ABLE TO

1 RESOLVE BETWEEN THEMSELVES WHO SHOULD BEAR THE BURDEN IN A
2 FAIR AND EQUITABLE WAY, AND I'M NOT VOTING ON ANYTHING ELSE
3 BUT THOSE FEELINGS.

4 AND I ALSO AM CONCERNED, DAVID, AND THAT'S WHAT I
5 WAS ABOUT TO ASK YOU, IS THE PORT DISTRICT UNDER A NPDES
6 PERMIT OR WILL BE SHORTLY OR HAVE THEY APPLIED, ET CETERA?

7 MR. BARKER: ONE ISSUE THAT WILL BE COMING UP
8 BEFORE THE BOARD IN COMING MONTHS IS THE QUESTION WHETHER
9 TO NAME THE PORT DISTRICT AS A LAND OWNER IN ALL THE NPDES
10 PERMITS SURROUNDING THE BAY, BUT ALSO IN PARTICULAR PACO'S
11 PERMIT. CURRENTLY THEY ARE NOT NAMED IN PACO'S PERMIT AND
12 THERE IS A MODIFICATION --

13 CHAIRMAN FOLEY: I THINK IT'S SOMETHING WE MAY
14 WANT TO DISCUSS. RIGHT NOW WE HAVE THE QUESTION --

15 MR. HOPKINS: MR. CHAIRMAN, IF I MAY HAVE ONE
16 FURTHER COMMENT? THIS RELATES TO LANGUAGE THAT I JUST
17 HEARD FOR THE FIRST TIME A MOMENT AGO ON THE
18 RECOMMENDATION, AND, AS YOU KNOW, I HAVE ARGUED LONG AND
19 HARD AND FUTILELY BEFORE THIS BOARD THAT NAMING THE PORT
20 DISTRICT SECONDARY AS OPPOSED TO PRIMARY WOULD ALLOW YOU TO
21 DETERMINE WHETHER PACO IN FACT REMAINED IN COMPLIANCE.
22 IT'S MY BELIEF THAT THIS BOARD STILL OR THAT THERE IS STILL
23 SENTIMENT ON THIS BOARD FOR WANTING TO BE SURE THAT PACO IS
24 IN COMPLIANCE AND THAT NAMING THE PORT DISTRICT PRIMARILY
25 RESPONSIBLE WILL REALLY MAKE IT IMPOSSIBLE TO MAKE THAT

1 DETERMINATION.

2 WHAT I WOULD REQUEST OR SUGGEST IS THAT IF THE BOARD
3 WISHES TO MAKE THE PORT DISTRICT PRIMARILY RESPONSIBLE AND
4 USE THE LANGUAGE THAT HAS BEEN SUGGESTED, THAT AN
5 ADDITIONAL SENTENCE BE ADDED WHICH STATES THAT IN THE EVENT
6 THAT THERE IS A VIOLATION OF THE ORDER, THAT NO
7 ADMINISTRATIVE CIVIL LIABILITY PENALTIES BE -- WILL BE
8 IMPOSED ON THIS BOARD BY -- ON THE PORT DISTRICT UNTIL 30
9 DAYS AFTER THE SAME HAVE BEEN IMPOSED ON PACO.

10 CHAIRMAN FOLEY: LET ME JUST COMMENT ON THAT,
11 AND, SHEILA, YOU MAY CORRECT ME, I WOULD THINK WE WOULD
12 HAVE THAT ABILITY TO MAKE THAT DECISION SUBSEQUENTLY ON
13 WHAT AND TO WHAT EXTENT AND TO WHOM AND HOW MUCH
14 ADMINISTRATIVE CIVIL LIABILITIES WE WOULD ELECT TO CHOOSE
15 TO USE. IS THAT CORRECT?

16 MS. VASSEY: CERTAINLY THE BOARD HAS THAT
17 DISCRETION. THE SUGGESTED LANGUAGE WOULD LOCK THE BOARD IN
18 AND I WOULD NOT RECOMMEND IT.

19 CHAIRMAN FOLEY: THANK YOU. HARRIET?

20 MRS. STOCKWELL: FURTHER CLARIFICATION OF THE
21 MOTION. CERTAINLY DOES NOT REMOVE THE RESPONSIBILITY OF
22 PACO INDUSTRIES.

23 CHAIRMAN FOLEY: OKAY. I THINK WE'LL CALL THE
24 ROLE. DIANNE?

25 MS. SOUKUP: MR. ARANT?

1 MR. ARANT: AYE.
2 MS. SOUKUP: MR. BADGER?
3 MR. BADGER: AYE.
4 MS. SOUKUP: MRS. FORSTER?
5 MS. FORSTER: AYE.
6 MS. SOUKUP: MR. THEILEN?
7 MR. THEILEN: AYE.
8 MS. SOUKUP: MRS. STOCKWELL?
9 MRS. STOCKWELL: AYE.
10 MS. SOUKUP: THE QUORUM HAS BEEN MET.
11 CHAIRMAN FOLEY: THANK YOU VERY MUCH.
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STATE OF CALIFORNIA)

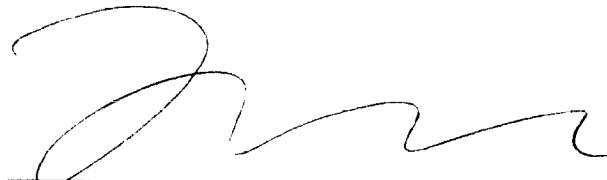
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COUNTY OF SAN DIEGO)

I, LEONARD J. DANIELS, CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT THE PROCEEDINGS AND TESTIMONY IN THE FOREGOING
MATTER WERE STENOGRAPHICALLY REPORTED BY ME ON JANUARY 23,
1989, AND WERE LATER TRANSCRIBED UNDER MY DIRECTION; AND
THAT THE FOREGOING 18 PAGES CONTAIN A TRUE AND COMPLETE
RECORD OF THE PROCEEDINGS AND TESTIMONY AT SAID HEARING.

EXECUTED AT SAN DIEGO, CALIFORNIA, ON THIS 14TH DAY
OF MARCH, 1989.



LEONARD J. DANIELS, CSR NO. 3376

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

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



March 20, 1989

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
P 959 506 206

Mr. Don Nay, Director
San Diego Unified Port District
P.O. Box 488
San Diego, California 92112

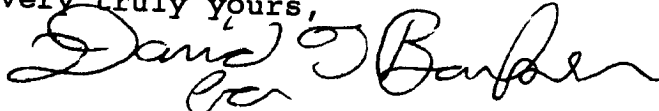
Dear Mr. Nay:

ADOPTION OF ADDENDUM NO. 3 TO ORDER NO. 85-91

On February 27, 1989, the Regional Board adopted the subject addendum adding the Port District as a responsible party for the discharges of copper ore to San Diego Bay. Enclosed is a copy of Addendum No. 3 to Cleanup and Abatement Order No. 85-91.

If you have any questions, please call Mr. David Barker at the above number.

Very truly yours,



LADIN H. DELANEY
Executive Officer

LKM:psr

Enclosure

cc: Jeremy Johnstone
Environmental Engineer
U.S. Environmental Protection Agency
Water Management Division (W-4)
215 Fremont Street
San Francisco, CA 94105

David B. Hopkins
Hillyer and Irwin, Attorneys At Law
530 "B" Street, 14th Floor
San Diego, CA 92101-4479

30

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Sacramento, California

PETITION FOR REVIEW AND STAY OF
REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
ADDENDUM No. 3 TO CLEANUP AND ABATEMENT ORDER 85-91

The following Petition is submitted pursuant to the provisions of 23 Cal. Adm. Code Sections 2050 and 2053.

- 1) Petitioner's Name and Address (23 Cal. Adm. Code §2050(1))

SAN DIEGO UNIFIED PORT DISTRICT
3165 Pacific Highway
San Diego, California 92112

- 2) Action to be Reviewed (23 Cal. Adm. Code §2050(2))

Addendum No. 3 to Cleanup and Abatement Order No. 85-91 issued by the Regional Water Quality Control Board - San Diego Region. Addendum No. 3 added the San Diego Unified Port District (the "Port District") as a primarily responsible party Under Cleanup and Abatement Order No. 85-91. That Order concerns the abatement and cleanup of discharges of copper concentrate as a result of copper concentrate handling, storage, and loading activities at the Port District's 24th Street Marine Terminal by PACO Terminals, Inc. ("PACO"). PACO operated at the site pursuant to leases and operating agreements from the Port District. Prior to Addendum No. 3, Cleanup and Abatement Order No. 85-91 had been issued only to PACO. (Cleanup and Abatement

Order No. 85-91 and Addenda Nos. 1, 2, and 3 are Exhibits A through D to Exhibit 3, Affidavit of David B. Hopkins, Esq. in Support of Petition for Stay.)

3) Date of Regional Board Action (23 Cal. Adm. Code §2050(a)(3))

Addendum No. 3 was adopted on February 27, 1989. Notice and a copy of the Addendum were first mailed to Petitioner on March 20, 1989.

4) Statement of Reasons the Regional Board's Action was Inappropriate or Improper (23 Cal. Adm. Code §2050(4))

Petitioner may supplement its Statement of Reasons by April 12, 1989, pursuant to an agreement with counsel for this Board. (See Exhibit 1, letter dated March 24, 1989 from David B. Hopkins, Esq. (counsel for the Port District) to Craig Wilson, Esq. (Supervising Staff Attorney, State Water Resources Control Board). These reasons include the following:

- A. Naming the Port District primarily liable along with PACO for the discharges is inappropriate because the Port District's only involvement in the discharges was passive, in its role as owner of the land and facilities from which the discharges originated. All of the discharges resulted from the activities of PACO, which conducted copper concentrate handling, storing,

and loading operations at the Port District's site pursuant to leases and operating agreements. Under these circumstances, it is appropriate to hold the Port District, at most, only secondarily liable and not primarily liable along with PACO. Holding the Port District only secondarily liable, at most, is supported by opinions of this Board and its office of General Counsel and the legal precedent which forms the basis for those opinions.

- B. Holding the Port District primarily liable along with PACO when the Port District's only involvement in the discharges was passive is also inappropriate because the Port District is a government agency. Opinions of this Board support holding a government agency which is only passively involved in discharges only secondarily liable, at most, rather than primarily liable. In addition, the Porter-Cologne Act embodies a policy of accomplishing cleanup without recourse to State funds. To further that policy, the Act specifically confers upon a State agency that has utilized government funds for cleanup a right of indemnity against other responsible parties.¹ Thus, naming the Port District primarily liable will only subvert this policy of the Porter-Cologne Act and necessitate the further use of

¹ The Port District also has additional rights to indemnity against PACO under the doctrine of equitable indemnity and specific indemnity provided under its leases and operating agreements with PACO.

State funds in pursuing the Port District's right to indemnity from PACO.

- C. Holding the Port District primarily liable for the discharges is improper to the extent that it is based on the Port District's "knowledge of the potential for discharge." See, Addendum No. 3 to Cleanup and Abatement Order No. 85-91, paragraph 5(g), **Exhibit D to Exhibit 3**. The Port District gained any knowledge of the potential for discharge only by conducting its Environmental Assessment of PACO's proposed activities before they began, as required by law. As a result of that process, the Port District notified the Regional Water Quality Control Board ("RWQCB") of PACO's planned operations. The RWQCB eventually issued an NPDES permit to PACO. The Port District properly fulfilled its environmental function and properly acted on its knowledge by including in its leases and operating agreements with PACO the requirements that PACO comply with all federal, state, and local laws and regulations, which encompasses the NPDES requirements.
- D. Holding the Port District primarily liable along with PACO when the Port District's only involvement in the discharges was passive is improper because the Port District properly relied upon the Regional Water Quality Control Board ("RWQCB") to enforce PACO's NPDES permit, or, at least, to notify the Port District of

the necessity of taking action against PACO. As a result of the Port District's Environmental Assessment of PACO's proposed activities, the Port District contacted the RWQCB and the RWQCB eventually issued an NPDES permit to PACO. That permit required PACO to submit a Best Management Practices Plan which would prevent discharges of copper concentrate into San Diego Bay. Before 1984, evidence became available that copper levels were rising off PACO's site and, therefore, that PACO was either not adhering to its plan or that its plan was inadequate. Nevertheless, the RWQCB did not take any enforcement or warning action against PACO, but instead renewed PACO's permit. This failure to act by the RWQCB would have substantially prejudiced any effort by the Port District to terminate PACO's lease because of these discharges. This does not suggest the RWQCB was derelict. But, it is improper for the RWQCB now to hold the Port District, another government agency, primarily liable for PACO's discharges because it failed to exercise its power to terminate PACO's lease, when any ability to terminate the lease was jeopardized by the RWQCB's own action and inaction.

- E. It is improper, and violates the doctrine of laches, to name the Port District to Cleanup and Abatement Order No. 85-91 thirty-eight months after the Order issued. Such a long delay also violates due process as to the Port District. The long delay renders it impossible

for the Port District to participate in formulating the cleanup procedures or standards to which it is now being held or to otherwise have participated in the preliminary preparations for cleanup.

E. Naming the Port District primarily liable for the discharges is particularly improper and inappropriate because it was done on PACO's petition and upon evidence presented by PACO. PACO has taken factual and legal positions in other litigation that are contrary to the positions it took before the RWQCB in urging that the Port District be added as a primarily responsible party. PACO should be estopped from taking such contradictory positions and this Board should not condone such conduct by granting PACO's petition.

5) Manner in which Petitioner is Aggrieved (23 Cal. Adm. Code §2050(a)(5))

Addendum No. 3 imposes joint and several liability on the Port District with PACO for all subsequent obligations required by Order 85-91. In addition, Addendum No. 3 subjects the Port District to civil liabilities up to \$15,000.00 per day in the event of future noncompliance with the Order.

6) Specific Action Requested by Petitioner (23 Cal. Adm. Code §2050(a)(6))

Petitioner requests the following specific action.

- A. Rescission of Addendum No. 3 to Cleanup and Abatement Order No. 85-91.

- B. In the alternative, reissuance of Addendum No. 3 to Cleanup and Abatement Order No. 85-91 to the effect that, because PACO has terminated its lease and operating agreement with the Port District, the Port District is primarily responsible for abating any continuing discharge of copper concentrate from the Port District's 24th Street Marine Terminal.

- C. In the alternative, reissuance of Addendum No. 3 to Cleanup and Abatement Order No. 85-91 to establish that the Port District shall be only secondarily liable for the provisions of Cleanup and Abatement Order No. 85-91, to become primarily responsible for those provisions only upon sixty days notice from the Executive Officer of the Regional Water Quality Control Board to the Port District that PACO is in default of a provision of that Order.

D. In the alternative, reissuance of Addendum No. 3 to Cleanup and Abatement Order No. 85-91 to the effect that, because PACO has terminated its lease and operating agreement with the Port District, the Port District is primarily responsible for abating any continuing discharge of copper concentrate from the Port District's 24th Street Marine Terminal; and also providing that the Port District shall be only secondarily liable for the cleanup provisions of Cleanup and Abatement Order No. 85-91, to become primarily liable for the cleanup provisions only upon sixty days notice from the Executive Officer of the Regional Water Quality Control Board that PACO has defaulted on one of its obligations under the Cleanup and Abatement Order.

E. In addition to one of the above alternatives, a stay of Addendum No. 3 to Cleanup and Abatement Order No. 85-91 pending this appeal. (See Section 11 to this Petition and Exhibit 3, Affidavit of David B. Hopkins in Support of Petition for Stay, with attachments thereto.)

7) Statement of Points and Authorities (23 Cal. Adm. Code §2050(A)(7))

Petitioner's Statement of Points and Authorities will be provided by April 12, 1989, pursuant to the Port District's agreement with counsel for this Board. (See Exhibit 2)

8) List of Affected Parties (23 Cal. Adm. Code §2050(a)(8))

The list of affected parties is to be provided by the Regional Board. Petitioner requested the list from the Regional Board on March 10, 1989. A copy of that Request is attached hereto as Exhibit 2. Petitioner has not yet received the list from the Regional Board.

Interested parties known to the Petitioner include

- a) PACO Terminals, Inc.;
- b) Pate Stevedoring Company,
1248 Conception Street
Mobile, Alabama 36601;
- c) Cooper/T. Smith Stevedoring,
Commerce Building
Mobile, Alabama 36601;
- d) Environmental Health Coalition,
1844 Third Avenue
San Diego, California 92101

9) Statement of Service (23 Cal. Adm. Code §2050(a)(9))

A copy of this Petition has been sent to the following:

- a) Regional Water Quality Control Board
San Diego Region
9771 Clairemont Mesa Boulevard, Suite B
San Diego, California 92114-1331

ATTN: Ladin H. Delaney,
Executive Director

b) John J. Lormon, Esq.
GRAY, CARY, AMES & FRYE
401 "B" Street, Suite 1700
San Diego, California 92101

(Counsel for PACO Terminals, Inc.)

- 10) Request that Regional Board Prepare Record (23 Cal. Adm. Code §2050(10))

On March 10, 1989, Petitioner requested the Regional Board to prepare the record of its decision regarding Addendum No. 3 to Cleanup and Abatement Order No. 85-91. A copy of that request is attached hereto as **Exhibit 2**.

- 11) Petition for Stay (23 Cal. Adm. Code §2053).

The Administrative Code provides that this Board may stay an action of a Regional Board provided the petitioner alleges facts and produces proof of:

- 1) Substantial harm to the petitioner or to the public interest if a stay is not granted;
- 2) A lack of substantial harm to other interested persons and to the public interest if a stay is granted; and,
- 3) Substantial questions of fact or law regarding the disputed action.

23 Cal. Adm. Code §2053. That same section also requires a supporting affidavit, which is provided and attached hereto as **Exhibit 3**.

This petition meets all the requirements for issuance of a stay. First, the Port District is subject to substantial harm in the absence of a stay. Addendum No. 3 subjects the Port District to potential civil liabilities in the event of noncompliance with Cleanup and Abatement Order No. 85-91. Those civil liabilities may run as high as \$5,000.00 per day (is assessed by the RWQCB itself) or \$15,000.00 per day (if assessed by a court). Cal. Water Code §13350(d).

Moreover, the Port District is not in a position to monitor the compliance status of the Order in the coming months. The Order requires submission of a draft bioassay report to the Army Corp of Engineers (ACOE) and the Environmental Protection Association (EPA) by April 25, 1989; submission of a dredge permit application to the ACOE and the EPA on June 13, 1989; and preparation of detailed dredge specifications by August 22, 1989. The signed dredge contract is not due until by September 19, 1989 and cleanup is not required until May 15, 1990. Cleanup and Abatement Order No. 85-91, Addendum No. 2.²

² Addendum No. 2 contains the current operative provisions of Cleanup and Abatement Order No. 85-91. They are as follows:

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:

(footnote continued)

Based upon PACO's representations to the Regional Water Quality Control Board prior to the option of Addendum No. 3 naming the Port District, it is the Port District's understanding that PACO has already had significant communications with the ACOE and the EPA regarding the bioassay report, bioassay plan, and the dredge permit application. (Exhibit 3, AFFIDAVIT, Paragraph 9.) In order to learn status of these communications, and therefore the compliance status of the Cleanup and Abatement Order and its likely obligations under Addendum No. 3, the Port District has requested from PACO documentation of the status of its requests to the ACOE and the EPA. PACO refused to provide

(footnote continued from previous page)

<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

the Port District with that documentation, purportedly because the Port District had determined to appeal the issuance of Addendum No. 3. (Exhibit 3, AFFIDAVIT, Paragraphs 5 through 8.) The result is that the Port District is significantly hampered in learning the compliance status of the Order, the likelihood of any violation of these deadlines, and the steps it should best take to prevent a violation.

Under these circumstances, the only means by which the Port District can assure compliance with the Order is to submit its own draft bioassay report and dredge permit applications to the ACOE and the EPA. To the best of the Port District's information and belief, these steps would unnecessarily duplicate work that has already been done by PACO. Moreover, submitting additional applications could jeopardize ACOE and EPA approvals for the cleanup project if the Port District's applications differ in any significant respect from PACO's. In addition to possibly jeopardizing the cleanup progress, putting the Port District to this additional and unnecessary expense is not in the public interest since the Port District is itself a public agency.³

³ It is important to note that, even if PACO agreed to provide this information to the Port District, or if the information were otherwise available, this Petition would still meet the requirements for a stay. Even in that event, Addendum No. 3 still substantially harms the Port District while a stay pending appeal would neither delay the cleanup nor harm PACO. The unavailability of the information to the Port District because of this appeal merely underscores the appropriateness of a stay.

On the other hand, issuing a stay of Addendum No. 3 will not harm the public interest. A stay will not delay the cleanup itself. Under Addendum No. 2, cleanup is not scheduled to begin until September 19, 1989 in any event, and is not scheduled to be completed until May 15, 1990. A stay of Addendum No. 3 pending this appeal should not jeopardize that schedule.

Nor should a stay of Addendum No. 3 pending the appeal jeopardize PACO's ability to submit the necessary reports, applications and plans in the coming months. It is the Port District's understanding from representations made to the RWQCB by PACO that PACO is on schedule in its dealings with the ACOE, the EPA, and the RWQCB. (Exhibit 3, AFFIDAVIT, Paragraph 9.)

In addition, staying Addendum No. 3 during the pendency of this appeal does not cause any substantial harm to PACO. PACO is under an obligation to comply with requirements of Addendum No. 2 in any event; therefore, staying Addendum No. 3 does not impose any additional or obligation on PACO.

Also, a stay also does not impose any additional cost on PACO, since Addendum No. 3 does not address the issue of allocating financial responsibility between the Port District and PACO. PACO has consistently contended that the issuance

of Addendum No. 3 has no bearing on any allocation issues, since all of those issues must be resolved in some other forum.

Finally, substantial questions of fact of law exist regarding the issuance of Addendum No. 3. Some of those issues are set out in Section 4, above, the Statement of Reasons the Regional Board's Action was Inappropriate or Improper. The most significant questions of fact and law involve the propriety of adding to a Cleanup and Abatement Order over three years after its issuance an additional primarily responsible party which was merely the owner of the land and facilities from which its tenant/licensee caused the discharges.

For all these reasons, it is appropriate that this Board issue a stay of Addendum No. 3 to Cleanup and Abatement Order No. 85-91 pending appeal.

DATED: March 28, 1989

Respectfully submitted,

HILLYER & IRWIN

By: David B. Hopkins
David B. Hopkins
Attorneys for Petitioner,
SAN DIEGO UNIFIED PORT DISTRICT

WILLIAM HILLYER
OSCAR F. IRWIN
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DEB C. PEDERSOOTER
STEPHEN M. BRIGANDI
DENNIS O. SEYMOUR JR.
JAMES M. CADY
MARK J. MECKLER

March 24, 1989

IN REPLY REFER TO
OUR FILE 8481.14

STATE WATER RESOURCES CONTROL BOARD
Office of Chief Counsel
Post Office Box 100
Sacramento, California 95801

Attention: Craig Wilson, Esq.
Supervising Staff Attorney

Re: Petition for Review of Addendum No. 3 to
Cleanup and Abatement Order No. 85-91 of the
Regional Water Quality Control Board -
San Diego Region

Dear Mr. Wilson:

This letter confirms our telephone discussion of March 23, 1989 in which we discussed the deadlines by which the San Diego Unified Port District ("Port District") should file its Petition For Review and Stay of Addendum No. 3 to Cleanup and Abatement Order No. 85-91 issued by the Regional Water Quality Control Board of the San Diego Region. In that conversation you advised that, for jurisdictional purposes, it will be necessary for the Port District to file a Petition by March 29, 1989, thirty days from the Regional Board's adoption of Addendum No. 3 on February 27, 1989. However, you also agreed that the Port District could satisfy this jurisdictional requirement by filing an incomplete Petition at that time, and that the Port District would be permitted to complete its Petition by April 12, 1989. Specifically, it is our intention to supplement the Petition by filing on that later date Points and Authorities and a more complete statement of reasons the Regional Board's action was improper.

You explained that this two week extension was consistent with general State Board policy, which permits petitioners to amend and complete their petitions for review within a reasonable time of filing the initial petition, provided the initial petition is filed within the thirty day jurisdictional time period. In addition, you agreed that the requested extension is particularly

HILLYER & IRWIN
A PROFESSIONAL CORPORATION

Craig Wilson, Esq.
March 24, 1989
Page 2

appropriate in this case because the Regional Board did not send formal notice or a copy of Addendum No. 3 to the Port District until March 20, 1989 and because of the logistics of obtaining any necessary approval of the appeal materials by the Port District, a government agency.

I appreciate your cooperation in this regard.

Very truly yours,

HILLYER & IRWIN



David B. Hopkins

DBH:koj

cc: Don L. Nay, Port Director, SAN DIEGO UNIFIED PORT DISTRICT
Joseph D. Patello, Esq., SAN DIEGO UNIFIED PORT DISTRICT
John J. Lormon, Esq. (Counsel for PACO Terminals, Inc.)

WILLIAM HILLYER
OSCAR F. IRWIN
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NORMAN R. ALLENBY
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DEB C. PEDERSDOTTER
STEPHEN M. BRIGANDI
DENNIS O. SEYMOUR JR.

March 10, 1989

IN REPLY REFER TO
OUR FILE 8481.14

REGIONAL WATER QUALITY CONTROL
BOARD
San Diego Region
9771 Clairemont Mesa Boulevard
Suite B
San Diego, California 92124-1331

HAND DELIVERY

ATTENTION: Ladin H. Delaney, Executive Director
David T. Barker, Senior Water Resource Control Engineer

Dear Mr. Delaney and Mr. Barker:

The San Diego Unified Port District ("the Port District") has authorized this office to prepare an appeal of the Regional Water Quality Control Board's Addendum No. 3 to Cleanup and Abatement Order No. 85-91, which adds the Port District as a primarily responsible party under that Order along with PACO Terminals, Inc.

Accordingly, please provide us with an "official copy" of Addendum No. 3 to Cleanup and Abatement Order No. 85-91, as adopted and issued by the Regional Board.

Also, please provide this office with a list of persons, if any, other than the Port District and PACO Terminals, Inc., known by the regional board to have an interest in the subject matter of this appeal. Section 2050(a)(8) of the Regulations governing review by the State Board of actions by a regional board requires the petition for review to contain such a list which "shall be obtained from the regional board."

Finally, this letter also shall serve as the request required by Section 2050(a)(10) of those regulations that the Regional Board prepare a copy of the Regional Board record, including a copy of the tape recording of the Regional Board action or a transcript, if available.

CUT 003367

HILLYER & IRWIN
A PROFESSIONAL CORPORATION

Mr. Ladin Delaney
March 10, 1989
Page 2

I appreciate your prompt response to this request in light of the short time limit in which an appeal must be prepared.

Very truly yours,

HILLYER & IRWIN


David B. Hopkins

DBH:koj

cc: Sheila K. Vassey, Esq.

John J. Lormon, Esq.
Counsel for PACO Terminals, Inc.

Joseph D. Patello, Esq.
Counsel for San Diego Unified Port District

HILLIER & IRWIN
ESNA@GON

Mr. Ladin Delaney
March 10, 1989
Page 3

bcc: Mark D. Martin, Esq.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

Sacramento, California

**AFFIDAVIT OF DAVID B. HOPKINS IN SUPPORT OF
PETITION OF SAN DIEGO UNIFIED PORT DISTRICT FOR
STAY OF ADDENDUM No. 3 TO CLEANUP AND ABATEMENT
ORDER No. 85-91 ISSUED BY THE
REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION**

I, DAVID B. HOPKINS, ESQ., being duly sworn, state as follows:

1. I am an attorney at law licensed to practice in the State of California. I am of counsel to the law firm HILLYER & IRWIN which represents the San Diego Unified Port District ("the Port District") with respect to Cleanup and Abatement Order No. 85-91. Cleanup and Abatement Order No. 85-91 and Addenda 1, 2, and 3 are attached hereto as Exhibits A through D, respectively.

2. On February 27, 1989, the Regional Water Quality Control Board for the San Diego Region ("RWQCB") adopted Addendum No. 3 to Cleanup and Abatement Order No. 85-91 (Exhibit D hereto). That Addendum adds the Port District as a primarily responsible party under the Order along with PACO and therefore requires the Port District to comply with all subsequent deadlines imposed by the Order.

3. On November 21, 1988, the RWQCB adopted Addendum No. 2 to Cleanup and Abatement Order No. 85-91 (Exhibit C hereto) which sets out the compliance schedule under the Order. Under that compliance schedule, the cleanup is not to begin until September 19, 1989, and is to be completed by May 15, 1990. That

same schedule required PACO to submit a revised bioassay plan with sediment map to the ACOE and EPA by January 17, 1989. It also requires submission of a draft bioassay report to the ACOE and EPA by April 25, 1989; submission of a dredge permit application to the ACOE and EPA by June 13, 1989 and preparation of detailed dredge specifications by August 22, 1989.

4. The Port District has no knowledge whether PACO complied with the requirement of submitting a revised bioassay plan with sediment map to the ACOE and EPA by January 17, 1989. Similarly, the Port District has no knowledge what progress, if any, has been made by PACO in discussing the ACOE and EPA the requirements of the other reports and applications to be submitted to those agencies in the coming months or any progress that may have been made in preparing those reports and applications.

5. On February 28, 1989, after the adoption of Addendum No. 3 to Cleanup and Abatement Order No. 85-91, I wrote to counsel for PACO to request the information outlined in Paragraph 3 above. (That letter is **Exhibit B** hereto.) It states in part:

"It would also be helpful if you would send this office a copy of all correspondence by or on behalf of PACO regarding, referring or relating to Cleanup and Abatement Order No. 85-91 with any government agency involved with compliance with the Order, i.e., RWQCB, ACOE, EPA (with the exceptions of submissions to the RWQCB you have already copied to us). It would also be helpful if you would provide this office with a copy of all correspondence by or on behalf of PACO regarding, referring or relating to Cleanup and Abatement Order No. 85-91 with Westec or with any other consultants whose opinions have formed the basis of any communication by PACO to any governmental agency involved in the cleanup.

Finally, since PACO's future compliance with Cleanup and Abatement Order No. 85-91 is of vital importance to the Port District, please keep this office informed of all future communications regarding compliance with any governmental agencies involved with the cleanup, and with any experts whose opinions form the basis for any future communications with any such agency."

6. On March 8, 1989, counsel for PACO replied to my February 28 request but did not provide the information. The March 8 response suggested that PACO's willingness to comply with the request somehow depended upon whether the Port District decided to appeal the RWQCB issuance of Addendum No. 3 to Cleanup and Abatement Order No. 85-91. PACO's counsel's March 8, 1989 letter is **Exhibit F** hereto.

7. On March 10, 1989, I renewed my request for information to PACO's counsel. (A copy of that letter is **Exhibit G** hereto.) At the same time, in order to avoid any confusion, I notified PACO that the Port District had authorized an appeal of Addendum No. 3. The letter continued

"Nevertheless, I hope that you will comply with the request I made to you in my February 28, 1989 letter, and with the additional request in this letter. I fail to see how the pendency of an appeal of that decision would affect your decision whether to provide us with the information we requested. The existence of an appeal does not create any additional conflict between PACO and the Port District. In any event, PACO and the Port District need to resolve allocation issues through some means in light of all of the facts and circumstances, including PACO's indemnification obligations to the Port District as set out in the lease and operating agreements, and the Port District's statutory right to indemnification from PACO.

8. I received no reply to my March 10 letter until March 22 when PACO's counsel again refused my request for any information. (PACO's counsel's March 22 letter is Exhibit H, hereto.) As a result of PACO's refusals, the Port District is unable to determine what steps it must take in order to assure compliance with Cleanup and Abatement Order No. 85-91.

9. I attended the November 21, 1988 meeting of the RWQCB at which Addenda No. 2 was adopted. To the best of my recollection, at that meeting PACO requested an extension of prior deadlines in the Order to comply with certain requests and scheduling requirements of the ACOE and EPA. Also, to the best of my recollection, RWQCB staff confirmed that PACO had had communications with the ACOE and EPA concerning those permits and that there appeared to be satisfactory progress in obtaining the necessary permits. However, I have no direct knowledge of the status of communications between PACO and either the ACOE or EPA.

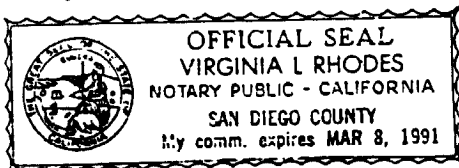
Further affiant sayeth not.

DATED: March 28, 1989

David B. Hopkins
DAVID B. HOPKINS

Subscribed and sworn to before me
this 28th day of March, 1989.

Virginia L Rhodes
NOTARY PUBLIC



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

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 November 26, 1979 the Regional Board adopted Order No. 79-72, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0107930, *Waste Discharge Requirements for Paco Terminals, Inc.* Order No. 79-72 regulated a potential intermittent discharge of copper ore from Paco Terminals, Inc., a copper ore transfer facility, located adjacent to San Diego Bay. Order No. 79-72 contained an expiration date of November 26, 1984. On November 26, 1984 the Regional Board adopted Order No. 84-50, NPDES No. CA0107930, *Waste Discharge Requirements for Paco Terminals, Inc. San Diego County.* Order No. 84-50 renewed the requirements of Order No. 79-72 and added additional discharge prohibitions to eliminate potential intermittent-discharges of copper ore to San Diego Bay from Paco Terminals, Inc.
2. Paco Terminals, Inc. ships an annual minimum of 137,750 tons of copper concentrate, a rendered form of cupric ferrous sulfide ore (chalcopyrite) through the San Diego Unified Port District's 24th Street Marine Terminal on San Diego Bay. The copper ore is shipped to the marine terminal via railroad gondola cars. Front-end loaders then stockpile the copper ore on asphalt pads adjacent to the loading pier for storage. Upon arrival of a transport ship the copper ore is moved to a container crane by the front-end loaders. The container crane then loads, using a clamshell bucket, the copper ore onto ships for export to other destinations.
3. Due to the potential discharge of copper ore to San Diego Bay by both storm runoff from the marine terminal area coming in contact with the copper ore and windborne transport of the copper ore, Paco Terminals, Inc. was required by the Regional Board to develop a Water Pollution Control Plan (Best Management Practices) to prevent the copper ore from being discharged to San Diego Bay under Provision B.2 of Order No. 79-72.

By letter dated November 26, 1979 Paco Terminals, Inc. submitted the following Water Pollution Control Plan, which was subsequently approved by Regional Board staff.

- a. Onsite storm drain inlets would be covered with a water filtration material to prevent any discharge of copper ore through the storm drains to San Diego Bay due to storm runoff.

- b. Copper ore stockpiles would be covered with a nylon reinforced polyethylene material to prevent the discharge or spillage of copper ore to San Diego Bay through wind action or storm water runoff.
 - c. During ship loading operations water trucks would be used to prevent the discharge or spillage of copper ore to San Diego Bay through wind action. In addition, net and nylon reinforced polyethylene tarps would be used to prevent the discharge or spillage of copper ore to San Diego Bay.
 - d. After ship loading operations, street sweepers would be used to remove any residual copper ore from the pavement area.
4. On July 31, 1984 Paco Terminals, Inc. submitted their application for renewal of Order No. 79-72 and amended their November 26, 1979 Best Management Practices Plan. The amended Best Management Practices Plan was approved by the Regional Board and included as Finding No. 7 to Order No. 84-50:
- "a. The storage pad at Berth Four, 24th Street Terminal is constructed in such a manner that the pad slopes landward in a line approximately 150 feet from the pierface. Concentrates, once removed from the railcars will be stored in stockpiles behind the slopeline which will be clearly identified. This will eliminate the possibility of any run off of concentrates over the pierface into the bay. By placing the concentrates a greater distance from the bay, the possibility of concentrate being blown into the bay will be further reduced. (See Attachment A of this Order)
 - b. By storing the concentrate as described in paragraph a, all run off water from the stockpiled concentrates will flow landward and will be contained in the storage pad area. Storm drains on the pad will be sealed and closed with the exception of a twelve inch riser pipe, the open end of which will be covered with polyester filtration cloth. This type of drainage system will allow water to flow into the storm drain only after it has reached sufficient depth to allow settling of the concentrates. The filtration cloth will further reduce the possibility of discharge of contaminants.
 - c. Concentrates will only be placed on the shipside of the slopeline during actual loading operation as the concentrates are being placed onboard ship. It is expected that there will be a maximum of five 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 pierface. This 20 foot safety zone will ensure that concentrates are kept back from the pierface to eliminate the possibility of spillage into the bay as concentrates are being handled on the dock. This safety zone will be clearly identified. (See Temporary Storage Boundary - Exhibit "A" attached hereto)

- e. Concentrates, once unloaded and stockpiled at the facility, will be completely covered with nylon reinforced polyethylene tarps which will be held in place by rubber ties. Tarps will be positioned and secured to prevent any blowing of the stockpiled concentrates. The tarps will remain over the concentrates at all times and will only be removed immediately before vessel loading.
 - f. Once tarps are removed from the concentrates in preparation for loading, and at all times during the loading operation, Paco Industries, Inc. will maintain on hand a manned 3,000 gallon water truck. This truck is capable of spraying a 40 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. 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 run off into the bay.
 - g. During loading operations, concentrates will be released from the clam bucket in to the ship's hold in such a manner that concentrates will not be spilled into the water.
 - 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 a new emphasis on manual labor (shovels and brooms) in cleanup operations since this is the most thorough cleanup method. In no event will water be used to clean concentrate 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 tarps as described above."
5. Order No. 79-72 contains the following applicable receiving water limitations and provisions:

a) Receiving Water Limitation A

"This discharge shall not cause a violation of any applicable water quality standard for receiving waters adopted by the Regional Board or the State Water Resources Control Act and regulations adopted thereunder. If more stringent applicable water quality standards are promulgated or approved pursuant to Section 303 of the Federal Water Pollution Control Act, or amendments thereto, the Regional Board will revise and modify this Order in accordance with such more stringent standards."

The water quality standards referenced above are contained in the Regional Board's *Comprehensive Water Quality Control Plan Report 1978 Amendments, San Diego Basin (9)* (Basin Plan). One pertinent water quality objective contained in the Basin Plan states:

"All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal or aquatic life..."

b) Provision B.1

"Neither the treatment nor the discharge of pollutants shall create a pollution, contamination, or nuisance as defined in the California Water Code."

c) Provision B.2

"Paco Terminals, Inc. shall develop and implement a Water Pollution Control Plan, acceptable to the Executive Officer of this Regional Board, detailing means of controlling the discharge of pollutants from the copper ore stockpiling and loading operation at the 24th Street Marine Terminal. In developing the plan, the discharger should consider methods of segregating the stockpiled copper to prevent contact with storm runoff discharged to San Diego Bay. Upon approval by the Executive Officer and the Regional Administrator, the Water Pollution Control Plan developed by the discharger shall become a condition of this permit."

