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12 National Steel and Shipbuilding Company

13 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
14 SAN DIEGO REGION

15 IN THE MATTER OF TENTATIVE
16 CLEANUP AND ABATEMENT ORDER
17 NO. R9-2010-0002 (SHIPYARD
18 SEDIMENT CLEANUP)

19 **NATIONAL STEEL AND SHIPBUILDING
20 COMPANY'S NOTICE OF MOTION AND
21 MOTION REQUESTING DETERMINATION
22 THAT TENTATIVE CLEANUP AND
23 ABATEMENT ORDER NO. R9-2010-0002 IS
24 EXEMPT FROM THE CALIFORNIA
25 ENVIRONMENTAL QUALITY ACT (CEQA)**

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN:

PLEASE TAKE NOTICE THAT on August 11, 2010, or as soon thereafter as this matter may be heard by the California Regional Water Quality Control Board, San Diego Region (Regional Board), designated party National Steel and Shipbuilding Company (NASSCO) will and hereby does move for a determination from the Regional Board that its review and issuance of Tentative Cleanup and Abatement Order No. R9-2010-0002 (CAO) is categorically exempt from the California Environmental Quality Act, Public Resources Code section 21000, *et seq.* (CEQA), pursuant to sections 15307, 15308 and 15321 of CEQA's implementing regulations set forth in Title 14 of the California Code of Regulations (CEQA Guidelines). This motion is made pursuant to the Regional Board's responsibility, acting as lead agency, to determine whether or not the CAO is exempt from CEQA, under CEQA Guidelines section 15061(a). This motion is based on this notice, the attached memorandum of points and authorities, the declaration of Jeffrey P. Carlin submitted concurrently herewith, such other evidence, argument and authorities submitted prior to or in connection any hearing held on this motion, and the complete record of proceedings in this matter.

Dated: July 23, 2010

Respectfully submitted,

LATHAM & WATKINS LLP

By 

Kelly E. Richardson
Attorneys for Designated Party
NATIONAL STEEL AND
SHIPBUILDING COMPANY

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion requests a determination from the California Water Quality Control Board,
4 San Diego Region (Regional Board) that its review and approval of Tentative Cleanup and
5 Abatement Order R9-2010-0002 (CAO) is exempt from the California Environmental Quality
6 Act, Public Resources Code section 21000, *et seq.* (CEQA). Such a determination is warranted
7 by CEQA's implementing regulations, which categorically exempt actions by regulatory
8 agencies to protect natural resources or the environment, as well as enforcement actions taken by
9 regulatory agencies. 14 Cal. Code Regs. (CEQA Guidelines) §§ 15307, 15308 and 15321. Such
10 a determination would also be consistent with precedent from this and other regional boards
11 throughout the state, which routinely have found the issuance of cleanup and abatement orders to
12 be exempt from CEQA, including orders issued for prior sediment remediation and dredging
13 projects in San Diego Bay. Further, it would allow the Regional Board's review of the CAO to
14 proceed without the lengthy and unnecessary delays that are certain to result from the preparation
15 and certification of an environmental impact report (EIR).

16 On March 22, 2010, designated party National Steel and Shipbuilding Company
17 (NASSCO) submitted correspondence to the Regional Board asserting that the CAO is
18 categorically exempt from CEQA and urging the Regional Board to treat it as such, consistent
19 with statewide practice. See Declaration of Jeffrey Carlin ("Carlin Dec."), Ex. 7. NASSCO's
20 letter cautioned that adoption of the CAO would be delayed until the CEQA process was
21 completed, to the extent CEQA was found to apply, and that preparation of an EIR would likely
22 extend well beyond the six month time-frame then contemplated by the Cleanup Team.
23 NASSCO's request has not received a formal response, but Regional Board staff is proceeding as
24 if CEQA applies. To the extent Regional Board staff has found CEQA to be applicable, this
25 motion constitutes an appeal of that staff-level decision to the Regional Board.

26 Because the CAO is categorically exempt from CEQA, and because NASSCO wishes to
27 avoid any unnecessary delays that will result from CEQA review, NASSCO hereby seeks a
28 determination from the Regional Board that CEQA is inapplicable to the CAO.

1 **II. SUMMARY OF RELEVANT FACTS**

2 An initial Tentative CAO in this matter was issued on April 29, 2005, designated as
3 Order No. R9-2005-0126. See Carlin Dec., Ex. 1. The Order indicated that “[t]his enforcement
4 action is exempt from the provisions of . . . CEQA” pursuant to CEQA Guidelines section 15321.
5 A revised version of Order No. R9-2005-0126 was released on August 24, 2007, and similarly
6 indicated that the CAO was categorically exempt from CEQA. See Carlin Dec., Ex. 2. A
7 subsequent revision to Order No. R9-2005-0126 was released on April 4, 2008, and again found
8 the CAO to be categorically exempt from CEQA, relying on CEQA Guidelines sections 15307,
9 15308 and 15321. See Carlin Dec., Ex. 3. It was not until the fourth iteration of the CAO,
10 released on December 22, 2009, that the Cleanup Team reversed itself to indicate that it had
11 decided to investigate whether “special circumstances” might apply to render a categorical
12 exemption inapplicable, while acknowledging that enforcement actions such as the CAO are “in
13 many cases” categorically exempt. See Carlin Dec., Ex. 4.

14 Also on December 22, 2009, the Cleanup Team released a CEQA Initial Study for the
15 CAO, in advance of a CEQA Scoping Meeting set for January 21, 2010. The Initial Study found
16 that the CAO might have a potentially significant environmental impact with respect to air
17 quality and geology/soils. A public comment period on the Initial Study ran through March 22,
18 2010, after one extension was provided. On January 21, 2010, designated party BAE Systems
19 San Diego Ship Repair, Inc. (BAE) submitted a comment letter to the Regional Board stating,
20 among other things, that the Scoping Meeting was premature because the Regional Board had
21 not yet determined whether or not the CAO was subject to CEQA. See Carlin Dec., Ex. 5. The
22 letter noted that many if not all prior cleanup and abatement orders have been considered
23 categorically exempt from CEQA under CEQA Guidelines sections 15307, 15308 and 15321.¹

24 On January 27, 2010, the Cleanup Team submitted correspondence to the Presiding
25

26 ¹ BAE submitted supplemental written comments on March 23, 2010, re-asserting that the
27 CAO should be categorically exempt from CEQA, and noting that such a determination
28 “would greatly speed the conclusion of the enforcement process and, hence, the cleanup
process itself.” See Carlin Dec., Ex. 8.

1 Officer, which, in pertinent part, acknowledged that cleanup and abatement orders are “often
2 exempted” from CEQA review, but contended that an exception applied for the CAO due to
3 “unusual circumstances.” See Carlin Dec., Ex. 6. On this basis, the Cleanup Team believed that
4 an EIR was required, and it then estimated that the process would take at least six months, or
5 until August 23, 2010.