6. Order No. 85-40 contains the following applicable prohibitions, receiving water limitations and provisions:

a) Prohibition A.2

"The deposition or discharge of copper concentrate ore into San Diego Bay or at any place where it would be eventually transported to San Diego Bay is prohibited."

Note: California Water Code Section 13050 defines contamination, pollution and nuisance as follows:

- i) "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" shall include any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.
- ii) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects (1) such waters for beneficial uses, or (2) facilities which serve such beneficial uses. "Pollution" may include "contamination".
- iii) "Nuisance" means anything which: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the treatment or disposal of wastes.

b) Discharge Specification B.2(c)

"Effluent discharged to San Diego Bay must be essentially free of...substances toxic to marine life due to increases in concentrations in marine waters or sediments."

c) Discharge Specification B.3

"The discharger shall comply with the Water Pollution Control Plan described in Finding No. 7. Any proposed amendment to the Water Pollution Control Plan must be approved in writing by the Executive Officer."

d) Receiving Water Limitations C.1(d)

"Water shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses."

e) Receiving Water Limitation
C.5(a) "Toxicity"

"All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life."

f) Receiving Water Limitation
C.6 "Toxic Materials Limitations"

"The discharge shall not cause the following toxic material limitations to be exceeded in the receiving waters upon the completion of initial dilution except that limitations indicated for radioactivity shall apply directly to the undiluted waste effluent."

<u>Constituent</u>	<u>Unit</u>	<u>6-Month¹ Median</u>	<u>Daily² Maximum</u>	<u>Instantaneous³ Maximum</u>
Copper	µg/l	5	20	50

¹ The six-month median concentration limit shall apply as a moving median of daily values for any 180-day period in which daily values represent flow-weighted average concentrations within a 24-hour period. For intermittent discharges, the daily values shall be considered to equal zero for days on which no discharge occurred.

² The daily maximum limitation shall apply to the results of a single composite sample collected over a period of 24 hours.

³ The instantaneous maximum concentration limit shall apply to grab sample determinations.

(g) Provision D.1

"Neither the treatment nor the discharge of pollutants shall create a pollution, contamination, or nuisance as defined by Section 13050 of the California Water Code."*

(h) Provision D.6

"This discharge shall not cause a violation of any applicable water quality standard for receiving waters adopted by the Regional Board or the State Water Resources Control Board as required by the Clean Water Act and regulations adopted thereunder. If more stringent applicable water quality standards are promulgated or approved pursuant to Section 303 of the Clean Water Act or Amendments thereto, the Regional Board will revise and modify this Order in accordance with the more stringent standards."

The water quality standards referenced above are contained in the Regional Board's *Comprehensive Water Quality Control Plan Report, San Diego Basin (9)* (Basin Plan) and amendments. One pertinent water quality objective contained in the Basin Plan states:

"All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal or aquatic life..."

7. The Water Quality Control Plan for Ocean Waters of California - 1983 (Ocean Plan) was adopted by the State Board on November 17, 1983. The 1983 Ocean Plan established beneficial uses of the ocean waters of the state, water quality objectives, general requirements for management of waste discharges to the ocean, quality requirements for waste discharges, and discharge prohibitions.
8. In a legal opinion issued on January 18, 1984 by the Office of the Chief Counsel for the State Water Resources Control Board, it was determined that the California Ocean Plan water quality standards can be applied to discharges in the absence of standards in the Bays and Estuaries policy. Such authority can be taken from the Porter-Cologne Act, Water Code Section 13000 et seq. which requires Regional Boards, in the adoption of waste discharge requirements, to implement relevant basin plans and to take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, and the provisions of Water Code Section 13241.
9. The beneficial uses of San Diego Bay are:

*Note: The definition of pollution, contamination and nuisance is stated in Finding No. 5 and California Water Code Section 13050.

- (a) Industrial service supply
- (b) Navigation
- (c) Water contact recreation
- (d) Noncontact water recreation
- (e) Ocean commercial and sport fishing
- (f) Saline water habitat
- (g) Preservation of rare and endangered species
- (h) Marine habitat
- (i) Fish migration
- (j) Shellfish harvesting

10. On October 28, 1968 the State Water Resources Control Board adopted Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California* (hereinafter referred to as the Nondegradation Policy). Under the terms and conditions of the Nondegradation Policy, the existing (pre-discharge) water quality of the San Diego Bay must be maintained unless it is demonstrated that a decrease in water quality (1) will be consistent with maximum benefit to the people of the State, (2) will not unreasonably affect beneficial uses, and (3) will not result in water quality less than prescribed in the Basin Plan or other adopted policies.
11. Monitoring performed by Regional Board staff from 1979 to 1984 at locations adjacent to Paco Terminals Inc. has detected increasing levels of copper concentrations in the bay sediments. Results of samples collected in April, 1979, prior to initiation of Paco Terminals Inc. operations, indicate an average copper concentration adjacent to Paco Terminals Inc. of 110 milligrams per kilogram (mg/kg). The average copper concentration in samples collected by Regional Board staff in June 1983 and June 1984 at the locations previously sampled in 1979 were 5551 mg/kg and 13,717 mg/kg respectively.
12. Additional documentation of elevated copper concentrations in San Diego Bay waters and sediments has been obtained from the California State Mussel Watch Program. Department of Fish and Game staff collected mussel tissue samples suspended in the San Diego Bay water column in December, 1982, January, 1984 and January 1985. The mussel tissue sample results indicate an average copper concentration of 49.2 mg/kg in December 1982, 78.7 mg/kg in January 1984 and 88.1 mg/kg in January 1985. All mussel tissue sampling data collected during 1982 through 1984 exceeded the 90 percent Elevated Toxic Pollutant Levels (ETPL) for mussel tissue copper concentrations established by the State Mussel Watch Program. The ETPL has been developed to identify locations where levels of toxic substances are significantly higher than the levels measured statewide. The 90 percent EPTL is that concentration of a toxic substance that equals or exceeds 90 percent of all measurements of the toxic substance in the same type of sample throughout the state.
13. The copper concentrations found in the mussel tissue are not a direct measurement of copper concentrations in San Diego Bay waters, however the mussel tissue copper concentrations are an excellent indicator of the relative presence of copper at one sampling station versus another sampling station. The high concentrations of copper found within the mussel tissue indicates that a significant amount of copper is migrating from the copper ore-contaminated sediments into the water column.

14. The test mussels used in the State Mussel Watch Program were suspended in the upper water column approximately 25 feet above the contaminated Bay sediment and would accurately reflect the copper concentrations in the water column at that depth. However, the copper concentration in the water column would likely increase as distance from the contaminated Bay sediment decreases. Thus it is likely that the Bay water closest to the sediment and the interstitial water found within the sediments can be expected to have higher concentrations of copper, as compared to the copper concentrations at the 10 foot depth contour assimilated by the test mussels. The copper concentration within the sediments can be expected to have detrimental effects on a wide range of benthic biota, particularly invertebrates, depressing the viability and productivity of the benthos in the Bay sediments adjacent to Paco Terminals Inc.
15. By memorandum dated December 31, 1984 to Mr. Ladin H. Delaney, Regional Board Executive Officer, Mr. John L. Baxter, Regional Manager, Department of Fish and Game made the following observation based on Department of Fish and Game staff review of samples collected by Regional Board and Department of Fish and Game staff:

"...in the Paco situation, the large volume of copper ore which has been introduced to marine sediments in solid form have contaminated the benthos directly and, by leaching into the surrounding waters, have contaminated the water column at significant concentrations."

The memorandum also stated that:

"In effect, the Paco situation represents a marine toxic waste site which if left in place will negatively influence the normally occurring, natural living resources of that area for an indefinite time period."

16. By letter dated July 16, 1985 Regional Board staff requested Paco Terminals, Inc. to submit a report which addressed (1) the areal extent of contamination, (2) actions taken for cleanup and (3) a schedule for cleanup. On August 30, 1985 Paco Terminals, Inc. submitted a report, *An Evaluation of Copper in the Marine Environment in the Vicinity of Paco Terminals, Inc., San Diego Bay, California*, prepared by Westec Services, Inc. in response to the Regional Board July 16, 1985 letter. Included in the report were the analysis of samples collected on August 16, 1985 by Westec Services, Inc. of San Diego Bay sediment in the Paco Terminals, Inc. area. The report stated the following:

"Analysis of grab samples revealed that concentrations of total copper (2300 to 28,600 ppm) at stations (9, 15, 16, 22, 23) along the pier face and near the storm drain (9300 ppm) were higher than elsewhere in the study area. This is consistent with data collected by the RWQCB and Paco's NPDES monitoring studies."

17. The general extent of copper contamination of San Diego Bay sediment caused by Paco Terminals, Inc. based on locations and results of sediment grab samples collected by Regional Board staff and Westec Services, Inc. discussed earlier, includes but is not necessarily limited to:

- (a) From the seaward pierface of Paco Terminals, Inc., which includes the shiploading operations, extending westerly in a rectangular manner to approximately 250 feet from the pierface and a width of 1000 feet along the seaward pierface.
- (b) The area extending northerly to approximately 250 feet from the storm drain outfall located at the north pierface of the 24th Street Marine Terminal.

More definite studies to delineate the precise area of San Diego Bay sediment contamination by Paco Terminals, Inc. will be performed under the directives of this Order.

18. On October 1, 1985 Regional Board staff conducted an on-site compliance inspection. During the inspection Regional Board staff noted the following conditions which were not in accord with Paco Terminals, Inc. Best Management Practices Program described in Finding No. 4:

- (a) A thin layer of copper ore residue covered the entire site up to the seaward pierface;
- (b) The majority of the storm drains were uncovered and contained copper ore.

Both Items a and b above are direct violations of Prohibition A.2 and Discharge Specifications B.3 of Order No. 84-50 as stated in Finding No. 6 of this Order.

19. For reasons stated previously, the increasing copper concentration in the portion of San Diego Bay adjacent to Paco Terminals, Inc. is a direct result of discharge or spillage of copper ore from Paco Terminals, Inc. operations. The Regional Board sediment sampling program and the State Mussel Watch Program have clearly documented extremely high, and constantly increasing concentrations of copper in both the sediments and water column of San Diego Bay adjacent to Paco Terminals, Inc. The Regional Board believes the increased copper concentrations caused by discharge or spillage of copper ore from Paco Terminals, Inc. since initiation of operations, is a direct result of one or both of the following:

- (a) Inadequate implementation of the previously mentioned Best Management Practices Plan, submitted by Paco Terminals, Inc. as described in Findings No. 3 and 4.
- (b) Some inherent weakness in the Water Pollution Control Plan itself which led to the discharge or spillage of copper ore in San Diego Bay.

Accordingly Paco Terminals, Inc. has violated Provision B.2 of Order No. 79-72 stated in Finding No. 5 and Discharge Specification B.3 of Order No. 84-50 stated in Finding No. 6. Based on the October 1, 1985 Regional Board staff inspection of Paco Terminals, Inc. described in Finding No. 18 Paco Terminals, Inc. is threatening to continue to cause violations of Discharge Specification B.3 of Order No. 84-50.

20. Paco Terminals, Inc. has caused a threatened violation of Discharge Specification B.2(c) of Order No. 84-50 stated in Finding No. 6 of this Order. The marked increase in copper concentrations in San Diego Bay sediments caused by the discharge or spillage of copper ore into San Diego Bay has been previously documented in this Order. The migration of copper from the contaminated sediments into the water column threatens to cause an adverse or degraded condition in marine biota detrimental to the marine habitat beneficial use of San Diego Bay.
21. Paco Terminals, Inc. has caused a threatened violation of Receiving Water Limitation A or Order No. 79-72 stated in Finding No. 5, Receiving Water Limitation C.5(a) of Order No. 84-50 stated in Finding No. 6 and Provision D.6 of Order No. 84-50 stated in Finding No. 6. As stated in the previous findings of this Order both the Regional Board and the Department of Fish and Game have found that the copper ore discharged to San Diego by Paco Terminals, Inc. is present in San Diego Bay sediments in concentrations that could be toxic to the marine life of San Diego Bay.
22. Paco Terminals, Inc. has caused a threatened violation of Provision B.1 of Order No. 79-72 as stated in Finding 5 and Provision D.1 of Order No. 84-50 as stated in Finding No. 6. Paco Terminals, Inc. has discharged copper ore to San Diego Bay in concentrations that have created a condition of pollution in San Diego Bay waters as defined in California Water Code Section 13050 and Finding No. 5 of this Order. This finding is based on the following conclusions:
 - (a) The migration of copper from the contaminated sediment to the water column is threatening to cause the copper receiving water limitation of 5 µg/l described in Receiving Water Limitation C.6 of Order No. 84-50 and stated in Finding No. 6 of this Order to be exceeded in San Diego Bay waters.
 - (b) The water quality objective for copper described in Receiving Water Limitation C.6 of Order No. 84-50 provides for the reasonable protection of the beneficial uses of San Diego Bay waters stated in Finding No. 6 of this Order. Thus in causing the copper concentration of San Diego Bay waters to exceed 5 µg/l Paco Terminals, Inc. has created a condition of pollution in San Diego Bay which threatens to impair the marine habitat beneficial use of San Diego Bay.
23. Paco Terminals, Inc. in causing the discharge or spillage of copper ore into San Diego Bay has violated Prohibition A.2 of Order No. 84-50 as stated in Finding No. 6 of this Order.
24. Paco Terminals, Inc. has caused a threatened violation of Receiving Water Limitation C.6 of Order No. 84-50 as stated in Finding No. 6 of this Order. As previously stated the copper concentrations at the Regional Board sediment sampling stations currently average 13,717 mg/kg. The migration of this copper into the water column has caused elevated copper concentrations of up to 88.1 mg/kg in mussel tissue sampled under the State Mussel Watch Program. Thus leaching of the copper from the affected sediment could cause the 5 µg/l standard for copper to be exceeded in San Diego Bay waters.

25. This enforcement action is exempt from the provision 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 Section 13304 of the California Water Code:

1. Paco Terminals, Inc. shall submit a report to this office no later than March 1, 1986 identifying a range of remedial action alternatives to cleanup present, and prevent future, contamination of San Diego Bay resulting from the discharge of copper ore from Paco Terminals, Inc. 24th Street Marine Terminal operations. The report shall examine and determine the (1) cost, (2) efficiency, (3) feasibility, and (4) lateral and vertical extent of copper contaminated sediment associated with each of the following cleanup strategies:

(a) Removal and/or treatment of the copper contaminated sediment to attain copper concentrations in the affected San Diego Bay sediment contamination zone essentially equivalent to copper concentrations occurring in the sediment contamination zone prior to initiation of operations at Paco Terminals, Inc. in 1979. As documented in Regional Board staff's July 20, 1985 letter to Paco Terminals, Inc. Regional Board staff sampling found copper levels in San Diego Bay sediments adjacent to Paco Terminals, Inc. in April 1979 to average 110 mg/kg. Any other data obtained by Paco Terminals, Inc. pertaining to copper concentration levels in adjacent San Diego Bay sediments prior to initiation of operations by Paco Terminals, Inc. will also be considered if, in the judgement of Regional Board staff, sufficient documentation is provided.

(b) Removal and/or treatment of copper contaminated sediment to attain the following copper concentrations in San Diego Bay waters to protect the San Diego Bay beneficial uses noted in Finding No. 9.

<u>Constituent</u>	<u>Unit</u>	<u>6-Month¹ Median</u>	<u>Daily² Maximum*</u>	<u>Instantaneous³ Maximum</u>
Copper	µg/l	5	20	50

¹ The six-month median concentration limit shall apply as a moving median of daily values for any 180-day period in which daily values represent flow-weighted average concentrations within a 24-hour period. For intermittent discharges, the daily values shall be considered to equal zero for days on which no discharge occurred.

² The daily maximum limitation shall apply to the results of a single composite sample collected over a period of 24 hours.

³ The instantaneous maximum concentration limit shall apply to grab sample determinations.

Under this cleanup alternative it will be necessary to ascertain the degree of copper migration from the sediments to the water column that will occur and to demonstrate that the copper migration will not cause the copper limitations be exceeded in either the water column or the interstitial water found within the sediment.

- (c) A remedial action alternative proposing the attainment of copper concentrations in the affected San Diego Bay sediment contamination zone which concedes contaminated San Diego Bay waters to a degraded status. Under this alternative Paco Terminals, Inc. may propose a level of contaminated sediment cleanup less stringent than that required under cleanup alternatives (a) or (b) listed above.

Under this alternative it will be necessary to ascertain the degree of copper migration from the sediments to the water column that will occur, and, subsequently to determine the effects that the "mobilized" copper will have upon the marine life of San Diego Bay. It will also be necessary to establish, to the satisfaction of the Regional Board, that the proposed copper concentrations would comply with the following criteria in accordance with the State "Non-Degradation Policy":

1. The proposed copper concentrations to be attained in the affected San Diego Bay sediment contamination zone would not alter the equality of San Diego Bay waters to a degree which unreasonably affects the San Diego beneficial uses listed in Finding No. 9.
 2. The proposed copper concentrations to be attained in the affected San Diego Bay sediment copper contamination zones will be consistent with the maximum benefit to the people of the state.
 3. The proposed copper concentrations to be attained in the San Diego Bay sediment copper contamination zone will not result in water quality less than prescribed in the Basin Plan, Ocean Plan, or other adopted policies.
2. The cleanup alternatives required under Directive 1 of this Order will be evaluated in detail by Regional Board staff. This evaluation will include technical considerations, estimated costs and anticipated water quality effects associated with each alternative. Based on this evaluation a specific cleanup alternative will be selected by Regional Board staff for implementation. Upon notification by the Executive Officer, Paco Terminals, Inc. shall implement the cleanup alternative selected by Regional Board staff.
3. In the interim period until final cleanup is selected, implemented and completed, Paco Terminals, Inc. shall maintain full compliance with the Best Management Practices as described in the terms and conditions of Order No. 84-50.
4. Paco Terminals, Inc. shall dispose of all copper contaminated water and sediment in accordance with all applicable state and federal regulations.

5. Paco Terminals, Inc. shall, upon implementation of the selected cleanup alternative, submit monthly progress reports discussing the cleanup program status and the progress made toward attaining the final selected cleanup criteria. Specific information to be included in the monthly progress report will be determined by Regional Board staff upon selection of final cleanup alternatives.

I Ladin H. Delaney, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Cleanup and Abatement Order issued on December 12, 1985.

Ladin H. Delaney
LADIN H. DELANEY
Executive Officer

December 12, 1985

JH:rs

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 1 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. In March, 1986 Paco Terminals Inc. submitted a report entitled *An Evaluation of the Impact of Copper Ore in the Marine Environment in the Vicinity of Paco Terminals Inc. on the Beneficial Uses of San Diego Bay*, prepared by Westec Services Inc. (hereinafter referred to as the March, 1986 Westec Report). The March, 1986 Westec Report was submitted in response to Directive 1 of Cleanup and Abatement Order No. 85-91 and was a continuation of a previous report submitted by Paco Terminals Inc. to the Regional Board in September, 1985. The March, 1986 Westec Report presented an evaluation of the cost and feasibility of three alternative cleanup options, provided additional information on the vertical and horizontal distribution of copper contaminated sediments and presented an evaluation of the effects of the copper contaminated sediments on the marine habitat beneficial use (the beneficial use potentially most affected by the copper ore discharge) of San Diego Bay.
3. In August, 1985 and January, 1986 Westec Services Inc. conducted sediment sampling in San Diego Bay to establish the vertical and horizontal distribution of the copper ore in the bay sediments. The study area extended approximately 1 nautical mile north and south and 0.5 nautical miles west of Paco Terminals Inc.. The vertical profile of copper ore in the bay sediments was obtained by collecting core samples at 9 different sites in the study area. The vertical core sediment samples were collected to depths up to the maximum core penetration depth. The maximum vertical core sample depths ranged from 12 inches to 52 inches. The horizontal distribution of copper ore in the bay sediments was determined based on 34 station sites sampled in August, 1985 and 77 stations sampled in January, 1986.

4. One vertical core sample collected at Station G-16 immediately adjacent to the Paco Terminals Inc. pier face contained a copper concentration of 12,500 milligrams per kilogram (mg/kg) at the top portion and 4,780 mg/kg in the bottom portion at a depth of 40 inches. Copper concentrations determined at the remaining 8 sample sites located 240, 480, 720, 1500, and 3000 feet from the pier face ranged from 3.0 to 9.0 mg/kg. With the exception of the vertical core sample collected from Station G-16, the vertical core sample values showed that the copper contamination in the affected bay sediments decreased markedly with depth and thus was primarily a surface phenomena.
5. The surficial sediment samples collected to determine the surficial areal extent of the copper ore contamination revealed that copper concentrations at stations 9, 15, 16, 22, and 23 along the Paco Terminals Inc. pier face ranged from 2300 mg/kg to 28,600 mg/kg. A surface sediment sample collected at Station 8, adjacent to the mouth of a storm drain tributary to Paco Terminals Inc., had a copper concentration of 9300 mg/kg. Copper concentrations in sediment samples collected along the Paco Terminals Inc. pier face and adjacent to the storm drain pipe were markedly higher than elsewhere in the study area. Sample stations located from 250 to 750 feet from the pier face (Stations 10, 11, 12, 17, 18, 19, 24, and 26) had copper concentrations ranging from 47 mg/kg to 372 mg/kg. Sample stations located 1500 to 3000 feet from the pier face (Stations 13, 14, 20, 21, 27, and 28) had copper concentrations ranging from 29 mg/kg to 45 mg/kg. Sediment sample stations located approximately 0.5 miles to the north and south of Paco Terminals Inc. had copper concentrations ranging from 118 mg/kg to 141 mg/kg and 209 mg/kg to 325 mg/kg.
6. Directive 1(a) of Cleanup and Abatement Order No. 85-91 required Paco Terminals Inc. to examine the cost and feasibility of removal and/or treatment of the copper contaminated sediment to attain sediment copper concentrations essentially equivalent to the copper concentrations occurring prior to commencement of operations by Paco Terminals Inc.. In April, 1979 Regional Board staff collected sediment samples adjacent to 24th Street Marine Terminals, prior to the occupation of the site by Paco Terminals Inc. (The site was occupied by Paco Terminals Inc. in early 1980.) The six sediment samples collected by Regional Board staff at that time had copper concentrations ranging from 91.7 mg/kg to 177.9 mg/kg. The average copper concentration of the six sediment samples was 110 mg/kg.
7. Directive 1(a) of Cleanup and Abatement Order No. 85-91 stated that any other data obtained by Paco Terminals Inc. to describe the copper concentrations occurring in the sediments prior to 1980 would be considered if sufficient documentation were provided. The March, 1986 Westec Report stated that baseline copper concentrations were as high as 398 mg/kg in the vicinity of 24th Street Marine Terminal prior to the occupation of the site by Paco Terminals Inc.. This conclusion was based on bioassay studies conducted on bay sediments at the nearby 32nd Street Naval Station, Piers 1 through 13 by the Naval Oceans Systems Center in 1979 in support of a proposed dredging project. Sediment copper concentrations contained in the Naval Ocean Systems Center studies show that copper concentrations averaged 385 mg/kg at Navy Piers 1 to 13 in 1979. Navy Piers 10 to 13, which were included in the Paco Terminals Inc. study area, had sediment copper concentrations ranging from 27 mg/kg to 397.8 mg/kg. In 1982, Lockheed Ocean Science Laboratories conducted a bioassay of sediments midway

between the 24th Street Marine Terminal and Navy Pier 13 in support of a proposed dredging project. The average sediment copper concentration determined at this location in the Lockheed Ocean Science Laboratories studies was 290 mg/kg.

8. The sediment copper concentration of 397.8 mg/kg referenced in Finding No. 7 occurred on the south side of Navy Pier 10 near the shoreline approximately 4000 feet north of Paco Terminals Inc.. Navy Pier 13 is located approximately 1200 feet north of Paco Terminals Inc.. The copper concentrations for Navy Pier 13 contained in the 1979 Naval Ocean Systems Center study referenced in Finding 7 ranged from 27 mg/kg to 161 mg/kg with an average copper concentration of 116 mg/kg. The Regional Board does not believe that the 1979 Naval Ocean Systems Center and the 1982 Lockheed Ocean Science Laboratories data referenced in Finding 7 conclusively demonstrate that the level of copper concentrations existing at 24th Street Marine Terminal in 1979, prior to the occupation of the site by Paco Terminals Inc. could be characterized by a copper concentration of 385 mg/kg. The Naval Ocean Systems Center data cited in the March, 1986 Westec report indicates that the average copper concentration in sediments adjacent to Navy Pier 13, located approximately 1200 feet north of the 24th Street Marine Terminal averaged 116 mg/kg in 1979 - prior to the occupation of the 24th Street Marine Terminal site by Paco Terminals Inc.. The Lockheed Ocean Systems Center study sediment data collected in 1982 - after the occupation of the 24th Street Marine Terminal site by Paco Terminals Inc. - at an area approximately 600 feet north of a storm drain receiving storm runoff from Paco Terminals Inc., indicates that sediment copper concentrations in that area increased to 290 mg/kg. The increase of copper in the bay sediment in that area may have been the result of the discharge of storm runoff containing elevated concentrations of copper to the storm drain during storm events. The Regional Board believes that the Regional Board staff data, collected in 1979 in the bay sediments adjacent to the 24th Street Marine Terminal, and referenced in Finding 6 is the best available data to establish baseline copper concentrations existing at that point prior to the occupation of the site by Paco Terminals Inc.. Accordingly the Regional Board finds that the baseline copper concentration existing in sediments adjacent to the 24th Street Marine Terminal prior to the commencement of operations at the site by Paco Terminals Inc. was 110 mg/kg.
9. Directive 1(b) of Cleanup and Abatement Order No. 85-91 directed Paco Terminals Inc. to examine the cost and feasibility of removing the copper ore contaminated sediment to attain a) a six-month median copper concentration of 5 ug/l; b) a daily maximum copper concentration of 20 ug/l; and c) an instantaneous maximum copper concentration of 50 ug/l in San Diego Bay waters. This copper water quality objective was obtained from the Water Quality Control Plan, Ocean Waters of California, 1983 (hereinafter referred to as the Ocean Plan), adopted by the State Water Resources Control Board on November 17, 1983. The Ocean Plan is applicable in its entirety to point source discharges of waste to ocean waters. The plan is not applicable to waste discharges to enclosed bays such as San Diego Bay. The Water Quality Control Policy for the Enclosed Bays and Estuaries of California, 1974, (hereinafter referred to as the Bays and Estuaries Policy), adopted by the State Water Resources Control Board on May 16, 1974, contains water quality standards applicable to waste discharges to enclosed bays and estuaries such as San Diego Bay. The Bays and Estuaries Policy requires that discharges of municipal wastewaters and industrial process waters to enclosed bays and estuaries

be phased out at the earliest practicable date. The Bays and Estuaries policy does not contain numerical water quality standards for waste discharges to bays and estuaries. The beneficial uses of San Diego Bay are similar, if not identical to those of the ocean. San Diego Bay waters are in hydrologic continuity to waters of the open ocean; however, the bay waters are generally subject to less dilution than ocean waters. Thus the water quality standard to protect the beneficial uses of San Diego Bay waters should be at least as stringent as the standards in the Ocean Plan which provide for the protection of open ocean waters. Accordingly the Regional Board believes that, in the absence of numerical water quality standards specifically applicable to San Diego Bay, any cleanup level selected by the Board should not cause the Ocean Plan water quality standard for copper to be exceeded in bay waters in order to provide for the protection of the beneficial uses of San Diego Bay.

10. The March, 1986 Westec Report contained an evaluation of the extent to which the copper ore in the bay sediment may be migrating from the sediments into the bay water column. Sample station 43, which had a sediment copper concentration of 19,800 mg/kg, was selected as the sampling point for the evaluation. Westec Services Inc. felt that this station represented the worst case situation in that this station had the highest sediment copper concentration in the study area based on the results of sampling conducted by Westec Services Inc. on January 29, 1986. Westec Services believed that if copper concentrations in the water column fell below the copper water quality objective referenced in Finding 9, it was reasonable to assume that copper concentrations in the water column overlying sediments with copper concentrations lower than Station 43 would also not exceed the copper water quality objective referenced in Finding 9. Westec Services Inc. also believed that the "worst case situation" would occur at high tide in San Diego Bay when copper-laden water from other possible discharge sources located between the bay entrance and Paco Terminals Inc. would enter the back bay and influence bay water samples collected adjacent to Paco Terminals Inc. Each water column sample collected was filtered through a 0.45 micron filter to remove the particulate matter. Westec Services Inc. analyzed the sample which passed through the filter to obtain the total "dissolved" copper concentration. Westec Services Inc. also analyzed the particulate matter retained on the 0.45 micron filter to obtain the total particulate copper concentration.
11. The average concentration of total dissolved copper in the water at Station 43 ranged from 3 ug/l (1 meter from the bay bottom under low tide conditions) to 4 ug/l (two meters from the bay bottom under high tide conditions). Westec Services Inc. maintained that these total dissolved copper concentrations were less than the copper water quality objective referenced in Finding 9. The average total particulate copper concentration in the water at Station 43 ranged from 6 ug/l (2 meters from the bay bottom under low tide conditions) to 18 ug/l (two meters from the bay bottom under high tide conditions). Westec Services Inc. maintained that the total particulate copper concentration was less than the 50 ug/l instantaneous maximum water quality objective referenced in Finding 9. Compliance with the copper water quality objective referenced in Finding 9 is only determined through analyses of water samples for total recoverable copper as defined in Title 40, Code of Federal Regulations, Part 136 (40 CFR 136). Total recoverable copper is defined as the concentration of copper determined on an unfiltered sample after vigorous digestion, or the sum of the copper concentrations in both the filtrable

and nonfilterable sample fractions. Accordingly, it is incorrect to measure compliance with the copper water quality objective referenced in Finding 9 by comparing the objective with only the copper concentration found in the filterable sample and excluding the copper concentration found in the nonfilterable sample or vice-versa. Compliance with the copper water quality objective can only be fully determined through comparison with the total recoverable copper concentration of the Station 43 sample results; this value is obtained by summing the copper concentration found in the filterable and nonfilterable sample fractions. The average total recoverable copper concentrations for Station 43, determined by the Regional Board by summing the filterable and nonfilterable copper concentrations reported by Westec Services Inc., ranged from 10 ug/l (2 meters from the bay bottom under low tide conditions) to 21 ug/l (two meters from the bay bottom at high tide conditions). The average total recoverable copper concentrations did not exceed the instantaneous maximum copper water quality objective of 50 ug/l which applies to grab sample determinations. However, the average total recoverable copper concentration did exceed the six month median copper water quality objective of 5 ug/l under both high tide and low tide conditions.

Compliance with the six month median objective is measured by calculating the median of daily values during any 180 day period. While a one day sample event is insufficient to determine compliance with a six month median copper water quality objective, it is significant to note that the 5 ug/l six month median objective was exceeded under both high and low tide conditions. Additional sample values would be required to fully confirm that the copper ore contaminated sediment is causing the 5 ug/l six month median objective to be exceeded in the water column.

12. The March, 1986 Westec Report contained data on the copper concentrations in the interstitial water lying in the bay sediment immediately adjacent to the sediment grains. The sampling plan was designed to evaluate the worst case conditions by conducting the sampling at Station 43 which had the highest sediment copper concentration of the January, 1986 sediment samples. Four replicate samples were collected by Westec Services Inc. by inserting syringes into the bay sediment and withdrawing a water sample. The samples were filtered through a 0.45 micron filter to remove particulates, thus sample analysis only determined the total dissolved copper concentration in the interstitial water. The total dissolved copper concentration in the interstitial water ranged from 80 ug/l to 480 ug/l with an average concentration of 214 ug/l.
13. The Regional Board compared the interstitial water concentrations referenced in Finding 12 with the Ocean Plan copper water quality objective referenced in Finding 6. Under this approach it was assumed that the interstitial water was the primary source of contaminants to benthic biota. It was also assumed that the exceedance of the six month median copper water quality objective of 5 ug/l in the interstitial water could adversely affect benthic biota and thus also adversely affect the marine habitat beneficial use of San Diego Bay. Based on the interstitial water copper concentrations discussed in Finding 12 the Regional Board believed that the existing sediment copper concentration appeared to be 1) causing the interstitial water concentrations to greatly exceed the 5 ug/l copper water quality objective, and 2) threatening to adversely affect benthic biota in the copper ore contamination area. By letter dated July 31, 1986 the Regional Board directed Paco Terminals Inc. to collect additional interstitial water samples to determine the areal extent of elevated copper concentrations in the

interstitial waters. Paco Terminals Inc. was also directed to gather sufficient data to define the relationship between sediment copper concentration and interstitial water copper concentration.

14. By letter dated September 11, 1987 Paco Terminals Inc. objected to the Regional Board's application of the Ocean Plan copper water quality objective referenced in Finding 6 to interstitial water. Paco Terminals Inc. maintained that interstitial waters from most sediments from embayments typically exceed Ocean Plan limits for many chemical variables such as sulfides, ammonia, and biological oxygen demand, because the interstitial water is relatively restricted compared to the overlying water column with reduced opportunity for dilution. The Regional Board believes that concentrations of some chemical constituents would be expected to be naturally greater in interstitial water than in the overlying water column. However, Paco Terminals Inc. has not demonstrated that the interstitial water copper concentrations in the affected area are within the range of concentrations which could be expected to naturally occur.
15. On March 24, 1987, Paco Terminals, Inc. submitted a report prepared by Westec Services, Inc. entitled **Evaluation of Copper in Interstitial Water from Sediments at Paco Terminals, San Diego Bay, Phase II**(hereinafter referred to as the March, 1987 Westec Report. The stated objectives of this report were to 1) define the relationship between copper concentrations in the sediment and interstitial water, and 2) if such a correlation does exist, use the correlation to determine the horizontal distribution of copper in the interstitial water adjacent to Paco Terminals Inc.. Westec Services Inc. collected 36 core samples on February 4, 1987 at distances up to 170 feet from the Paco Terminals Inc. pier face. Westec Services Inc. reported that due to probable interferences from salts in the sea water, interstitial water samples had to be diluted with deionized water to reduce the interference. The dilution process reduced the level of detection for copper from 2 ug/l to 20 ug/l. Thus the interstitial water copper concentration could not be compared with the Ocean Plan 5 ug/l copper water quality objective due to the reduction in the level of detection to 20 ug/l. The interstitial water concentrations ranged from <20 ug/l to 300 ug/l (one of the 36 interstitial water samples was not analyzed due to an insufficient sample volume). The sediment copper concentration ranged from 21 ug/l to 21,700 ug/l.
16. The March, 1987 Westec Report contained the results of a linear regression analysis of the data referenced in Finding 15. The purpose of the evaluation was to determine if there was a statistically significant relationship between copper concentrations in the interstitial water and the sediment. Two correlation relationships between the copper concentration in the interstitial water and sediment were developed. One of the correlation relationships employed all 35 sample results. The second correlation relationship employed only 33 sample results; two sample results were removed from consideration because of possible sample contamination. Both correlation relationships assumed that 16 sample results, with reported interstitial water copper concentrations of <20 ug/l, were actually 20 ug/l - a worst case assumption. The sediment copper concentrations at

which the 50 ug/l instantaneous maximum Ocean Plan copper water quality objective is attained in the interstitial water as predicted by the two correlation relationships are presented below:

<u>Linear Regression Analysis</u>	<u>Correlation Value</u>	<u>Number of Samples</u>	<u>Sediment Copper Concentration</u>
1	0.369	35	3,950 mg/kg
2	0.593	33	7,050 mg/kg

Westec Services Inc. believed that Analysis 2, which determined that removing the copper contaminated sediment to a copper concentration of 7,050 mg/kg would result in a interstitial water concentration of 50 ug/l, was the best estimate due to the higher correlation value.

17. The March, 1987 Westec Report did not establish a clearly defined relationship between the sediment copper concentration and either the Ocean Plan copper water quality objective six-month median limitation of 5 ug/l or the daily maximum limitation of 20 ug/l. However, as shown in Finding 16, the available data does indicate that a relationship exists between the Ocean Plan copper water quality objective instantaneous maximum limitation of 50 ug/l and the sediment copper concentration. Based on the regression analysis referenced in Finding 16, an interstitial water copper concentration of 50 ug/l is associated with a sediment copper concentration of 7,050 mg/kg. The Regional Board believes that although the available data do not provide a clearly defined relationship between the six-month median copper concentration limit of 5 ug/l and a particular sediment copper concentration, the data indicates that the sediment copper concentration corresponding to the Ocean Plan six month median concentration limit would likely be no greater than 1000 mg/kg.
18. The March, 1986 Westec Report examined the effects of the copper contaminated sediment on the benthic biota in the vicinity of Paco Terminals Inc. The report characterized the benthic community as impoverished with low numbers of species and individuals and low species diversity. The report found that 93.5 percent of the area influenced by the copper contaminated sediment was already influenced by shipyard operations and other harbor activities prior to the commencement of operations at Paco Terminals Inc. The impoverished condition of the benthic community was attributed in part to disturbances from harbor activities such as ship movement, with the attendant propeller wash and scour, and maintenance dredging. The impoverished condition of the benthic community was cited as a historic condition in that it had been noted in other studies in the general vicinity of 24th Street Marine Terminal in 1974 and 1977- prior to the commencement of operations by Paco Terminals Inc. No statistically significant relationship between sediment copper concentration and total number of species, total number of individuals and species diversity was found.
19. The March, 1986 Westec Report does not conclusively demonstrate that the copper ore does not have the potential to adversely affect benthic communities. As previously stated in Finding 18, the vitality of the benthic community was

depressed prior to the deposition of copper ore in the sediment. It is possible that a direct correlation between sediment with a high copper concentration and benthic community indices might be found in areas which have more diverse benthic communities. The Regional Board also believes that some of the environmental stresses which were responsible for the depressed condition of the benthic community prior to the commencement of operations by Paco Terminals Inc. may be reduced in the future. Improved controls over anti-fouling boat hull paints and painting techniques and other changes in vessel activities could provide conditions conducive to an increase in the diversity and numbers of marine organisms in the vicinity of Paco Terminals Inc. However if copper ore is allowed to remain on the floor of San Diego Bay in the present high concentrations, the potential vitality of future biological communities might be limited long after other environmental stresses have been reduced or eliminated.