6 On March 22, 2010, NASSCO submitted written comments to the Regional Board
7 concerning the CEQA Scoping Meeting that was held on January 21, 2010. See Carlin Dec., Ex.
8 7. The letter asserted that the CAO is categorically exempt under the three exemptions identified
9 in BAE’s letter and earlier iterations of the CAO, explaining that these exemptions have been
10 widely applied by this Regional Board and other regional boards throughout the state. The letter
11 disputed the Cleanup Team’s position that “special” or “unusual” circumstances had been
12 identified relative to prior sediment remediation or dredging projects before the Regional Board,
13 inasmuch as air emissions, truck traffic, and the potential for seismic activity are conditions
14 common to all these activities. NASSCO’s letter also cautioned that if the Regional Board
15 elected to prepare an EIR, despite the categorical exemptions, “then it is important for the
16 Regional Board to understand that adoption of the CAO will be delayed until the CEQA process
17 is completed – **a result that NASSCO does not advocate.**” Finally, NASSCO opined that the
18 Cleanup Team’s estimate of six months to complete the EIR process was “very optimistic,” and
19 that the process could realistically be expected to take twelve to eighteen months, or longer.

20 On July 9, 2010, the Cleanup Team submitted further correspondence to the Regional
21 Board, which continued to assert that “unusual circumstances” prevented application of
22 categorical exemptions to the CAO. See Carlin Dec., Ex. 9. The Cleanup Team conceded that
23 such exemptions were “routinely used” for other Regional Board actions, including the issuance
24 of cleanup and abatement orders.

25 **III. ARGUMENT**

26 **A. Standard of Review**

27 **1. Certain Classes of Projects Are “Categorically Exempt” From CEQA**

28 Public Resources Code section 21084(a) requires the Secretary of the Natural Resources Agency

1 to prepare and adopt “a list of classes of projects which have been determined not to have a
2 significant effect on the environment,” and which are therefore “categorically exempt” from
3 CEQA. Pub. Res. Code (CEQA) § 21084(a); CEQA Guidelines § 15061(b)(2); *San Lorenzo*
4 *Valley Cmty Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.*, 139
5 Cal. App. 4th 1356, 1380 (2006) (“CEQA does not apply to projects that are . . . categorically
6 exempt.”). Thirty-three such categorical exemptions are currently authorized, as set forth in
7 CEQA Guidelines sections 15301-15333. Each exempted class of projects “embodies a ‘finding
8 by the Resources Agency that the project will not have a significant effect on the environment’.”
9 *San Lorenzo*, 139 Cal. App. 4th at 1381; CEQA Guidelines § 15300.

10 As pertinent here, the classes of exempted projects include (i) “actions taken by
11 regulatory agencies as authorized by state law or local ordinance to assure the maintenance,
12 restoration, or enhancement of a natural resource where the regulatory process involves
13 procedures for protection of the environment” (Class 7); (ii) “actions taken by regulatory
14 agencies, as authorized by state or local ordinance, to assure the maintenance, restoration,
15 enhancement or protection of the environment where the regulatory process involves procedures
16 for protection of the environment” (Class 8); and (iii) actions by agencies related to
17 “enforcement of a law, general rule, standard, or objective, administered or adopted by the
18 regulatory agency” (Class 21). CEQA Guidelines §§ 15307, 15308 and 15321.

19 If the lead agency determines a project is categorically exempt, the project “may be
20 implemented without any CEQA compliance whatsoever,” and the agency may file a notice of
21 exemption with the Office of Planning and Research or the county clerk after the project is
22 approved. *Ass’n for Prot. of Env’tl Values in Ukiah v. City of Ukiah*, 2 Cal. App. 4th 720, 726
23 (1991); CEQA Guidelines §§ 15061(d) and 15062. An agency’s factual determination that a
24 project is exempt from CEQA will be upheld by a reviewing court if it is supported by
25 “substantial evidence” in the record, or if the record contains any “relevant evidence that a
26 reasonable mind might accept as adequate support for a conclusion,” even if another conclusion
27 could also be reached based on the evidence. *Fairbank v. City of Mill Valley*, 75 Cal. App. 4th
28 1243, 1251 (1999); *Banker’s Hill, Hillcrest, Park West Cmty Pres. Group v. City of San Diego*,

1 139 Cal. App. 4th 249, 261 n.10 (2006).

2 **2. In Limited Cases, “Unusual Circumstances” May Allow an Exception**
3 **to a Categorical Exemption**

4 A public agency may not require an EIR or negative declaration for a categorically
5 exempt project unless one of the exceptions enumerated in CEQA Guidelines section 15300.2
6 applies. CEQA Guidelines § 15061(b)(2); CEQA §§ 21080(b)(9) and 21084. Here, the Cleanup
7 Team has asserted that an exception exists for the CAO because “unusual circumstances” will
8 allegedly result in a reasonable possibility that the CAO will have a significant effect on the
9 environment. CEQA Guidelines § 15300.2(c). Application of this exception “involves two
10 distinct inquiries. First, . . . whether the Project presents unusual circumstances. Second, . . .
11 whether there is a reasonable possibility of a significant effect on the environment due to the
12 unusual circumstances.” *Banker’s Hill*, 139 Cal. App. 4th at 278. “A negative answer to either
13 question means the exception does not apply.” *Id.* (quoting *Santa Monica Chamber of*
14 *Commerce v. City of Santa Monica*, 101 Cal. App. 4th 786, 800 (2002)).

15 Unusual circumstances will not be found unless some feature distinguishes the project
16 from other typical projects in the exempt class, such that the type of environmental impacts that
17 may result are different than the type of environmental impacts likely to result from other typical
18 projects within the class. *E.g.*, *Santa Monica*, 101 Cal. App. 4th at 801-03. Thus, for example,
19 the location of a proposed 14-story residential project next to a condominium project, which
20 would block the views of residents in the condominium, is not an “unusual circumstance”
21 justifying an exception to a categorical exemption for urban in-fill projects because “[t]he
22 location of urban in-fill construction next to another building, which might result in blocked
23 views, is not an unusual circumstance [since] such construction normally takes place in an
24 already built-up urban environment.” *Banker’s Hill*, 139 Cal. App. 4th at 279 n.26.

25 Any agency determination relating to the existence of a particular factual circumstance is
26 reviewed under the substantial evidence standard described above, while a reviewing court
27 would determine whether or not such a circumstance is “unusual” as a matter of law. *Banker’s*
28 *Hill*, 139 Cal. App. 4th at 261 n.11. To the extent the Regional Board found the CAO to be

1 exempt from CEQA, an opponent of that finding would bear the burden of proving that an
2 exception exists in any subsequent lawsuit. *Santa Monica*, 101 Cal. App. 4th at 739.

3 **B. The CAO Is Exempt From CEQA Under Class 7, Class 8 And Class 21**

4 There is no dispute that the CAO falls within the class of projects regularly found to be exempt
5 under the Class 7, Class 8 and Class 21 categorical exemptions. As noted, these categorical
6 exemptions were relied upon in the first three iterations of the CAO during 2005-2008; the
7 Cleanup Team has acknowledged that “Regional Boards have often exempted CAO projects
8 from CEQA” under these categorical exemptions; and the current CAO continues to
9 acknowledge the applicability of these exemptions subject to a Regional Board investigation to
10 determine if an exception would apply.

11 The Cleanup Team has also acknowledged that this Regional Board “has routinely used
12 these categorical exemptions when taking regulatory actions, including when it issues cleanup
13 and abatement orders.” This is correct. In fact, the Regional Board has previously found exempt
14 from CEQA cleanup and abatement orders it issued for prior sediment remediation and dredging
15 projects in San Diego Bay, such as the Campbell Shipyard Site (where the remediation was
16 completed in or around 2007), Paco Terminals and Convair Lagoon. See Carlin Dec., Ex 10, 11,
17 and 12. Also attached to this motion are a variety of cleanup and abatement orders issued by
18 other regional boards which were found to be exempt from CEQA, showing that CEQA
19 exemptions are commonly applied throughout the state. See Carlin Dec., Ex. 13.

20 Since the CAO is plainly an agency enforcement action carried out to protect the
21 environment and natural resources, no reasonable argument could be made that it does not fit
22 within the Class 7, Class 8 or Class 21 exemptions, and the Cleanup Team has not asserted
23 otherwise. Thus, CEQA cannot apply unless a supportable finding can be made that “unusual
24 circumstances” require an exception. As discussed below, the requisite unusual circumstances
25 do not exist here.

26 **C. There Is No Evidence Of “Unusual Circumstances” Warranting an**
27 **Exception to the CAO’s Categorical Exemption from CEQA**

28 The “unusual circumstances” exception cannot apply without a two-pronged showing that

1 (1) unusual circumstances differentiate the CAO from the “general” circumstances of other
2 sediment remediation/dredging projects falling within the categorical exemptions, and (2) such
3 unusual circumstances create an environmental risk that does not exist for the general category of
4 projects. *Banker’s Hill*, 139 Cal. App. 4th at 278. For the reasons detailed below, the exception
5 does not apply because no unusual circumstances exist, rendering unnecessary any inquiry into
6 the second prong. *Id.*

7 Notably absent from the record is any evidence showing that this CAO contains
8 environmental circumstances unusual to those seen in other sediment remediation or dredging
9 projects that have been found categorically exempt by the Regional Board. The Cleanup Team
10 has asserted that unusual circumstances exist here based on the potential release of contaminants
11 into the air or water from sediment management activities (including diesel emissions from
12 dredging equipment); air, noise and other potential effects of truck trips to transport sediment
13 away from the site or other materials to the site; and the potential for seismic activity to shift
14 backfill material and expose underlying contaminated sediment. Yet these circumstances are
15 applicable to most if not all dredging projects, and are not “special” or “unusual” circumstances
16 tied only to this CAO.

17 Accordingly, none of the above factors is sufficient to mandate preparation of an EIR
18 under the “unusual circumstances” exception. *See Banker’s Hill*, 139 Cal. App. 4th at 279 n.26
19 (construction of residential tower next to condominium not an unusual circumstance warranting
20 exception to urban in-fill exemption because urban in-fill projects are “normally” constructed in
21 already built-up urban environment); *Fairbank*, 75 Cal. App. 4th at 1260-61 (alleged traffic and
22 parking effects not “unusual circumstances” warranting exception to categorical exemption for
23 small commercial structures built in urban areas because such effects were not unusual from the
24 effects of other small buildings added to a downtown area); *Santa Monica*, 101 Cal. App. 4th at
25 802-03 (denying claim that “unusually large” size of resident-only permit parking district,
26 “unusually restrictive” 19-hour per day time-period of parking permit requirement, and
27 “unusually diverse” mix of parking purposes (i.e., non-profit, commercial, academic and
28 residential) warranted application of “unusual circumstances” exception because these are the

1 “normal and common” considerations any city might face when operating public parking
2 facilities and allocating limited curbside parking); *Ass’n for Prot. of Env’tl Values in Ukiah v.*
3 *City of Ukiah*, 2 Cal. App. 4th 720, 736 (1991) (surface and groundwater runoff from the
4 construction of a new house were not unusual circumstances warranting exception to single
5 family residence categorical exemption because “[s]urface and groundwater runoff are common
6 and typical concerns with sloping lots”).

7 Since the potential environmental impacts associated with the CAO are the “normal and
8 common considerations” involved with other sediment remediation and dredging projects
9 exempted from CEQA, the unusual circumstances exception does not apply.

10 **D. Policy Considerations Support a Finding That The CAO is Exempt**

11 Finally, there is an important public policy rationale underlying the categorical
12 exemptions applicable to the CAO: Regional Board-mandated efforts to remediate the
13 environment should not be delayed or obstructed because of additional environmental review
14 requirements where, as here, the State Natural Resources Agency has already determined that the
15 activity falls within a class of projects that will not cause significant environmental impacts.
16 This policy rationale is consistent with state-wide practice to treat cleanup and abatement orders
17 as exempt from CEQA. Reversing course now and preparing an EIR for this CAO, despite the
18 applicability of categorical exemptions, would upset this policy and could establish precedent for
19 subjecting other Regional Board enforcement actions to CEQA review.

20 **IV. CONCLUSION**


21 For each and all of the foregoing reasons, NASSCO respectfully requests that the
22 Regional Board determine that the CAO is categorically exempt from CEQA and proceed to
23 review the CAO without mandating preparation of an EIR or other CEQA document. Such a

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1 determination would comply with CEQA and cause the Regional Board's review of this matter
2 to be completed expeditiously.

3 Dated: July 23, 2010

LATHAM & WATKINS LLP

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5 By 
6 Kelly E. Richardson
7 Attorneys for Designated Party
8 NATIONAL STEEL AND
9 SHIPBUILDING COMPANY
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6 Attorneys for Designated Party
7 National Steel and Shipbuilding Company

8 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

9 SAN DIEGO REGION

10 IN THE MATTER OF TENTATIVE
11 CLEANUP AND ABATEMENT ORDER
NO. R9-2010-0002 (SHIPYARD
12 SEDIMENT CLEANUP)

**DECLARATION OF JEFFREY P. CARLIN IN
SUPPORT OF NATIONAL STEEL AND
SHIPBUILDING COMPANY'S NOTICE OF
MOTION AND MOTION REQUESTING
DETERMINATION THAT TENTATIVE
CLEANUP AND ABATEMENT ORDER NO.
R9-2010-0002 IS EXEMPT FROM THE
CALIFORNIA ENVIRONMENTAL QUALITY
ACT (CEQA)**

1 I, Jeffrey P. Carlin, declare as follows:

2 1. I am an attorney duly licensed to practice before all the courts of the State
3 of California. I am an associate with the law firm of Latham & Watkins LLP, counsel of record
4 for Designated Party National Steel and Shipbuilding Company (NASSCO) in the above-
5 captioned matter concerning Tentative Cleanup and Abatement Order No. R9-2010-0002
6 (Tentative CAO). I am personally familiar with the facts set forth herein and if called upon to do
7 so, could and would testify competently thereto.