20. By letter dated September 11, 1987 Paco Terminals Inc. submitted information pertaining to the potential for migration of the copper ore contaminated sediment to other portions of San Diego Bay. It was reported that the probability for significant migration of the copper contaminated sediment is low due to the following factors:
- a) The copper ore is very dense and sinks rapidly. Any copper ore re-suspended by tidal action or ship propeller wash would probably not travel very far before sinking to the bay bottom;
 - b) Tidal currents adjacent to 24th Street Marine Terminal are generally low;
 - c) The number of large vessels capable of re-suspending the copper ore contaminated sediment while passing over the area is small due to its location near the terminus of the main San Diego Bay navigation channel; and
 - d) A review of 10 sets of quarterly NPDES permit monitoring reports covering the period 1985 - 1987 and other data indicates that the copper ore contaminated sediment is not migrating.

The Regional Board believes that migration of the copper ore contaminated sediment can be expected to remain quite slow unless increases in tidal currents and/or vessel activities occur. However, any dredging activities in the area near Paco Terminals could contribute significantly to the migration of the copper ore within the bay.

21. The March, 1986 Westec Report evaluated State Mussel Watch data contained in the California State Mussel Watch Report, 1981-1983. Data provided by the State Mussel Watch Program shows that mussels held at Station 882, located adjacent to Paco Terminals Inc., had some of the highest copper concentrations found in the mussel watch program. The mussel watch sample results (dry weight) showed an average copper concentration of 58.1 ug/g in January, 1982, 60.3 ug/g in December, 1982, 78.7 ug/g in January, 1984, and 88.1 ug/g in January, 1985. All mussel watch sampling data at Station 882 exceeded both the 85 and 95 percent Elevated

Data Level (EDL)¹ for copper of 12.1 ug/g dry weight and 24.4 ug/g dry weight, respectively; thus the mussel copper concentrations represent very elevated concentrations. Westec Services Inc., citing data from the 1981-83 Mussel Watch, conclude that a 38.4 percent reduction in copper concentration found between depurated² and undepurated mussel samples collected from Station 882 is due to the elimination of inorganic particulate matter in the mussel digestive tract. With the particulate copper removed, the remaining results provide a more accurate reflection of actual copper concentrations in the mussel tissue. Westec Services Inc. maintains that much of the copper found in the tissues of the mussels held at Station 882 is from discharges from the nearby shipyard operations.

22. The Regional Board believes that because the sediment near Paco Terminals Inc. contains a high proportion of copper ore, any sediment which is found within the digestive tract of mussels at Station 882 might also contain a high proportion of copper ore. As noted in Finding 21, the effect of this ingested sediment on the analytical results for Station 882 was documented in the 1981-83 Mussel Watch. During that program ten mussel watch stations, including Station 882, were selected statewide and were analyzed in both a depurated and a non-depurated condition. Depuration was found to reduce copper concentrations at Station 882 by 38.4%, while reductions found at the other nine stations ranged between 7.5 % and 25.1%, and averaged only 13.2%. (Subsequent Mussel Watch samples have not been depurated.)
23. As previously stated in Finding 21, Westec Services Inc. believes that the high State Mussel Watch copper concentrations found near Paco Terminal Inc. may be due in large part to the proximity of the terminal to the 32nd Street Naval Station and other commercial ship repair facilities. These vessel repair areas start at Pier 13 of the 32nd Street Naval Station, approximately 1000 feet north of the 24th Street Marine Terminal, and extend approximately three and one-half miles north to the Coronado Bridge. Five Mussel Watch stations have been located in that area during the Mussel Watch Program. Of these five stations, Station Nos. 886 and 887 are near the NASSCO ship repair facility approximately 3 miles north of Paco Terminals; Station No. 885 is located at Buoy 30 on the west side of the navigation channel approximately 1.5 miles north Paco Terminals; Station No. 882.6 is located at the extension of Sampson Street approximately 2 miles north of Paco Terminals; and Station No. 882.4 is located near the end of Pier 13 less than 2000 feet north of Paco Terminals. Since Station No. 882.4 is located at the extreme south end of the vessel repair facilities, less than 2000 feet from Paco Terminal's ore transfer facility, any copper-based anti-fouling paints which

¹ The Elevated Data Level (EDL) has been developed by the State Mussel Watch Program to identify locations where levels of toxic substances are significantly higher than the levels measured statewide. The 85 or 95 percent EDL is that concentration of a substance that equals or exceeds 85 or 95 percent of all State Mussel Watch measurements of the substance in the same mussel type throughout the State.

² Depuration is a process whereby mussels are placed in aerated or circulating "clean" sea water essentially free of trace metals and synthetic organic compounds as soon after sample collection as possible.

originate in the ship repair yards north of Paco Terminals and affect Station 882 at Paco Terminals Inc. should have at least as great an impact on mussels at Station No. 882.4. Mussel Watch data provided in the table below reveal that the copper concentration in mussels at Station 882.4 is less than the concentration found at Stations 882 and 882.2. This condition exists even after the data have been adjusted to compensate for the elevated level of particulate copper contained within the mussels at the 24th St Marine Terminal station(s). The unusually high concentration of particulate copper entrained within the digestive tracts of the mussels at Station No. 882 indicate that there is a high level of particulate copper within the waters near that station. Although the particulate copper which is contained within the digestive tract is not a measure of the copper which is incorporated into mussel tissue, it can be viewed as a potential source of copper, which might, in part, become assimilated into the mussel tissue.

STATE MUSSEL WATCH COPPER CONCENTRATION DATA

Station Number	Date	Copper Conc.(ug/g)		Distance (ft) and Direction from Station G-16 ⁴	
		Non-Dep	Dep ³		
882.4	12/29/82	32.67	30.22	1,880	North
882.2	12/29/82	50.27	30.94	710	North
882.0	12/29/82	60.32	37.13	330	South
882.4	01/04/84	31.8	29.4	1,880	North
882.0	01/04/84	78.7	48.4	330	South
882.4	01/04/85	21.20	19.61	1,880	North
882.0	01/04/85	88.10	54.23	330	South

³ Sample values are also shown reduced by the proportion indicated in the 1981-83 Mussel Watch depuration study in order to simulate the copper concentrations which might be expected to exist if all mussels had been depurated. Station No. 882.4, which is not expected to be heavily influenced by copper ore, is reduced by 7.5% and Station Nos. 882 and 882.2, which are expected to be heavily influenced by copper ore, are reduced by 38.4%.

⁴ Station G-16 is located along the pier face of Paco Terminals, Inc. The exact location of this station is described in the March 1986, Westec Report.

24. The March, 1986 Westec Report examined the cost and feasibility of five different cleanup options for removal of the copper contaminated sediment to sediment copper concentrations of 110 mg/kg, 350 mg/kg and 1000 mg/kg. The five cleanup options, in order of increasing cost, were: (1) dredging of sediment with ocean disposal of the dredged material, (2) dredging of sediment with disposal at Otay Sanitary Landfill, (3) dredging of sediment with truck shipment to mine for reclamation of copper ore, (4) dredging of sediment followed by rail shipment to mine for reclamation of copper ore, and (5) dredging of sediment with disposal at Casmalia landfill. The projected costs to achieve the three alternative cleanup levels is summarized as follows:

<u>Sediment Copper Concentration</u>	<u>Dredge Volume</u>	<u>Cleanup Cost Range</u>
110 mg/kg	575,186 yds ³	\$3,709,094 - \$176,547,735
350 mg/kg	246,481 yds ³	\$1,661,358 - \$75,727,434
1000 mg/kg	57,402 yds ³	\$472,922 - \$17,722,649

The method to be employed by Paco Terminals Inc. for disposal of the dredged copper ore sediment is not known at this time. Westec Services Inc. reported that from an operational, logistic, and cost viewpoint, ocean disposal of the dredged material was the most feasible alternative at this time. However significant problems could arise in obtaining the necessary dredge spoil ocean disposal permit from the Army Corps of Engineers. Land disposal of the dredged material is also a possibility; however significant problems could arise in transporting large amounts of dredge material by truck and in gaining approval to dispose of the material in a landfill. Two of the dredge spoil disposal options involved returning the copper ore contaminated sediment to the mine where it originated for reclamation of the copper ore. These disposal options would be contingent on the quality of the copper ore and its potential for reclamation using the leaching process employed at the mine.

25. The preponderance of evidence in this matter demonstrates that operations at Paco Terminals Inc. resulted in the discharge of copper ore to San Diego Bay in direct violation of waste discharge requirements prescribed by the Regional Board and contained in Order Nos. 79-72 and 84-50. Therefore, under the terms and conditions of California Water Code Section 13304, the Regional Board is not required to demonstrate that the copper ore contaminated sediment is causing, or is threatening to cause, a condition of pollution in San Diego Bay in order to require its removal from the waters of the state. However, the Regional Board believes that the copper ore contaminated sediment is threatening to adversely affect the marine habitat beneficial use of San Diego Bay. The Regional Boards review of the available information indicates that the copper ore contaminated sediment significantly contributes to the very elevated copper concentrations found in mussels at Mussel Watch Station 882. The copper ore contaminated

sediment also appears to have caused the exceedance of Ocean Plan copper water quality objectives in both the water column and interstitial water of the affected portion of San Diego Bay.

26. The Regional Board, in determining the appropriate level of cleanup in this matter, is guided by the State Water Resources Control Board's Resolution 68-16, **Statement of Policy with Respect to Maintaining High Quality of Waters in California**. This policy provides that existing water quality be maintained when it is reasonable to do so. This policy further provides that any change in water quality be consistent with maximum public benefit and not unreasonably affect beneficial uses. The Regional Board has determined that discharges of copper ore from Paco Terminals Inc. have resulted in a change in water quality in the affected portion of San Diego Bay; the change in water quality threatens to adversely affect the marine habitat beneficial use of San Diego Bay. The Regional Board, based on the available information, is directing Paco Terminals Inc. to remove the copper ore contaminated sediment from the affected portion of San Diego Bay to attain a cleanup level sediment copper concentration of less than 1000 mg/kg. This cleanup level represents less than 100 percent removal of the copper ore contaminated sediment. The Regional Board has determined that this cleanup level is reasonable, consistent with maximum public benefit, and will not unreasonably affect beneficial uses.
27. 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. Paco Terminals, Incorporated, shall reduce the sediment copper concentration in the affected portion of San Diego Bay identified in the March, 1986 Westec Report to a sediment copper concentration less than 1000 mg/kg by January 3, 1989.
2. Paco Terminals Inc. shall submit a technical report to the Regional Board no later than February 4, 1988 containing a discussion of the proposed procedures to cleanup the copper contaminated sediment. The report shall contain a detailed time schedule for completion of all activities associated with the cleanup of the copper ore contaminated sediment. The report shall also include the sampling procedures that will be used to determine the completion of the cleanup.
3. Paco Terminals Inc. shall submit cleanup progress reports to the Regional Board on a quarterly basis, until in the opinion of the Regional Board Executive Officer, the cleanup of the copper contaminated sediment has been completed. The progress reports shall include information on a) the percent completion of the cleanup project, b) the status of requests for permits and their expected approval dates, c) any anticipated deviation from the time schedule submitted in accordance with

Directive 2 of this Addendum, and d) any other relevant information. The progress reports shall be submitted in accordance with the following reporting schedule:

<u>Reporting Period</u>	<u>Report Due</u>
January, February, March	April 30
April, May, June	July 30
July, August, September	October 30
October, November, December	January 30

4. Paco Terminals Inc. shall no later than December 3, 1988 submit a post-cleanup sampling plan to verify the attainment of the prescribed cleanup standards in the area of sediment copper contamination identified in the March, 1986 Westec Report. Upon approval of the sampling plan by the Regional Board Executive Officer, Paco Terminals Inc. shall collect and analyze the samples prescribed in the sampling plan. The post-cleanup sample results shall be submitted to the Regional Board no later than April 3, 1989.
5. Directive No. 5 of Cleanup and Abatement Order No. 85-91 is hereby rescinded.

PROVISIONS

1. Paco Terminals Inc. shall submit to the Regional Board on or before each completion date a report of compliance or noncompliance with the specific task. If noncompliance is being reported, the reasons for such noncompliance and an alternative compliance schedule shall be stated. The discharger shall notify the Regional Board by letter upon return to compliance with the time schedule.

Ordered by Ladin H. Delaney
Ladin H. Delaney
Executive Officer

Dated: November 13, 1987

DTB:GBP:LKM

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

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

CERTIFIED MAIL - RETURN RECEIPT

P-105 662 740

November 29, 1988

Mr. Glen Howell
Vice President
Paco Terminals, Inc.
P.O. Box 2026
National City, CA 92050-0451

Dear Mr. Howell:

ADDENDUM #2 TO CLEANUP AND ABATEMENT ORDER NO. 85-91

Enclosed is a copy of the subject order which was adopted by the Regional Board on
November 21, 1988.

If you have any questions, please call Mr. Lance McMahan at the above number.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ladin H. Delaney".

LADIN H. DELANEY
Executive Officer

LKM:ds

cc: Jeremy Johnstone, Environmental Engineer
Water Management Division (W-4)
Environmental Protection Agency
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John J. Lorman
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Laguna Niguel, CA 92656

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

Ladin H. Delaney

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION9771 Clairemont Mesa Blvd., Ste. B
San Diego, California 92124-1331
Telephone: (619) 265-5114

RECEIVED MAR 21 1989



March 20, 1989

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
P 959 506 206Mr. Don Nay, Director
San Diego Unified Port District
P.O. Box 488
San Diego, California 92112

Dear Mr. Nay:

ADOPTION OF ADDENDUM NO. 3 TO ORDER NO. 85-91

On February 27, 1989, the Regional Board adopted the subject addendum adding the Port District as a responsible party for the discharges of copper ore to San Diego Bay. Enclosed is a copy of Addendum No. 3 to Cleanup and Abatement Order No. 85-91.

If you have any questions, please call Mr. David Barker at the above number.

Very truly yours,

A handwritten signature in cursive script, appearing to read "David Barker".

LADIN H. DELANEY
Executive Officer

LKM:psr

Enclosure

cc: Jeremy Johnstone
Environmental Engineer
U.S. Environmental Protection Agency
Water Management Division (W-4)
215 Fremont Street
San Francisco, CA 94105David B. Hopkins
Hillyer and Irwin, Attorneys At Law
530 "B" Street, 14th Floor
San Diego, CA 92101-4479

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

ADDENDUM NO. 3 TO ORDER NO. 85-91

PACO TERMINALS INC.
SAN DIEGO UNIFIED PORT DISTRICT

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 was issued to Paco Terminals Inc. (Paco Terminals) for violations of Order Nos. 79-72 and 84-50, NPDES Permit No. CA0107930. Order Nos. 79-72 and 84-50 contained waste discharge requirements regulating the storage and loading of copper ore at the San Diego Unified Port District's (Port District's) 24th Street Marine Terminal.
2. On November 13, 1987, the Regional Board issued Addendum No. 1 to Cleanup and Abatement Order No. 85-91 and, on November 21, 1988, the Regional Board issued Addendum No. 2 to Order No. 85-91.
3. By letter dated September 1, 1988, Paco Terminals requested that the Regional Board amend Cleanup and Abatement Order No. 85-91 to name the Port District as a responsible party.
4. On January 23, 1989, and February 27, 1989 the Regional Board held hearings to consider amending Cleanup and Abatement Order No. 85-91 to include the Port District as a responsible party.
5. Evidence introduced in the hearing on January 23, 1989, and February 27, 1989 including, but not limited to, the Regional Board files, written submittals by Paco Terminals and the Port District, and oral testimony support the following findings:
 - (a) From March 1978 through January 1988 Paco Terminals leased a portion of the Port District's 24th Street Marine Terminal for Paco Terminals copper ore storage and loading operation;

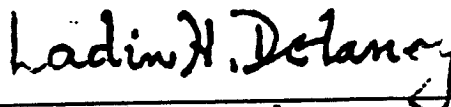
- (b) The Port District, at all relevant times, retained exclusive control over 120 feet of land between the end of Paco Terminals leasehold and the pier face;
- (c) The Port District owned a container crane which was leased by Paco Terminals for the loading of copper ore onto vessels. The Port District routinely maintained an electrician and a mechanic on-site in order to repair any problems with the crane;
- (d) Problems with operation of the container crane resulted in accidental opening of the crane over the ships being loaded. Evidence indicates that the copper concentration in the loading area bay sediments are very elevated compared to background levels. This evidence supports the conclusion that problems with the functioning of the crane likely contributed to elevated copper concentrations in the loading area.
- (e) The Port District also owned and controlled the storm drains on Paco Terminals leasehold;
- (f) Copper was discharged and is still being discharged through the storm drains;
- (g) The Port District knew of the potential for a discharge of copper ore to San Diego Bay from the leased premises and the land which remained in the Port District's exclusive control;
- (h) The Port District had the ability under the lease agreements with Paco Terminals, as well as its ownership of the storm drain and land between Paco Terminal's leasehold and the pier face, to prevent the discharge of copper ore to San Diego Bay;
- (i) Paco Terminals has terminated its lease with the Port District. Therefore, the Port District now has exclusive possession and control over the formerly leased premises.

6. Based upon the factors listed in Finding 5 above, the Regional Board finds that the Port District caused or permitted the discharge of copper ore to San Diego Bay in violation of the terms and conditions of Order No. 79-72 and 84-50, as described in detail in the findings of Cleanup and Abatement Order No. 85-91.
7. The Regional Board also finds that the Port District caused or permitted copper ore to be deposited where it was and probably will be discharged into San Diego Bay. This condition created and threatens to continue to create a condition of pollution as described in Finding No. 22 of Cleanup and Abatement Order No. 85-91.
8. 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. Cleanup and Abatement Order No. 85-91 and Addenda are amended to add the Port District as a responsible party. The directives of Cleanup and Abatement Order No. 85-91 and Addenda shall hereafter be construed to refer to both Paco Terminals and the Port District unless otherwise stated. The title headings of Cleanup and Abatement Order No. 85-91 and addenda are amended to read Paco Terminals Inc., San Diego Unified Port District, San Diego County.

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, on February 27, 1989.



Ladin H. Delaney
Executive Officer

WILLIAM HILLYER
OSCAR F. IRWIN
WESTCOTT GRISWOLD
NORMAN R. ALLENBY
HENRY J. KLINNER
BROWN B. SMITH
JAMES C. EHLERS
JAMES E. DRUMMOND
PETER J. IPPOLITO
GARY S. HARDKE
HOWARD A. ALLEN
ROBERT J. MANNA
KENT W. HILDRETH
JONATHAN S. GASSIERI
HOWARD E. SUSMAN
DAVID B. HOPKINS
ROBERT L. ZAJAC

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

TELEPHONE (619) 234-6202
FAX (619) 234-3954 / 234-0615

February 28, 1989

CURTIS HILLYER 572-1951
CHARLES J. NOBER
STEVEN M. HILL
MICHAEL F. MILLERICK
MURRAY T. S. LEWIS
DONALD L. DUPIT
MARA G. B. DWIG
LESA CHRISTENSON
MARK D. MARTIN
DOROTHY J. ALMOUR
CARY P. BONO
STEVEN C. SAYLER
DEB C. PEDERSCOTTER
STEPHEN M. SP. GANDI
DENNIS O. SEYMOUR JR.
JAMES M. GADY
MARK J. MECKLER

IN REPLY REFER TO
OUR FILE 8481.14

John J. Lormon, Esq.
GRAY, CARY, AMES & FRYE
401 "B" Street, Suite 1700
San Diego, California 92101

HAND DELIVERY

Re: Regional Water Quality Control Board
Cleanup and Abatement Order 85-91; PACO Terminals, Inc.

Dear Mr. Lormon:

In order properly to respond to its obligations under yesterday's ruling of the Regional Water Quality Control Board granting PACO's request to add the Port District as a primarily responsible party under Cleanup and Abatement Order No. 85-91, the Port District must be brought up to date on the status of the cleanup. Specifically, as to abatement, please provide this office with copies of all monitoring reports taken at the site since PACO began monitoring, including, but not limited to, those reports which purport to show a continuing discharge from the storm drains. As to cleanup, please provide this office promptly with the latest communications from the Regional Water Quality Control Board concerning the level of cleanup required (i.e., allowable concentrations), as well as the volume and location of sediment that is currently required or contemplated to be removed in order to meet the required cleanup levels.

It would also be helpful if you would send this office a copy of all correspondence by or on behalf of PACO regarding, referring or relating to Cleanup and Abatement Order No. 85-91 with any government agency involved with compliance with the Order, i.e., RWQCB, ACOE, EPA (with the exceptions of submissions to the RWQCB you have already copied to us). It would also be helpful if you would provide this office with a copy of all correspondence by or on behalf of PACO regarding, referring or relating to Cleanup and Abatement Order No. 85-91 with Westec or with any other consultants whose opinions have formed the basis of any communication by PACO to any governmental agency involved in the cleanup.

HILLYER & IRWIN
A PROFESSIONAL CORPORATION

John J. Lormon, Esq.
February 28, 1989
Page 2

Finally, since PACO's future compliance with Cleanup and Abatement Order No. 85-91 is of vital importance to the Port District, please keep this office informed of all future communications regarding compliance with any governmental agencies involved with the cleanup, and with any experts whose opinions form the basis for any future communications with any such agency.

Thank you for your cooperation in this regard. I look forward to your prompt response.

Sincerely yours,



David B. Hopkins

DBH/kcj

cc: Regional Water Quality Control Board
ATTN: Ladin H. Delaney, Executive Officer

ATTN: David T. Barker

11:20 am
RECEIVED MAR 09 1989

GRAY, CARY, AMES & FRYE

ATTORNEYS AT LAW

1700 FIRST INTERSTATE PLAZA

401 B STREET

SAN DIEGO, CALIFORNIA 92101-4219

TELEPHONE (619) 699-2700

FAX (619) 239-4237

FAX (619) 236-1048

TELEX II 910 335-1273

March 8, 1989

OTHER OFFICES

IN

LA JOLLA

EL CENTRO

GORDON GRAY (1877-1967)
W. P. CARY (1882-1943)
WALTER AMES (1893-1980)
FRANK A. FRYE (1904-1970)

WRITER'S DIRECT LINE
619-699-3695

VIA MESSENGER

David B. Hopkins, Esq.
Hillyer and Irwin
530 B Street, Suite 1400
San Diego, California 92101

Re: RWQCB Cleanup and Abatement Order 85-91; Paco
Terminals, Inc./San Diego Unified Port District

Dear Mr. Hopkins:

In reply to your letter of February 28, 1989, Paco Terminals, Inc. ("Paco") wants the San Diego Unified Port District ("Port") to know that Paco is pleased to cooperate with the Port and will welcome the Port's cooperation in return.

Your letter made very broad-ranging document production requests of Paco. Much of the information which you claimed to need is already in the public record. In a letter dated February 28, 1989 to the Regional Water Quality Control Board ("RWQCB"), you made a request for substantially the same information. While the nature of your request is burdensome and somewhat duplicative, we do intend to cooperate with you in accomplishing the purposes of Cleanup and Abatement Order No. 85-91 ("Order No. 85-91"), including sharing appropriate documentation.

Due to the nature of your request, it appears that the Port intends to comply with the RWQCB order and not to contest it. Is that the Port's intention? If you client intends to continue to contest the matter and not work with Paco in the cleanup effort, then your sweeping request for documents will be viewed in a different light.

In addition to answering the question of whether the Port will appeal the RWQCB decision, we need to know what your proposal is in regards to establishing a mechanism whereby the Port and Paco can move forward to accomplish the requirements of Order No. 85-91. The Port has now been unequivocally named as a party primarily liable for the alleged copper discharges at the 24th Street Terminal.

CUT 003410

David B. Hopkins, Esq.
March 8, 1989
Page 2

As Paco has indicated to the RWQCB over a period of approximately one year, it cannot continue to solely sponsor the cleanup and abatement costs associated with this order. This does not mean that Paco is unwilling to undertake every good faith effort to comply with the intent and purpose of Order No. 85-91. The Port and Paco needs to establish a working arrangement whereby the Port immediately commences to share in the ongoing cost associated with compliance under Order No. 85-91. In addition, we have to achieve an allocation of historical cost associated with Order No. 85-91.

We also should discuss insurance coverage issues related to this matter. As you know, Paco has filed two suits in the San Diego Superior Court seeking to obtain coverage against numerous primary and excess insurance carriers. The Port was additionally named in these policies and we understand that you have put the Paco carriers on notice of your claim. We would like to know what your intentions are concerning pursuit of coverage under the Paco policies. In addition, the Port has its own insurance coverage and we are interested in knowing whether you will be making claims against those carriers.

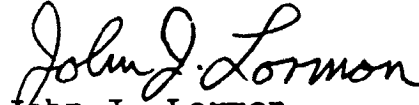
In order to address the various concerns referenced above, we need to discuss these matters as soon as possible. We suggest we meet on these matters on Monday, March 13, 1989 at 10:00 a.m. at our offices. Please let me know if this is convenient for you.

In addition, Paco has a need for information from the Port concerning the various issues related to the RWQCB's decision. For example, the exact nature and extent of the day-to-day involvement of the Port during the term of the Paco lease will need to be examined in order to establish a basis for allocation. We are formulating an extensive list of documents that we will need from you and we will try to provide this request to you as soon as possible.

David B. Hopkins, Esq.
March 8, 1989
Page 3

Please feel free to contact me to confirm the proposed March 13th meeting. Thank you for your cooperation in this regard. We look forward to a prompt response from you.

Very truly yours,



John J. Lormon

For

GRAY, CARY, AMES & FRYE

166:JJL/bmc

cc: Mr. Ladin H. Delaney
Sheila Vassey, Esq.

WILLIAM HILLYER
OSCAR F. IRWIN
WESTCOTT GRISWOLD
NORMAN R. ALLENBY
HENRY J. KLINER
BROWN B. SMITH
JAMES G. EHLERS
JAMES E. DRUMMOND
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JONATHAN S. GABBIERI
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HILLYER & IRWIN
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SAN DIEGO, CALIFORNIA 92101-4479
TELEPHONE (619) 234-6121
FAX (619) 234-3934 / 234-0615
March 10, 1989

CURTIS HILLYER (1972-1951)
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STEVEN M. HILL
MICHAEL F. MILLERICK
MURRAY T. S. LEWIS
DONALD L. CUPIT
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DOROTHY J. ALMOUR
CARY R. BOND
STEVEN C. SATLER
DEB C. PEDERSDOTTER
STEPHEN M. BRIGANDI
DENNIS O. SEYMOUR JR.

IN REPLY REFER TO
OUR FILE 8481.14

John J. Lormon, Esq.
GRAY, CARY, AMES & FRYE
401 "B" Street, Suite 1700
San Diego, California 92101

VIA FACSIMILE
(619) 239-4237
or (619) 236-1048

Re: Regional Water Quality Control Board
Cleanup and Abatement Order 85-91; PACO Terminals, Inc.

Dear Mr. Lormon:

This is in reply to your letter of March 8, 1989. Unfortunately, my schedule will not permit me to meet with you on Monday, March 13, 1989. It would be best for us to arrange a meeting during the week of March 20. I suggest March 21 at 10:00 a.m. at your offices, since we may be able to review at that time any documents which you are willing to provide in response to the request in my letter of February 28. Please let me know if you are available.

In addition to the documents I requested in my February 28 letter, I also request from you any information you may have developed with your consultants concerning cleanup methodology and disposal requirements for copper concentrate of the type at the site. The Port District is determining how best to abate the purported continuing discharge from the site and would appreciate any information you may have already developed concerning cleanup methodology and disposal requirements. I suggest that it is in PACO's interest to provide the Port District with any such information since PACO will benefit from any cost savings to the Port District to the extent that it may reduce the Port District's claim for indemnification from PACO under the leases and operating agreements. The Port District is moving to abate promptly any continuing discharge, but those efforts would be expedited further by PACO's cooperation in this regard.

Your letter of March 8 suggests that your willingness to comply with our request for (inter alia) documentation of the compliance status of Cleanup and Abatement Order No. 85-91 and for consultants' reports regarding the site somehow depends upon whether

CUT 003413

HILLYER & IRWIN

A PROFESSIONAL CORPORATION

John J. Lormon, Esq.
March 10, 1989
Page 2

the Port District will appeal the RWQCB issuance of Addendum No. 3 to Cleanup and Abatement Order No. 85-91, which names the Port District as a primarily responsible party under that Order along with PACO. So that there is no misunderstanding, this is to advise you that the Port District has authorized our law firm to prepare an appeal of that RWQCB Order. Therefore, an appeal will be filed, barring some change of plans.

Nevertheless, I hope that you will comply with the request I made to you in my February 28, 1989 letter, and with the additional request in this letter. I fail to see how the pendency of an appeal of that decision would affect your decision whether to provide us with the information we requested. The existence of an appeal does not create any additional conflict between PACO and the Port District. In any event, PACO and the Port District need to resolve allocation issues through some means in light of all of the facts and circumstances, including PACO's indemnification obligations to the Port District as set out in the lease and operating agreements, and the Port District's statutory right to indemnification from PACO.

I look forward to meeting you on March 21, assuming you can clear your schedule for that date. In addition, please notify me as promptly as possible (before our March 21 meeting, if you can) whether the Port District's determination to appeal the RWQCB decision affects your willingness to provide us with any of the documentation requested in my February 28 letter or in this letter.

Sincerely yours,

HILLYER & IRWIN



David B. Hopkins

DBH/koj

cc: Regional Water Quality Control Board
ATTN: Ladin H. Delaney, Executive Officer

Sheila K. Vassey, Esq.

Joseph D. Patello, Esq.

RECEIVED MAR 23 1989

GRAY, CARY, AMES & FRYE

ATTORNEYS AT LAW

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SAN DIEGO, CALIFORNIA 92101-4219

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TELEX II 910 335-1273

OTHER OFFICES

IN

LA JOLLA

EL CENTRO

WRITER'S DIRECT LINE

699-2856

GORDON GRAY (1877-1967)
W. P. CARY (1882-1943)
WALTER AMES (1893-1980)
FRANK A. FRYE (1904-1970)

March 22, 1989

David B. Hopkins, Esq.
Hillyer & Irwin
530 B Street, 14th Floor
San Diego, CA 92101-4479

Re: RWOCB Cleanup Order No. 85-91/Paco Terminals, Inc.

Dear Mr. Hopkins:

Your letter to John Lormon of our office of March 10, 1989, has been referred to me for response. Our position is that until the Port reconciles itself to the fact that it is a proper party to the Cleanup and Abatement Order and until it offers cooperation to Paco Terminals in working toward an equitable resolution of the cleanup problems, we cannot comply with the demands that you have made.

As Mr. Lormon previously indicated to you in his letter, the demands that you have made for documents are nothing more or less than an improper request for discovery in your continuing litigation of this matter, and until the order becomes final, either through your exhaustion of your remedies or the Port's acquiescence in it, we do not intend to furnish documents.

As Mr. Lormon also indicated in his letter, we have a lengthy list of documents that we will need in order to determine the equitable apportionment between the two parties once the Order becomes final, and you can count on us to send that list along to you promptly. We will expect, once the order becomes final, to work together toward the solution, and regret that you do not seem to be in a position to give that commitment to us presently.

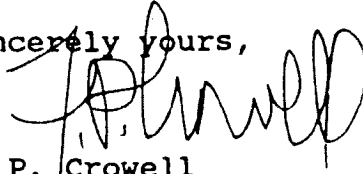
I would have an interest in discussing another matter with you, however, and will call you for an appointment if your client has an interest likewise. That involves the question of the insurance coverage of the Port in this matter. The Port is

CUT 003415

David B. Hopkins, Esq.
March 22, 1989
Page 2

an additional insured under Paco's policies, and we assume that the Port has insurance of its own. It may well be that we have things to discuss that are mutually beneficial between the two parties in that regard. As you know, Mr. Lormon's letter raised this issue, but we received no response.

Sincerely yours,



F. P. Crowell
For
GRAY, CARY, AMES & FRYE

FPC:ca

cc: Paco Terminals, Inc.

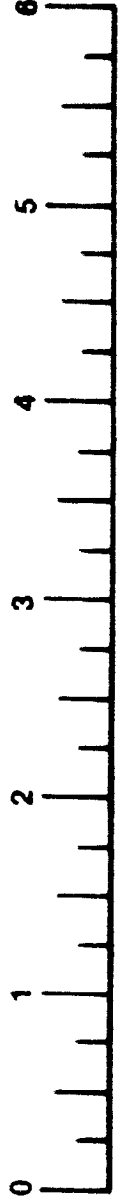
PHOTOGRAPHER Lance McMahan

DATE 05/09/89 **ROLL #** 252868
Month Day Year

LOCATION Shelter Island Drive

CASE FILE _____ ✓

AGENCY RWQCB - San Diego



9-89

2.5.74

Shelter Island Drive - Inspection
HRC: 4

T.C: 101-05
Arr: 1415

1430 - Sample A collected at
gutter at 2330 Shelter Island Drive
Drive. LVM 877-07-A. Inspection
of Ansbury Lane and Shelter
Island Drive.

1445 - Sample B collected at
gutter at 2330 Shelter Island
Drive.

1455 - Located storm drain inlet
at 2510 Shelter Island Drive
which drains to yacht basin side
rather than commercial basin
Located next to building
#2510a(8)

1510 - collected sample at 2510
Shelter Island Drive south end of
Bus stop (near Versailles). Sample
collected. Material I.D. as

NOT

waste from
the car wash.

1520 1600 flat roof area. HRC: 4
Parking

1600 storm drain inlet to
water #2330(8) next to
Shelter Island Drive and
yacht basin.

1610 - New sample C
at 2330 Shelter Island Drive.

1615 - Vented car
boat wash (Pond area). N
drains into

1630 - Storm drain at 2638
Island Drive drains to
Commercial Basin.

1700 - Samples placed in
refrigerator

QUALITY ASSURANCE LABORATORY
 6555 NANCY RIDGE DR., SUITE 300
 SAN DIEGO, CALIFORNIA 92121
 (619) 566-1060

 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
 ATTN: LANCE MCMAHAN
 9771 CLAIREMONT MESA BLVD., STE B
 SAN DIEGO, CA 92124



DATE OF REPORT	MAY 17, 1989
DATE RECEIVED	MAY 10, 1989
DATE OF SAMPLE	MAY 9, 1989
DATE COMPLETED	MAY 16, 1989
ANALYZED BY	EA JM RM TP TM MH
SAMPLE TYPE	3 SEDIMENT
PROJECT NAME	LKM889-119

ANALYSES RESULTS

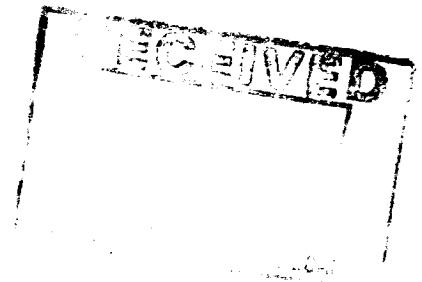
			LOG NUMBER: 5525-89	5525-89	
			SAMPLE ID: A	A	
ANALYSIS	METHOD	UNITS	WET WEIGHT	WET WEIGHT	DRY WEIGHT

TOTAL PCB	EPA 8080	MG/KG		0.08/0.08*	0.09/0.09*
MERCURY	7471	MG/KG WET		1.00	1.11
COPPER	6010	MG/KG WET	14,200		15,800
TBT				**	
% SOLIDS	GRAVIMETRIC %				90%

* DUPLICATE ANALYSIS

** RESULTS TO FOLLOW

PETER SHEN
 LABORATORY DIRECTOR



MAY 17, 1989

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

ANALYSES RESULTS

			LOG NUMBER: 5526-89	5526-89	
			SAMPLE ID: B	B	
ANALYSIS	METHOD	UNITS	WET WEIGHT	WET WEIGHT	DRY WEIGHT
TOTAL PCB	EPA 8080	MG/KG		0.07	0.07
MERCURY	7471	MG/KG WET		<0.5	<0.5
COPPER	6010	MG/KG WET		1,760	1,760
TBT				**	
% SOLIDS	GRAVIMETRIC	%			100%

** RESULTS TO FOLLOW



PETER SHEN
LABORATORY DIRECTOR

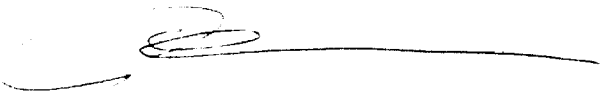
MAY 17, 1989

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

ANALYSES RESULTS

ANALYSIS	METHOD	UNITS	LOG NUMBER: 5527-89		5527-89
			SAMPLE ID: C		C
			WET WEIGHT	WET WEIGHT	DRY WEIGHT
TOTAL PCB	EPA 8080	MG/KG		0.08	0.08
MERCURY	7471	MG/KG WET		<0.5	<0.52
COPPER	6010	MG/KG WET	1,490		1,540
TBT				**	
% SOLIDS	GRAVIMETRIC %				97%

** RESULTS TO FOLLOW

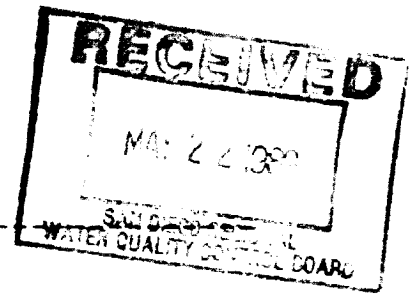


PETER SHEN
LABORATORY DIRECTOR

		5525		5526		5527	
		A		B		C	
		Dry	Wet	Dry	Wet	Dry	Wet
mg/kg	Cu	15,800	14,200 1,000 ^{µM}	1,760	1,760	1,540	1,490
	Hg	1.11	1.00	<0.5	<0.5	<0.52	<0.5
	PCB	0.09/0.09	0.08/ 0.08	0.07	0.07	0.08	0.08
ppb	TBT	120		26		1.1	
	DBT	400		4.2		4.3	
	MBT	430	430 ^{µM}	59		34	
	8 solid	90		100		972	

Anne Durbin of QAL relayed results over telephone on 5-18-89 to LK McMahon (566-1060)

QUALITY ASSURANCE LABORATORY
 6555 NANCY RIDGE DR., SUITE 300
 SAN DIEGO, CALIFORNIA 92121
 (619) 566-1060



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
 ATTN: LANCE MCMAHAN
 9771 CLAIREMONT MESA BLVD., STE B
 SAN DIEGO, CA 92124



DATE OF REPORT	MAY 18, 1989
DATE RECEIVED	MAY 10, 1989
DATE OF SAMPLE	MAY 9, 1989
DATE COMPLETED	MAY 18, 1989
ANALYZED BY	EA JM RM TP TM MH
SAMPLE TYPE	3 SEDIMENT
PROJECT NAME	LKM889-119

ANALYSES RESULTS

ANALYSIS	METHOD	UNITS	LOG NUMBER: 5525-89		5525-89
			SAMPLE ID: A		A
			WET WEIGHT	WET WEIGHT	DRY WEIGHT
TOTAL PCB	EPA 8080	MG/KG		0.08/0.08*	0.09/0.09*
MERCURY	7471	MG/KG WET		1.00	1.11
COPPER	6010	MG/KG WET	14,200		15,800
MONOBUTYL TIN	**	PPB			430
DIBUTYL TIN	**	PPB			400
TRIBUTYL TIN	**	PPB			1,200
% SOLIDS	GRAVIMETRIC	%			90%

* DUPLICATE ANALYSIS

** HYDRIDE CRYOGENIC ATOMIC ABSORPTION DETERMINATION AS OUTLINED BY VALKIRS.

Anne Durbin of QAL
 confirmed [TBT] = 1200 ppb
 on May 24, 1989. J.M.