8 2. An initial Tentative CAO in this matter was issued on April 29, 2005,
9 designated as Order No. R9-2005-0126. A revised version of Order No. R9-2005-0126 was
10 released on August 27, 2007, with a subsequent version was released on April 4, 2008. Each of
11 these versions of Order No. R9-2005-0126 indicated that the CAO was categorically exempt
12 from CEQA. On December 22, 2009, a fourth iteration of the Tentative CAO was released. For
13 the first time, the Cleanup Team indicated that it had decided to investigate whether a categorical
14 exemption from the California Environmental Quality Act (CEQA) would be inapplicable due to
15 “special circumstances.” True and correct excerpts of pertinent portions of the current and prior
16 versions of the Tentative CAO are attached hereto as Exhibits 1, 2, 3, and 4. Also on December
17 22, 2009, the Cleanup Team released a CEQA Initial Study for the CAO, in advance of a CEQA
18 Scoping Meeting set for January 21, 2010.

19 3. On January 21, 2010, designated party BAE Systems San Diego Ship
20 Repair, Inc. (BAE) submitted a comment letter to the San Diego Regional Water Quality Control
21 Board (Regional Board) stating, among other things, that the Scoping Meeting was premature
22 because the Regional Board had not yet determined whether or not the Tentative CAO was
23 subject to CEQA. A true and correct copy of this letter is attached hereto as Exhibit 5.

24 4. On January 27, 2010, the Cleanup Team submitted correspondence to the
25 Presiding Officer, which, in pertinent part, acknowledged that cleanup and abatement orders are
26 “often exempted” from CEQA review, but contended that an exception applied for the Tentative
27 CAO due to “unusual circumstances.” A true and correct copy of this letter is attached hereto as
28 Exhibit 6.

1 5. On March 22, 2010, Kelly Richardson of Latham & Watkins LLP sent a
2 letter to the Regional Board, on behalf of NASSCO, asserting that the Tentative CAO is
3 categorically exempt from CEQA and urging the Regional Board to treat is as such, consistent
4 with statewide practice. A true and correct copy of Mr. Richardson's letter is attached hereto as
5 Exhibit 7.

6 6. On March 23, 2010 BAE submitted supplemental written comments to the
7 Regional Board, which re-asserted that the Tentative CAO should be categorically exempt from
8 CEQA, and noted that such a determination "would greatly speed the conclusion of the
9 enforcement process and, hence, the cleanup process itself." A true and correct copy of this letter
10 is attached hereto as Exhibit 8.

11 7. On July 9, 2010, the Cleanup Team submitted further correspondence to
12 the Regional Board, which continued to assert that "unusual circumstances" prevented
13 application of categorical exemptions to the Tentative CAO. A true and correct copy of this
14 letter is attached hereto as Exhibit 9.

15 8. Attached hereto as Exhibit 10, Exhibit 11, and Exhibit 12 are true and
16 correct copies of pertinent excerpts from prior cleanup and abatement orders issued by the
17 Regional Board for sediment remediation and dredging projects conducted in the San Diego Bay.
18 These orders were issued to Campbell Industries, Paco Terminals, Inc. and TDY Industries, Inc.,
19 respectively. The Regional Board found that each of these projects was categorically exempt
20 from CEQA. I obtained a copy of the order for the Campbell Shipyard Site from the files
21 maintained by my office based on its involvement in the Campbell Shipyard matter, while the
22 orders for Paco Terminals and TDY Industries were obtained from the Regional Board's website
23 by paralegals at Latham & Watkins LLP working under my supervisions and at my direction.

24 10. Attached hereto as Exhibit 13 are true and correct copies of pertinent
25 excerpts from 24 cleanup and abatement orders issued by various regional boards throughout the
26 state that were found to be exempt from CEQA. These orders were obtained from the State
27 Board's website by paralegals at Latham & Watkins LLP working under my supervision and at
28 my direction. The attached excerpts are from the following cleanup and abatement orders:


- 1 1. Bingham, Fieldstone Communities, Inc., CAO No. R9-2005-0033
- 2 2. Bulldog Concrete Pumping, No. R9-2008-0036, CAO No. R9-2008-0036
- 3 3. California Department of Transportation (Caltrans), CAO No.
- 4 R9-2003-0230
- 5 4. Chino Airport, CAO No. R8-2008-0064
- 6 5. City of Benicia, CAO No. 00-007
- 7 6. Harwood Products, CAO No. R1-2009-0128
- 8 7. James McCann, JRMC Real Estate, Inc., CAO No. R9-2004-0420
- 9 8. Jesse M. Lange, CAO No. R5-2007-0701
- 10 9. Lake Elsinore Realty #2, LLC, CAO No. R8-2008-0095
- 11 10. Lovett's One Hour Dry Cleaners, CAO No. R9-2005-0017
- 12 11. North County Transit District, CAO No. R9-2007-0226
- 13 12. Olin Corporation, CAO No. R3-2005-0014
- 14 13. Palmilla, LLC, CAO No. R9-2005-0259
- 15 14. Pioneer Builders Inc., CAO No. R9-2003-0158
- 16 15. Redwood Empire Cleaners, CAO No. R1-2008-0044
- 17 16. Riverside County Waste Management Dept., CAO No. 01-104
- 18 17. Robert Henninger, CAO No. R9-2005-0044
- 19 18. Ronald and Betty Logan, CAO No. R5-2007-0731
- 20 19. Tallac Creek Bridge Replacement Project, CAO No. R6T-2009-0135
- 21 20. San Diego Country Estates HOA, CAO. No. R9-2003-0178
- 22 21. State of California, Dept. of Parks and Recreation, CAO No.
- 23 R5-2008-0713-R01
- 24 22. United States Marine Corps, CAO No. R9-2006-0016
- 25 23. URJ Camp Newman, CAO No. R1-2010-0058
- 26 24. Valley Center Landfill, CAO No. R9-2004-0039

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 23, 2010, at San Diego, California.



Jeffrey P. Carlin

EXHIBIT 1

TENTATIVE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN DIEGO REGION

TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126 FOR

- NATIONAL STEEL AND SHIPBUILDING COMPANY
- SOUTHWEST MARINE, INC.
- CITY OF SAN DIEGO
- MARINE CONSTRUCTION AND DESIGN COMPANY
AND CAMPBELL INDUSTRIES, INC.
- CHEVRON, A SUBSIDIARY OF CHEVRONTEXACO
- BP
- SAN DIEGO GAS AND ELECTRIC, A SUBSIDIARY OF
SEMPRA ENERGY COMPANY
- UNITED STATES NAVY

CONTAMINATED MARINE SEDIMENT IN SAN DIEGO BAY WITHIN AND ADJACENT TO SOUTHWEST MARINE, INC. AND NATIONAL STEEL AND SHIPBUILDING COMPANY LEASEHOLDS GENERALLY BETWEEN SAMPSON STREET EXTENSION AND MOUTH OF CHOLLAS CREEK

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

JURISDICTION

1. **WASTE DISCHARGE.** Elevated levels of pollutants above San Diego Bay background conditions exist in the San Diego Bay bottom marine sediment within and adjacent to the National Steel and Shipbuilding Company (hereinafter "NASSCO") and Southwest Marine, Inc. (hereinafter "Southwest Marine") leaseholds (hereinafter collectively referred to as "Shipyard Sediment Site"), City of San Diego, Marine Construction and Design Company and Campbell Industries, Inc., Chevron, a subsidiary of ChevronTexaco, BP as the parent company and successor to Atlantic Richfield Company, San Diego Gas and Electric, a subsidiary of Sempra Energy Company, and the United States Navy have each caused or permitted the discharge of pollutants to the Shipyard Sediment Site resulting in the accumulation of pollutants in the marine sediment. The concentrations of these pollutants causes or threatens to cause conditions of pollution, contamination, and nuisance in San Diego Bay that adversely affects three categories of beneficial uses: Aquatic Life, Aquatic-

criteria, and advisories adopted by other state and federal agencies.

36. **CEQA EXEMPTION.** This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.
37. **PUBLIC NOTICE.** The Regional Board has notified all known interested persons and the public of its intent to adopt this Cleanup and Abatement Order and has provided them with an opportunity to submit written comments and recommendations.
38. **PUBLIC HEARING.** The Regional Board has considered all comments pertaining to this Cleanup and Abatement Order submitted to the Regional Board in writing, or by oral presentations at the public hearing held on June 29, 2005. Detailed response to relevant comments has been incorporated into the final Technical Analysis of the Cleanup and Abatement Order adopted by this Order.

ORDER DIRECTIVES

IT IS HEREBY ORDERED that, pursuant to Sections and 13267 and 13304 of the California Water Code, National Steel and Shipbuilding Company; Southwest Marine, Inc.; City of San Diego; Marine Construction and Design Company and Campbell Industries, Inc; Chevron, a subsidiary of ChevronTexaco; BP; San Diego Gas and Electric, a subsidiary of Sempra Energy Company; and the United States Navy (hereinafter Discharger(s)), shall comply with the following directives.

A. CLEANUP AND ABATE

1. The Discharger(s) shall take all corrective actions⁹ necessary to cleanup contaminated marine bay sediment at the Shipyard Sediment Site to attain the sediment quality levels specified below:

Chemical	Units (dry weight)	Sediment Quality Levels ⁽¹⁾
Metals		
Arsenic	mg/kg	10
Cadmium	mg/kg	1.0
Chromium	mg/kg	81
Copper	mg/kg	200
Lead	mg/kg	90
Mercury	mg/kg	0.7
Nickel	mg/kg	20

⁹ Corrective Actions include the phases of cleanup and abatement described in Directives A through D of this Cleanup and Abatement order.

EXHIBIT 2

TENTATIVE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN DIEGO REGION

TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126

NATIONAL STEEL AND SHIPBUILDING COMPANY

**BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.
(FORMERLY SOUTHWEST MARINE, INC.)**

CITY OF SAN DIEGO

**MARINE CONSTRUCTION AND DESIGN COMPANY
AND CAMPBELL INDUSTRIES, INC.**

**SAN DIEGO GAS AND ELECTRIC,
A SUBSIDIARY OF SEMPRA ENERGY COMPANY**

UNITED STATES NAVY

SHIPYARD SEDIMENT SITE SAN DIEGO BAY SAN DIEGO, CALIFORNIA

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

JURISDICTION

- 1. WASTE DISCHARGE.** Elevated levels of pollutants above San Diego Bay background conditions exist in the San Diego Bay bottom marine sediment along the eastern shore of central San Diego Bay in an area extending approximately from the Sampson Street Extension to the north and Chollas Creek to the south and from the National Steel and Shipbuilding Company Shipyard facility (hereinafter "NASSCO") and the BAE Systems San Diego Ship Repair Facility (hereinafter "BAE Systems") shoreline out to the San Diego Bay

- 33. LEGAL AND REGULATORY AUTHORITY.** This Order is based on (1) section 13267 and Chapter 5, Enforcement, of the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with section 13000), commencing with section 13300; (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board and the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the Regional Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board policies for water quality control, including State Water Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code section 13304*); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies.
- 34. CEQA EXEMPTION.** This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.
- 35. PUBLIC NOTICE.** The Regional Board has notified all known interested persons and the public of its intent to adopt this Cleanup and Abatement Order and has provided them with an opportunity to submit written comments and recommendations.
- 36. PUBLIC HEARING.** The Regional Board has considered all comments pertaining to this Cleanup and Abatement Order submitted to the Regional Board in writing, or by oral presentations at the public hearing held on [date(s) to be inserted]. Detailed responses to relevant comments have been incorporated into the final Technical Report for the Cleanup and Abatement Order adopted by this Order.

ORDER DIRECTIVES

IT IS HEREBY ORDERED that, pursuant to sections 13267 and 13304 of the Water Code, *National Steel and Shipbuilding Company; BAE Systems San Diego Ship Repair Inc. (formerly Southwest Marine, Inc.); City of San Diego; Marine Construction and Design Company and Campbell Industries, Inc; San Diego Gas and Electric, a subsidiary of Sempra Energy Company; and the United States Navy (hereinafter Discharger(s)), shall comply with the following directives:*

EXHIBIT 3

TENTATIVE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN DIEGO REGION

TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126

NATIONAL STEEL AND SHIPBUILDING COMPANY

**BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.
(FORMERLY SOUTHWEST MARINE, INC.)**

CITY OF SAN DIEGO

**MARINE CONSTRUCTION AND DESIGN COMPANY
AND CAMPBELL INDUSTRIES, INC.**

**SAN DIEGO GAS AND ELECTRIC,
A SUBSIDIARY OF SEMPRA ENERGY COMPANY**

UNITED STATES NAVY

SHIPYARD SEDIMENT SITE SAN DIEGO BAY SAN DIEGO, CALIFORNIA

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

JURISDICTION

- 1. WASTE DISCHARGE.** Elevated levels of pollutants above San Diego Bay background conditions exist in the San Diego Bay bottom marine sediment along the eastern shore of central San Diego Bay in an area extending approximately from the Sampson Street Extension to the north and Chollas Creek to the south and from the National Steel and Shipbuilding Company Shipyard facility (hereinafter "NASSCO") and the BAE Systems San Diego Ship Repair Facility (hereinafter "BAE Systems") shoreline out to the San Diego Bay