JM
 5-24-89

PETER SHEN
 LABORATORY DIRECTOR

Original in Eichenlaub file.
 Copies to
 Kochler Kraft
 Shelter Island Boatyard
 Nielsen Beaumont Marine
 Driscoll Custom Boats
 Kettenburg Marine


MAY 18, 1989

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

ANALYSES RESULTS

ANALYSIS	METHOD	UNITS	LOG NUMBER: 5526-89		5526-89
			SAMPLE ID: B		B
			WET WEIGHT	WET WEIGHT	DRY WEIGHT
TOTAL PCB	EPA 8080	MG/KG		0.07	0.07
MERCURY	7471	MG/KG WET		<0.5	<0.5
COPPER	6010	MG/KG WET	1,760		1,760
MONOBUTYLTIN	**	PPB			59
DIBUTYLTIN	**	PPB			4.2
TRIBUTYLTIN	**	PPB			26
% SOLIDS	GRAVIMETRIC	%			100%

** HYDRIDE CRYOGENIC ATOMIC ABSORPTION DETERMINATION AS OUTLINED BY VALKIRS.



PETER SHEN
LABORATORY DIRECTOR

CUT 007688


MAY 18, 1989

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

ANALYSES RESULTS

ANALYSIS	METHOD	UNITS	LOG NUMBER: 5527-89		5527-89
			SAMPLE ID: C		C
			WET WEIGHT	WET WEIGHT	DRY WEIGHT
TOTAL PCB	EPA 8080	MG/KG		0.08	0.08
MERCURY	7471	MG/KG WET		<0.5	<0.52
COPPER	6010	MG/KG WET	1,490		1,540
MONOBUTYLTIN	**	PPB			34
DIBUTYLTIN	**	PPB			4.3
TRIBUTYLTIN	**	PPB			1.1
% SOLIDS	GRAVIMETRIC	%			97%

** HYDRIDE CRYOGENIC ATOMIC ABSORPTION DETERMINATION AS OUTLINED BY VALKIRS.



PETER SHEN
LABORATORY DIRECTOR

LATHAM & WATKINS

ATTORNEYS AT LAW

701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
TELEPHONE (619) 236-1234
TELECOPIER (619) 696-7419
TLX 590778
ELN 62793276

PAUL R. WATKINS (1800-1073)
DANA LATHAM (1800-1074)

CHICAGO OFFICE

SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
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TELECOPIER (312) 993-9767

LOS ANGELES OFFICE

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2466
TELEPHONE (213) 485-1234
TELECOPIER (213) 614-8763

NEW YORK OFFICE

53RD AT THIRD, SUITE 1000
885 THIRD AVENUE
NEW YORK, NEW YORK 10022-4802
TELEPHONE (212) 906-1200
TELECOPIER (212) 751-4864

ORANGE COUNTY OFFICE

650 TOWN CENTER DRIVE
TWENTIETH FLOOR
COSTA MESA, CALIFORNIA 92626-1918
TELEPHONE (714) 540-1235
TELECOPIER (714) 755-8290

WASHINGTON, D.C. OFFICE

1001 PENNSYLVANIA AVE., N.W., SUITE 300
WASHINGTON, D.C. 20004-2508
TELEPHONE (202) 637-2200
TELECOPIER (202) 637-2201

April 17, 1989

Via Messenger

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

*Original letter
and report are
in Kettenburg file*

4-18-89/LKM

Re: Phase 2 Sampling Plan Submittal
Addendum No. 2 to Cleanup and Abatement
Order Nos. 88-78, 88-79, and 88-86

Dear Ladin:

On March 24, 1989, in accordance with the requirements of Cleanup and Abatement Order Nos. 88-78, 88-79, and 88-86 (the "Orders"), results of Phase 1 of the Commercial Basin Boatyards Sediment Sampling Program were submitted to the Regional Water Quality Control Board (the "Board"). Phase 1 sample results for areas beyond the leasehold interests of Bay City Marine, Inc., Kettenburg Marine, and Mauricio and Sons, Inc. (collectively, the "Boatyards"), and proposed locations for Phase 2 sediment corings, however, were not included in the submittal. A review of what has transpired to date is provided to help clarify why only a partial submittal was made.

The revised Commercial Basin Boatyards Sediment Sampling Plan, which was submitted on December 19, 1988 and subsequently approved by the Board, identified the areas to be sampled in Figure 2-1. The approved sample grid was based upon "areas suspected to be influenced by each boatyard" as shown on Figure 1 of the Orders.

After being informed that additional Cleanup and Abatement Orders would be issued to other boatyards in Commercial Basin and in an effort to encourage a coordinated response to the alleged problems identified in the Orders and

SD23\ADH\delaney.407

CUT 007691

Mr. Ladin H. Delaney
April 17, 1989
Page 2

provide a comprehensive and reliable database, the Boatyards decided to finance an expanded scope of sediment sampling that included the entire southern border of Commercial Basin. This expanded scope of sampling was described in an amendment to the approved sampling plan, which was submitted to the Board on January 27, 1989, and subsequently approved by the Board. The Boatyards' willingness to undertake the expense and responsibility of additional voluntary sediment sampling was influenced by two factors: (1) the understanding that several new potentially responsible parties would be issued Cleanup and Abatement Orders; and (2) that the additionally named parties would have some regulatory incentives favoring their participation in a joint approach to the Commercial Basin sediment sampling effort.

With these two factors in mind, the Boatyards performed the expanded scope of sampling and analysis in Phase 1. The Boatyards' plan was to submit the required report by March 24, 1989, with support from the more recently involved parties. Cleanup and Abatement Orders were issued to Eichenlaub Marine, Driscoll Custom Boats, and Koehler Kraft Company, on February 17, 1989, March 6, 1989, and March 10, 1989, respectively. Each of the new Cleanup and Abatement Orders contained the following schedule:

Submittal of Sampling Plan	March 17, 1989
Submittal of Sample Results	April 17, 1989
Submittal of Remedial Alternatives Report	May 17, 1989

These deadlines applied if the parties chose not to participate in a joint sampling effort. Participation in the joint effort would have required the new parties to comply with the dates in the Orders issued to the Boatyards.

The Boatyards were unable to obtain a commitment of participation from any of the newly named parties prior to March 24, 1989. In at least one instance, it was because of some sort of extension that was granted one of the new parties. We do not know if any of the parties have confirmed with the Board their preferred approach to compliance. Several reasons for this lack of progress can be suggested, but the net result is a dilemma for the Boatyards.

Mr. Ladin H. Delaney
April 17, 1989
Page 3

The Boatyards were prepared to submit a comprehensive Phase 2 sampling plan on March 24, 1989, which would have provided for sediment coring and analysis in a pattern that utilized the entire Phase 1 database. However, submittal of the comprehensive Phase 2 plan was inappropriate if the newly named parties intended to pursue an independent course of action.

We are desirous of maintaining our good faith approach to compliance and hope that you will understand why we felt it was necessary not to submit a completed Phase 2 plan on March 24, 1989. We continue to feel that participation by the new parties in a joint sampling approach will be to the benefit of all parties and will ultimately result in a more cost-effective, timely, and technically sound resolution. We have been unable, however, to obtain a firm commitment of joint participation from the new parties.

Consequently, the Boatyards are moving ahead independent of the new parties with Phase 2 of the plan. We have enclosed a written description and sampling grid of Phase 2 for your review. We also are supplementing the Phase 1 data we submitted to the Board on March 24, 1989.

If your staff can review this plan during this next week and it is approved, we can complete all of the required sampling by May 1, 1989, which is the next deadline identified in the Orders. In other words, we will be right back on track. If any of the new parties choose to participate in the joint effort, we will notify you immediately and, with your approval, amend the sampling grid of Phase 2 accordingly.

We appreciate your consideration of this letter. If we can answer any questions you may have, please do not hesitate to contact us.

Very truly yours,



Allen D. Haynie
of LATHAM & WATKINS

cc: Thompson Fetter
Anthony Mauricio

LATHAM & WATKINS

Mr. Ladin H. Delaney
April 17, 1989
Page 4

cc: Thompson Fetter
Anthony Mauricio
Austin Crawford
Barry Graham

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

9771 Clairemont Mesa Blvd., Ste. B

San Diego, California 92124-1331 **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Telephone: (619) 265-5114

P 959 506 240



April 14, 1989

Mr. Allen Haynie
Latham & Watkins
701 B Street, suite 2100
San Diego, California 92101-8197

Dear Mr. Haynie:

NOTICE OF VIOLATION OF CLEANUP AND ABATEMENT ORDER NO. 87-78, 88-79, 88-86

By letter dated March 24, 1989, you submitted a technical report on behalf of Kettenburg Marine, Bay City Marine and Mauricio and Sons, Inc., in response to Directive 2(b) of Addendum No. 2 to the subject Cleanup and Abatement Orders. The report was incomplete as described below:

- a. The report did not contain a Phase 2 sample plan identifying the proposed Phase 2 sampling locations.
- b. The report did not contain a plot of the sample results with lines of equal concentration as required under Provision 3.
- c. The report did not contain sample results fully defining the horizontal extent of waste discharge contamination from the facility formerly owned by Mauricio and Sons, Inc.

Consequently Kettenburg Marine, Bay City Marine and Mauricio and Sons, Inc., are in violation of the terms and conditions of the subject Cleanup and Abatement Orders.

As you know, the Regional Board may impose substantial administrative civil liability penalties for violations of cleanup and abatement orders. My recommendation to the Regional Board for monetary penalties for the above noted violations will be based in large part on the response of Bay City Marine, Kettenburg Marine and Mauricio and Sons, Inc., in submitting the required information immediately. Accordingly, I urge you to submit the information necessary to fully comply with the Cleanup and Abatement Orders.

If you have any questions on this matter, please contact Mr. David Barker at the above number.

Very truly yours,

LADIN H. DELANEY
Executive Officer

DTB:ds

cc: Thomas Fetter, President
Kettenburg Marine
2810 Carlton Street
San Diego, CA 92106
P 959 506 239

Anthony Mauricio, President
Mauricio and Sons, Inc. P 959 506 238
1864 National Avenue
San Diego, CA 92113

David Lloyd, President
Bay City Marine
P.O. Box 2571
National City, CA 92050
P 959 506 237

*file Mauricio
Sons*

Is your RETURN ADDRESS completed on the reverse side?

Complete items 1 and 2 when additional service is desired, and complete items 3 through 7 on the "RETURN TO" form on the reverse side. Failure to do this will prevent this form from being used for proof of delivery.

1. Return to return address, date, and addressee's address. 2. Registered Delivery

3. Article Addressed to:
 Anthony Mauricio, President
 Mauricio and Sons, Inc.
 1864 National Avenue
 San Diego, CA 92113

4. Article Number: P 959 506 238

5. Date of Delivery: Registered Insured Signature Mail Signature Mail

6. Signature: *Anthony Mauricio*

7. Date of Mailing: *4/11/89*

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.

CERTIFIED MAIL
P 959 506 238

PS Form 3800, June 1986

RECEIPT FOR CERTIFIED MAIL
 REGISTERED MAIL
 INSURANCE
 (See Reverse)

P 959 506 238
 P 959 506 238

Anthony Mauricio
 1864 National Avenue
 San Diego, CA 92113

14 Apr 89

NOTICE OF VIOLATION OF C & A ORDER NOS. 87-78, 88-79, 88-86

Cambric Corporate Center
1760 E. River Road Suite 136
Tucson, AZ 85718
(602) 577-6363

Woodward-Clyde Consultants

June 15, 1989
Project No. 8853235T-VSP2

Latham & Watkins
701 'B' Street, Suite 2100
San Diego, California 92101

Attention: Mr. Allen D. Haynie

COMMERCIAL BASIN BOATYARDS SEDIMENT
SAMPLING: PHASE 2 RESULTS

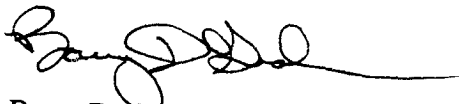
Dear Mr. Haynie:

Woodward-Clyde Consultants (WCC) is pleased to provide this report for Phase 2 of the Commercial Basin Boatyards Sediment Sampling. This report satisfies the reporting requirements of Directive 2(d) and Provision 1 of Addendum 2 to Cleanup and Abatement Orders issued to Bay City Marine, Inc. (88-79), Kettenburg Marine (88-78), and Mauricio and Sons, Inc. (88-86).

Please contact us with your questions or comments.

Very truly yours,

WOODWARD-CLYDE CONSULTANTS



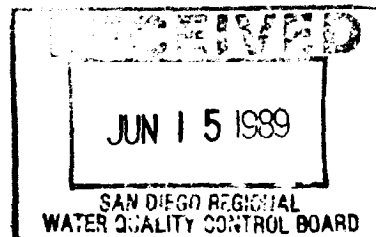
Barry D. Graham
Project Scientist

BDG/rlg (a/bdg1)

Attachment

cc: Mr. Thompson Fetter, Kettenburg Marine
Mr. David Lloyd, Bay City Marine, Inc.
Mr. Anthony Mauricio, Mauricio & Sons, Inc.

Original report is in
Kettenburg file - Copy
of cover letter to:
Bay City Marine
✓ Mauricio (Nielson Beaumont)
Kettenburg



GRAY, CARY, AMES & FRYE

ATTORNEYS AT LAW

1730 FIRST INTERSTATE PLAZA

401 S STREET

SAN DIEGO, CALIFORNIA 92101-4219

TELEPHONE (619) 599-2100

FAX (619) 239-4217

TELETYPE (619) 599-0448

TELEX 930 335 273

OTHER OFFICES

IN

LA JOLLA

EL CENTRO

GORDON GRAY (1877-1967)

W. P. CARY (1887-1947)

WALTER AMES (1891-1990)

FRANK A. FRYE (1924-1970)

18755 E 105th - 41

May 25, 1989

Mr. David Barker
Senior Engineer
California Regional Water
Quality Control Board
9771 Clairemont Mesa Boulevard
Suite B
San Diego, CA 92124-1331

Re: Copies of Commercial Basin Boatyard Files

Dear Mr. Barker:

As we discussed today, we are requesting copies of the files your office maintains for the following boatyards: Kettenberg, Bay City, Shelter Island, Mauricio and Sons, Kollercraft, and Eichenlaub. As to the Driscoll Custom Boats file, please have the service copy materials filed after May 16, 1989. Also, we would like a copy of the plastic overlay pertaining to the Commercial Basin that the Board has used at recent meetings.

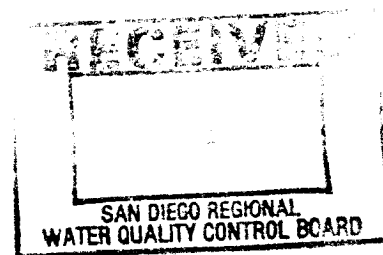
I advised Mr. Lormon of your estimate of one week as the time frame for the copy service to duplicate the files. At that time, the copy service will contact our office to pick up the copies. Mr. Lormon adds that the schedule provided to him on Tuesday, May 23 will be met one week after the copying has been completed.

I appreciate your assistance. Please contact me if you have any questions.

Very truly yours,

Jean Robertson
Legal Assistant
to John Lormon

*Original in Driscoll
Custom Boats. Copies to:
Kettenburg
Bay City
Shelter Island
Mauricio (Nielsen Beaumont)
Koehler Kraft
Eichenlaub*



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

PHOTOGRAPH LOG

Location: Shelter Island Drive Photo Date: 5-9-89

WDID: _____ Photographer: Lance McMahan

Roll #: 252868 Signature: Lance McMahan

Frame	Description
1	log sheet
2	Overview of location for sample LKM889-119-A
3	Sample Station "A" before collection
4	Sample Station "A" after collection. Jar sealed
5	Overview of location for sample LKM889-119-B
6	Sample Station "B" before collection
7	Sample station "B" after collection. Jar Sealed
8	Not a sample location. Material was identified as waste from recently poured concrete.
9	Overview of location for sample LKM889-119-C
10	Sample station "C" before collection
11	Sample station "C" after collection. Jar sealed
12	Entrance to Eichenlaub Marine
	Original log sheet and _____
	photos are in Eichenlaub File: _____
	Copies of log sheet to files: _____
	1. Koehler Kraft Company _____
	2. Driscoll Custom Boats _____
	3. Mauricio (Nielson-Beaumont) ✓ _____
	4. Shelter Island Boatyard _____
	5. Kettenburg Marine _____

LKM3/photolog

PHOTOGRAPHER Lance McMahan

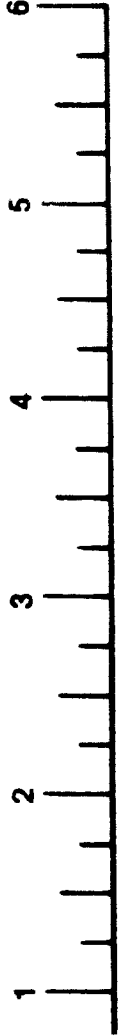
DATE 06/23/89 **Month Day Year** A B **ROLL #** ~~252863~~

LOCATION Shelter Island Drive

CASE FILE _____

AGENCY RWQCB - San Diego

Original & photos to
Driscoll Custom Boats.
Copies to following:
Koehler Kraft
Shelter Island Boatyard
Nielsen Beaumont ✓
Eichenlaub Marine
Kettenburg Marine



PHOTOGRAPHER Lance McMahan

DATE 06 / 126 / 189 **ROLL #** B
Month Day Year

LOCATION RB office

CASE FILE Shelter Island Drive Inspection

AGENCY RWQCB - San Diego

Sample "B" was inadvertently labeled with initials "LKM" - changed to "BOK"

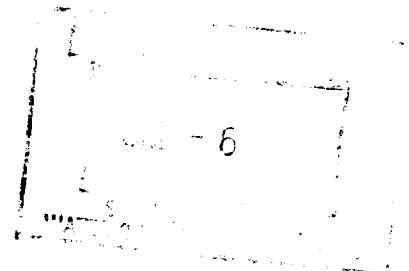
0	1	2	3	4	5	6

QUALITY ASSURANCE LABORATORY
6555 NANCY RIDGE DR., SUITE 300
SAN DIEGO, CALIFORNIA 92121
(619) 566-1060

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ATTN: BRIAN KELLEY
9771 CLAIREMONT MESA BLVD., STE B
SAN DIEGO, CA 92124

DATE OF REPORT	JULY 3, 1989
DATE RECEIVED	JUNE 26, 1989
DATE OF SAMPLE	JUNE 23, 1989
DATE COMPLETED	PARTIAL RESULTS
ANALYZED BY	JM RM
SAMPLE TYPE	15 SEDIMENT
PROJECT NAME	BDK-890-20

QUALITY ASSURANCE
LABORATORY

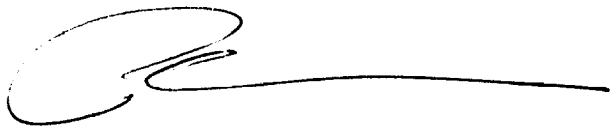


JULY 3, 1989

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

		LOG NUMBER: 7647-89	7647-89
		SAMPLE ID: A	A
		UNITS: MG/KG	MG/KG
ANALYSIS	MEHTOD	WET WEIGHT	DRY WEIGHT
CADMIUM	6010	1.46	2.18
CHROMIUM	6010	43.3	64.6
COPPER	6010	2470	3687
LEAD	6010	471	703
NICKEL	6010	18.1	27
SILVER	6010	0.775	1.157
ZINC	6010	908	1355
ARSENIC	7060	3.64	5.43
MERCURY	7471	0.395	0.590
% SOLID	GRAVIMETRIC		67 %

		LOG NUMBER: 7648-89	7648-89
		SAMPLE ID: B	B
		UNITS: MG/KG	MG/KG
ANALYSIS	MEHTOD	WET WEIGHT	DRY WEIGHT
CADMIUM	6010	< 0.800	< 1.067
CHROMIUM	6010	20.6	27.5
COPPER	6010	440	587
LEAD	6010	391	521
NICKEL	6010	14.1	18.8
SILVER	6010	0.433	0.577
ZINC	6010	879	1172
ARSENIC	7060	3.32	4.43
MERCURY	7471	0.180	0.240
% SOLID	GRAVIMETRIC		75 %



PETER SHEN
LABORATORY DIRECTOR

PS/at

QUALITY ASSURANCE
LABORATORY

CUT 007714

JULY 3, 1989

PAGE 2
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

		LOG NUMBER: 7649-89	7649-89
		SAMPLE ID: C	C
		UNITS: MG/KG	MG/KG
ANALYSIS	METHOD	WET WEIGHT	DRY WEIGHT
CADMIUM	6010	1.12	1.67
CHROMIUM	6010	29.9	44.6
COPPER	6010	1310	1955
LEAD	6010	350	522
NICKEL	6010	8.42	12.57
SILVER	6010	0.744	1.110
ZINC	6010	323	482
ARSENIC	7060	2.64	3.94
MERCURY	7471	< 0.05	< 0.07
% SOLID	GRAVIMETRIC		67 %

		LOG NUMBER: 7650-89	7650-89
		SAMPLE ID: D	D
		UNITS: MG/KG	MG/KG
ANALYSIS	METHOD	WET WEIGHT	DRY WEIGHT
CADMIUM	6010	1.68	1.71
CHROMIUM	6010	25.4	25.9
COPPER	6010	727	742
LEAD	6010	513	523
NICKEL	6010	10.7	10.9
SILVER	6010	0.768	0.784
ZINC	6010	1060	1082
ARSENIC	7060	5.26	5.37
MERCURY	7471	0.296	0.302
% SOLID	GRAVIMETRIC		98 %



PETER SHEN
LABORATORY DIRECTOR

PS/at

QUALITY ASSURANCE
LABORATORY

CUT 007715

JULY 3, 1989

PAGE 3
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

ANALYSIS	METHOD	LOG NUMBER: 7651-89	7651-89
		SAMPLE ID: E	E
		UNITS: MG/KG	MG/KG
		WET WEIGHT	DRY WEIGHT
CADMIUM	6010	< 0.741	< 0.938
CHROMIUM	6010	62.1	78.6
COPPER	6010	398	504
LEAD	6010	442	559
NICKEL	6010	10.4	13.2
SILVER	6010	0.708	0.896
ZINC	6010	511	647
ARSENIC	7060	3.36	4.25
MERCURY	7471	0.113	0.143
% SOLID	GRAVIMETRIC		79 %

ANALYSIS	METHOD	LOG NUMBER: 7652-89	7652-89
		SAMPLE ID: F	F
		UNITS: MG/KG	MG/KG
		WET WEIGHT	DRY WEIGHT
CADMIUM	6010	< 0.741	< 1.256
CHROMIUM	6010	18.1	30.7
COPPER	6010	439	744
LEAD	6010	167	283
NICKEL	6010	7.09	12.02
SILVER	6010	0.854	1.447
ZINC	6010	1440	2441
ARSENIC	7060	2.32	3.93
MERCURY	7471	0.079	0.134
% SOLID	GRAVIMETRIC		59 %



PETER SHEN
LABORATORY DIRECTOR

PS/at

QUALITY ASSURANCE
LABORATORY

CUT 007716

JULY 3, 1989

PAGE 4
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

ANALYSIS	METHOD	LOG NUMBER: 7653-89	7653-89
		SAMPLE ID: G	G
		UNITS: MG/KG	MG/KG
		WET WEIGHT	DRY WEIGHT
CADMIUM	6010	< 0.784	< 1.059
CHROMIUM	6010	28.5	38.5
COPPER	6010	1010	1365
LEAD	6010	258	349
NICKEL	6010	9.70	13.11
SILVER	6010	0.733	0.991
ZINC	6010	551	745
ARSENIC	7060	3.27	4.42
MERCURY	7471	0.357	0.482
% SOLID	GRAVIMETRIC		74 %

ANALYSIS	METHOD	LOG NUMBER: 7654-89	7654-89
		SAMPLE ID: H	H
		UNITS: MG/KG	MG/KG
		WET WEIGHT	DRY WEIGHT
CADMIUM	6010	< 0.800	< 1.270
CHROMIUM	6010	35.8	56.8
COPPER	6010	1280	2032
LEAD	6010	307	487
NICKEL	6010	11.9	18.9
SILVER	6010	0.761	1.208
ZINC	6010	518	822
ARSENIC	7060	2.94	4.67
MERCURY	7471	0.082	0.130
% SOLID	GRAVIMETRIC		63 %



PETER SHEN
LABORATORY DIRECTOR

PS/at

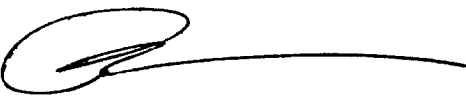
QUALITY ASSURANCE
LABORATORY

JULY 3, 1989

PAGE 5
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

ANALYSIS	METHOD	LOG NUMBER: 7655-89	7655-89
		SAMPLE ID: I	I
		UNITS: MG/KG	MG/KG
		WET WEIGHT	DRY WEIGHT
CADMIUM	6010	1.30	1.81
CHROMIUM	6010	58.8	81.7
COPPER	6010	2060	2861
LEAD	6010	1200	1667
NICKEL	6010	22.4	31.1
SILVER	6010	1.32	1.83
ZINC	6010	886	1231
ARSENIC	7060	6.15	8.54
MERCURY	7471	0.375	0.521
% SOLID	GRAVIMETRIC		72 %

ANALYSIS	METHOD	LOG NUMBER: 7656-89	7656-89
		SAMPLE ID: J	J
		UNITS: MG/KG	MG/KG
		WET WEIGHT	DRY WEIGHT
CADMIUM	6010	1.06	2.94
CHROMIUM	6010	177	492
COPPER	6010	1190	3306
LEAD	6010	1370	3806
NICKEL	6010	7.23	20.08
SILVER	6010	0.836	2.322
ZINC	6010	382	1061
ARSENIC	7060	2.09	5.81
MERCURY	7471	0.248	0.689
% SOLID	GRAVIMETRIC		36 %



PETER SHEN
LABORATORY DIRECTOR

PS/at

QUALITY ASSURANCE
LABORATORY

CUT 007718

JULY 3, 1989

PAGE 6
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

ANALYSIS	METHOD	LOG NUMBER: 7657-89	7657-89
		SAMPLE ID: K	K
		UNITS: MG/KG	MG/KG
		WET WEIGHT	DRY WEIGHT
CADMIUM	6010	1.16	2.47
CHROMIUM	6010	14.7	31.3
COPPER	6010	584	1243
LEAD	6010	139	296
NICKEL	6010	10.4	22.1
SILVER	6010	< 0.396	< 0.843
ZINC	6010	747	1589
ARSENIC	7060	4.08	8.68
MERCURY	7471	0.233	0.496
% SOLID	GRAVIMETRIC		47 %

ANALYSIS	METHOD	LOG NUMBER: 7658-89	7658-89
		SAMPLE ID: L	L
		UNITS: MG/KG	MG/KG
		WET WEIGHT	DRY WEIGHT
CADMIUM	6010	< 0.769	< 0.973
CHROMIUM	6010	54.6	69.1
COPPER	6010	222	281
LEAD	6010	132	167
NICKEL	6010	40.9	51.8
SILVER	6010	1.06	1.34
ZINC	6010	263	333
ARSENIC	7060	6.02	7.62
MERCURY	7471	0.073	0.092
% SOLID	GRAVIMETRIC		79 %


PETER SHEN
LABORATORY DIRECTOR

PS/at

QUALITY ASSURANCE
LABORATORY

CUT 007719

JULY 3, 1989

PAGE 7

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

ANALYSIS	METHOD	LOG NUMBER: 7659-89		7659-89	
		SAMPLE ID: M	M	MG/KG	MG/KG
		UNITS:	WET WEIGHT	DRY WEIGHT	
CADMIUM	6010	<	0.792	<	1.182
CHROMIUM	6010		40.6		60.6
COPPER	6010		154		230
LEAD	6010		110		164
NICKEL	6010		43.9		65.5
SILVER	6010		1.62		2.42
ZINC	6010		91.2		136.1
ARSENIC	7060		4.88		7.28
MERCURY	7471		0.089		0.133
% SOLID	GRAVIMETRIC				67 %

ANALYSIS	METHOD	LOG NUMBER: 7660-89		7660-89	
		SAMPLE ID: N	N	MG/KG	MG/KG
		UNITS:	WET WEIGHT	DRY WEIGHT	
CADMIUM	6010	<	0.769	<	0.884
CHROMIUM	6010		30.8		35.4
COPPER	6010		263		302
LEAD	6010		475		546
NICKEL	6010		28.6		32.9
SILVER	6010		0.843		0.969
ZINC	6010		359		413
ARSENIC	7060		5.53		6.36
MERCURY	7471		0.147		0.169
% SOLID	GRAVIMETRIC				87 %


PETER SHEN
LABORATORY DIRECTOR

PS/at

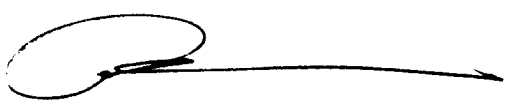
QUALITY ASSURANCE
LABORATORY

CUT 007720

JULY 3, 1989

PAGE 8
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ANALYSES RESULTS
SAMPLE TYPE - SEDIMENT

ANALYSIS	METHOD	LOG NUMBER: 7661-89	7661-89
		SAMPLE ID: P	P
		UNITS: MG/KG	MG/KG
		WET WEIGHT	DRY WEIGHT
CADMIUM	6010	< 0.762	< 1.003
CHROMIUM	6010	37.2	48.9
COPPER	6010	702	924
LEAD	6010	250	329
NICKEL	6010	6.20	8.16
SILVER	6010	0.905	1.191
ZINC	6010	264	347
ARSENIC	7060	3.28	4.32
MERCURY	7471	0.096	0.126
% SOLID	GRAVIMETRIC		76 %



PETER SHEN
LABORATORY DIRECTOR

PS/at

QUALITY ASSURANCE
LABORATORY

CUT 007721

QUALITY ASSURANCE LABORATORY
 6555 NANCY RIDGE DR., SUITE 300
 SAN DIEGO, CALIFORNIA 92121
 (619) 566-1060

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
 ATTN: BRIAN KELLEY
 9771 CLAIREMONT MESA BLVD., STE B
 SAN DIEGO, CA 92124

DATE OF REPORT JULY 19, 1989
 DATE RECEIVED JUNE 26, 1989
 DATE OF SAMPLE JUNE 23, 1989
 DATE COMPLETED JULY 17, 1989
 ANALYZED BY TOXSCAN
 SAMPLE TYPE 15 SEDIMENT
 PROJECT NAME BDK-890-20

ANALYSES RESULTS

LOG NUMBER	SAMPLE ID	ANALYSIS: UNITS:	MONOBUTYLTIN PPB	DIBUTYLTIN PPB	TRIBUTYLTIN PPB
7647-89	A		97	26	64
7648-89	B		17	<1.0	<1.0
7649-89	C		76	50	41
7650-89	D		9	<1.0	49
7651-89	E		6	<1.0	<1.0
7652-89	F		61	2.2	105
7653-89	G		29	<1.0	48
7654-89	H		82	81	200
7655-89	I		59	21	46
7656-89	J		290	76	64
7657-89	K		48	<1.0	16
7658-89	L		18	4.3	5.1
7659-89	M		66	<1.0	<1.0
7660-89	N		3.5	<1.0	4.6
7661-89	P		120	10	17

METHOD: HYDRIDE CRYOGENIC ATOMIC ABSORPTION DETERMINATION AS OUTLINED BY VALKIRS.



PETER SHEN
 LABORATORY DIRECTOR

PS/ms

RECEIVED

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

PHOTOGRAPH LOG

Location: Shelter Island Drive Photo Date: 6-23-89

WDID: _____ Photographer: Lance M. Mahan

Roll #: 163551 Signature: Lance M. Mahan
(252863)

<u>Frame</u>	<u>Description</u>
1A	log sheet
2A, 3A, 4A	Panorama of sample location at 2638 shelter Island Drive (SID)
5A	storm drain at 2638 SID prior to collection of sample from grate
6A(1&2)	Sample BDK890-020-A was collected from dirt in grate nearest gutter
7A, 8A	Panorama of sample location across from 2638 SID
9A	storm drain shown in 7A, 8A prior to sampling
10A	Danny Mornea & Willie Scott of City of San Diego attempting to remove grate unsuccessfully
11A(1&2)	Sample B was collected from grate shown in 9A
12A	Sample C being collected from sump at 2638 SID
13A(1&2)	Sample C following collection
14A	grate removed from drain across from 2638 SID
15A	sump in 14A prior to sampling

LKM3/photolog

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

PHOTOGRAPH LOG

Location: Shelter Island Drive Photo Date: 6-23-89

WDID: _____ Photographer: Lance McMahan

Roll #: 163550(A) Signature: Lance McMahan

<u>Frame</u>	<u>Description</u>
3A	log sheet
4A	grate at PM 2502 prior to sampling
5A(1&2)	sample G. sealed following collection
6A(1&2)	sample H following collection (sealed)
7A	boat at Driscoll awaiting cleaning
8A, 9A	Panorama of sample locations I & J at PM 2320
10A	grate prior to sampling with PM 2320 shown
11A(1&2)	sample I sealed following collection from grate
12A(1&2)	sample J sealed following collection from sump
13A, 14A	Panorama of sample location K at PM 2319.
	Person in 13A wearing orange vest is standing next to storm drain.
15A	grate at PM 2319 prior to sample collection
16A(1&2)	sample K sealed following collection
17A	photo of sump at edge of Shelter Island Circle
18A	Panorama of sump shown in 17A
19A	same as 17A
20A(1&2)	sample L sealed after collection from dirt along edge of sump.

LKM3/photolog

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

PHOTOGRAPH LOG

Location: Shelter Island Drive Photo Date: 6-23-89 (except as shown)

WDID: _____ Photographer: Lance McMichael

Roll #: 165549(B) Signature: Lance McMichael

<u>Frame</u>	<u>Description</u>
<u>Ø</u>	<u>BDKelley's feet. Accidental photo</u>
<u>ØA</u>	<u>Portion of panorama for sample station N</u>
<u>1A</u>	<u>city crew attempting to remove grate unsuccessfully</u>
<u>2A</u>	<u>log sheet</u>
<u>3A</u>	<u>BDK collecting sample N</u>
<u>4A</u>	<u>same as 3A</u>
<u>5A(1&2)</u>	<u>sample N sealed following collection</u>
<u>6A, 7A, 8A</u>	<u>Panorama of sample station P</u>
<u>9A</u>	<u>station P prior to collection</u>
<u>10A(1&2)</u>	<u>sample P sealed after collection</u>
<u>11A, 12A</u>	<u>Driscoll Custom Boats. Note trail of white leading from corner of building</u>
<u>13A</u>	<u>dye introduced to gutter and flushed downstream at DCB</u>
<u>14A</u>	<u>sample station P</u>
<u>15A</u>	<u>flow entering storm drain at PM 2502.</u>
	<u>No flow went past storm drain</u>
<u>18A</u>	<u>Flow Flow entering Shelter Island Yacht Basin self-explanatory. Taken 6-26-89</u>
	<u>19A</u>

LKM3/photolog

QUALITY ASSURANCE LABORATORY
CHAIN OF CUSTODY

COMPANY: SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

PROJECT NAME/NUMBER: BDK-890-20

Q.A. LOG NUMBER: 7647

TO 7661-89

SAMPLE ID	DATE OF SAMPLE	SAMPLE LOCATION	CONT TYPE	SAMPLE TYPE	ANALYSIS REQUIRED	COMMENTS
A	6/23/89	SHELTER ISLAND	GLASS JAR	SEDIMENT	TOTAL HEAVY METALS, TRIBUTYLTIM	" URGENT "
B	"	"	"	"	"	"
C	"	"	"	"	"	"
D	"	"	"	"	"	"
E	"	"	"	"	"	"
F	"	"	"	"	"	"
G	"	"	"	"	"	"
H	"	"	"	"	"	"
I	"	"	"	"	"	"
J	"	"	"	"	"	"
K	"	"	"	"	"	"
L	"	"	"	"	"	"

RELINQUISHED BY <i>Brian Kelley</i>	DATE/TIME 6/26/89 1143	RECEIVED BY <i>[Signature]</i>
RELINQUISHED BY	DATE/TIME	RECEIVED BY
RELINQUISHED BY	DATE/TIME	RECEIVED BY

SEND RESULTS TO ATTN: BRIAN KELLEY

PHONE #: 265-5114

M A T I O L

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

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



January 12, 1989

Mr. Allen Haynie
Latham & Watkins
701 B Street, Suite 2100
San Diego, CA 92101-8197

Dear Mr. Haynie:

This is a followup to our discussion with you and representatives of Commercial Basin boatyards on Monday. While I am disturbed that there has been no apparent progress towards collection and analysis of sediment samples, I understand your position with regard to participation by other responsible parties. We therefore will expedite the issuance of new Cleanup and Abatement Orders to additional boatyards in Commercial Basin. We will make every effort to issue the orders early enough so that hearings, if requested, can be held during the Board's February 27, 1989 meeting. The orders will be structured so that the boatyard operators will have the option of participating in the sediment monitoring program currently being finalized if they desire; we will encourage such participation.