- 35. CEQA EXEMPTION.** This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA) because it falls within Classes 7, 8, and 21 of the categorical exemptions for projects that have been determined not to have a significant effect on the environment under section 21084 of CEQA. [14 CCR 15307, 15308, and 15321.] The Regional Board will not undertake any construction activity as a result of this Order, nor will the issuance of this Order allow environmental degradation.
- 36. PUBLIC NOTICE.** The Regional Board has notified all known interested persons and the public of its intent to adopt this Cleanup and Abatement Order and has provided them with an opportunity to submit written comments and recommendations.
- 37. PUBLIC HEARING.** The Regional Board has considered all comments pertaining to this Cleanup and Abatement Order submitted to the Regional Board in writing, or by oral presentations at the public hearing held on [date(s) to be inserted]. Detailed responses to relevant comments have been incorporated into the final Technical Report for the Cleanup and Abatement Order adopted by this Order.
- 38. TECHNICAL REPORT.** The attached “Draft Technical Report for Tentative Cleanup and Abatement Order No. R9-2005-0126” is hereby incorporated as a finding in support of this Cleanup and Abatement Order as if fully set forth here verbatim.

ORDER DIRECTIVES

IT IS HEREBY ORDERED that, pursuant to sections 13267 and 13304 of the Water Code, National Steel and Shipbuilding Company; BAE Systems San Diego Ship Repair Inc. (formerly Southwest Marine, Inc.); City of San Diego; Marine Construction and Design Company and Campbell Industries, Inc; San Diego Gas and Electric, a subsidiary of Sempra Energy Company; and the United States Navy (hereinafter Discharger(s)), shall comply with the following directives:

A. CLEANUP AND ABATE

- 1. Terminate Illicit Discharges.** The Discharger(s) shall terminate all illicit discharges to San Diego Bay in violation of waste discharge requirements or other order or prohibition issued by the Regional Board.

EXHIBIT 4

TENTATIVE

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN DIEGO REGION

TENTATIVE CLEANUP AND ABATEMENT ORDER

NO. R9-2010-0002

NATIONAL STEEL AND SHIPBUILDING COMPANY

**BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.
(FORMERLY SOUTHWEST MARINE, INC.)**

CITY OF SAN DIEGO

**MARINE CONSTRUCTION AND DESIGN COMPANY
AND CAMPBELL INDUSTRIES, INC.**

**SAN DIEGO GAS AND ELECTRIC,
A SUBSIDIARY OF SEMPRA ENERGY COMPANY**

UNITED STATES NAVY

SHIPYARD SEDIMENT SITE

SAN DIEGO BAY

SAN DIEGO, CALIFORNIA

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

JURISDICTION

- 1. WASTE DISCHARGE.** Elevated levels of pollutants above San Diego Bay background conditions exist in the San Diego Bay bottom marine sediment along the eastern shore of central San Diego Bay in an area extending approximately from the Sampson Street Extension to the north and Chollas Creek to the south and from the National Steel and Shipbuilding Company Shipyard facility (hereinafter "NASSCO") and the BAE Systems San Diego Ship Repair Facility (hereinafter "BAE Systems") shoreline out to the San Diego Bay

38. LEGAL AND REGULATORY AUTHORITY. This Order is based on (1) section 13267 and Chapter 5, Enforcement, of the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with section 13000), commencing with section 13300; (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Board and the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the San Diego Water Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board policies for water quality control, including State Water Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code section 13304*); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies.

39. CALIFORNIA ENVIRONMENTAL QUALITY ACT. In many cases, an enforcement action such as this could be exempt from the provisions of the California Environmental Quality Act ("CEQA"; Public Resources Code, section 21000 et seq), because it would fall within Classes 7, 8, and 21 of the categorical exemptions for projects that have been determined not to have a significant effect on the environment under section 21084 of CEQA. [14 CCR 15307, 15308, and 15321.] The San Diego Water Board, however, is currently investigating whether special circumstances may apply to this cleanup and abatement order and enforcement action that could render one or all of these categorical exemptions inapplicable. Whether and the extent to which this enforcement action may be exempt from CEQA, and whether and the extent to which it may have the potential to significantly impact the environment, are currently under investigation and analysis by the San Diego Water Board. A public notice of scoping meeting has been issued for January 21, 2010, and responsible and trustee agencies have been asked to comment on the proposed project so that these important issues may be fully investigated and analyzed before the San Diego Water Board considers them.

Before the San Diego Water Board acts on any final cleanup order, an appropriate CEQA determination will need to be made. San Diego Water Board staff has begun CEQA's public process and will present its CEQA analysis and proposed CEQA findings at the time the San Diego Water Board considers a final cleanup order.

40. PUBLIC NOTICE. The San Diego Water Board has notified all known interested persons and the public of its intent to adopt this Cleanup and Abatement Order and has provided them with an opportunity to submit written comments and recommendations.

41. PUBLIC HEARING. The San Diego Water Board has considered all comments pertaining to this Cleanup and Abatement Order submitted to the San Diego Water Board in writing, or by oral presentations at the public hearing held on [date(s) to be inserted]. Responses to relevant comments have been incorporated into the Technical Report for this Cleanup and Abatement Order.

EXHIBIT 5



DLA Piper LLP (US)
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San Diego, California 92101-4297
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Amy G. Nefouse
amy.nefouse@dlapiper.com
T 619.699.2693
F 619.764.6693

January 21, 2010
BY HAND

RWRCB rec'd 1/21/10
@ 9:00 am

San Diego Regional Water Quality Control Board
9174 Sky Park Court
San Diego, CA 92123

Re: Scoping Meeting – Tentative CAO for NASSCO/BAE Systems Shipyard Sediment Site

To whom it may concern:

On behalf of our client BAE Systems San Diego Ship Repair, Inc., we submit the following comments with respect to the California Environmental Quality Act (CEQA) scoping meeting being held on January 21, 2010.

Under CEQA, the purpose for holding a scoping meeting is to solicit comments from the public and other responsible public agencies on the scope and content of the environmental information to be addressed in the planned environmental impact report (EIR) for a specific project. Pub. Res. Code §§ 21080.4, 21083.9, 21104. The holding of a scoping meeting now, with respect to the Tentative Cleanup and Abatement Order (Tentative CAO), is inappropriate and pre-mature for several reasons. Therefore, BAE respectfully requests that the scoping meeting be continued and not be rescheduled unless and until it is determined that such a meeting is appropriate.

First, as clearly articulated in the Tentative CAO, there has been no decision yet as to whether the Tentative CAO is even subject to CEQA. As noted, many (if not all) prior CAOs such as this have been considered exempt from CEQA under three separate categorical exemptions. 14 Cal. Code of Regs. (CEQA Guidelines) §§ 15307, 15308, 15321. If the Tentative CAO is exempt from CEQA, there would be no preparation of an EIR and hence no scoping meeting would be necessary or appropriate.

Second, in order to consider the "scope" and content of a proposed EIR, there must be a clear and definite description of the project to be analyzed in the EIR. As noted in the Tentative CAO, the proposed Remedial Action Plan (RAP) is not even required to be submitted to the Regional Board until 90 days after adoption of the CAO. How can a project that is not now and will not be fully articulated until after the CAO is approved be described with sufficient clarity and detail to be "scoped" for purposes of an EIR?

Finally, the very purpose of preparing an EIR is to analyze a proposed project and provide the lead agency with information concerning that project's potential environmental impacts before the lead agency makes a decision whether or not to approve the project. Because the proposed manner of complying with the COA will not be known until the RAP is submitted, and because that is not intended to occur until after the CAO is approved, it is not possible at this point to begin preparation of an EIR that could be considered by the Board before it decides whether to approve the Tentative CAO.

CONFIDENTIAL

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San Diego Regional Water Quality Control Board
January 21, 2010
Page Two

Any comments provided today on the appropriate scope of an EIR for the Tentative CAO will be premature. Holding a scoping meeting before it has even been determined whether or not CEQA applies could also lead to public confusion. Therefore, the Board should continue this CEQA "scoping" meeting for the Tentative CAO until such time as it determines what, if any, CEQA review is required and appropriate.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in cursive script, appearing to read 'Amy G. Neffouse'.

Amy G. Neffouse
Partner

Admitted to practice in California

Cc: Ray Parra, Esq.
Mike Tracy, Esq.
Matt Dart, Esq.
Mr. Shawn Halvax

0101111111

EXHIBIT 6



Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from U.S. EPA



Arnold Schwarzenegger
Governor

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(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

January 27, 2010

VIA EMAIL ONLY

David A. King
Presiding Officer and Vice-Chair
San Diego Regional Water Quality
Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Dear Presiding Officer King:

RE: SHIPYARD SEDIMENT SITE TENTATIVE CAO NO. R9-2010-002

Pursuant to your request, this is the Cleanup Team's response to Mr. Gallagher's January 19, 2010, request that the discovery period for the above-referenced matter be extended to August 23, 2010. The Cleanup Team supports Mr. Gallagher's request because California Environmental Quality Act (Pub. Resources Code, sections 21000 et seq. "CEQA") compliance is likely to take until at least August 23, 2010 to complete. We believe the public comment and discovery periods on the Cleanup and Abatement Order (CAO) should remain open while an Environmental Impact Report ("EIR") is prepared to identify, analyze and mitigate, where feasible, the potentially significant adverse environmental impacts that may result from implementation of the CAO (the "Project").

As you may be aware, Regional Boards have often exempted CAO projects from CEQA under categorical exemption class 7 (Actions by Regulatory Agencies for Protection of Natural Resources), class 8 (Actions by Regulatory Agencies for Protection of the Environment) and/or class 21 (Enforcement Actions by Regulatory Agencies).¹ However, all of these categorical exemptions are to be strictly construed, and "shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (14 Cal. Code Regs., § 15300.2; *McQueen v. Mid-Peninsula Regional Open Space* (1988) 202 Cal.App.3d 1136.) In late 2009, when the Cleanup Team felt the activities that would be conducted

¹ See 14 Cal. Code Regs., §§ 15307, 15308, and 15321, respectively.

pursuant to the tentative CAO had taken on enough definition to prepare a Project description for purposes of CEQA review, the Cleanup Team undertook an Initial Study to help determine whether there is a reasonable possibility the CAO will have a significant effect on the environment and whether, if there is such a reasonable possibility, it is the result of unusual circumstances.² In such a case, under the regulatory guidelines, no CEQA exemption applies.

The Initial Study indicates that there is a reasonable possibility that the CAO Project will have a significant effect on Air Quality and Geology/Soils. The unusual circumstances that give rise to the reasonable possibility of a significant effect on air quality arise from conflicts with implementation of applicable air quality plans and standards due to diesel exhaust emissions from dredging equipment, and due to the large number of truck trips needed to transport sediment out of the Shipyard Site area to an appropriate disposal location. (Initial Study, p. 9-11.) The unusual circumstances that give rise to the reasonable possibility of a significant effect on Geology/Soils arise from the potential for strong seismic activity to shift backfilled sands and potentially expose underlying contaminated sediment. (Initial Study, p. 17-18). Accordingly, the Cleanup Team believes an EIR should be prepared for the CAO and we are preparing to retain an EIR consultant in the near term.

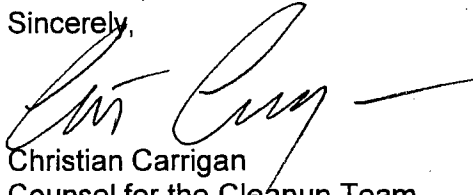
Optimistically, the Cleanup Team estimates it will take between 90 and 120 days to complete preparation of an EIR after a qualified consultant is retained. For projects such as the CAO that must be submitted to the State Clearinghouse for review by state agencies, CEQA requires a minimum 45-day public comment period for Draft EIRs. (14 Cal Code Regs., § 15105(a).) Once the public comment period closes, the Cleanup Team and its consultants will be required to respond to comments in writing and prepare a Final EIR for the Board's consideration. We estimate this will take another 30 days, taking into account the need to produce the Final EIR in time for the public to review it before the Regional Board considers it. Accordingly, the Cleanup Team estimates that it will require at least six months, or until August 23, 2010 at a minimum, to have an appropriate environmental review of the Project completed and ready to present to the Regional Board for its consideration.

Under CEQA, the CAO cannot be adopted by the Regional Board prior to its approval of an appropriate EIR. The Cleanup Team believes that it is appropriate to allow the parties to engage in discovery and to extend the public

² The Initial Study is posted on the San Diego Regional Water Quality Control Boards website at http://www.waterboards.ca.gov/sandiego/water_issues/programs/shipyards_sediment/2005_0126cut2.shtml

comment period during the time it undertakes CEQA compliance. Accordingly, we strongly recommend that Mr. Gallagher's request on behalf of the responsible parties to extend the discovery period to and through August 23, 2010, be granted.