It appears obvious that little work has been done towards sediment sampling and analysis. As a result the data will not be submitted by January 13 as required. I do not consider the possible issuance of Cleanup and Abatement Orders to new boatyards to be valid reason for delay in the work required under the existing orders.

It is our understanding that your consultant will modify the sediment monitoring program to include the new boatyards so they may participate if they desire. The modified program should be submitted to this office as soon as possible. It is also our understanding that sediment monitoring to comply with the existing orders can proceed following the existing plan and be phased to include the monitoring for the new boatyards to be added if and when they agree to participate. I urge you to proceed with the sediment sampling in this manner and to complete it as rapidly as possible. The staff recommendation for possible penalties and/or modifications to the compliance dates will be based in large part on the progress that is made and evidence of a good faith effort to comply.

During the meeting you discussed a proposal of your consultant to structure the sediment monitoring so the sampling would be done in two phases. We have discussed a program for phasing the analytical work with your consultant and do not object to that

Allen Haynie

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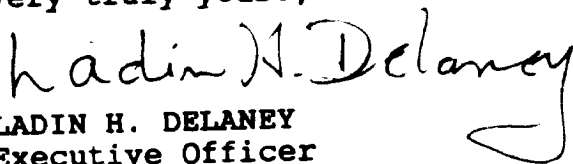
concept. We do have reservations about phasing the actual sample collection and would not approve that type of program at the present time.

During the meeting the boatyard representatives expressed the desire to include previous owners and the San Diego Unified Port District in the Cleanup and Abatement Orders. As we indicated during the meeting, we would not object to doing so as long as adequate documentation to justify doing so is provided to us. We would, however, object to delaying the sediment monitoring, and any subsequent cleanup pending the addition of past boatyard operators or other entities or persons as responsible parties.

If you provide documentation on other responsible parties to us by January 19, we can evaluate it and, if appropriate, amend the existing Cleanup and Abatement Orders in time for any requested hearings to be conducted at the Board's February 27, 1989 meeting.

Please let me know no later than January 17 if you have any questions or if there are any misunderstandings.

Very truly yours,


LADIN H. DELANEY
Executive Officer

cc: Jack Foley, Chairman

David Lloyd, President
City Bay Marine
P.O. Box 2571
National City, CA 92050

William Roberts, General Partner
Shelter Island Boatyard
2330 Shelter Island Drive
San Diego, CA 92106

Mr. Anthony Mauricio, President
Mauricio & Son, Inc.
1864 National Avenue
San Diego, CA 92113

Thomas Fetter, President
Kettenburg Marine
2810 Carlton Street
San Diego, Ca 92106

CUT 007731

**QUALITY ASSURANCE LABORATORY
6555 NANCY RIDGE DR., SUITE 300
SAN DIEGO, CALIFORNIA 92121
(619) 566-1060**

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
ATTN: LANCE McMAHAN
9771 CLAIREMONT MESA BLVD., STE B
SAN DIEGO, CA 92124

DATE OF REPORT	APRIL 6, 1989
DATE RECEIVED	MARCH 1, 1989
DATE OF SAMPLE	FEBRUARY 12, 1989
(THROUGH)	FEBRUARY 14, 1989
DATE COMPLETED	APRIL 6, 1989
ANALYZED BY	RM CC TOXSCAN
SAMPLE TYPE	10 SEDIMENT

ANALYSES RESULTS

LOG NUMBER	SAMPLE ID	ANALYSIS:	COPPER	MERCURY	TRIBUTYLtin	MONOBUTYLtin	DIBUTYLtin
		METHOD:	6010	7471	*	*	*
		UNITS:	NG/CG	NG/CG	PPB	PPB	PPB
1993-09	LKH-009-111-MK50		120	2.35	9.0	10	6.0
1994-09	LKH-009-111-MK52		145	2.76	11	16	6.9
1995-09	LKH-009-111-MK39		132	1.19	11	19	9.4
1996-09	LKH-009-111-KK13		19.1	<0.40	3.7	13	2.6
1997-09	LKH-009-111-MK59		111	2.20	15	11	0.1
1998-09	LKH-009-111-MK4		171	2.20	19	14	0.3
1999-09	LKH-009-111-MK3		224	3.05	10	23	5.0
2000-09	LKH-009-111-MK31		100	1.35	11	51	9.4
2001-09	LKH-009-111-KK3		130	1.57	7.6	27	7.0
2002-09	LKH-009-111-MK66		87.8	0.05	2.9	37	3.3

* HYDRIDE CRYOGENIC ATOMIC ABSORPTION DETERMINATION AS OUTLINED BY VALKERS.

*Original to
Keitensburg. Copies to
Koehler Kraft
Driscoll
Eichmayer
Nelson Beaumont ✓*

PETER SHEN
LABORATORY DIRECTOR

QUALITY ASSURANCE LABORATORY
CHAIN OF CUSTODY

COMPANY: <i>Regional Board</i>		Q.A. LOG NUMBER: <i>1993-89</i> TO <i>2002-89</i>				
PROJECT NAME/NUMBER:						
SAMPLE ID	DATE OF SAMPLE	SAMPLE LOCATION	CONT TYPE	SAMPLE TYPE	ANALYSIS REQUIRED	COMMENTS
<i>LK889-111</i> <i>-MK58</i>	<i>2-12-89</i>		<i>glass</i>	<i>Sediment</i>	<i>Cu; Hg; TBT</i>	
<i>-MK52</i>	<i>"</i>		<i>"</i>	<i>"</i>		
<i>-MK39</i>	<i>"</i>		<i>"</i>	<i>"</i>		
<i>MK K13</i>	<i>"</i>		<i>"</i>	<i>"</i>		
<i>-MK59</i>	<i>"</i>		<i>"</i>	<i>"</i>		
<i>-MK4</i>	<i>"</i>		<i>"</i>	<i>"</i>		
<i>-MK3</i>	<i>"</i>		<i>"</i>	<i>"</i>		
<i>-MK31</i>	<i>"</i>		<i>"</i>	<i>"</i>		
<i>-KK3</i>	<i>"</i>		<i>"</i>	<i>"</i>		
<i>-MK66</i>	<i>"</i>		<i>"</i>	<i>"</i>		
TRANSPORT CONDITION:						
SEND RESULTS TO ATTN: <i>Lance McMahon</i>			CORRECT CONTAINER TYPE: YES _____ NO _____		RECEIVED BY <i>J. Lopez</i>	
PHONE #: <i>265-5114</i>			RELINQUISHED BY <i>Lance McMahon</i>		DATE/TIME <i>3/1/89 12:10P</i>	
			RELINQUISHED BY		DATE/TIME	
			RELINQUISHED BY		DATE/TIME	
			RELINQUISHED BY		DATE/TIME	
			RELINQUISHED BY		DATE/TIME	

LATHAM & WATKINS

ATTORNEYS AT LAW

701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
TELEPHONE (619) 236-1234
TELECOPIER (619) 696-7419

TLX 590778
ELN 62793276

JAN 20 1989

PAUL R. WATKINS (899-1973)
DANA LATHAM (856-1974)

ORANGE COUNTY OFFICE

850 TOWN CENTER DRIVE
TWENTIETH FLOOR
COSTA MESA, CALIFORNIA 92626-1918
TELEPHONE (714) 540-1235
TELECOPIER (714) 755-8290

WASHINGTON, D.C. OFFICE

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

CHICAGO OFFICE

SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 876-7700
TELECOPIER (312) 993-9767

LOS ANGELES OFFICE

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2466
TELEPHONE (213) 485-1234
TELECOPIER (213) 614-8763

NEW YORK OFFICE

53RD AT THIRD, SUITE 1000
885 THIRD AVENUE
NEW YORK, NEW YORK 10022-4802
TELEPHONE (212) 906-1200
TELECOPIER (212) 751-4864

January 19, 1989

VIA MESSENGER

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

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

Dear Mr. Delaney:

On January 13, 1989, we received your letter in which you indicated that the Regional Water Quality Control Board ("RWQCB") would consider naming additional responsible parties to the cleanup and abatement orders issued to Shelter Island Boatyard, Kettenburg Marine Corporation, Bay City Marine, Inc., and Mauricio & Sons, Inc. (collectively, the "Boatyards"). At our meeting on January 9, 1989, you indicated that your staff was preparing to issue orders to other boatyards currently operating in Commercial Basin. We have focused our efforts, therefore, on putting together a chronology of previous boatyard operators at those locations where the Boatyards currently operate.

Pursuant to your request and on behalf of the Boatyards, we request that the entities/individuals identified in this letter as being previous boatyard operators be named in the cleanup and abatement orders as additional responsible parties.

1. Historical Use of Bay City Marine, Inc.'s Facility. As you are probably aware, Bay City Marine operated a boatyard at its present location from approximately 1983 to 1985. For the past three years, the facility has, for the most part, been dormant. Prior to Bay

Handwritten notes and stamps in the bottom right corner, including "CUT 007734" and other illegible markings.

Mr. Ladin Delaney
January 19, 1989
Page 2

City Marine, the boatyard was operated by Harbor Boat & Yacht, a corporation, which operated a boatyard from 1946 to 1983. We confirmed this by telephone with Mr. Dirk Mathiason of the Port District. In other words, Harbor Boat & Yacht operated a boatyard for approximately 37 years while Bay City Marine operated a boatyard for only two years. Bay City Marine did not make any significant changes to the boatyard after it acquired the boatyard, other than to upgrade equipment and repair certain structures.

We do not know what the corporate status is of Harbor Boat & Yacht, although we do know that it is not an active business entity. We believe there were three principal shareholders. One was an individual named Arne Strom from Tacoma, Washington; another was Dave Carson, who is dead; and the third was Tony Jelusich, whose present address is 3421 Curtis Street, San Diego, CA 92106.

It is important to note that Bay City Marine worked principally on Navy vessels whereas Harbor Boat & Yacht worked on a large variety of commercial and recreational boats. Based on our conversations with Mr. Skip Huzar at Proline Paints, whose telephone number is 231-2313, it appears that the paint used by Bay City Marine on the Navy vessels did not contain TBT. We are in the process of further verifying this with other suppliers. Similarly, anti-fouling paints containing mercury were banned long before Bay City Marine acquired the facility. We believe it is reasonable to conclude that all of the alleged contaminants in front of Bay City Marine were not placed there during a two-year period.

2. Historical Use of Kettenburg Marine Corporation's Facility. Kettenburg Marine Corporation began operating a boatyard at its present location in 1986. Prior to that time, the boatyard had two other owners/operators. From 1968 to 1986 the boatyard was operated by Kettenburg Marine, a division of the Whittaker Corporation. The address of the Whittaker Corporation is 10880 Wilshire Blvd., Los Angeles, CA 90024-9990. From 1929 to 1968, the boatyard was operated by a partnership named Kettenburg Boat Works, of which Mr. Paul Kettenburg was a general partner. His address is 3225 Kellogg Street, San Diego, CA 92106.

The operating procedures today are essentially the same as those used in the past. The sump and filter system used by the Whittaker Corporation is the same as that used by Kettenburg Marine Corporation. If the sump system is

Mr. Ladin Delaney
January 19, 1989
Page 3

inadequate now, it was inadequate from the beginning. (The Kettenburg Marine Corporation currently is designing a new system that will eliminate virtually all discharge to Commercial Basin.) Moreover, it is virtually impossible for Kettenburg Marine Corporation to have discharged the amounts of copper, TBT, and mercury allegedly present in front of the boatyard during the short time it has been operating. This is particularly true with respect to mercury since that constituent has not been used in marine anti-fouling paints since the early 1970's.

3. Historical Use of Shelter Island Boatyard's Facility. Shelter Island Boatyard began operating the boatyard in 1986. Prior to that time, the boatyard was operated as two separate facilities.

A. The Boatyard Side

This portion of the boatyard (the "boatyard side") was originally operated in the late 1950's and for a period of approximately 5 years by Niel Livesay and Mr. Marvin Tuckson. It was acquired by Mr. Chuck Boyce and his three brothers and operated as the Boyce Brothers in the early 1960's. At some point prior to 1969, the boatyard side was operated by Bill Nelson as Nelson Boatyard. From 1969 to 1982, the boatyard side was operated by Mr. Fred Gledhill under the name of The Boatyard. (Mr. Fred Gledhill is the owner of Frederick Enterprises, Inc., which currently is operating in the Commercial Basin). From 1982 to 1986, the boatyard side was operated by Shelter Island Boatyard, Ltd., with Mr. Rocky Jordan, Mr. Bill Roberts, and Mr. Dale Johnson as general partners.

In 1982, the configuration and management practices of the boatyard side changed dramatically. Prior to that time, no sump system was employed to collect discharge and all work was done in the railway area. In 1982, a travel lift system was installed and the current sump system was employed. Once again, if the sump system is inadequately now, it was inadequate in 1982.

B. The Yachtways Side

This portion of the boatyard (the "yachtways side") was operated by Mr. James Slaughter dba Shelter Island Yachtways from 1953 to 1975. He is deceased. In 1975, Shelter Island Yachtways, Inc. began operating the yachtways side and did so until 1982. The shareholders in this entity

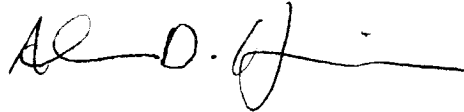
Mr. Ladin Delaney
January 19, 1989
Page 4

were Mr. Rocky Jordan and Mr. Eddie Johns. From 1982 to 1985, the yachtways side was operated by Shelter Island Yachtways with Mr. Bill Roberts, Ms. Bettyann Roberts, and Mr. Joseph Roberts as general partners.

As was the case on the boatyard side, the configuration and management practices on the yachtways side changed dramatically in 1982. Prior to 1982, all work was done on boats in the railways. After 1982, boats were lifted out of the water and all discharges were filtered and settled out in the sump system. The alleged existence of mercury in front of Shelter Island Boatyard also supports the conclusion that a historical discharge occurred prior to 1986 since mercury ceased being used in anti-fouling paint in the early 1970's.

You have requested that we gather the necessary documentary evidence to support the amendment. We will contact you tomorrow to find out what sort of documentation, if any, is required. The Port District has indicated it would take approximately a week to track down old leases, if that is necessary. We appreciate your assistance in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "A.D. Haynie", with a long horizontal flourish extending to the right.

Allen D. Haynie
of LATHAM & WATKINS

cc: Boatyards

PS Form 3800, June 1985

RECEIPT FOR CERTIFIED MAIL

P 838 816 049

P 838 816 049

Send to
Mr. Anthony Mauricio
1864 National Ave.
San Diego, CA 92113

Registered Delivery
Special Delivery
Certified Mail
Registered Mail
Registered Mail - Return Receipt
Registered Mail - Return Receipt with Certificate of Posting
Registered Mail - Return Receipt with Certificate of Posting and Address of Delivery
Total postage and fees
Postage and fees paid
12-29-88

CERTIFIED

P 838 816 049

DOMESTIC COMMERCIAL BASIN SEDIMENT SAMPLING PLAN

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery (Basic charge)

3. Article Addressed to:
Mr. Anthony Mauricio, President
Mauricio & Sons, Inc.
1864 National Avenue
San Diego, CA 92113

4. Article Number
P 838 816 049

Type of Service:
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee
X *[Signature]*

6. Addressee's Address (ONLY if requested and fee paid)

7. Signature - Agent
X

8. Date of Delivery
X *[Signature]*

Form 3800, Mar. 1988 * U.S.G.P.O. 1988-212-885 DOMESTIC RETURN RECEIPT

Thank you for using Return Receipt Service.

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

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



December 29, 1988

CERTIFIED MAIL -RETURN RECEIPT REQUESTED

p 838 816 048

Mr. Anthony Mauricio, President
Mauricio & Sons, Inc.
1864 National Ave.
San Diego, California 92113

Dear Mr. Mauricio:

**REVISED COMMERCIAL BASIN BOATYARDS SEDIMENT SAMPLING PLAN,
SAN DIEGO, CALIFORNIA**

We received the subject document on December 19, 1988, and have completed our review of the sampling plan which has been proposed to characterize sediment contamination in commercial basin. We understand that the proposed sampling plan will incorporate all analytical results of surficial sediment sampling which have been previously obtained by the California Department of Fish & Game (DFG). We understand that cores will be collected and analyzed from all grid locations listed as "proposed coring location(s)" in Figure No. 2-1 of the subject document. All cores will be divided and analyzed in 1 foot sections, down to a sediment depth of 5 feet. We expect the report on contaminant characterization to incorporate the data obtained from both the proposed sampling plan and the earlier DFG sampling.

With the above understanding, the Regional Board accepts the subject sampling plan and requests that the plan be implemented as soon as possible in order to meet the January 13, 1989 reporting deadline. If you have any questions please contact Mr. David T. Barker at (619) 265-5114.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ladin H. Delaney".

LADIN H. DELANEY
Executive Officer

BDK:psr

cc: Port District
Port District Attorney

Allen Haynie

Mr. Ladin Delaney
December 13, 1988
Page 2

technique for testing TBT. We assumed your staff desired the technique to be included in the sampling plan. We made efforts to find out the specifics of the analytical technique in order to revise the draft plan prior to December 2, but no one on the staff was able to give us the necessary information. We telephoned Mr. Art Coe on December 2 and informed him of the problem. He indicated that he did not think there would be any problem with submitting the plan on December 5.

The letter specifying the analytical technique arrived on the morning of December 5. We immediately began contacting labs to find one that would perform such a technique, but were unable to find one. We eventually submitted the plan on December 7, 1988, and left open the issue of TBT testing because of the inability to find a lab in the private sector that would perform the analytical technique your staff requested. In other words, absent being informed at the last minute of a required element of the sampling plan, we would have submitted the draft on December 2, 1988. It is unfair to conclude that the Boatyards are in violation of the cleanup and abatement orders because they attempted to include in the draft sampling plan last minute requirements identified by your staff.

You also suggest that the Boatyards violated the orders because they did not submit a satisfactory sampling plan to your staff prior to December 2, 1988. That is an inappropriate conclusion to draw since the Boatyards committed to submit a sampling plan to your staff for review prior to the deadline. It is entirely normal for your staff to request revisions to draft plans, but that event should not constitute a violation. We have been and still are willing to meet with your staff to discuss the specifics of the sampling plan. The fact that we did not draft a sampling plan that completely satisfied your staff on the first go-round does not mean that the Boatyards have violated the cleanup and abatement orders.

We respectfully request, therefore, that the determinations in the letter be revised to reflect the events that transpired. Needless to say, we welcome the opportunity to meet with your staff in an effort to prepare a sampling plan that is acceptable to both the Boatyards and your staff. We should point out, however, that the resources available to these four boatyards are limited and need to be taken into consideration in preparing and reviewing the sampling plan.

LATHAM & WATKINS

ATTORNEYS AT LAW

701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
TELEPHONE (619) 236-1234
TELECOPIER (619) 696-7419
TLX 590778
ELN 62793276

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

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TELECOPIER (213) 614-8763

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53RD AT THIRD, SUITE 1000
885 THIRD AVENUE
NEW YORK, NEW YORK 10022-4802
TELEPHONE (212) 906-1200
TELECOPIER (212) 751-4864

ORANGE COUNTY OFFICE

650 TOWN CENTER DRIVE
TWENTIETH FLOOR
COSTA MESA, CALIFORNIA 92626-9188
TELEPHONE (714) 540-1235
TELECOPIER (714) 755-8290

WASHINGTON, D.C. OFFICE

100 PENNSYLVANIA AVE., N.W., SUITE 300
WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637-2200
TELECOPIER (202) 637-2201

December 13, 1988

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

DEC 15 1988

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

Dear Mr. Delaney:

We have had an opportunity to review your letters dated December 9, 1988, in which you determined that Shelter Island Boatyard, Kettenburg Marine Corporation, Bay City Marine, Inc., and Mauricio & Sons, Inc. violated the proposed cleanup and abatement orders by not submitting an acceptable sampling plan on December 2, 1988.

We are very troubled by such a determination and feel compelled to respond, not in an effort to be contentious, but rather to demonstrate the Boatyards desire to do precisely what they committed to the Regional Board they would do, which was to prepare an adequate sampling plan, carry out such a plan, and prepare a remedial alternatives report.

You state in your letters that the Boatyards were five days late in submitting the draft sampling plan. That does not adequately reflect the events that transpired; events which involved your staff. Woodward-Clyde Consultants, the technical experts retained by the Boatyards, were perfectly prepared to submit the draft sampling plan to your staff on or before December 2, 1988. One day prior to that deadline, however, Mr. David Barker informed us that we would be receiving a letter specifying an analytical

SD23\adh\delaney5.ltr

*See: 10/17/88 each
LHD*

*02/12/89
LHD
DB*

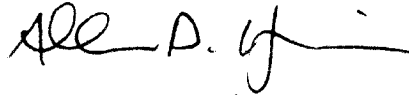
CUT 007741

LATHAM & WATKINS

Mr. Ladin Delaney
December 13, 1988
Page 3

We look forward to further cooperation from both sides in
this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read "Allen D. Haynie". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Allen D. Haynie
of LATHAM & WATKINS

cc: All Boatyards

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

9771 Clairemont Mesa Blvd., Suite B
San Diego, California 92124-1331
Telephone: (619) 285-5114



December 9, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

P 105 662 760

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

Dear Mr. Mauricio:

This letter is in response to the report entitled, "**Commercial Basin Boatyards, Sediment Sampling Plan, San Diego, California,**" which was submitted on December 7, 1988. Upon review of this report, I have determined the report to be inadequate in characterizing the vertical and horizontal extent of the bay sediment contamination. This constitutes a violation of Directive No. 2. a) of Addendum No. 1 to Cleanup and Abatement Order No. 88-86.

Furthermore, Directive No. 2. a) of Addendum No. 1 to Cleanup and Abatement Order No. 88-86 required that the sampling plan be submitted by December 2, 1988. Since the sampling plan which was submitted on your behalf was not received until December 7, 1988, this constitutes five days of violations of Directive No. 2. a) of Addendum No. 1 to Cleanup and Abatement Order No. 88-86.

In order to adequately determine the vertical and horizontal extent of contamination within the commercial basin area of San Diego Bay, I request that you submit by December 19, 1988 a revised sampling plan. This revised plan should contain a sampling grid adjacent and off shore of each boatyard facility with a maximum of 100 feet between sampling stations. The details of the sampling grid shall be developed in coordination with Regional Board staff prior to submittal of the revised sampling plan.

You should be aware that the January 13, 1989 date contained in Directive No. 2. b) for submission of sample results upon completion of an approved sampling plan shall remain in full force and effect. Thus I urge you to submit an adequate sampling plan for my approval as soon as possible.

Is your RETURN ADDRESS completed on the reverse side?

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
 Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt for this card shows you the name of the person delivered to and the date of delivery. For additional information on the services available, consult postmaster for rates and check boxes for additional services.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery (Extra charge)

3. Article Addressed to:
 Mr. Anthony Mauricio, President
 Mauricio and Sons, Inc.
 1864 National Avenue
 San Diego, CA 92113

4. Article Number
 P 105 662 760

Type of Service:
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee
Anthony Mauricio

6. Signature - Agent
 X

7. Date of Delivery
 12/12/88

8. Addressee's Address (ONLY if requested and fee paid)

Thank you for using Return Receipt Service.

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-885 DOMESTIC RETURN RECEIPT

PS Form 3800 June 1985 * U.S.G.P.O. 1985-212-885 DOMESTIC RETURN RECEIPT

Sediment Sampling Plan for Mauricio and Sons.

P-105 662 760

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

Certified Fee
 Special Delivery Fee
 Restricted Delivery Fee
 Return Receipt - Showing to whom and Date Delivered
 Return Receipt - Showing Date and Address of Delivery
 TOTAL Postage and Fees

Postmark or Date
 12-8-88

PS Form 3800 June 1985

Is your RETURN ADDRESS completed on the reverse side?

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. (Extra charge)

2. Restricted Delivery (Extra charge)

3. Article Addressed to:
 Mr. Anthony Mauricio, President
 Mauricio & Sons, Inc.
 1864 National Avenue
 San Diego, CA 92113

4. Article Number
 P-105 662 748

Type of Service:
 Registered Insured
 Certified COD
 Express Mail Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Address
 6. Signature - Agent
 7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

12-5-88

Thank you for using Return Receipt Service.

PS Form 3800 June 1985

Mauricio & Sons, Inc.
 1864 National Ave
 San Diego, CA 92113

12-2-88

ADD 1 TO 88-68

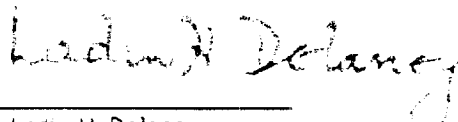
P-105 662 748
 RECEIPT FOR CERTIFIED MAIL

Abatement Order No. 88-86 shall be prepared and submitted in accordance with the following time schedule and criteria:

- a) Mauricio and Sons, Inc. shall submit a sampling plan by December 2, 1988 to determine the vertical and horizontal extent of the bay sediment contamination resulting from the discharge of waste by Mauricio and Sons, Inc..
 - b) Upon approval of the sampling plan by the Regional Board Executive Officer, Mauricio and Sons, Inc. shall complete sampling and submit the sample results to the Regional Board by January 13, 1989. Mauricio and Sons, Inc. shall provide Regional Board staff with at least five working days notification prior to the date and time that samples will be collected to enable the Regional Board to witness sampling activities and obtain split samples. Each sample result submitted to the Regional Board shall, as a minimum, contain the following information:
 1. Sample type
 2. Sample location, including depth
 3. Date and time of sampling
 4. Method of sample collection
 5. Sample analysis method
 6. Method of sample preservation
 7. Laboratory used to analyze sample

Mauricio and Sons, Inc. shall also submit all field notes and sample logs prepared during the collection of samples.
 - c) Mauricio and Sons, Inc. shall submit the remedial action alternatives analysis report described in Directive No. 1 of Cleanup and Abatement Order No. 88-86 by February 3, 1989.
3. Collection, transport and analysis of sediment samples (excluding analysis of sediment samples for tributyltin) shall be in accordance with procedures contained in 40 CFR Part 261, **Identification and Listing of Hazardous Waste**. Collection, transport and analysis of water samples (excluding analysis of water samples for tributyltin) shall be in accordance with procedures contained in 40 CFR 136, **Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act**. Analysis of sediment and water samples for tributyltin shall be in accordance with procedures employed by the California Department of Fish and Game described in **Report On TBT In San Diego Harbor, California Department of Fish and Game, Moss Landing Marine Laboratories, August, 1988**.

Ordered by _____


Ladin H. Delaney
Executive Officer

Dated: December 1, 1988

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 1 TO CLEANUP AND ABATEMENT ORDER NO. 88-86

MAURICIO AND SONS, INC.
SAN DIEGO COUNTY

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board) finds that:

1. On July 5, 1988 the Regional Board Executive Officer issued Cleanup and Abatement Order No. 88-86, **Mauricio and Sons, Inc., San Diego County**. Cleanup and Abatement Order No. 88-86 contained findings alleging that boat repair and maintenance activities at Mauricio and Sons, Inc. had resulted in waste discharges to San Diego Bay. The waste discharges were violations of discharge prohibitions contained in Order No. 85-03, **Waste Discharge Requirements for Mauricio and Sons, Inc., San Diego County**.
2. Cleanup and Abatement Order No. 88-86 directed Mauricio and Sons, Inc. to submit a report by November 1, 1988 containing a detailed analysis of the cost, feasibility and lateral and vertical extent of contaminated sediment associated with four alternative cleanup levels.
3. By letter dated November 18, 1988 Mr. Allen Haynie, counsel representing Mauricio and Sons, Inc., requested that Cleanup and Abatement Order No. 88-86 be modified to contain the following schedule for preparation and submittal of the report required under Directive No. 1:
 - a) Submit sample plan to determine the vertical and horizontal extent of the bay sediment contamination on or before December 2, 1988,
 - b) Complete sampling and submit the sample results to the Regional Board on or before January 13, 1989; and
 - c) Submit a draft remedial action alternatives report to the Regional Board on or before February 3, 1989.

Mr. Haynie reported in the November 18 letter that the above schedule may have to be adjusted if climatic conditions make it impossible to collect samples

4. 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 in accordance with California Water Code Section 13304, Cleanup and Abatement Order No. 88-86 is amended to include the following directives:

1. The November 1, 1988 date for submission of the remedial action alternative analysis report contained in Directive No. 1 of Cleanup and Abatement Order No. 88-86 is deleted.
2. The remedial action alternative analysis report described in Directive No. 1 of Cleanup and

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

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



CERTIFIED RETURN RECEIPT REQUESTED

P-105 662 748

December 1, 1988

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

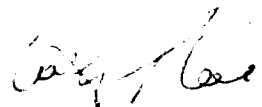
Dear Mr. Mauricio:

Enclosed is a copy of "Addendum No. 1 to Cleanup and Abatement Order No. 88-86, Mauricio and Sons, Inc., San Diego County."

The directives of Addendum No. 1 require Mauricio and Son, Inc., to prepare and submit the remedial action alternative analysis report in accordance with a specified time schedule and criteria. The compliance dates included in Addendum No. 1 are the same dates proposed by your legal counsel Mr. Allen Haynie at the November 21, Regional Board meeting and stated in his letter to the Regional Board dated November 18, 1988.

If you have any questions concerning this matter, please contact Mr. Jim Munch of my staff at (619) 265-5114.

Very truly yours,


LADIN H. DELANEY
Executive Officer

Enclosure

DTB:cg

Don Nay, Director (Certified Mail - Return Receipt Requested)
San Diego Unified Port District
P.O. Box 488
San Diego, CA 92112

Mr. Allen Haynie
Latham and Watkins
Attorneys at Law
701 B Street, Suite 2100
San Diego, CA 92101-8197

Mr. Mark Martin
Attorney at Law
Hillyer & Irwin
530 B Street, 14th Floor
San Diego, CA 92101

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

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
November 21, 1988

ITEM: 14(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 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 part responsible for compliance with directives of Order No. 88-86.

ITEM: 14(d)

DISCUSSION: (Continued)

Mauricio and Sons, Inc. has a sedimentation sump just adjacent to 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.

Overflows 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 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 concentration 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.

ITEM: 14(d)

DISCUSSION: (Continued)

A public hearing concerning the findings of Order No. 88-79 was initiated during the regularly scheduled Regional Board meeting of October 3, 1988. During the October 3 meeting the Regional Board decided to continue the public hearing at today's meeting.

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.

LATHAM & WATKINS

ATTORNEYS AT LAW

701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
TELEPHONE (619) 236-1234
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ELN 62793276

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DANA LATHAM (1898-1974)

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TELECOPIER (212) 751-4864

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TELECOPIER (714) 755-8290

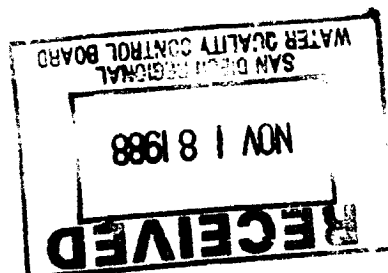
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WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637-2200
TELECOPIER (202) 637-2201

November 18, 1988

VIA MESSENGER

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



Re: Cleanup and Abatement Order Nos. 88-70, 88-79,
88-80, and 88-86

Dear Mr. Delaney:

On November 16, 1988, we delivered a letter to you on behalf of the boatyards involved in the cleanup and abatement orders identified above that proposed to submit a report to your staff on March 15, 1989, that would identify the range of remedial action alternatives to the cleanup of the allegedly contaminated bay sediment. Yesterday, you contacted our office and indicated that the March 15, 1989 date was unacceptable and that the report would have to be submitted on an earlier date. This letter confirms the schedule that we have agreed to in response to the concern you expressed.

1. A sampling plan will be submitted to your staff for your review on or before December 2, 1988.
2. Your staff will review the sampling plan on or before December 9, 1988.
3. All sampling will be completed and sampling data submitted to your staff on or before January 13, 1989.
4. A draft of the remedial alternatives report will be submitted to your staff for review on or before February 3, 1989.

SD23\adh\delaney4.ltr

CUT 007753

Mr. Delaney
November 18, 1988
Page 2

As we discussed in our last telephone conversation, the schedule may have to be adjusted if climatic conditions make it impossible for samples to be taken. We will notify you immediately if we are faced with such a difficulty.

We appreciate your assistance in working out this new schedule.

Very truly yours,



Allen D. Haynie
of LATHAM & WATKINS

cc: Mr. Maurico
Mr. Hobbs
Mr. Fetter
Mr. Crawford
Mr. Adkins
Mr. Brown

11/17 10:25

Nielson & Beaumont

- #1 - SES - 10:26 in trap ~ 2ft from east rail between piers. in area where a cut of soil had been taken.
- #2 to west side of trap in visual unobstructed area. - SES
- Boat just pulled on ~ 11/15 & Hydrowashed. Soil, Litter present.
- #3 - SES - 10:30 ~ 20 ft south of trap in center of roadway. soil had more visual paint chips
- WATER CLEAR - NO EVIDENCE OF WASTES.
- Vessel "Ocean Pacific" being painted - NO WASTES being discharged - Vessel boomed and approved

LATHAM & WATKINS

ATTORNEYS AT LAW

701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
TELEPHONE (619) 236-1234
TELECOPIER (619) 696-7419

TLX 590778
ELN 62793276

PAUL R. WATKINS (1800-973)
DANA LATHAM (1800-974)

CHICAGO OFFICE

SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 676-7700
TELECOPIER (312) 993-9767

LOS ANGELES OFFICE

555 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071-2456
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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
TELECOPIER (212) 751-4864

ORANGE COUNTY OFFICE

650 TOWN CENTER DRIVE
TWENTIETH FLOOR
COSTA MESA, CALIFORNIA 92626-9108
TELEPHONE (714) 540-2335
TELECOPIER (714) 755-8290

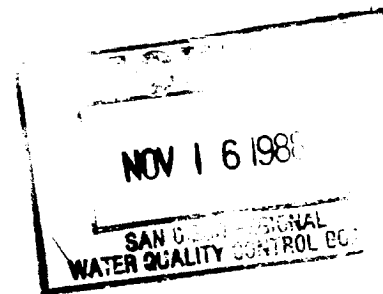
WASHINGTON, D.C. OFFICE

1001 PENNSYLVANIA AVE., N.W., SUITE 300
WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637-2200
TELECOPIER (202) 637-2201

November 16, 1988

VIA MESSENGER

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



Re: Cleanup and Abatement Order Nos. 88-70, 88-79,
88-80, and 88-86

Dear Mr. Delaney:

We have received your November 10, 1988 letter and have discussed its contents with Mauricio & Sons, Inc., Kettenburg Marine, Bay City Marine, Inc., and Shelter Island Boatyard (the "Boatyards"). We also have discussed with the Boatyards the relative merits of requesting a continuance of the November 21, 1988 hearing, which was suggested by Ms. Sheila Vassey, your legal counsel, as a mechanism to accomplish our objective of not wasting valuable resources contesting the validity of the findings in the cleanup and abatement orders while preserving the right to do so at a later date if it ultimately proves necessary. The Boatyards have concluded that a continuance of the hearing would be in everyone's best interest. Therefore, on behalf of the Boatyards, we formally request that the November 21, 1988 hearing be continued until April 10, 1989, at which time we will present a report identifying the range of remedial action alternatives to cleanup of the allegedly contaminated bay sediment to the Regional Water Quality Board (the "Regional Board") as called for in directive 3 of the cleanup and abatement orders. We also propose to make a copy of the report available to your staff on March 15, 1989. If these dates are acceptable to you, we would request that the dates in the cleanup and abatement orders be adjusted accordingly.

SD23\adh\delaney.ltr

CUT 007756

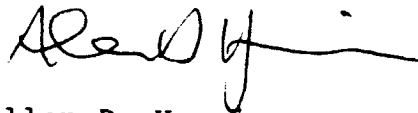
Mr. Delaney
November 16, 1988
Page 2

As we have indicated to Ms. Vassey in recent conversations, the Boatyards are willing to comply with the directives of the cleanup and abatement orders pending the proposed April 10, 1989 hearing and the Boatyards understand that such orders remain in effect pending such hearing. Based on our discussions with Ms. Vassey, it is our understanding that the continuance of the hearing will not prejudice the Boatyards' ability to obtain an adjudicatory hearing at a later date to develop the administrative record necessary for an appeal of any final action of the Regional Board to the State Water Resources Control Board (the "State Board") if they deem such an appeal necessary after the remedial alternatives report has been reviewed by your staff and the Regional Board. It is also our understanding that the 30-day time period in which the Boatyards must file an appeal to the State Board will not begin to run until a final hearing is held by the Regional Board on the cleanup and abatement orders and a remedial alternative is selected based on the report submitted by the Boatyards.

We have discussed the contents of this letter with Ms. Vassey and unless you notify us to the contrary, we will assume it fairly and accurately represents the agreement we have reached.

We appreciate your consideration of what may seem to be a unique approach to this situation. We think it better focuses all of our resources and ultimately may eliminate the need for a lengthy adjudicatory hearing in front of the Regional Board. If you have any questions concerning the contents of this letter, please do not hesitate to contact us.

Very truly yours,



Allen D. Haynie
of LATHAM & WATKINS

cc: Mr. Maurico
Mr. Hobbs
Mr. Fetter
Mr. Crawford
Mr. Adkins
Mr. Brown

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

9771 Clairemont Mesa Blvd., Suite B

San Diego, California 92124-1331

Telephone: (619) 265-5114



November 10, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (P 838 816 013)

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

Dear Mr. Haynie:

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

In our letter of October 17 we informed you that in order to expeditiously conclude the hearing on the boatyard Cleanup and Abatement Orders, you would be required to submit a list of all witnesses whose testimony the boatyards intended to introduce and the written testimony of each witness no later than November 3, 1988. When we met in our office on October 31, we discussed the scope of the information you were required to submit and also the possibility of some type of stipulated agreement or the equivalent of such an agreement. Subsequent to our meeting, I understand you have contacted Sheila Vassey, our legal counsel, and received additional input on the scope of the written information required and also discussed making a request to hold the hearing in abeyance as a way to protect your clients' rights of appeal.

We did not receive the list of witnesses and their written testimony by November 3. Therefore, I assume that you either do not plan to introduce any testimony at the Regional Board meeting of November 21, or you are planning on sending the Regional Board a written request to continue the hearing together with the acknowledgments that you discussed with Ms. Vassey. Our preferred choice is to conclude the hearing on November 21. We do understand your situation, however, and would not be adverse to recommending continuance of the hearing provided we receive your written request to do so, in the format discussed with Ms. Vassey, no later than November 16.

On a related matter, in our letter of October 17 we requested a revised time schedule for completion of the sediment cleanup analysis report. If you wish to obtain the time extension for your clients, it will be necessary to provide us with the revised time schedule no later than Wednesday, November 16, 1988.

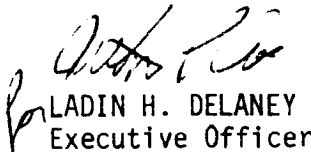
Mr. Allen Haynie

-2-

November 10, 1988

Please contact me or Mr. David Barker at the number on our letterhead if you have any questions or need any additional information.

Very truly yours,


LADIN H. DELANEY
Executive Officer

ALC:bcs

cc: William Roberts, General Partner, Shelter Island Boatyard
2330 Shelter Island Drive, San Diego, CA 92106

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

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

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

John V. Foley, Chairman, San Diego Regional Water Quality
Control Board, c/o Moulton Niguel Water District, 27500
La Paz Road, Laguna Niguel, CA 92677-1098

Howard Susman, Hillyer & Meyer, Attorneys at Law
California First Bank Bldg., 530 B Street - 14th Floor,
San Diego, CA 92101-4479

Sheila Vassey, Staff Counsel, State Water Resources Control Board
P. O. Box 100, Sacramento, CA 95801-0100

Don Nay, Director, San Diego Unified Port District
P. O. Box 488, San Diego, CA 92112

CUT 007759

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
 Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery
 †(Extra charge)† †(Extra charge)†

3. Article Addressed to:
 Mr. Allen Haynie
 Latham and Watkins
 Attorneys at Law
 701 B Street, Suite 2100
 San Diego, CA 92101-8197

4. Article Number
 P 838 816 013

Type of Service:
 Registered Insured
 Certified COD
 Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED.**

5. Signature - Addressee
 X

6. Signature - Agent
 X *[Signature]*

7. Date of Delivery
 11-12-88

8. Addressee's Address (ONLY if requested and fee paid)
 Re: C & A Orders Nos.
 88-70, 88-78, 88-86

PS Form 3811, Mar. 1987 * U.S.G.P.O. 1987-178-268

DOMESTIC RETURN RECEIPT

RE: C & A Orders Nos. 88-70, 88-78, 88-86

P 838 816 013

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE TO BE PROVIDED
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

Sent to Mr. Allen Haynie	
Street and No. 701 B Street, Suite 2100	
P.O. State and ZIP Code San Diego, CA 92101-8197	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt showing to whom and Date Delivered	
Return Receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$

Postmark or Date

November 10, 1988

PS Form 3800, June 1985

ORIGINAL IN BAY CITY MARINE
 COPY IN KET-FURNACE TO ALAUNCO

11/31/88

FOA Boat yards

LADIN DELANEY

DAVID BARKER

BARRY GRAHAM

ALLEN ~~HAVEME~~

ART COE

~~RWQCB~~ S-i-1 265-5114

RWQCB "

WOODWARD-LYDE CONSULTANTS 294-9400

~~IT~~ WATKINS

RWQCB 265-5114

10/31/88

Haynes

Bay City Marina - Don't need permit
want to get rid of it - what is
process for is there one?

LHO - Yes, but By Bd staff will leave
permit in force till all enforcement
action is done - even if it expires, will
be admin. extended

Haynes

What if not in op.? what about men reqs
D.B. - Can go on inactive status @ rec'd
approval of staff - just inform Bd - need letter
saying inactive -

If boatyard leases out over to subcontractor to
do work, must be in conf. w/ R.B. Wdr's

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
 Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. Restricted Delivery
 †(Extra charge)† †(Extra charge)†

3. Article Addressed to:
 Ms. Sheila Vassey
 Office of The Chief Counsel
 State Water Resources Control
 Board
 901 "P" Street
 Sacramento, CA 95814

4. Article Number
 P 959 506 228

Type of Service:
 Registered Insured
 Certified COD
 Express Mail

5. Signature - Addressee
 X

6. Signature - Agent
 X

7. Date of Delivery

Always obtain signature of addressee or agent and DATE DELIVERED.
 Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1987 * U.S.G.P.O. 1987-178-268 DOMESTIC RETURN RECEIPT

PS Form 3800, June 1985

RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVER IF PROVIDED
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

P 959 506 228

Sent to
 Ms. Sheila Vassey
 Street and No
 901 "P" Street
 P.O. State and ZIP Code
 Sacramento, CA 95814
 Postage

(Certified Fee)
 Special Delivery Fee
 Restricted Delivery Fee
 Return Receipt showing to whom and Date Delivered
 Return Receipt showing to whom Date and Address of Delivery
 TOTAL Postage and Fees
 Postmark or Date
 10-19-88

C & A Orders No. 88-70, 77-79, 88-78, & 88-86

CERTIFIED MAIL
 P 959 506 228

CUT 007763

SENDER: Complete items 1 and 2, when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. Restricted Delivery
 ↑(Extra charge)↑

2. Restricted Delivery
 ↑(Extra charge)↑

3. Article Addressed to:
 Mr. John Foley,
 Regional Board Chairman
 Moulton Niguel Water District
 27500 La Paz Road
 Laguna Niguel, CA 92677-1090

4. Article Number
 P 959 506 226

Type of Service:
 Registered Insured
 Certified COD
 Express Mail

Always obtain signature of addressee or agent and **DATE DELIVERED**.

5. Signature - Addressee
 [Signature]

6. Signature - Agent

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

PS Form 3811, Mar. 1987 * U.S.G.P.O. 1987-178-268 DOMESTIC RETURN RECEIPT

PS Form 3800, June 1985

RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED
 NOT FIT FOR INTERNAL MAIL MAIL
 (See Reverse)

Sent to
 Mr. John Foley, Chairman
 Street and No.
 27500 La Paz Road
 P.O. State and Zip Code
 Laguna Niguel, CA 92677
 Postage \$

Certified Fee

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing to whom and Date Delivered

Return Receipt showing to whom, Date, and Address of Delivery

TOTAL Postage and Fees \$

Postmark or Date
 10=19-88

CERTIFIED MAIL
 P 959 506 226

P 959 506 226
 P 959 506 226

C & A Order Nos. 88-70, 88-79, 88-78 & 88-86

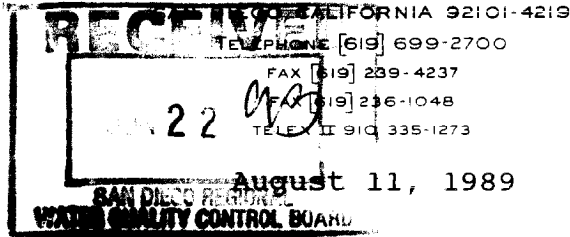
GRAY, CARY, AMES & FRYE

ATTORNEYS AT LAW

1700 FIRST INTERSTATE PLAZA

401 B STREET

GORDON GRAY (1877-1967)
W. P. CARY (1882-1943)
WALTER AMES (1893-1980)
FRANK A. FRYE (1904-1970)



OTHER OFFICES

AUG 15 1989
LA JOLLA
EL CENTRO

WRITER'S DIRECT LINE
(619) 699-3695

August 11, 1989

PACO TERMINALS, INCORPORATED
SAN DIEGO UNIFIED PORT DISTRICT
COPPER ORE BAY SEDIMENT CLEANUP
NPDES ORDER: 85-91
ENF. REPORT FILE: 2 12/88-08/89
02-0045.06 STATUS: C

Frances McChesney, Esq.
State Water Resources Control Board
901 P Street, 4th Floor
Sacramento, California 95814

Re: San Diego Unified Port District's
Petition for Review

Dear Ms. McChesney:

The San Diego Regional Water Quality Control Board's ("Regional Board") Addendum 3 to Cleanup and Abatement Order No. 85-91 ("Addendum 3") should be upheld. The facts contained in record of this case clearly show that the Port ("Port") should be held primarily responsible under California Water Code Section 13304 and the State Board decisions. Therefore, the San Diego Unified Port District's ("Port") Petition for Review should be denied.

At the workshop, however, the State Board and the Office of Chief Counsel raised some concerns that Paco would like to address in this letter. Those concerns are:

- (1) Why Addendum 3, while making the Port a responsible party under Order No. 85-91, does not expressly state that the Port is "primarily" responsible;

State Water Resources Control Board
August 11, 1989
Page 2

(2) Whether or not holding a landlord responsible along with a tenant is appropriate in any case; and

(3) The extent of the Port's control over the storm drains.

Paco submits this letter for the State Board's consideration in an effort to address those issues.

Before addressing the above issues, Paco points out that it has argued and briefed the issues of whether or not the Port should be held liable under Cleanup and Abatement Order 85-91, and if the Port should be held liable, whether or not it should be held primarily liable. Paco has shown and record reflects that:

(1) The Port caused or permitted the discharges,¹ at issue;

¹ Discussions of alleged discharges or discharges herein is not an admission of any fact by Paco that such discharges in fact occurred.

State Water Resources Control Board
August 11, 1989
Page 3

(2) The Port is not an innocent landowner deserving of secondary liability under Prudential Insurance Company of America, WQ 87-18, and Vallco Park, Ltd., WQ 86-18; and

(3) The Port is not a responsible public agency with the regulatory authority to protect the environment deserving of secondary liability under United States Department of Agriculture, Forest Service, WQ 87-5.

Based on the above showing alone, the Port's Petition should be denied. However, since those issues have already been thoroughly briefed and argued, Paco will not reargue them in this letter.

ADDENDUM 3 IMPOSES PRIMARY LIABILITY ON THE PORT.

Some concern has been raised over the absence of the word "primary" from Addendum 3 and its effect on whether the Port was in fact named primarily responsible under Addendum 3. However, Addendum 3 should have included the word "primary" and nonetheless, the Regional Board staff reads Addendum 3 as imposing primary responsibility under Order 85-91 on the Port.

State Water Resources Control Board
August 11, 1989
Page 4

At the February 27, 1989 Regional Board meeting, the Regional Board considered the adoption of Addendum 3. While the motion for Addendum 3's adoption was on the floor, Board Member Stockwell made a motion to change the order to include the word "primary."² Mrs. Stockwell stated that:

. . . I feel that the staff has correctly assessed the situation here. I did not feel that its precedent setting as far as the Port activities in other places in the Bay. I think each one will be handled on a case-by-case basis and [sic] the same sort of thoroughness that this one has been done and I would move approval, Mr. Chairman, of Addendum No. 3 to Order No. 85-91 and changing the Order on page 3 to insert the word primary before responsible party.

Board Member Thalen seconded the motion. Addendum 3 was ultimately adopted as amended by Board Member Stockwell. Therefore, the word "primary" should have appeared in Addendum 3, and its absence was unintended.

² February 27, 1989 Transcript of Proceedings, ("Transcript") p. 13, l. 14, attached as Exhibit A; "Index to the Record in the Paco Appeal to State Board of Water Control," p. 647, submitted by Paco in opposition to the Port's Petition ("Index").

State Water Resources Control Board
August 11, 1989
Page 5

The Regional Board staff has informed Paco that it reads Addendum 3 as imposing primary liability on the Port despite the absence of the word "primary." In fact, the Regional Board staff drafted Addendum 3, without the word "primary," with the intent to impose primary liability on the Port. Mr. David Barker, of the Regional Board staff, testified that ". . . the staff's recommendation in the Addendum is to name the Port District as a primary responsible party, and there's a directive to that effect on page 3 of the tentative addendum and staff recommends the adoption of the Addendum."³

Addendum 3 orders that:

Cleanup and Abatement Order No. 85-91 and Addenda are amended to add the Port District as a responsible party. The directives of Cleanup and Abatement Order No. 85-91 and addenda shall hereafter be construed to refer to both Paco Terminals and the Port District unless otherwise stated. The title headings of Cleanup and Abatement Order No. 85-91 and addenda are amended to read, Paco Terminals, Inc., San Diego Unified Port District, San Diego County.⁴

³ Transcript, p. 9, ll. 19-23; Index, p. 643.

⁴ Index, p. 660.

State Water Resources Control Board
August 11, 1989
Page 6

The order simply adds the Port as a responsible party under No. 85-91, and requires all directives to be construed to refer to both Paco and the Port District without distinguishing between Paco or the Port District. The order in effect refers to Paco and the Port equally. Since the order cannot be logically read to make both parties secondary responsible parties, it must logically make both primary responsible parties.

Therefore, the absence of the word "primary" from Addendum No. 3 is insignificant. The Regional Board intended to include the word, and the logical effect of the order without the word "primary" is to impose primary responsibility on the Port.

HOLDING A LANDLORD RESPONSIBLE WITH ITS TENANT
IS APPROPRIATE IN GENERAL AND PARTICULARLY
APPROPRIATE IN THIS CASE.

State and federal environmental laws and regulations in general impose expansive and far-reaching liability. For example, the comprehensive Environmental Response, Compensation and Liability Act holds responsible all potentially responsible parties. 42 U.S.C. § 9007. In this case, California Water Code Section 13304 holds responsible those who cause or permit discharges. These expansive notions of liability seek to ensure that the cleanup is accomplished, and to make those who may cause or prevent discharges

State Water Resources Control Board
August 11, 1989
Page 7

responsible for the environment's protection. This policy of expansive liability has been put to practice by the State Board by naming landlords and tenants together in previous cleanup orders and waste discharge permits. Therefore, naming both a landlord and a tenant in a cleanup order is appropriate and in keeping with public policy.

This case falls well within the expansive notion of liability. Here, the Port was more than just a landlord. The potential discharge points were within the Port's control. The Port knew the discharges were allegedly occurring. Further, the Port had the ability to control the discharges.

The three potential discharge points, the Port's storm drain systems, its container crane, and its 120-foot wide pier face, were all within the Port's control and, with the exception of two storm drain inlets, beyond Paco's leasehold. Paco's leasehold represented only 4.3% of the 24th Street Terminal. The leasehold consisted of an open paved area for storing copper concentrate. Everything that occurred there was readily apparent to the Port, and was within its control. Moreover, since January 1988, the Port had possession and control of the entire facility including Paco's former leasehold area.

State Water Resources Control Board
August 11, 1989
Page 8

The Port knew the discharges were allegedly occurring. The Port did not have to take sediment samples or do special testing to determine that the discharges were occurring. The prohibition in the NPDES permit was not against contamination, but against any copper discharge. The Port had a staff of environmental experts who knew of the Regional Board's concern about potential discharges since 1978. In early 1978, the Port acknowledged its responsibility to cover the storm drains.⁵ Yet, it denied Paco's request to do this⁶ and removed the covers which Paco on its accord put over the storm drains.⁷ Then, in 1989, after the Regional Board named the Port as primarily responsible, the Port covered the storm drains, its only act to abate the continuing discharges.

⁵ See Exhibit B, March 1, 1978 letter from Michael V. Needham, Port District Assistant Coordinator Environmental Management, to Peter W. Michael, California Regional Water Quality Control Board (Port assured the Board that it would exercise source control); Index 244-245; Exhibit C, March 22, 1979 memorandum from William J. Garrett, Port District Marine Operations Manager, to Jack E. Leibmann, Port District Chief Engineer (Port recognized that storm drains require covers); Index, p. 257. Exhibit D, March 23, 1979 letter from William J. Garrett to Glenn Howell, Paco Terminals, Inc. Operations Manager (Port advised Paco that it might cover the storm drains); Index, pp. 258-259.

⁶ Glen Howell's Declaration, pp. 3-4; Index, pp. 461-462.

⁷ Id.

State Water Resources Control Board
August 11, 1989
Page 9

The Port had the ability to control the discharges. As discussed above and reflected in the record, the potential discharge points were within the Port's control and most were beyond Paco's leasehold. The Port also had the ability to control the potential discharge points within Paco's leasehold; namely, the two storm drain inlets located on Paco's leasehold.⁸ Further, the Port had the ultimate power to control Paco's activities at the 24th Street Terminal with its right to terminate Paco's lease for violation of any laws, rules, or regulations.⁹ Although Paco's activities took place in the open, the Port also had the right to enter Paco's leasehold and inspect the premises.¹⁰

The unique facts of this case, as demonstrated in the record, show that the Port was more than just a landlord. The Port knew about the alleged discharges; knew about its responsibilities; and had an ability to carry out its responsibilities. However, the Port chose to sit back and do nothing. Therefore, holding the Port

⁸ Exhibit F, Lease by and between the Port and Paco, dated March 14, 1979, ¶ 22 Easements; Index, pp. 201-02.

⁹ Exhibit G, Lease, ¶ 17, Conformance with Rules and Regulations; Index, p. 200. Exhibit H, Lease, ¶ 9, default; Index, pp. 195-197.

¹⁰ Exhibit I, Lease, ¶ 14, Maintenance and Repair; Index, p. 199.

State Water Resources Control Board
August 11, 1989
Page 10

primarily responsible in this case is well within policy of expansive liability reflected in Water Code § 13304.

THE PORT CONTROLLED THE STORM DRAINS.

The State Board expressed concern about whether the Port did in fact control the two storm drain inlets on Paco's leasehold. The Port had a contractual right to control the storm drains.¹¹ As discussed above, Paco attempted to cover the storm drains and the Port denied permission and later removed the covers Paco installed.¹² Thus, the Port exercised its contractual rights by preventing the use of storm drain covers. Therefore, the facts in the record demonstrate that the Port had the ability to control, and did in fact control all the storm drains, even the two on Paco's leasehold.

CONCLUSION.

In six of the other cleanup and abatement cases involving San Diego Bay, the Regional Board has imposed only secondary liability on the Port. This is the only case in which the Regional

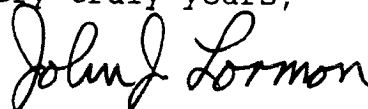
¹¹ Exhibit F; Index, pp. 201-202.

¹² See Exhibit E, pp. 3-4; Index, pp. 461-462.

State Water Resources Control Board
August 11, 1989
Page 11

Board has found the Port primarily responsible. The unique facts in this case, as shown in the record, justify the Regional Board's action. Paco has demonstrated in this letter and in the record that Addendum 3 should be upheld because the law requires it, previous State Board decisions require it, and good public policy requires it. Therefore, the Port's Petition should be denied.

Very truly yours,



John J. Lormon

For

GRAY, CARY, AMES & FRYE

Attorneys for Paco Terminals, Inc.

JJL:jg

StBd-2.Ltr

**Certified
Copy.**

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

PUBLIC HEARING

**TO CONSIDER AMENDMENT OF CLEANUP AND ABATEMENT
ORDER 85-91 TO INCLUDE SAN DIEGO UNIFIED PORT DISTRICT
AS A RESPONSIBLE PARTY FOR COMPLYING WITH CLEANUP
AND ABATEMENT ORDER 85-91**

TRANSCRIPT OF PROCEEDINGS

SAN DIEGO, CALIFORNIA

FEBRUARY 27, 1989

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000634

CUT 003132

1 CHAIRMAN FOLEY: ITEM NUMBER 14, THE PUBLIC
2 HEARING WHICH IS CONTINUED FROM THE JANUARY 23RD MEETING.
3 I'D LIKE TO MENTION ON ITEM NUMBER 14 THIS IS A
4 CONTINUATION. I'LL DISPENSE WITH READING ALL THE PREAMBLE
5 TO A PUBLIC HEARING EXCEPT THAT I'D LIKE TO ADDRESS --

6 MR. DELANEY: MR. CHAIRMAN, IF I COULD
7 INTERRUPT FOR ONE MINUTE. THE HEARING WAS CLOSED AT THE
8 LAST MEETING AND IT WAS -- WRITTEN RECORD WAS HELD OPEN FOR
9 A PERIOD OF 15 DAYS. STAFF IS RECOMMENDING THAT WE REOPEN
10 THE PUBLIC HEARING THIS MORNING. THE RECORD SHOULD SHOW IT
11 ISN'T A CONTINUATION BUT REOPENING THE PUBLIC HEARING.

12 MRS. STOCKWELL: WHAT IS THE STAFF'S REASONING
13 FOR THAT, PLEASE?

14 MR. DELANEY: I'M SORRY?

15 MRS. STOCKWELL: WHAT IS THE STAFF'S REASONING
16 FOR REOPENING?

17 MR. DELANEY: RECOMMENDATION OF OUR STAFF
18 COUNSEL IS THAT WE REOPEN THE HEARING TO GIVE EACH PARTY A
19 SPECIFIED PERIOD OF TIME TO PRESENT, SAY, 15 MINUTES TO
20 PRESENT THEIR SIDE OF THE ARGUMENTS AND THEN A FIVE MINUTE
21 REBUTTAL PERIOD TO ALLOW OTHERS TO TESTIFY.

22 THE HEARING WAS CLOSED LAST TIME AFTER ONLY THE TWO
23 PRINCIPAL PARTIES WERE ALLOWED TO TESTIFY AND WE DIDN'T
24 HAVE AN OPPORTUNITY TO LET ANYONE ELSE THAT MAY HAVE WISHED
25 TO TESTIFY TO DO SO AT THAT HEARING. SO WE FEEL THAT WE

1 HAVE TO REOPEN AT LEAST FOR THAT.

2 MRS. STOCKWELL: I THOUGHT THAT'S WHAT THE 15
3 DAYS WAS FOR, THAT NOT ONLY THE TWO PARTIES INVOLVED BUT
4 ANYONE ELSE COULD SUBMIT WRITTEN COMMENTS WITHIN THOSE 15
5 DAYS.

6 MS. VASSEY: WELL, FOR ONE THING, MEMBERS OF
7 THE PUBLIC DO HAVE A RIGHT TO PRESENT NOT ONLY WRITTEN BUT
8 ORAL COMMENTS AT A HEARING. MY PRINCIPAL REASON FOR
9 RECOMMENDING REOPENING THE HEARING WAS THAT THE PARTIES,
10 THE PRINCIPAL PARTIES, DID NOT HAVE THE OPPORTUNITY, FOR
11 EXAMPLE, TO CROSS-EXAMINE, WHICH IS IMPORTANT, AND IN
12 ADDITION, THERE WAS SOME CONFUSION ABOUT WHETHER THE RECORD
13 WAS HELD OPEN STRICTLY FOR ORAL ARGUMENT OR FOR ACTUAL
14 EVIDENTIARY TYPES OF MATERIALS, AND MR. LORMAN HAS ARGUED
15 STRENUOUSLY THAT IT WOULD BE A DENIAL OF HIS DUE PROCESS
16 RIGHTS IF HE WAS NOT ALLOWED TO REBUT ADDITIONAL EVIDENCE
17 INTRODUCED BY THE PORT DISTRICT, AND RATHER THAN GET INTO A
18 BIG DISPUTE ABOUT THAT, I WOULD RECOMMEND REOPENING FOR A
19 SHORT PERIOD OF TIME TO LET THE PARTIES WRAP UP THEIR
20 CASES.

21 MR. LORMAN: MR. CHAIRMAN, JOHN LORMAN FOR
22 PACO. I DO NOT HAVE, NOTWITHSTANDING THAT LETTER, SINCE I
23 WORKED MY MAY THROUGH PLANNING FOR TODAY ANY ADDITIONAL
24 WITNESSES I WANT TO INTRODUCE. I SEE JAY POWELL HERE.
25 THERE MAY BE SOME PUBLIC TESTIMONY, BUT I DON'T ON MY

000636

CUT 003134

1 BEHALF HAVE ANYTHING OTHER THAN A SUMMARY TYPE
2 PRESENTATION, AND DEPENDING ON WHAT THE PORT DOES,
3 DEPENDING WHAT THE RULING IS IF THEY PUT ON WITNESSES, I
4 WOULD RESERVE THE RIGHT TO CROSS-EXAMINE THOSE WITNESSES,
5 BUT I DON'T HAVE ANY WITNESSES TO PUT ON TODAY MYSELF.

6 CHAIRMAN FOLEY: OKAY. IS THERE A
7 REPRESENTATIVE FROM THE PORT DISTRICT THAT WISHES TO MAKE
8 COMMENTS ON ORGANIZATION OF THE HEARING IF WE REOPEN IT?
9 DO YOU HAVE ADDITIONAL WITNESSES, SIR?

10 MR. HOPKINS: I HAVE ADDITIONAL WITNESSES
11 HERE.

12 CHAIRMAN FOLEY: HOW MANY?

13 MR. HOPKINS: I HAVE TWO PEOPLE HERE, BUT THEY
14 ARE HERE ONLY BECAUSE I RECEIVED NOTICE ON FRIDAY THAT THIS
15 HEARING WAS BEING REOPENED AND THAT WE HAD BETTER GET OUR
16 ACTS TOGETHER AND GET DOWN HERE. IT WAS OUR UNDERSTANDING
17 THAT THE HEARING WAS CLOSED AS OF FEBRUARY 7TH AND WE ARE
18 PREPARED TO STAND ON THE RECORD OF THAT HEARING UNLESS THIS
19 BOARD THINKS THAT THERE'S SOME PROBLEM WITH THE EVIDENCE
20 THAT THE PORT DISTRICT HAS SUBMITTED.

21 ALSO MR. FURLEY AND MR. HUTTON ARE HERE IF THE PORT
22 DISTRICT HAS ANY -- I'M SORRY -- IF THIS BOARD HAS ANY
23 QUESTIONS OF THEM ABOUT ANY OF THESE MATTERS.

24 MS. VASSEY: IN LIGHT OF THE PARTIES'
25 STATEMENTS, PERHAPS WE COULD REOPEN IT SIMPLY TO ALLOW

000637

1 MEMBERS OF THE PUBLIC TO MAKE STATEMENTS.

2 CHAIRMAN FOLEY: THAT DID NOT HAVE AN
3 OPPORTUNITY AT THE LAST HEARING AND THEN CLOSE THE HEARING? —
4 WE'VE RECEIVED -- HAS EVERY BOARD MEMBER RECEIVED THE INPUT
5 FROM BOTH MR. LORMAN AND THE PORT DISTRICT FURNISHED US
6 PRIOR TO THE 15TH? THEY WERE MAILED OUT.

7 OKAY. WELL THEN, WHAT WE'LL DO TODAY IS WE'LL
8 REOPEN THE HEARING FOR PURPOSES OF RECEIVING TESTIMONY FROM
9 INTERESTED PARTIES, OTHER INTERESTED PARTIES THAN THE
10 CLAIMANTS AND SO FORTH, AND WE'LL GO AHEAD AND ALLOW A
11 LIMIT OF 10 MINUTES AT THE MAXIMUM FOR THAT PERSON OR
12 INDIVIDUAL. WE'LL CONCLUDE THE HEARING AND THEN WE'LL
13 ALLOW DISCUSSION FROM MEMBERS. IS THAT ACCEPTABLE TO THE
14 BOARD?

15 MS. FORSTER: YES.

16 CHAIRMAN FOLEY: OKAY, ALL RIGHT. LET ME
17 POINT OUT THAT ANY PERSON TESTIFYING ON THIS MATTER WILL
18 STATE HIS NAME, ADDRESS AND WHOM THEY OR HE OR SHE
19 REPRESENTS. WE MAY ASK QUESTIONS AT ANY TIME. THEY MAY BE
20 CROSS-EXAMINED, AND I'M GOING TO ASK ANYONE WHO INTENDS TO
21 TESTIFY TO PLEASE TAKE THE OATH AT THIS POINT IN TIME.

22 (ALL WITNESSES SEVERALLY SWORN)

23 CHAIRMAN FOLEY: THANK YOU VERY MUCH. MEMBERS
24 OF THE PUBLIC? I DON'T HAVE ANY SLIPS. SO YOU'LL HAVE TO
25 INTRODUCE YOURSELVES.

000638

1 MR. POWELL: THANK YOU, MR. CHAIRMAN. I DID
2 SUBMIT A SLIP. I PUT THE WRONG AGENDA ITEM DOWN. I DO
3 HAVE A STATEMENT I'D LIKE TO DISTRIBUTE AND IT WILL BE
4 BRIEF. I WILL NOT TAKE MUCH TIME OF THE BOARD HERE THIS
5 MORNING.

6 WE BASICALLY -- MY NAME IS JAY POWELL AND I'M
7 REPRESENTING THE ENVIRONMENTAL HEALTH COALITION, 1844
8 FOURTH AVENUE. WE'RE NOT HERE TO TAKE SIDES, BUT WE DO
9 WANT TO SEE THAT THE REAL PROBLEM, THE POLLUTION OF SAN
10 DIEGO BAY, IS DEALT WITH EFFECTIVELY, AND FOR US THE ISSUES
11 ARE WHAT WILL GET THE CLEANUP UNDERWAY AND COMPLETED AND
12 WHAT WILL PREVENT FURTHER DISCHARGES INTO THE BAY FROM THE
13 SITE.

14 WHILE PACO HAS DUTIFULLY REPORTED AS A CONDITION BY
15 THIS BOARD A STORM DRAIN APPEARS TO BE DISCHARGING COPPER,
16 THERE STILL HAS BEEN NO ACTUAL CLEANUP OF THE AREA OR THE
17 LOADING AREA. THAT DISCHARGES OF COPPER TO THE BAY WERE
18 OCCURRING TO THE BAY WAS EVIDENT EARLY IN THE OPERATION OF
19 THIS FACILITY, AND OUR RECORDS SHOW THAT THE MUSSEL WATCH
20 PROGRAM RECORDED EXCESSIVE CONCENTRATIONS OF COPPER IN '83.

21 WHILE THE REGIONAL BOARD COMMENCED SOME CORRECTIVE
22 ACTIONS IN 1984, THE PERMIT WAS RENEWED, THE COPPER IS
23 STILL IN THE BAY AND WE SEE NO DEFINITIVE DATES SET FOR ITS
24 REMOVAL. THIS IS FIVE YEARS WITHOUT A GRAIN OF COPPER
25 REMOVED FROM THE BAY.

000639

CUT 003137

1 THE STAFF HAS VERY THOROUGHLY ANALYZED A COMPLEX
2 CASE AND WE BELIEVE THEIR ANALYSIS AND RECOMMENDED FINDINGS
3 ACCURATELY SET FORTH THE FACTS. WE DO HAVE ONE CONCERN
4 WITH THE ANALYSIS REGARDING LEGAL RESPONSIBILITY OF THE
5 PORT DISTRICT TO, QUOTE, PROTECT THE ENVIRONMENT.

6 STAFF COUNSEL STATES THAT THE PORT DISTRICT IS
7 PRIMARILY ENGAGED IN A COMMERCIAL ENTERPRISE. THE PORT
8 DISTRICT ALSO HAS THE STATUTORY RESPONSIBILITY TO PROMOTE
9 OTHER ACTIVITIES ON THE BAY REQUIRING THAT IT PROTECT THE
10 ENVIRONMENT. WHILE WE DO NOT BELIEVE THAT EXPLANATION, THE
11 CONCLUSION OF THE -- WE WOULD HOPE THAT THE BOARD AND ALL
12 PARTIES WOULD RECOGNIZE THAT THE PORT DISTRICT HAS A LEGAL
13 RESPONSIBILITY TO PROTECT THE ENVIRONMENT.

14 IN CONCLUSION, WE HOPE THE QUESTIONS THE BOARD WILL
15 PLACE TO YOUR STAFF ARE WHICH ACTION WILL BEST ACHIEVE THE
16 EXPEDITIOUS CLEANUP AND ABATEMENT OF THIS CONTINUING
17 DISCHARGE TO THE BAY AND WHEN MIGHT WE EXPECT TO SEE THE
18 ACTUAL CLEANUP OPERATIONS COMMENCED AND CONCLUDED. THANK
19 YOU VERY MUCH.

20 CHAIRMAN FOLEY: THANK YOU, MR. POWELL.
21 QUESTIONS?

22 MS. FORSTER: ARE YOU AN ATTORNEY?

23 MR. POWELL: NO, MA'AM. I'M HERE SPEAKING ON
24 BEHALF OF OUR ORGANIZATION AS A MEMBER OF THE INTERESTED
25 PUBLIC.

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CUT 003138

1 CHAIRMAN FOLEY: IS THERE ANYONE ELSE THAT
2 WISHES TO ADDRESS THE BOARD AT THIS TIME?

3 MR. LORMAN, YOU UNDERSTAND WE'RE GOING TO CLOSE THE
4 PUBLIC HEARING BASED ON THE EVIDENCE AND THE PUBLIC
5 TESTIMONY.

6 ANY FURTHER QUESTIONS BY MEMBERS OF THE BOARD?
7 WE'LL DECLARE THE PUBLIC HEARING CLOSED AND AT THIS POINT
8 IN TIME I'LL ASK FOR THE PLEASURE OF THE BOARD.

9 MR. DELANEY: MR. CHAIRMAN, IF I COULD
10 INTERRUPT. THE STAFF HAS PREPARED A TENTATIVE RESOLUTION,
11 ADDENDUM NUMBER 3, ORDER NUMBER 85-91. WITH THE BOARD'S
12 INDULGENCE, I WOULD SUGGEST YOU CALL UPON MR. BARKER FOR A
13 VERY BRIEF PRESENTATION OF THAT BEFORE THE BOARD COMPLETES
14 ITS DELIBERATIONS.

15 MR. BARKER: MEMBERS OF THE BOARD, FOR THE
16 RECORD, MY NAME IS DAVID BARKER. I'M A SENIOR ENGINEER
17 WITH THE WATER QUALITY CONTROL BOARD.

18 THE MATTER BEFORE YOU TODAY, AS YOU KNOW, IS TO
19 DETERMINE WHETHER OR NOT TO INCLUDE THE PORT DISTRICT IN
20 CLEANUP AND ABATEMENT ORDER 85-91 AS A PRIMARY RESPONSIBLE
21 PARTY OR A SECONDARY RESPONSIBLE PARTY, AND YOU'VE HEARD
22 EVIDENCE ON BOTH SIDES OF THAT ISSUE AT THE BOARD MEETING
23 IN JANUARY.

24 BASICALLY THERE ARE THREE ELEMENTS THAT SHOULD BE
25 CONSIDERED BY YOU TO DETERMINE WHETHER A LAND OWNER, WHICH

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CUT 003139

1 THE PORT DISTRICT IS IN THIS CASE, CAN BE HELD ACCOUNTABLE
2 FOR DISCHARGES, AND THOSE THREE ELEMENTS ARE OWNERSHIP OF
3 THE LAND, KNOWLEDGE OF THE ACTIVITY AND THE ABILITY TO
4 REGULATE IT. IT'S STAFF'S POSITION THAT ALL THREE OF THESE
5 ITEMS ARE PRESENT IN THIS CASE.

6 THERE'S A TENTATIVE ADDENDUM THAT WE PREPARED,
7 ADDENDUM NUMBER 3 TO ORDER 85-91, WHICH CONTAINS FINDINGS
8 IN THIS REGARD. BASICALLY I'LL QUICKLY SUMMARIZE THE
9 FINDINGS.

10 PACO LEASED LAND OWNED BY THE PORT DISTRICT FROM
11 MARCH 1978 THROUGH JANUARY 1989. THE PORT DISTRICT AT ALL
12 RELEVANT TIMES RETAINED EXCLUSIVE CONTROL OVER 120 FEET OF
13 LAND BETWEEN THE END OF PACO TERMINAL'S LEASEHOLD AND THE
14 PIER FACE. THE PORT DISTRICT OWNED A CONTAINER CRANE WHICH
15 WAS LEASED BY PACO TERMINALS FOR THE LOADING OF COPPER ORE
16 TO VESSELS, AND THAT PROBLEMS WITH THE OPERATION OF THIS
17 CRANE RESULTED IN DISCHARGES OF COPPER TO THE BAY.

18 I'D LIKE TO REMIND THE BOARD THAT WE IMPOSED
19 ADMINISTRATIVE CIVIL LIABILITIES ON PACO BACK IN APRIL OF
20 1988. SOME OF THE DISCHARGES WHICH THE BOARD IMPOSED THE
21 LIABILITY ON WERE DUE TO RELEASES OF COPPER FROM THIS
22 LOCATION, AND THE EVIDENCE BEFORE YOU TODAY SUGGESTS THAT
23 THE PORT DISTRICT HAD A ROLE IN THE OPERATION OF THE
24 LOADING ACTIVITIES.

25 THE PORT DISTRICT ALSO OWNED AND CONTROLLED THE

1. STORM DRAINS ON PACO TERMINAL'S LEASEHOLD. THE STORM
2 DRAINS ON THE PROPERTY WERE ALSO A VEHICLE FOR RELEASES OF
3 COPPER ORE TO THE BAY AND THE PORT DISTRICT KNEW OF THE
4 POTENTIAL FOR A DISCHARGE OF COPPER ORE TO THE BAY FROM THE
5 LEASED PREMISES AND THE LAND WHICH REMAINED IN THE PORT
6 DISTRICT'S EXCLUSIVE CONTROL.

7 THE REGIONAL BOARD INFORMED THE PORT DISTRICT ON
8 SEVERAL OCCASIONS OF THE POTENTIAL OF A DISCHARGE FROM THIS
9 OPERATION. THE PORT DISTRICT ALSO HAD THE ABILITY UNDER
10 LEASE AGREEMENTS WITH PACO TERMINALS TO CONTROL THE
11 ACTIVITIES THAT ITS TENANT WAS ENGAGED IN ON THE PROPERTY.

12 FINALLY, ANOTHER RELEVANT FACTOR IS PACO TERMINALS
13 HAD TERMINATED ITS LEASE WITH THE PORT DISTRICT. RECENT
14 MONITORING REPORTS TURNED IN BY PACO FOR JANUARY 1989
15 INDICATED THAT THERE ARE -- THERE IS EVIDENCE OF FURTHER
16 DISCHARGES OF COPPER ORE GOING ON INTO THE BAY. SO THIS
17 MOST CERTAINLY WOULD MAKE THE PORT DISTRICT A DISCHARGER
18 NOW.

19 BASED UPON THESE FACTORS, THE STAFF'S RECOMMENDATION
20 IN THE ADDENDUM IS TO NAME THE PORT DISTRICT AS A PRIMARY
21 RESPONSIBLE PARTY, AND THERE'S A DIRECTIVE TO THAT EFFECT
22 ON PAGE 3 OF THE TENTATIVE ADDENDUM AND STAFF RECOMMENDS
23 THE ADOPTION OF THE ADDENDUM.

24 THIS CONCLUDES MY PRESENTATION. ARE THERE ANY
25 QUESTIONS?

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CUT 003141

1 CHAIRMAN FOLEY: DAVID, I HAVE A QUESTION.
2 ARE WE -- I'LL SAVE IT FOR THE DISCUSSION. THANK YOU VERY
3 MUCH.

4 MR. THEILEN: I HAVE ONE QUESTION. PRIMARY OR
5 SECONDARY OR DOES IT SAY?

6 CHAIRMAN FOLEY: THE STAFF'S RECOMMENDATION,
7 IF I UNDERSTOOD WHAT DAVID JUST SAID, WAS PRIMARY.

8 MR. BARKER: EXACTLY.

9 MR. THEILEN: JUST MAKE THAT CLEAR.

10 MR. BARKER: PRIMARY RESPONSIBILITY BEING THAT
11 THE PORT DISTRICT WOULD BE INCLUDED IN THE ORDER AND WOULD
12 HAVE TO COMPLY WITH THE ORDER ALONG WITH PACO TERMINALS.

13 MR. THEILEN: DOES THAT PRIMARY INCLUDE
14 BEFORE, DURING THE LEASE TIME AND AFTER THE LEASE TIME? IS
15 THAT SPECIFICALLY --

16 MR. BARKER: EXACTLY. BY MODIFYING THE
17 CLEANUP AND ABATEMENT ORDER, THERE IS DIRECTIVES IN THE
18 ORDER THAT PROHIBIT DISCHARGES OF COPPER INTO THE BAY. BY
19 INCLUDING THE PORT DISTRICT IN THE ORDER, THE PORT DISTRICT
20 WOULD HAVE TO BEGIN TAKING MEASURES TO TERMINATE THE
21 DISCHARGES OF COPPER INTO THE BAY THAT OCCUR NOW MOSTLY DUE
22 TO STORM EVENTS.

23 MR. THEILEN: THAT WOULD ALSO COMPLY IF THERE
24 WAS NO LEASE WITH ANYBODY, JUST THEIR OWN LAND, WE'LL SAY
25 IF THERE WASN'T ANY LEASE, THEY WERE JUST DISCHARGING?

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CUT 003142

1 MR. BARKER: EXCUSE ME?

2 MR. THEILEN: I'M SAYING IF THERE'S NO LEASE
3 WITH PACO RIGHT NOW ON THAT PROPERTY. IS THAT RIGHT?

4 MR. BARKER: YES. THAT'S MY UNDERSTANDING.

5 MR. THEILEN: SO NOW YOU'RE SAYING THEY HAVE
6 RESPONSIBILITY FOR DISCHARGE WITHOUT A LESSEE ON THEIR
7 PROPERTY?

8 MR. BARKER: EXACTLY.

9 MR. THEILEN: ON ALL OF THEIR PROPERTIES ON
10 SAN DIEGO BAY?

11 MR. BARKER: JUST THIS PROPERTY. THERE'S
12 COPPER THERE BEING RELEASED FROM THE BAY -- INTO THE BAY.
13 PACO IS NO LONGER LEASING THE LAND. THE PORT DISTRICT HAS
14 CONTROL OVER THE LAND.

15 MR. THEILEN: THIS COVERS THE PACO LEASE AREA
16 ONLY THEN?

17 MR. BARKER: THE ISSUE I'M TALKING ABOUT IS
18 JUST THE PACO LEASEHOLD, YES.

19 CHAIRMAN FOLEY: OKAY. THANK YOU VERY MUCH,
20 DAVID. FURTHER QUESTIONS OR DISCUSSION?

21 MS. FORSTER: I HAVE SOME DISCUSSION.

22 CHAIRMAN FOLEY: YES, MRS. FORSTER?

23 MS. FORSTER: I HAVE SOME DISCUSSION BEFORE
24 SOMEONE MOVES THE MOTION. I WAS GOING -- I HAD A BIG FEAR
25 OF NAMING THE PORT PRIMARY BECAUSE OF THE PRECEDENT ALL

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CUT 003143

1 AROUND THE BAY AND I CONTINUE TO FEEL THAT THE PRIMARY USER
2 OF THE PROPERTY OR THE PERSON LEASING THE LAND SHOULD
3 ALWAYS BE HELD AS THE MAIN RESPONSIBLE PARTY. SO THE
4 LANGUAGE OF THE PORT BEING SECONDARY I THOUGHT WAS FAIR.
5 AND THE REASON THAT I WILL NOW SUPPORT THE STAFF
6 RECOMMENDATION IS THE RUNOFF FROM THE -- THE RUNOFF AFTER
7 PACO WAS THERE AND THE CONTINUING CONTAMINATION, BECAUSE I
8 THINK THAT THE PORT DISTRICT THROUGH THE PUBLICITY AND
9 THROUGH THESE -- THIS PROCESS SHOULD HAVE SHOWN THEIR --
10 SHOULD HAVE SHOWN THEIR POWERS BY GOING OUT AND DOING
11 WHATEVER THEY COULD TO CORRECT THE PROBLEM.

12 THE ONLY FEAR I HAVE IS THAT EVERYTHING WILL COME TO
13 A HALT AND THERE WILL BE THESE BIG LAWSUITS AND MR.
14 POWELL'S QUESTION OF WHETHER THIS WILL ACCELERATE AND MAKE
15 IT HAPPEN OR IF IT WILL ONLY THROW IT INTO THE COURTS FOR
16 ANOTHER FIVE YEARS. I'M REALLY AFRAID OF THE PRECEDENT AND
17 I'M AFRAID OF THE STALL, BUT YES, I UNDERSTAND IN THIS
18 SITUATION, IN THIS PARTICULAR CASE WHY THEY BOTH SHOULD BE
19 PRIMARY. SO -- BUT I JUST WANTED TO MAKE THOSE COMMENTS.

20 I ALSO APOLOGIZE TO MR. LORMAN FOR THE LAST BOARD
21 MEETING BEING SO -- KIND OF SHOOTING FROM THE HIP, THAT I
22 WAS SO UPSET BECAUSE I DIDN'T SEE -- IT WAS LIKE A BORN
23 AGAIN AFTER ALL THE MONTHS OF NOTHING HAPPENING AND THEN
24 YOU BEING SO UP TO DATE AND SO ORGANIZED AND SO
25 PROFESSIONAL. SO I APOLOGIZE.

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CUT 003144

1 MR. LORMAN: THANK YOU.

2 MS. FÖRSTER: YOU DID A GOOD JOB AND SO DID
3 THE PORT DISTRICT. IT'S UNFORTUNATE THAT THIS IS THE WAY
4 IT IS RIGHT NOW, BUT THOSE ARE MY COMMENTS.

5 CHAIRMAN FOLEY: YES, MRS. STOCKWELL?

6 MRS. STOCKWELL: WELL, MR. CHAIRMAN, I FEEL
7 THAT THE STAFF HAS CORRECTLY ASSESSED THE SITUATION HERE.
8 I DO NOT FEEL THAT IT'S PRECEDENT SETTING AS FAR AS THE
9 PORT ACTIVITIES IN OTHER PLACES IN THE BAY. I THINK EACH
10 ONE WILL BE HANDLED ON A CASE-BY-CASE BASIS AND THE SAME
11 SORT OF THOROUGHNESS THAT THIS ONE HAS BEEN DONE AND I
12 WOULD MOVE APPROVAL, MR. CHAIRMAN, OF ADDENDUM NUMBER 3 TO
13 ORDER NUMBER 85-91 AND CHANGING THE ORDER ON PAGE 3 TO
14 INSERT THE WORD PRIMARY BEFORE RESPONSIBLE PARTY.

15 MR. THEILEN: WHAT PARAGRAPH?

16 MRS. STOCKWELL: THE ORDER, THERE'S ONLY ONE
17 PART.

18 MR. THEILEN: I WOULD SECOND THAT MOTION.

19 CHAIRMAN FOLEY: IT'S BEEN MOVED AND SECONDED.
20 THE ONLY THING I'LL ALLOW AT THIS POINT IS IF YOU HAVE A
21 PROCEDURAL CORRECTION. I DON'T THINK WE WANT TO HEAR ANY
22 FURTHER -- WE HEARD THE TESTIMONY.

23 MR. HOPKINS: I DO HAVE ONE POINT ONLY BECAUSE
24 IT ADDRESSES A POINT MADE BY ONE OF THE BOARD MEMBERS THAT
25 I DON'T THINK HAD BEEN A SUBJECT BEFORE, AND IT WAS JUST

1 THE POINT WAS JUST MADE THAT THE REASON FOR CHANGING THIS
2 IS -- FOR MAKING THE PORT DISTRICT PRIMARILY RESPONSIBLE,
3 AT LEAST IN THE EYES OF ONE MEMBER, IS THE EXISTENCE OF THE
4 CONTINUING RUNOFF, WHICH IS, AS WE ALL KNOW, JUST CAME TO
5 EVERYONE'S ATTENTION IN JANUARY. THE PORT DISTRICT IS
6 MOVING, HAS MOVED AND WE CAN PRESENT EVIDENCE TODAY OF THE
7 WORK ORDER BEING PUT OUT TO DEAL WITH THAT. I WOULD HATE
8 TO SEE THIS DECISION BEING MADE HANDING THE PORT DISTRICT A
9 LIABILITY FOR A CLEANUP FOR THE ACTIVITIES OF SOMEONE ELSE
10 WHEN AS YOU --

11 CHAIRMAN FOLEY: I THINK WE'RE GETTING INTO --

12 MRS. STOCKWELL: MAY I CLARIFY THAT? MY
13 MOTION WAS NOT BASED ON THE STATEMENT THAT MRS. FORSTER
14 MADE. I HAVE FELT EVEN AFTER THE LAST MEETING THAT THE
15 PORT DISTRICT HAD PRIMARY RESPONSIBILITY.

16 MR. HOPKINS: I ALSO DO HAVE ONE OTHER
17 PROCEDURAL POINT, AND IT MAY BE MOOT DEPENDING ON WHAT THE
18 VOTE IS, BUT ARE THE OTHER MEMBERS OF THE BOARD WHO ARE NOT
19 PRESENT GOING TO HAVE AN OPPORTUNITY TO VOTE ON THIS?

20 CHAIRMAN FOLEY: NO. THAT'S NOT OUR
21 PROCEDURE. THERE'S A QUORUM PRESENT. THANK YOU. WE
22 HAVE --

23 MS. FORSTER: I HAVE TO SAY FOR THE RECORD --

24 CHAIRMAN FOLEY: I'M GOING TO HAVE DISCUSSION.

25 MR. THEILEN: WE HAVE A MOTION ON THE FLOOR,

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CUT 003146

1 MR. CHAIRMAN.

2 MS. FORSTER: THAT WASN'T MY ONLY REASON. SO
3 I WANT THE RECORD TO SHOW IN CASE THIS GETS TO COURT AND
4 SOMEBODY STARTS TO TALK ABOUT THAT. THIS WAS NOT MY ONLY
5 REASON. IT WAS ALSO A CUMULATIVE DECISION IN READING
6 EVERYTHING OVER ONE TIME AGAIN. SO I SHOULDN'T HAVE MAYBE
7 SAID IT JUST EXCLUSIONARY, BUT I DID.

8 MR. THEILEN: I CALL FOR THE QUESTION, A ROLE
9 CALL VOTE, PLEASE?

10 CHAIRMAN FOLEY: I'D JUST LIKE TO MAKE ONE
11 COMMENT BEFORE THAT AND I'LL DO THAT IMMEDIATELY AFTER. I
12 THINK IT'S IMPORTANT THAT -- IT'S PROBABLY BEEN SAID
13 ALREADY IN A NUMBER OF DIFFERENT WAYS. I THINK MY FEELING
14 IS THAT THERE'S CLEARLY A RESPONSIBILITY AND A DUTY ON THE
15 PART OF THE PRINCIPAL USER, NAMELY PACO, AND ANYTHING TO
16 THE CONTRARY TO THAT GIVES ME HEARTBURN.

17 ON THE OTHER HAND, I ALSO RECOGNIZE THAT WHEN YOU
18 PARTICIPATE IN AN ACTIVITY IN SOME FORM SUCH AS THE PORT
19 DID IN THIS CASE, YOU HAVE AN INHERENT RESPONSIBILITY THERE
20 . NOT ONLY AS THE LAND OWNER BUT ALSO A MINOR PARTICIPANT,
21 NAMELY OPERATING A CRANE OR WHATEVER. I WISH WE COULD
22 DISTINGUISH BETWEEN THE TWO, BUT I'M NOT SURE WE CAN, BUT I
23 DO BELIEVE THE PRIMARY RESPONSIBILITY IS WITH THE OPERATOR
24 OF THAT TERMINAL. I BELIEVE THE PORT HAS A LEGITIMATE AND
25 LEGAL RESPONSIBILITY, AS WELL. I HOPE THAT THEY'RE ABLE TO

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CUT 003147

1 RESOLVE BETWEEN THEMSELVES WHO SHOULD BEAR THE BURDEN IN A
2 FAIR AND EQUITABLE WAY, AND I'M NOT VOTING ON ANYTHING ELSE
3 BUT THOSE FEELINGS.

4 AND I ALSO AM CONCERNED, DAVID, AND THAT'S WHAT I
5 WAS ABOUT TO ASK YOU, IS THE PORT DISTRICT UNDER A NPDES
6 PERMIT OR WILL BE SHORTLY OR HAVE THEY APPLIED, ET CETERA?

7 MR. BARKER: ONE ISSUE THAT WILL BE COMING UP
8 BEFORE THE BOARD IN COMING MONTHS IS THE QUESTION WHETHER
9 TO NAME THE PORT DISTRICT AS A LAND OWNER IN ALL THE NPDES
10 PERMITS SURROUNDING THE BAY, BUT ALSO IN PARTICULAR PACO'S
11 PERMIT. CURRENTLY THEY ARE NOT NAMED IN PACO'S PERMIT AND
12 THERE IS A MODIFICATION --

13 CHAIRMAN FOLEY: I THINK IT'S SOMETHING WE MAY
14 WANT TO DISCUSS. RIGHT NOW WE HAVE THE QUESTION --

15 MR. HOPKINS: MR. CHAIRMAN, IF I MAY HAVE ONE
16 FURTHER COMMENT? THIS RELATES TO LANGUAGE THAT I JUST
17 HEARD FOR THE FIRST TIME A MOMENT AGO ON THE
18 RECOMMENDATION, AND, AS YOU KNOW, I HAVE ARGUED LONG AND
19 HARD AND FUTILELY BEFORE THIS BOARD THAT NAMING THE PORT
20 DISTRICT SECONDARY AS OPPOSED TO PRIMARY WOULD ALLOW YOU TO
21 DETERMINE WHETHER PACO IN FACT REMAINED IN COMPLIANCE.
22 IT'S MY BELIEF THAT THIS BOARD STILL OR THAT THERE IS STILL
23 SENTIMENT ON THIS BOARD FOR WANTING TO BE SURE THAT PACO IS
24 IN COMPLIANCE AND THAT NAMING THE PORT DISTRICT PRIMARILY
25 RESPONSIBLE WILL REALLY MAKE IT IMPOSSIBLE TO MAKE THAT

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1 DETERMINATION.

2 WHAT I WOULD REQUEST OR SUGGEST IS THAT IF THE BOARD
3 WISHES TO MAKE THE PORT DISTRICT PRIMARILY RESPONSIBLE AND
4 USE THE LANGUAGE THAT HAS BEEN SUGGESTED, THAT AN
5 ADDITIONAL SENTENCE BE ADDED WHICH STATES THAT IN THE EVENT
6 THAT THERE IS A VIOLATION OF THE ORDER, THAT NO
7 ADMINISTRATIVE CIVIL LIABILITY PENALTIES BE -- WILL BE
8 IMPOSED ON THIS BOARD BY -- ON THE PORT DISTRICT UNTIL 30
9 DAYS AFTER THE SAME HAVE BEEN IMPOSED ON PACO.

10 CHAIRMAN FOLEY: LET ME JUST COMMENT ON THAT,
11 AND, SHEILA, YOU MAY CORRECT ME, I WOULD THINK WE WOULD
12 HAVE THAT ABILITY TO MAKE THAT DECISION SUBSEQUENTLY ON
13 WHAT AND TO WHAT EXTENT AND TO WHOM AND HOW MUCH
14 ADMINISTRATIVE CIVIL LIABILITIES WE WOULD ELECT TO CHOOSE
15 TO USE. IS THAT CORRECT?

16 MS. VASSEY: CERTAINLY THE BOARD HAS THAT
17 DISCRETION. THE SUGGESTED LANGUAGE WOULD LOCK THE BOARD IN
18 AND I WOULD NOT RECOMMEND IT.

19 CHAIRMAN FOLEY: THANK YOU. HARRIET?

20 MRS. STOCKWELL: FURTHER CLARIFICATION OF THE
21 MOTION. CERTAINLY DOES NOT REMOVE THE RESPONSIBILITY OF
22 PACO INDUSTRIES.

23 CHAIRMAN FOLEY: OKAY. I THINK WE'LL CALL THE
24 ROLE. DIANNE?

25 MS. SOUKUP: MR. ARANT?

000651

1 MR. ARANT: AYE.
2 MS. SOUKUP: MR. BADGER?
3 MR. BADGER: AYE.
4 MS. SOUKUP: MRS. FORSTER?
5 MS. FORSTER: AYE.
6 MS. SOUKUP: MR. THEILEN?
7 MR. THEILEN: AYE.
8 MS. SOUKUP: MRS. STOCKWELL?
9 MRS. STOCKWELL: AYE.
10 MS. SOUKUP: THE QUORUM HAS BEEN MET.
11 CHAIRMAN FOLEY: THANK YOU VERY MUCH.
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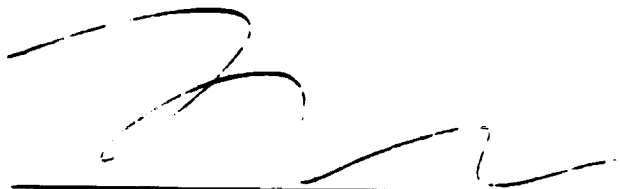
STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

I, LEONARD J. DANIELS, CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT THE PROCEEDINGS AND TESTIMONY IN THE FOREGOING
MATTER WERE STENOGRAPHICALLY REPORTED BY ME ON JANUARY 23,
1989, AND WERE LATER TRANSCRIBED UNDER MY DIRECTION; AND
THAT THE FOREGOING 18 PAGES CONTAIN A TRUE AND COMPLETE
RECORD OF THE PROCEEDINGS AND TESTIMONY AT SAID HEARING.

EXECUTED AT SAN DIEGO, CALIFORNIA, ON THIS 14TH DAY
OF MARCH, 1989.



LEONARD J. DANIELS, CSR NO. 3376

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BOB [unclear]
PORT DIST. [unclear]
MARINE OPS [unclear]
PACO [unclear]

**PORT OF SAN DIEGO
AND LINDBERGH FIELD AIR TERMINAL**

(714) 291-3909 • P.O. Box 488, San Diego 92112

RECEIVED
MAR 26 1979

RECEIVED
MAR 1 1979

MARINE OPERATIONS DEPT.

SAN DIEGO AIRPORT
WATER QUALITY CONTROL SECTION

Mr. Peter W. Michael
California Regional Water
Quality Control Board
6154 Mission Gorge Road, Suite 205
San Diego, CA 92120

SUBJECT: Pre-project Consultation--Paco Marine Terminal Area

Dear Peter:

I appreciate your efforts to assist me and the applicant in the pre-project consultation relative to the assignment of a special area for Paco's use on the Port's 24th Street Marine Terminal.

The applicant intends to have a special area reserved for his use, to be able to reliably schedule shipment of copper concentrate through the Port of San Diego. This material has previously been handled on the 10th Avenue Marine Terminal without any environmental problems. It is covered under the existing tariff and can be accommodated on a space available basis any time.

As you recall, F. M. Keeling, attorney for applicant, had contacted your office, but you may have misinterpreted the purpose of his contact during our pre-application analysis. In the process of preparing his project description, we requested that he 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 antipollution regulations.

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.

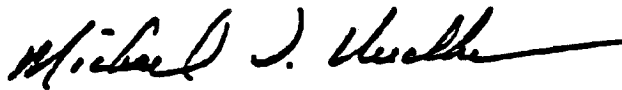
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RR 3-1-79

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Peter W. Michael
California RWQCB
Page 2

In light of the Port's objective to increase housekeeping practices, I discussed with you some ways to improve control measures preventing any potential for discharge. You again confirmed that our primary emphasis should be on our complete source control. If the project is to be implemented, we will insist that the entire material remain completely within the applicant's lease area.

Sincerely,



MICHAEL V. NEEDHAM, Assistant Coordinator
Environmental Management

MVN:pm

cc: W. Garrett, UPD Marine Operations Manager

000245

CUT 003153

INTER-STAFF COMMUNICATION

Date: 22 March 1979

To: JACK E. LIEBMANN - Chief Engineer

From: WILLIAM J. GARRETT - Manager, Marine Operations

Subject: Storm Drain Covers

It has been brought to our attention that the storm drain covers in the area of the copper concentrate operations at 24th Street Terminal are not properly protected. This was pointed out by the Water Quality Control Representative on a tour this week.

At present, the drains cover are triple wrapped with burlap. It appears that we will have to provide a solid cover which is hinged so it can be opened for drainage when needed, but would prevent any contamination during a normal dry operation.

This matter was mentioned on a verbal basis and we would now request that something definite be accomplished to resolve this problem. We have stated verbally to WQC that we would take action in this regard.

Respectfully,

WILLIAM J. GARRETT

cc: G.J. Gallina
T.E. Firlie



file
10/10
11/10
(S)

SAN DIEGO UNIFIED PORT DISTRICT

March 23, 1979

**Mr. Glenn Howell,
Operations Manager
PACD TERMINALS, INC.
Post Office Box 1534
National City, CA 92050**

Dear Glenn:

An inspection of your lease and operating areas was conducted March 20, 1979 by Mr. Peter Michael and Mr. Greg Peters, Environmental Specialists representing the California Regional Water Quality Control Board, San Diego Region. They were accompanied by Bob Hutton of my staff. The purpose of the inspection was to determine if copper concentrate is being discharged into San Diego Bay, potential adverse effects of such discharge, and to define/recommend possible corrective measures to prevent further discharge. Subsequent conversations between Mr. Michael and Bob Hutton revealed several areas of concern.

One primary concern is that of covering the storm drain openings to prevent introduction of material into that system and subsequent transfer to the Bay. A memorandum of request has been forwarded to Port District Engineering asking for assistance in the design of some sort of protective covers, or equivalent, to remedy this problem area. You will be advised of the progress as it occurs.

Regarding covering and containment of stockpiles, increased attention is needed in the use of tarps and weights, particularly during times of rain and high wind conditions. A review of procedures to provide for continuing protection during both working and non-working periods would appear to be in order. It is understood that the timbers along the fence line are intended for use as tarp anchors rather than retainer walls.

Of particular concern is the washing, sweeping or blowing of significant amounts of ore over the face of the wharf along the crane tracks. Additionally, if a mobile crane is employed, extreme caution should be exercised to prevent spillage into the Bay. Regular sweeping of the general area, as previously discussed, may be a partial solution to some of these problems.

Mr. Glenn Howell
March 23, 1979

No one solution to all the items listed above is readily available. The one common denominator that seems to be apparent, however, is a need for increased attention towards general housekeeping details and efforts.

Your prompt attention to these matters will be appreciated. Please feel free to call upon this office for any assistance we may provide.

Sincerely,

MARINE OPERATIONS DEPARTMENT

WILLIAM J. GARRETT,
Manager

WJS:sc

cc: G.J. Gallina
T.E. Fiple
R.G. Hutton

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Water Quality Control Board (hereinafter, "RWQCB") arrived on site and began testing puddles of water. I asked the gentleman what he was doing; he identified himself as Peter Michael of the RWQCB and told me that the Port of San Diego (which was the owner of the 24th Street Terminal property) should have a discharge permit from the RWQCB. I immediately called Bill Garrett, Port of San Diego Marine Operations manager, to see what this was all about. I had heard nothing previously about any requirement for any type of permit from the RWQCB.

6. I discussed the issue of the permit with Bill Garrett, Port of San Diego general manager of Marine Operations. The Board staff took the position that the Port should apply for a discharge permit. The Port insisted that PACO apply for the permit directly. PACO complied with the Port's directive.

7. I never really knew why we needed a permit because I had no prior experience with California regulations of any kind. Employees of the RWQCB told me that PACO was an unusual case because we were not really a typical "point source" because we did not have a discharge point that was actually under PACO's control. I asked Peter Michael what PACO should do to comply. He said PACO should prepare our own plan and that the RWQCB staff would review it. Before we submitted our application, Peter Michael told me that the reason he was testing the puddles was that he was concerned that the copper concentrate might lower the pH of the water sufficiently to cause the copper to go "into solution" and then get discharged into the Bay through the storm drain system.

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Peter Michael then told me that the pH test had shown that the pH was not lowered and that he felt there was no problem. I kept Garrett informed on a daily basis of all operations, including PACO's communications with the RWQCB.

8. I had no knowledge concerning copper concentrate and its possible effects on the environment. I have a high school education and no background in chemistry. I thought copper concentrate was inert and therefore could not harm the water in the Bay.

9. Prior to any dealings with the RWQCB, I had become concerned that we might lose some of the copper concentrate material down the two drains on our leasehold that led into the Port District's storm drain. My concern arose because a major concern of our customers was minimizing loss of such a valuable material during shipment.

10. I devised a screen made of nylon and polyester cloth to filter out the copper concentrate so that only water would enter the storm drain.

11. On occasion the screens became clogged with copper concentrate and caused water to pool in the area. In about 1982, the Port of San Diego directed PACO to remove the screens from the drains because the Port was concerned about its underground electrical conduits might be affected by any standing water.

12. In 1984, at the time PACO was renewing its permit and redrafting its best management practices, we at PACO devised a steel cover for the drains with a riser so that only water could

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enter the drains. The Port of San Diego refused to let us cover the drains in that manner, or at all.

13. Finally, in 1985, PACO again covered the drains by using solid steel plates.

14. The Port of San Diego was directly involved in PACO's loading operations. The Port had had a Hitachi container crane installed at the 24th Street Terminal well in advance of PACO becoming the lessee. I have been told that the crane was installed sometime in 1976. The Port was very anxious for PACO to use the container crane because it was very expensive and had not been used since it was purchased. PACO loaded its first ship in March 1979. The Port had one mechanic on site at all times the container crane was being operated. There was also usually a Port electrician there. During the entire length of PACO's operations at the 24th Street Terminal, it was my understanding that the Port could direct us to cease operations at any time and I would have complied forthwith.

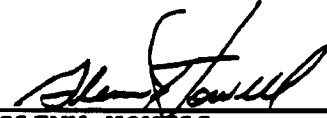
15. In about 1981, PACO purchased a bucket that could be used on the container crane. It was very difficult to find a bucket suitable for use on a container crane because it is somewhat unusual to use a container crane in that manner. A container crane has a lot more lifting capacity than a regular crane and copper concentrate is an extremely heavy commodity. The bucket PACO purchased in 1981 was radio controlled. Initially, we had some problems with the radio control device, but they were solved within six months.

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16. However, we had a second problem with the container crane because the bucket had to travel the length of the crane arm and the crane arm had a joint in it that substantially jarred the bucket as it crossed over the joint. Occasionally the bucket would accidentally open when it hit this joint. Since the joint was directly over the water, the bucket's contents would spill into the water. One or more Port mechanics were always present during the operation of the crane and therefore witnessed this problem. Port electricians were also often present. PACO repeatedly complained to the Port about the problem and asked the Port to fix it. The Port did not fix the crane until 1985.

17. PACO had no power or authority to do anything to the crane. It was owned by the Port of San Diego. I contacted Bill Garrett, the Port's manager of Marine Operations, and Bob Hutton, assistant manager of Marine Operations, about the crane problem on many occasions. Myron Jose, Port Maintenance, and Bill Carrol, Port Maintenance, also both knew about the crane problem.

I declare under penalty of perjury of the laws of the United States and of the Commonwealth of Pennsylvania, that this declaration is true and correct, and that it was executed on January 10, 1989, at Fairless Hills, Pennsylvania.



GLENN HOWELL

KEELING DECLARATION

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DECLARATION OF F.M. KEELING

I, F.M. Keeling, declare:

1. I am an attorney licensed to practice law in the State of Alabama, and am a partner in the law firm of Armbrrecht, Jackson, DeMouy, Crowe, Holmes & Reeves in Mobile, Alabama.

2. In early 1978, I represented Paco Terminals, Inc. ("PACO") in its negotiations with the Port of San Diego concerning leasing a portion of the 24th Street Terminal. In February, 1978, I spent approximately one week in San Diego working with officials of the Port of San Diego to finalize the lease and to apply for whatever business licenses and permits were necessary to begin operations.

3. As of 1978, it appeared to me that the Port of San Diego was not as commercially active as other similarly situated ports in that it had a very high percentage of Navy and recreational use. The Port of San Diego was very cooperative and seemed pleased to have the opportunity for a commercial tenant.

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4. In our lease negotiations, the Port adhered very closely to its form lease.

5. Aside from negotiating the lease itself, I tried to ascertain what licenses and/or permits PACO had to obtain to begin operations. The Port of San Diego Operations' personnel introduced me to the Port's Environmental Management Department with respect to the requirements concerning environmental issues. I was provided with a form letter signed by Tomas E. Firle, Coordinator, Environmental Management, that gave a brief explanation of the requirements of the California Environmental Quality Act of 1970 as they might apply to Port lessees. The form letter requested that an Environmental Assessment and Evaluation form ("EA") be completed by the proposer of the project (i.e., PACO) and the Port District. I was provided with an EA form. After consultation with the Port's environmental staff and management of PACO, I filled out the form.

6. The form letter explained that if a proposed project did not have a significant adverse environmental impact, a negative declaration would be prepared. Otherwise an environmental impact report would be necessary. I believe that Mr. Firle told me that PACO should take the position in its EA form that there would be no discharge. On February 23, 1978, I telephoned the California Coastal Commission, the Regional Water Quality Control Board and the Air Pollution Control District to explain PACO's proposed operation and to see whether or not any of them would require a permit. Of the

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three agencies, I believe that only the Regional Water Quality Control Board felt a permit might be in order.

7. I then recontacted the Environmental Management Department of the Port District to report my progress. Mr. Firlie seemed somewhat upset that I had contacted the regulatory agencies myself. He told or strongly implied to me not to call any of the state environmental regulatory agencies again. He told me that the Port Environmental Management Department would deal directly with the regulatory agencies.

8. Once I filled out PACO's part of the EA form, it was my understanding that the Port was responsible for completing the questionnaire as indicated thereon.

9. I answered every question that the Port Environmental Management Department asked me about the proposed operation of PACO to the best of my knowledge. It was my understanding at the time, based on my own personal knowledge and based on the opinions expressed by the Port officials, that the PACO project did not and would not present any material threat of harm to the environment in any way if the operations of PACO were conducted in a prudent manner.

10. I have no training, background or expertise in chemistry or environmental biology, nor did I have any

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expertise regarding environmental law or California law in 1978.

11. After my trip to San Diego in February, 1978, other PACO personnel took over PACO's communications with the Port of San Diego.

I declare under penalty of perjury of the laws of the United States and of the State of Alabama, that this declaration is true and correct to the best of my knowledge and belief, and that it was executed on January 12th, 1989, at Mobile, Alabama.

F. M. Keeling

F. M. Keeling

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18. NON-DISCRIMINATION: Lessee agrees not to discriminate against any person or class of persons by reason of sex, color, race, creed, or national origin. Lessee shall make its accommodations and services available to the public on fair and reasonable terms.

19. PARTIAL INVALIDITY: If any term, covenant, condition, or provision of this lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

20. HOLD HARMLESS: Lessee shall defend, indemnify, and hold harmless Lessor, its officers and employees against causes of action, liability, damage, and expense, including reasonable attorney's fees, for judicial relief of any kind, for damage to property of any kind whatsoever and to whomever belonging, including without limitation Lessee or its employees, or injury or death of any person or persons, including without limitation Lessee or its employees, resulting directly or indirectly from granting and performance of this lease or arising from the use and operation of the leased premises or any defect in any part thereof.

21. SUCCESSORS IN INTEREST: Unless otherwise provided in this lease, the terms, covenants and conditions herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto, all of whom shall be jointly and severally liable hereunder.

22. EASEMENTS: This lease and all rights given hereunder shall be subject to all easements and rights-of-

way now existing or heretofore granted or reserved by Lessor in, to or over the leased premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits and such telephone, telegraph, light, heat, or power lines as may from time to time be determined by Lessor to be in the best interests of the development of the tidelands.

Said easements and rights-of-way specifically include without limitation the water, storm drain, and gas easements delineated on Exhibit "B" attached hereto together with ingress and egress thereto and Lessee shall not use said easement areas in a manner inconsistent with said easements. Lessee acknowledges that said utility lines presently exist in said easement areas and are used and operated by the Lessor, its contractors, licensees and easement holders. Lessee agrees that the areas covered by said easement shown crosshatched on Exhibit "B" shall be used only and exclusively for the parking of automobiles and vehicular access. This lease is also subject to those easements heretofore granted to San Diego Gas & Electric Company shown on Exhibit "B". Said easements are on file with the Clerk of the Lessor as Documents Nos. 3445 and 7433. Lessee agrees that this lease is subject to all of the terms and conditions of said easements and may not be used in a manner inconsistent therewith. Lessee further agrees to indemnify, defend and hold harmless Lessor with regard to said easements in the manner and to the extent as provided in paragraph 20 of this lease.

Lessor agrees that any additional easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Lessee.

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 Unified Port District, 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.

dissolution, nor permit sale of a controlling interest in the voting stock in said corporation without the consent of Lessor, evidenced by resolution, first had and obtained in each instance. It is mutually agreed that the personal qualifications of the parties controlling the corporation named herein as Lessee are a part of the consideration for the granting of this lease and said parties do hereby agree to maintain active control and supervision of the operations conducted on the leased premises. No assignment, voluntary or involuntary, in whole or in part of the lease or any interest therein, and no sublease of the whole or any part of the leased premises and no permission to any person to occupy the whole or any part of the leased premises, shall be valid or effective without the consent of Lessor, first had and obtained in each instance; provided, however, that nothing herein contained shall be construed to prevent the occupancy of said premises by any employee or business invitee of Lessee.

9. DEFAULT: It is mutually understood and agreed that if any default be made in the payment of rental herein provided or in the performance of the covenants, conditions, or agreements herein, or should Lessee fail to fulfill in any manner the uses and purposes for which said premises are leased as above stated, and such default shall not be cured within five (5) days after written notice thereof if default is in the submittal of monthly reports of gross income if required in this lease or ten (10) days after written notice thereof if default is in the performance of the failure to use provisions pursuant to paragraph 13 of

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this lease, or thirty (30) days after written notice thereof if default is in the payment of rent, or sixty (60) days after written notice thereof if default is in the performance of any other covenant, condition and agreements, Lessor shall have the right to immediately terminate this lease, and that in the event of such termination, Lessee shall have no further rights hereunder and Lessee shall thereupon forthwith remove from said premises and shall have no further right to claim thereto, and Lessor shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the leased premises. Lessor shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Lessee in the amount necessary to compensate the Lessor for all the detriment proximately caused by the Lessee's failure to perform his obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

In the event Lessor consents to an encumbrance of the Lease for security purposes in accordance with Paragraph 7 of the Lease, it is understood and agreed that Lessor shall furnish copies of all notices of defaults to the beneficiary or mortgagee under said encumbrance by certified mail contemporaneously with the furnishing of such notices to Lessee, and in the event Lessee shall fail to cure such default or defaults within the time allowed above, said beneficiary or mortgagee shall be afforded the right to cure such default at any time within fifteen (15) days following the expiration of the period within which Lessee may cure such default,

provided, however, Lessor shall not be required to furnish any further notice of default to said beneficiary or mortgagee.

In the event of the termination of this lease pursuant to the provisions of this paragraph, Lessor shall have any rights to which it would be entitled in the event of the expiration or sooner termination of this lease under the provisions of paragraph 5.

10. BANKRUPTCY: In the event Lessee becomes insolvent, makes an assignment for the benefit of creditors, becomes the subject of a bankruptcy proceeding, reorganization, arrangement, insolvency, receivership, liquidation, or dissolution proceedings, or in the event of any judicial sale of Lessee's interest under this lease, Lessor shall have the right to declare this lease in default.

The conditions of this paragraph shall not be applicable or binding on Lessee or the beneficiary in any deed of trust, mortgage, or other security instrument on the demised premises which is of record with Lessor and has been consented to by resolution of Lessor, or to said beneficiary's successors in interest consented to by resolution of Lessor, as long as there remains any monies to be paid by Lessee to such beneficiary under the terms of such deed of trust; provided that such beneficiary or its successors in interest, continuously pay to the Lessor all rent due or coming due under the provisions of this lease and the premises are continuously and actively used in accordance with paragraph 13 of this lease.

11. EMINENT DOMAIN: If the whole or a substantial part of the premises hereby leased shall be taken by any

value of the tidelands, provides needed public service, provides additional employment, taxes, and other benefits to the general economy of the area.

14. MAINTENANCE AND REPAIR: 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, and shall make all necessary repairs and alterations thereto hereby waiving all right to make repairs at the expense of Lessor as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said Code. 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. Lessee shall, as further consideration for the leasing thereof, keep the premises in a clean and sanitary condition and provide proper containers for and keep the demised premises free and clear of rubbish, garbage, and other waste. Lessor shall at all times during ordinary business hours have the right to enter upon and inspect the leased premises and any improvements thereon.

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. Lessor will accept the performance and labor and material bonds supplied by Lessee's contractor or subcontractors. 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.

JOHN;

CALLED TRACY AT (CRP) AND YOU CAN (FAX) HER THE INFORMATION FOR
ARTICLE ON MONDAY. IT MAY BE WELL TO COMPOSE SOMETHING IF YOU
WANT TO HAVE IT SAID YOUR WAY.

(DAWN MARIE WAS A "TEMP" JUST CALLING FOR THE INFO)

COMMERCIAL BASIN BOATYARDS:
SEDIMENT CHARACTERIZATION
AND REMEDIAL ACTION
ALTERNATIVES EVALUATION

Prepared for:

Latham & Watkins
701 "B" Street, Suite 2100
San Diego, California 92101

BAY CITY MARINE, INC.
BAY CITY MARINE BOATYARD
NPDES
ENR REPORT FILE: 1-663968 (7/1990)
03-0328.051 TATUS: C



**COMMERCIAL BASIN BOATYARDS:
SEDIMENT CHARACTERIZATION
AND REMEDIAL ACTION
ALTERNATIVES EVALUATION**

Prepared for:

**Latham & Watkins
701 "B" Street, Suite 2100
San Diego, California 92101**

1550 Hotel Circle North
San Diego, California 92108
(619) 294-9400
Fax: (619) 293-7920

Woodward-Clyde Consultants

September 8, 1989
Project No. 8853235T-COM3

Latham & Watkins
701 B Street, Suite 2100
San Diego, California 92101

Attention: Mr. Allen D. Haynie

**COMMERCIAL BASIN BOATYARDS:
SEDIMENT CHARACTERIZATION AND
EVALUATION OF REMEDIAL ACTION ALTERNATIVES**

Dear Mr. Haynie:

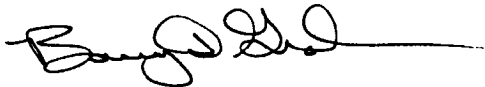
Woodward-Clyde Consultants (WCC) is pleased to provide this report, entitled Commercial Basin Boatyards: Sediment Characterization Study and Remedial Action Alternatives Evaluation. This report satisfies the reporting requirements of Directive 3 of Cleanup and Abatement Orders issued to Bay City Marine, Inc. (Order No. 88-79), Kettenburg Marine (Order No. 88-78), and Mauricio and Sons, Inc. (Order No. 88-86).

Analytical laboratory reports will be sent under separate cover.

Please contact us with your questions or comments.

Very truly yours,

WOODWARD-CLYDE CONSULTANTS



Barry D. Graham
Project Scientist

BDG/hal (a/bdg2)

Enclosures

- (1) Mauricio & Sons, Inc.
- (1) Bay City Marine, Inc.
- (1) Kettenburg Marine



TABLE OF CONTENTS

	<u>PAGE NO.</u>
1.0 INTRODUCTION	1
2.0 SEDIMENT CHARACTERIZATION	1
3.0 REMEDIAL ACTION ALTERNATIVES EVALUATION	2
3.1 Alternative Strategies	2
Alternative (A) - Background	2
Alternative (B) - Apparent Effects Threshold	3
Alternative (C) - Ocean Plan	3
3.2 Feasibility	4
3.3 Cost	5
Alternative (A) - Background	6
Alternative (B) - Apparent Effects Threshold	6
Alternative (C) - Ocean Plan	6
Alternative (D) - Beneficial Uses	7
Alternative (E) - No Disturbance of Sediments	7
4.0 DISCUSSION	8
4.1 Study Findings	8
4.2 Related Issues	9
5.0 CONCLUSIONS AND RECOMMENDATIONS	11
REFERENCES	14
TABLE	
1. Affected Sediment Volumes	
FIGURES	
1. Site Location Map	
2. Sediment Sampling Locations	
3. Copper in Sediment	
4. Mercury in Sediment	
5. Tributyltin in Sediment	

TABLE OF CONTENTS (continued)

APPENDICES

- A. Analytical Results
- B. Correlation Documentation
- C. Sediment Coring Logs
- D. Remedial Action Costs Estimates, Bay City Marine, Inc.
- E. Remedial Action Costs Estimates, Kettenburg Marine
- F. Remedial Action Costs Estimates, Mauricio and Sons, Inc.

COMMERCIAL BASIN BOATYARDS:
SEDIMENT CHARACTERIZATION STUDY
AND REMEDIAL ACTION
ALTERNATIVES EVALUATION

1.0 INTRODUCTION

This report is provided in response to Directive 3 of the California Regional Water Quality Control Board, San Diego Region (RWQCB) Cleanup and Abatement (C&A) Orders issued to three boat repair and maintenance facilities located on the waterfront in the Commercial Basin region of San Diego Bay (see Figure 1, Site Location Map). The named facilities are Bay City Marine, Inc. (Order No. 88-79), Kettenburg Marine (Order No. 88-78), and Mauricio and Sons, Inc. (Order No. 88-86). Directive 3 of each of the C&A Orders requires an evaluation of several remedial action alternatives relating to "removal and/or treatment" of contaminated sediment. Directive 3 also implicitly requires a preliminary study to characterize the lateral and vertical extent of contamination of the sediments. This report presents the findings of the Commercial Basin Boatyards Sediment Characterization Study and applies study findings to the Remedial Action Alternatives Evaluation.

2.0 SEDIMENT CHARACTERIZATION

A two-phased study of sediments near the subject facilities was approved by RWQCB. The study plan was designed to characterize the vertical and lateral extent of copper, mercury, and tributyltin in sediments and to provide an information base for the Remedial Action Alternatives Evaluation.

Phase 1 of the Study focused upon determination of copper concentrations in the uppermost layer of sediment. Copper was selected as a representative indicator of lateral distribution patterns for various constituents typically occurring in boatyard discharges. Phase 1 sampling took place in February, 1989. Analytical results and Quality Assurance documentation for the Phase 1 study were reported in Commercial Basin Boatyards Sediment Sampling: Phase 1 Results/Phase 2 Plan, (Woodward-Clyde Consultants, April 14, 1989). Phase 2 of the study was directed toward determination of the vertical

distribution of all three target species. Sediment core samples were collected at locations which were selected on the basis of distribution patterns observed in the Phase 1 copper data. Phase 2 sampling was conducted in April, 1989 and results were reported in: Commercial Basin Boatyards Sediment Sampling: Phase 2 Results, (Woodward-Clyde Consultants, June 15, 1989). Figure 2 shows Phase 1 and Phase 2 sampling locations. Phase 1 and Phase 2 analytical results are included in Appendix A to this report. Analytical results for interstitial water and deeper sediments (3 feet to 4 feet) received after submittal of the Phase 2 results are also included in Appendix A.

A conceptual three-dimensional profile of the vertical and lateral distribution of copper, mercury, and tributyltin in study area sediments can be constructed by correlation of the Phase 1 and Phase 2 results. Linear regression correlation coefficients relating copper to both mercury and tributyltin were calculated for Phase 2 data and subsequently applied to the Phase 1 copper data, (corrected for moisture content). Statistical documentation of the Phase 1:Phase 2 correlation is provided in Appendix B. The resultant calculated data base was used for computer generation of lateral profiles for all three constituents. Figures 3, 4 and 5 show calculated lateral concentration isopleths for copper, mercury and tributyltin. Sediment Coring Logs showing vertical concentration profiles and sediment lithology are provided in Appendix C.

3.0 REMEDIAL ACTION ALTERNATIVES EVALUATION

3.1 Alternative Strategies

Directive 3 of the C&A Orders specifically requires an evaluation of the feasibility and cost for alternative strategies A, B, and C below. C&A Order criteria proposed for each of these alternative strategies are listed below.

Alternative (A) - Background

Removal and/or treatment of the contaminated sediment to attain background concentrations:

Constituent	Concentration (dry weight)
Mercury	0.81 mg/kg
Copper	63 mg/kg
Tributyltin	193 ng/g = 0.193 mg/kg

Alternative (B) - Apparent Effects Threshold[†]

Removal and/or treatment of the contaminated sediment to attain Apparent Effects Threshold (AET) concentrations:

Constituent	Concentration (dry weight)
Mercury	0.49 mg/kg
Copper	170 mg/kg
Tributyltin	6 ng/l*

*Water Quality Criteria

Alternative (C) - Ocean Plan

Removal and/or treatment of contaminated sediment to attain Ocean Plan water quality objectives for copper and mercury, and State Water Resources Control Board proposed criteria for Tributyltin:

Constituent	Concentration*
Mercury	0.14 µg/l
Copper	5 µg/l
Tributyltin	6 ng/l

*Water Quality Criteria

Directive 3 also allows for evaluation of an optional remedial action alternative that will comply with beneficial uses of San Diego Bay and applicable water quality standards. This alternative strategy is included as Alternative (D) - Beneficial Uses. Evaluation of the

[†] The Apparent Effects Threshold (AET) criteria was developed specifically for biota and sediments of Puget Sound. Applicability of AET criteria outside of Puget Sound is not recommended.

Beneficial Uses cleanup standard led to definition of one additional remedial action alternative strategy which is included as Alternative (E) - No Disturbance of Sediments.

3.2 Feasibility

As suggested by the “removal and/or treatment” provisions of the C&A Orders, more than one technical approach may be employed to achieve the same standard of remediation. However, a feasibility analysis for implementation of any of the alternative strategies listed above should consider numerous factors beyond the purely technical. Both short- and long-term consideration of local environmental effects (Commercial Basin) and potential off-site environmental effects (due to dredged material disposal) are an important part of the feasibility analysis (1). Social and economic factors and associated issues must also be recognized and accommodated in remedial plans (2). It is assumed that resolutions to issues other than the technical/engineering approach to remediation are similar for all strategies. Therefore, selection of the technical approach for remediation is the focus of this analysis.

Technical options considered for application in Commercial Basin sediments were drawn from literature and data published by various agencies and jurisdictions experienced in sediment remediation. Given that Commercial Basin sediments are in relatively shallow waters and are readily accessible, the technology most frequently cited for achieving sediment and/or water quality criteria involves sediment removal by any of several conventional methods (hydraulic or mechanical dredging) and subsequent disposal of dredge spoils in an approved manner. Consideration was also given to other less familiar technical options such as: in situ treatment by chemical methods, biological methods, solidification, or isolation (capping), and post-dredging treatment by chemical/biological methods, solidification, and to achieve volume reduction (1). After reviewing data concerning the technical merits of the various remedial approaches, the current level of understanding for each, and relative costs, it was determined that the only two viable approaches for Commercial Basin sediments are: 1) Dredging, using the most appropriate method of excavation, followed by disposal of dredge spoils (without treatment), and 2) Leaving the sediments in place.

3.3 Cost

Implementation costs for each of the alternative strategies are determined by two factors: (1) the technical approach to remediation, and (2) the volume of sediment involved. Having established the feasibility of dredging and disposal as an approach for all strategies, (and the only approach involving expense), affected sediment volume becomes the determining parameter for cost estimating. Estimates of affected sediment volume were developed through a three step process:

1. Spatial concentration profiles were developed for each constituent in the sediments of each boat repair facility. Lateral distribution profiles were prepared by computer-generation of isopleth contours based on surficial sediment concentration data. Vertical profiles were based on core sampling analytical results.
2. Vertical and lateral concentration profiles were compared with applicable standards for the range of alternative strategies at each boat repair facility to determine the most widely distributed constituent. The constituent showing the greatest spatial distribution beyond the applicable standard levels was determined to be the significant constituent.
3. The areal extent of affected sediment volume was quantified by planimeter survey of the appropriate isopleth. This two-dimensional expression was then multiplied by an estimate of affected sediment depth to yield affected sediment volume.

Concentration isopleths depicting the lateral distribution of copper, mercury, and tributyltin in sediments of Bay City Marine, Inc., Kettenburg Marine, and Mauricio and Sons, Inc., are shown in Figures 3, 4 and 5. As previously described, the concentration isopleths were based on calculated values derived from Phase 2 correlations of copper to mercury and tributyltin as applied to Phase 1 copper data (corrected for moisture). Vertical concentration profiles were based on Phase 2 Sediment Coring analyses. The rationale for determination of the "limiting constituent" and affected sediment volume for each alternative

strategy are discussed below. The limiting constituent approach is based upon the observation that within each alternative strategy, the spatial distribution of one constituent will predominate and will therefore determine the volume of affected sediment.

Alternative (A) - Background

Results of the Phase 1 and Phase 2 sediment analyses indicate that copper is the limiting constituent for the Background alternative. Copper is the most widely distributed, both vertically and laterally, at each of the boat repair facilities with respect to the proposed Background level of 63 mg/kg. Phase 2 results confirm that each of the constituents occurs primarily in the surface sediments at a majority of the coring locations. Copper concentrations in excess of 63 mg/kg were found in deeper sediments (2 feet to 3 feet) at only four nearshore coring locations where surface concentrations were also elevated.

Alternative (B) - Apparent Effects Threshold

The limiting constituent for the Apparent Effects Threshold (AET) standard at each boat repair facility is mercury. Phase 2 analytical results indicate that mercury concentrations exceed the AET standard of 0.49 mg/kg at all coring location surface samples. The occurrence of mercury in deeper sediments (2 feet to 3 feet) is observed at nearshore locations where surface concentrations are high. Mercury concentrations in deeper sediments are below detectable limits (<0.25 mg/kg) at other locations farther from shore. The water quality criteria of 6 ng/l proposed for tributyltin is not considered to be limiting for this alternative strategy because recently developed data indicate that mg/l concentrations are typical throughout San Diego Bay (3). Proposed ng/l levels for tributyltin are therefore not considered to be achievable through removal of sediment.

Alternative (C) - Ocean Plan

Interstitial water samples collected from the Phase 2 cores were analyzed for copper and mercury to evaluate the Ocean Plan alternative strategy. Results of these analyses are included in Appendix A. An insufficient volume of interstitial water from the cores prevented analysis for tributyltin; however, tributyltin is not considered to be the limiting

constituent for reasons discussed in Alternative (B). Interstitial water analytical results indicate that Ocean Plan standards are generally satisfied for mercury (0.14 µg/l) but that some copper concentrations are slightly in excess of the 5 µg/l standard. Copper is therefore the limiting constituent for Alternative (C). (It should be noted that interstitial water concentrations represent the “worst case condition” because dilution within the water column will result in greatly reduced copper concentrations.)

Alternative (D) - Beneficial Uses

The Beneficial Uses alternative is proposed as a cost effective alternative strategy for maintenance of the established beneficial uses of Commercial Basin and applicable water quality standards. Alternative (D) emphasizes removal of localized sediments which show the highest constituent concentrations. Copper is again identified as the limiting constituent because of its consistently broader distribution and higher levels. An action threshold of 800 mg/kg copper is proposed for the Beneficial Uses alternative.

Alternative (E) - No Disturbance of Sediments

Estimation of affected sediment volume does not apply to the No Disturbance of Sediments alternative, however, cost estimates associated with characterization of the sediments are provided.

A summary of affected sediment volumes for each alternative strategy at each boat repair facility is provided in Table 1. Itemized costs, developed from the affected sediment volume estimates of Table 1, are provided for Bay City Marine, Inc., Kettenburg Marine, and Mauricio and Sons, Inc. in Appendices D, E, and F, respectively.

4.0 DISCUSSION

4.1 Study Findings

Significant findings of the Commercial Basin Boatyards Sediment studies are:

4.1.1 Constituent Distribution

Copper, mercury and tributyltin concentrations in study area sediments tend to decrease with increasing horizontal distance from the shoreline as shown in Figures 3, 4 and 5.

Similarly, all constituent concentrations decrease significantly with increasing depth of sediment. The surface layer of sediment (upper 1 foot) holds over 90% of the total mass of all constituents. One explanation for the observed distribution patterns, as proposed in the C&A Orders, is that constituents originate primarily from boat repair facility discharges. However, the distribution patterns can also be explained by normal hydrology and sediment deposition phenomena of Commercial Basin.

4.1.2 Constituent Concentrations and Form

The solid phase concentrations of copper, mercury, and tributyltin in Commercial Basin sediments are tabulated in Appendix A. Sediment solid phase concentrations are clearly higher than would be expected in a pristine sedimentary environment and the distribution patterns described above suggest that some dynamics are involved. In absolute terms, the measured concentrations range as follows (mg/kg dry weight):

Copper	2.7 to 4530
Mercury	<0.25 to 93.3
Tributyltin	<0.04 to 22

Interpretation of the extent to which boat repair facilities contribute to sediments is complicated by uncertainty regarding background concentrations for local marine sediments. Ideally, background concentrations are determined for local sediments having

similar properties (organic carbon content and grain size) but not influenced by boat repair facilities. To date, an appropriate background location has not been identified.

To assist in the interpretation of constituent concentration data, interstitial water samples extracted from sediment cores were analyzed. Concentrations of copper and mercury in these samples indicate preferential partitioning to the solid phase. Analytical results from core segments having the highest solid phase concentrations show very low to non-detectable concentrations of soluble copper and essentially no soluble mercury. These metals are therefore strongly bound in the solid phase and not available to benthic biota.

Partitioning of soluble metals (copper, mercury, and tributyltin) to suspended organic materials in the marine environment is well documented (4) and helps to explain the solid phase (sediment) concentrations of the various constituents. Stability of adsorbed metals within anoxic sediments of high organic content is also well understood. Insoluble (non-bioavailable) metal sulfides will predominate under such conditions (5).

Ultimately, the environmental and human health significance of solid phase and interstitial water concentrations should be interpreted in terms of the appropriate biological/toxicity indices for local conditions. Therefore, the non-bioavailability of metals to biota in Commercial Basin sediments is highly relevant to the Remedial Action Alternatives Evaluation.

4.2 Related Issues

Other facts and issues with relevance to the Commercial Basin Remedial Action Alternatives Evaluation include:

4.2.1 Abatement

The importance of eliminating the source(s) of sediment contamination is explicit in the Cleanup and Abatement Orders to which this report responds. In fact, the Orders might be more appropriately named Abatement and Cleanup to describe the actual sequence of

events. Directives 1 and 2 of the C&A Orders involve abatement-oriented tasks and were previously addressed by the boat repair facilities.

The logic of abatement prior to cleanup is obvious. This approach has been recognized by the International Joint Commission (U.S. and Canada) in its report to the Great Lakes Water Quality Board, entitled "A Protocol for the Selection of Process-Oriented Remedial Options to Control In Situ Sediment Contaminants" (1). This report states: "If no source control is implemented, then it would be futile to attempt any program to remove or eliminate sediment-bound contaminants."

The importance of this issue lies in the fact that significant quantities of soluble and particulate forms of anti-fouling paint components are continually released into the waters of Commercial Basin (and throughout San Diego Bay). Commercial Basin is home to four other boat repair facilities (named in separate Cleanup and Abatement Orders), one major free anchorage and several large marinas which berth commercial and pleasure boats. All of these operations are involved in routine maintenance activities which could release anti-fouling paint components to bay waters. In addition to these sources, large quantities of copper and tributyltin are routinely released from the hulls of vessels within Commercial Basin waters. Nichols, 1988 (6) estimates that this mechanism accounts for the annual release of 33,000 pounds of copper to San Diego Bay waters. On a proportional basis (15%=900 moorings of 6,000 total), Commercial Basin waters receive nearly 5,000 pounds of copper annually. Actual release totals could be higher since these estimates do not reflect the increased use of copper-containing bottom paints since the restrictions on tributyltin application took effect in 1988.

4.2.2 Hydrology and Sedimentation

Soluble and particulate antifouling paint components released to the waters of Commercial Basin are subject to a variety of chemical and physical processes which determine how they are distributed in the environment. The chemical properties of copper, mercury, and tributyltin cause these metals to become adsorbed to organic matter in the water column and ultimately deposited as sediment. Sediment deposition within Commercial Basin involves much more than simple settling of particulate matter. Commercial Basin is a dynamic

system where sediments are subject to the physical influences of tidal action, currents, and turbulence from power boats. In this type of setting, finer-grained particulate sediments containing adsorbed metals tend to deposit in areas with less turbulence such as near docks, around pilings, and generally at the shoreline. This phenomenon can be beneficial in the sense that it tends to concentrate the metals of concern near the shore. However, shoreline concentrations can be misinterpreted without proper consideration of sediment deposition and transport mechanisms.

4.2.3 Natural Remedial Processes

Deposition of sediments is an ongoing process which has the potential to remove dissolved and suspended contaminants from the biosphere. The sedimentation process can function to isolate or cap suspected contaminants in sediments where they become chemically bound into insoluble forms and are no longer available to biota. With time, these materials become less and less available as they move deeper into the sediments. The process of transferring surface sediments to deeper layers can be accelerated by the action of benthic biota (7).

Rapid degradation of tributyltin in the marine environment has been reported (8). A comparison of tributyltin concentrations in Commercial Basin sediments between February 1988 and April 1989 indicates that significant reductions have occurred. Restrictions on tributyltin use and abatement practices may be partially responsible for the reduction from greater than 1000 ppm to less than 100 ppm, however, biodegradation is considered to be the primary cause. With control of the source, tributyltin could conceivably be eliminated in Commercial Basin sediments.

5.0 CONCLUSIONS AND RECOMMENDATIONS

Selection of a remedial approach for Commercial Basin is a very complex exercise in environmental risk management. In addition to the relative technical and economic merits of various remedial strategies, other less well-defined issues must be incorporated into the decision-making process. Proper attention to factors such as perceived risk versus actual risk, remediation macroeconomics, potential long-term environmental effects both on and

off-site and socio-political considerations will improve the validity of the remedial action selection process.

Important conclusions relevant to selection of a cleanup level for Commercial Basin are:

1. The levels of copper, mercury, and tributyltin in Commercial Basin sediments are insignificant with respect to bioavailability and toxicity as indicated by interstitial water sample results. These data indicate that copper and mercury within the sediments exist primarily as insoluble forms.
2. Natural remedial processes occurring within Commercial Basin sediments include: isolation of deeper sediments by the deposition and sedimentation, chemical bonding of metals into insoluble forms, and the rapid degradation of tributyltin.
3. Adverse environmental impacts associated with sediment removal from Commercial Basin include: resuspension and redistribution of compounds that are currently isolated within sediments, total destruction of existing communities of benthic biota, and creation of depressions which will preferentially accumulate new sediment deposits (9).
4. The physical and political dynamics of Commercial Basin are so intertwined that assignment of remedial responsibilities is guesswork. Multiple sources of contaminants as yet unabated, the mobility of soluble forms, and physical transport of sediments containing sorbed contaminants to depositional zones make it inappropriate to attribute contaminants to adjacent waterfront facilities. This situation is further complicated by the temporal issues of contaminant production (past tenants).
5. With the exception of tributyltin, the water quality objectives of Alternative (C) - Ocean Plan, for estimated chronic toxicity are currently satisfied. Even using "worst case" interstitial water concentrations, mercury levels are

below the conservatively estimated toxicity standard and copper is below the standard at most sample locations.

If water column dilution is considered, the toxicity standard will certainly be met for all cases. Tributyltin concentrations are not of sediment origin and water quality criteria for tributyltin cannot be met without source control.

6. A cost-benefit analysis of the various remedial alternatives at each boat repair facility indicates that costs could range from approximately two hundred thousand to several million dollars. Considering the insignificance of the constituent concentrations, the fact that remedial efforts will not substantially affect the beneficial uses of Commercial Basin, and the magnitude of estimated remedial costs, and the enormity of these costs relative to the sizes of the business involved, the benefit of pursuing any of the remedial alternatives involving dredging is very questionable.

The number of unresolved issues surrounding Commercial Basin remediation and the lack of evidence of significant environmental impact due to the constituents studied indicate that Alternative (E) - No Disturbance of Sediments is the appropriate selection. Alternative (E) will not result in any negative environmental effects or limitations on the beneficial uses of Commercial Basin. Abatement, not removal or treatment of sediments, is the most cost effective and technically valid approach to remediation of Commercial Basin sediments.

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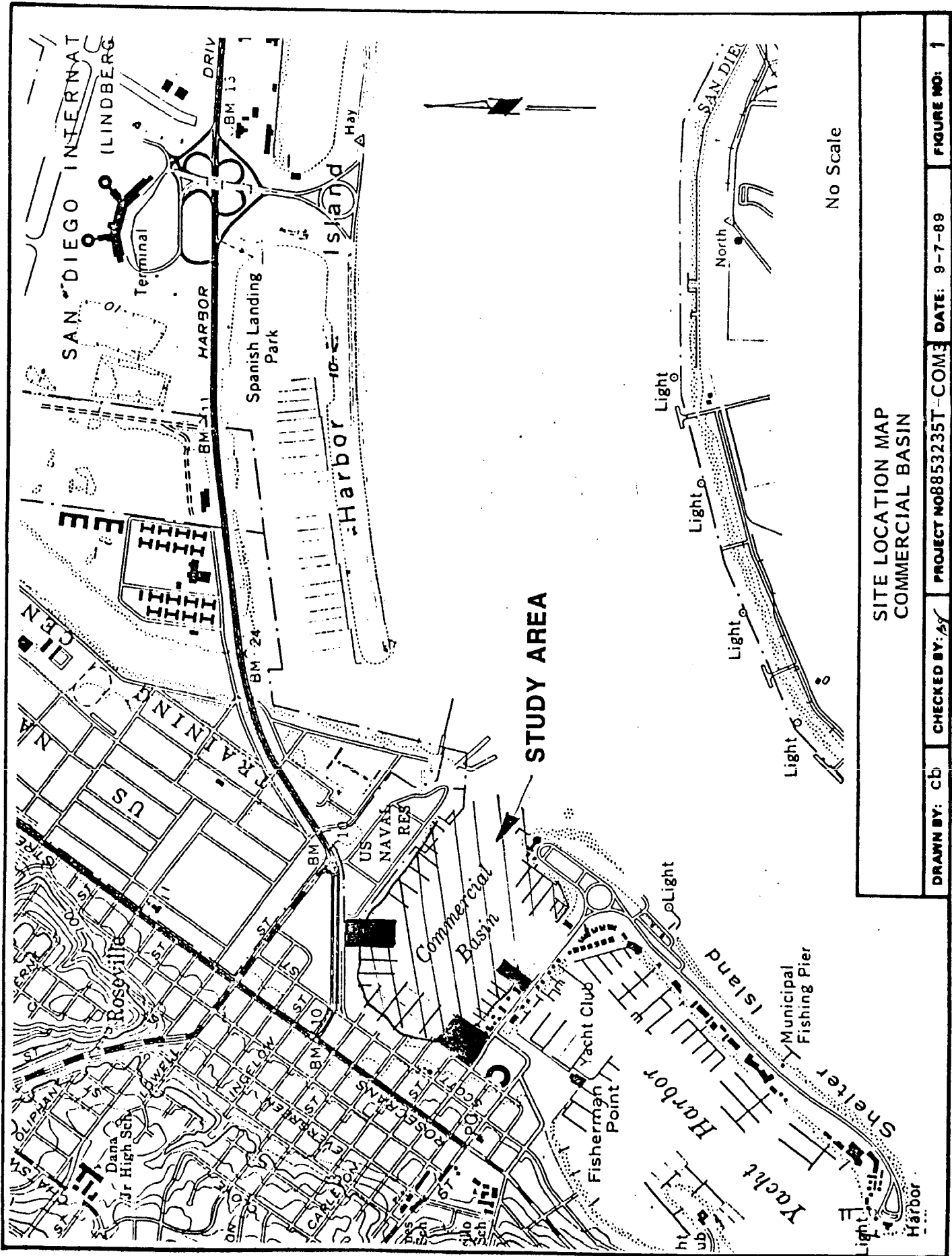
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TABLE 1
AFFECTED SEDIMENT VOLUMES

Facility	(A)		(B)		(C)		(D)		
	Total* Area (ft ²)	(ft ²) >1' Deep	Volume (yds ³)	Total* Area (ft ²)	(ft ²) >1' Deep	Volume (yds ³)	Total* Area (ft ²)	(ft ²) >1' Deep	Volume (yds ³)
Bay City Marine, Inc.	275,000	70,000 ^a	15,300	275,000	70,000 ^a	15,300	40,000	10,000 ^a	2,200
Kettenburg Marine	200,000	0	7,400	200,000	0	7,400	18,000	0	700
Mauricio and Sons, Inc.	225,000	23,000 ^a	10,000	225,000	23,000 ^b	9,200	47,000	10,000 ^b	2,100
							45,000	5,000 ^b	1,800
							22,000	0	800
							20,000	0	750

*To a depth of 1 foot.
^a3' depth.
^b2' depth.

a/bdg2



SITE LOCATION MAP
COMMERCIAL BASIN

DRAWN BY: cb CHECKED BY: SY PROJECT NO: 8853235T-COME DATE: 9-7-89 FIGURE NO: 1

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November 20, 1989

REGIONAL WATER QUALITY CONTROL BOARD
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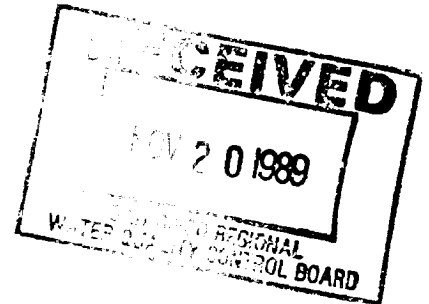
BY HAND DELIVERY

Attention: Ladin H. Delaney, Executive Director
David T. Barker, Director of Enforcement

Dear Messrs. Delaney and Barker:

The San Diego Unified Port District ("the Port District") has authorized this office to prepare an appeal of the Regional Water Quality Control Board's decision on October 23, 1989 to amend prior NPDES permits to add the Port District as a permitted party under NPDES permits previously issued to certain boatyards or shipyards operating on Port District property. The specific NPDES permits at issue are as follows:

1. **Campbell Industries, Inc.**
Addendum No. 1 to Order No. 85-01
(NPDES Permit No. CA 0107646);
2. **Kettenburg Marine Corporation**
Addendum No. 1 to Order No. 85-02
(NPDES Permit No. CA 0107654);
3. **Nielsen Beaumont Marine, Inc.**
Addendum No. 1 to Order No. 85-03
(NPDES Permit No. CA 0107719);
4. **National Steel and Shipbuilding Company**
Addendum No. 1 to Order No. 85-06
(NPDES Permit No. CA 0107671);
5. **Bay City Marine, Inc.**
Addendum No. 1 to Order No. 87-49
(NPDES Permit No. CA 0108006);
6. **Continental Maritime of San Diego, Inc.**
Addendum No. 1 to Order No. 87-65
(NPDES Permit No. CA 0108332).



AL 2/28/97
DB

Please provide us with an "official copy" of each of these Addenda as adopted on October 23, 1989 by the Regional Board. The most recent version we have are the tentatives as revised on 10/23/89,

all 11/21
DB
note: 1 copy each board yard

HILLYER & IRWIN

A PROFESSIONAL CORPORATION

Mr. Ladin H. Delaney
Mr. David T. Barker
November 20, 1989
Page 2

which were distributed at the hearing on that date. Additional changes were made at the hearing.

Also, please provide this office with a list of interested persons, if any, other than the Port District; Karl S. Lytz of Latham & Watkins; and, the Environmental Health Coalition, who are known by the Regional Board to have an interest in the subject matter of this appeal. Section 2050(a)(8) of the Regulations governing review by the State Board of actions by a Regional Board requires the petition for review to contain such a list which "shall be obtained from the Regional Board." It is our understanding that Mr. Lytz of Latham & Watkins represents each of the originally permitted parties and that, therefore, it is appropriate for us as counsel for the Port District to serve all papers with respect to this matter on him.

In addition, this letter also shall serve as the request required by Section 2050(a)(10) of those Regulations that the Regional Board prepare a copy of the Regional Board record, including a copy of the tape-recording of the Regional Board action or a transcript, if available. Please notify me when those documents have been prepared so that I may obtain a copy.

I appreciate your prompt response to this request in light of the short time limit in which an appeal must be prepared.

Finally, this is to notify you that, as part of its Petition for Review, the Port District will also seek a stay of the Addenda to the extent that they add the Port District to the NPDES permits, pending the period of the State Board's review. I hope that you will be able to acquiesce to such a stay on the basis that such a stay would not impair enforcement of the permit requirements or jeopardize the public interest in any respect.

*we should oppose stay -
it could screw up
mound. prog
we will - DB*

Very truly yours,

David B. Hopkins

David B. Hopkins
HILLYER & IRWIN
Counsel for
THE SAN DIEGO UNIFIED PORT DISTRICT

DBH:kog

cc: Sheila K. Vassey, Esq., Counsel for RWQCB
Karl S. Lytz, Esq., Counsel for Permitted Parties
Joseph D. Patello, Esq., San Diego Unified Port District

individual yards should be listed

Pollute: State expands port' duties ag

Continued from B-1
peratively."

Named in yesterday's ruling were Campbell Industries, Kettenburg Marine Co., Nielsen Beaumont Marine Inc., National Steel & Shipbuilding Co., Bay City Marine Co. and Continental Marine Co. Three of the six shipyards already are suspected of being the sources of pollutants such as sandblasting wastes, marine paints and other compounds containing copper, which stunts fish growth.

"The other shipyards (in San Diego Bay) are going to be considered in subsequent months; They are all

going to end up with monitoring programs" like those imposed on the six yards yesterday, Barker said.

The San Diego Ship Repair Association had lobbied for a larger role for the port in pollution control and applauded yesterday's vote, saying it should be the first entity to pay for monitoring and cleanups in some cases.

"There is a view that the port should be involved in these activities and is appropriately characterized as being a discharger in the permits," said attorney Karl Lytz, spokesman for the group.

However, port district attorney David B. Hopkins said: "The district does not control the day-to-day operations of its tenants. We are on-site continuously to insist on kind of compliance — although we might have to try to find a way that, which is not going to be the tenants very happy."

San Diego Bay and Elbe near Seattle were found in a study

last year to be spot highest levels industry among 31 bays the Alaska.

Bottom-feeding er and barred found to have re of some pollutants though officials' demonstrated that the bay is hazardous

Barry on the bus. Watch for his sports column in Union. Subscribe by calling 299-4141.

district to shoulder.

By a unanimous vote, the state Regional Water Quality Control Board listed the port as a "discharger" in the federal pollution-control permits issued to six boat and ship repair yards, which occupy district-owned land. This makes sampling bay-floor sediments for pollutants at the yards the port district's responsibility if the yards fail to do it.

"If the water board has to issue a cleanup order, it could also name the port" responsible for pollution-cleanup costs if the yards are unable to pay for them, said David Barker, senior engineer for the water board.

Yesterday's vote expands the water board's February ruling making the port district jointly responsible with Paco Terminals Inc., for copper pollution at National City's 24th Street Marine Terminal. Cleanup in that case alone could cost from \$500,000 to \$18 million, officials say.

Another earlier water board ruling made the port jointly responsible with four boatyards for pollution cleanups in the Shelter Island Commercial Basin.

Port commissioners soon will consider whether to appeal yesterday's

completely surprised by the ruling and said it could give the port a potentially ruinous role as guarantor that bayside industries will be pollution-free.

"When you have bay users in heavy industry, a certain amount of unfortunate contaminants get into the air or the water. We may have to stop doing industrial work on the bay. This would be an extremely serious thing," he said.

Jay Powell, a spokesman for the 2,000-member Environmental Health Coalition, applauded the action.

"The port district is the landlord. They do have responsibility and they should be involved. This gives them some leverage to do the right thing," Powell said.

Though the port district opposed being listed on the federal permits, it formed a 21-member advisory committee to monitor bay pollution last March and is setting up an in-house department to monitor bay pollution.

Water board chairman John V. Foley commended the district but supported the vote, saying: "I think we're evolving a system of truly evaluating the status of the bay co-

See **Pollute** on Page B-8

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

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



January 5, 1990

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
P 550 242 135

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

Dear Mr. Mauricio:

**NOTICE OF PUBLIC HEARING FOR ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. 90-06**

Enclosed is a copy of Complaint No. 90-06 and the report entitled "Rationale for the Determination of Administrative Civil Liability Contained in Complaint No. 90-06, Mauricio and Sons, Inc., San Diego County." This complaint is being issued to Mauricio and Sons, Inc. for violations of Cleanup and Abatement Order No. 88-86 and addenda thereto.

Unless waived, a hearing will be held on this matter before the Regional Board at 9:00 a.m. on January 29, 1990 in the Encinitas City Council Chamber, 535 Encinitas Boulevard, Suite 100, Encinitas, California 92024. Also enclosed is a copy of the hearing procedures which the Regional Board will follow on January 29, 1990.

If you have any questions concerning this matter, please contact Mr. Lance McMahan of my staff at (619) 265-5114.

Very truly yours,

Ladin H. Delaney
LADIN H. DELANEY
Executive Officer

Enclosures

cc: (See Attached List)

cc: Mr. Allen D. Haynie
Latham and Watkins
Attorneys at Law
701 B Street, Suite 2100
San Diego, CA 92101-8197

Mr. Don Nay
General Manager
San Diego Unified Port District
P.O. Box 488
San Diego, California 92112

Mr. Jeremy Johnstone
Water Management Division
Compliance Branch
California Section (W-4-2)
U.S. Environmental Protection Agency
215 Fremont Street
San Francisco, California 94105

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1. Show to whom delivered, date, and addressee's address. (Extra charge) 2. Restricted Delivery (Extra charge)

3. Article Addressed to:
Mr. Anthony Marricchio, President
Mauricio and Sons, Inc.
1864 National Avenue
San Diego, CA 92113

4. Article Number
P 550 242 135

Type of Service:
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 Certified COD
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Always obtain signature of addressee or agent and DATE DELIVERED.

5. Signature - Addressee
X *Anthony Marricchio*

6. Signature - Agent
X

7. Date of Delivery
1-8-90

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PS Form 3811, Apr. 1989

DOMESTIC RETURN RECEIPT

Return Receipt Service

P 550 242 135

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San Diego, CA 92113

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PS Form 3800, June 1985

Not of Pub Hearing for ACL 90-06

CUT 007644

E. Discretion of the Chairman

At the discretion of the Regional Board Chairman, the time limits and other restrictions on testimony outlined in these procedures may be modified.

Dated: January 1990

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

PUBLIC HEARING PROCEDURES

A. Direct Testimony

1. No later than ten days before the hearing, any person requesting a hearing must submit:
 - (a) a list of all witnesses whose testimony will be introduced at the hearing; and
 - (b) the written testimony of each witness so identified.
2. At the hearing, each witness appearing on behalf of the person requesting a hearing will be given five minutes to authenticate submitted written materials and to summarize his or her written testimony.
3. Other interested persons are encouraged, but are not required to, submit their testimony in writing to the Regional Board prior to the hearing. Appropriate time limits, generally not more than five minutes, will be placed on testimony by these individuals.

B. Cross-Examination

1. Any person requesting a hearing may cross-examine any individual who has provided direct testimony. Total cross-examination time will be limited to a maximum of thirty minutes.
2. Cross-examination will be limited to matters covered on direct unless otherwise authorized by the Regional Board Chairman.
3. Additional time for cross-examination may be allowed, at the discretion of the Chairman, upon a demonstration that the additional cross-examination is necessary, relevant, and not redundant.
4. Regional Board Members, staff, and counsel may ask questions at any time.

C. Redirect and Recross-examination

Redirect and recross-examination may be allowed at the discretion of the Chairman.

D. Closing Statement

At the conclusion of the hearing, all persons who testified at the hearing will be given three minutes to present a closing statement.