Sincerely,



Christian Carrigan
Counsel for the Cleanup Team
San Diego Regional Water Quality Control Board

cc: All Parties

EXHIBIT 7

Kelly E. Richardson
Direct Dial: 619.238.2878
Kelly.Richardson@lw.com

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LATHAM & WATKINS LLP

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March 22, 2010

VIA ELECTRONIC MAIL AND U.S. MAIL

File No. 030815-0028

Regional Water Quality Control Board, Region 9
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Re: *Comment letter from National Steel and Shipbuilding Co. on the Regional Water Quality Control Board's CEQA Scoping Meeting on January 21, 2010*

To Whom It May Concern:

On behalf of our client General Dynamics National Steel and Shipbuilding Company ("NASSCO"), we submit the following comments for consideration by the Regional Water Quality Control Board, San Diego Region ("Regional Board") in relation to its California Environmental Quality Act ("CEQA") Scoping Meeting held on January 21, 2010.

As recognized in previous iterations of Tentative Cleanup and Abatement Order ("CAO") No. R9-2010-0002 issued over the years, the CAO is categorically exempt from CEQA under the Class 7, Class 8, and Class 21 exemptions. See 14 Cal. Code Regs. ("CEQA Guidelines") §§ 15307, 15308, 15321. Not only have these exemptions been widely applied to CAOs by the San Diego Regional Board, but they have also been widely applied to CAOs by other Boards throughout the State. In fact, despite a statewide review, NASSCO has been unable to locate any examples where an order similar to the CAO proposed by the Regional Board in the present matter has been subjected to CEQA review.

Furthermore, contrary to the Regional Board's assertion in the CAO, paragraph 39, and in correspondence to Presiding Officer King on January 27, 2010, the Regional Board still has not identified any "special" or "unusual" circumstances that make this CAO any different than prior sediment remediation or other remediation projects the Regional Board has been involved in. Air emissions, truck traffic, and the potential for seismic activity are conditions every CAO is subject to, and are not "special" or "unusual" circumstances tied to this CAO.

If, contrary to the applicable CEQA exemptions, the Regional Board decides that it must prepare an Environmental Impact Report ("EIR") for this CAO, then it is important for the

LATHAM & WATKINS LLP

Regional Board to understand that adoption of the CAO will be delayed until the CEQA process is completed—a result that NASSCO does not advocate. Furthermore, NASSCO considers the Regional Board's estimate that it will be able to prepare an EIR and complete the public review process in six months to be a very optimistic estimate. A more realistic estimate may be twelve to eighteen months, if not longer.

Finally, NASSCO asserts that it was premature to hold a CEQA Scoping Meeting for an EIR before the Regional Board had made its final decision as to whether CEQA applies to the CAO. CEQA Guidelines § 15082 (Notice of Preparation and CEQA scoping meeting only occurs "after deciding that an environmental impact report is required for a project.").

Accordingly, NASSCO respectfully urges the Regional Board to apply the Class 7, Class 8, and Class 21 CEQA categorical exemptions to the CAO, as Regional Boards have consistently done throughout the State.

Very truly yours,



Kelly E. Richardson
of LATHAM & WATKINS LLP

cc: Matthew Luxton, Esq.
Debra Buljat, Esq.
Robert M. Howard, Esq.
Ryan Waterman, Esq.

EXHIBIT 8



DLA Piper LLP (US)
401 B Street, Suite 1700
San Diego, California 92101-4297
www.dlapiper.com

Amy G. Nefouse
amy.nefouse@dlapiper.com
T 619.699.2693
F 619.764.6693

March 23, 2010

BY EMAIL (TALO@WATERBOARDS.CA.GOV)
AND U.S. MAIL

San Diego Regional Water Quality Control Board
9174 Sky Park Court
San Diego, CA 92123

Re: Supplemental Comments on Initial Study – Tentative CAO No. R9-2010-0002 for San Diego Shipyard Sediment Site

To whom it may concern:

On behalf of our client BAE Systems San Diego Ship Repair, Inc., we submit the following comments with respect to the California Environmental Quality Act (CEQA) Initial Study on the Tentative Cleanup and Abatement Order (CAO) for the San Diego Shipyards site dated December 22, 2009. These comments supplement the comments made in our letter to the Board dated January 21, 2010 and oral comments made at the scoping meeting held that day.

As noted in the Tentative CAO and our prior comments, there has been no decision yet as to whether the Tentative CAO is even subject to CEQA. This is a critical and threshold decision that should have been made prior to the preparation of the Initial Study. The Board should first analyze whether the Tentative CAO is exempt from CEQA. There are at least three potential categorical exemptions that cover the activities contemplated in the Tentative CAO. See 14 Cal. Code of Regs. (CEQA Guidelines) §§ 15307, 15308, 15321. These three exemptions have been relied upon in the past for other cleanup and abatement orders issued by the Board and there is no reason to treat this project differently. Prior to moving forward with any environmental impact report, the Board should provide analysis of whether these exemptions apply, and if not, the reasons why.

Proceeding under these CEQA exemptions, rather than moving ahead with preparation of an EIR for the Tentative CAO, would greatly speed the conclusion of the enforcement process and, hence, the cleanup process itself.



San Diego Regional Water Quality Control Board
March 23, 2010
Page Two

Thank you for the opportunity to comment on this matter.

Very truly yours,

DLA Piper LLP (US)

A handwritten signature in black ink, appearing to read 'Amy G. Neffouse', written over the typed name.

Amy G. Neffouse
Partner

cc: Ray Parra, Esq.
Mike Tracy, Esq.
Matt Dart, Esq.
Mr. Shaun Halvax

EXHIBIT 9



California Regional Water Quality Control Board San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

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Governor

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<http://www.waterboards.ca.gov/sandiego>

TO: Mr. David King, Presiding Officer for Prehearing Proceedings
Tentative Cleanup and Abatement Order No. R9-2010-0002

Honorable San Diego Water Board Members

FROM: Christian Carrigan
Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement

San Diego Regional Water Quality Control Board Cleanup Team

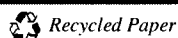
DATE: July 9, 2010

SUBJECT: CALIFORNIA ENVIRONMENTAL QUALITY ACT ANALYSIS FOR
SHIPYARD SEDIMENT PROJECT; TENTATIVE CLEANUP AND
ABATEMENT ORDER R9-2010-0002

I. ISSUES PRESENTED.

- A. Under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.; "CEQA"), may the San Diego Water Board, as lead agency, use a categorical exemption for adopting Tentative Cleanup and Abatement Order R9-2010-0002 (the "CAO Project") when it differs in scope and detail from the class of projects ordinarily within the category, and when there is substantial record evidence that the CAO Project may have significant adverse environmental impacts?
- B. Under CEQA, may the San Diego Water Board defer environmental review and preparation of an environmental impact report ("EIR") for the CAO Project until after it has approved the CAO Project and prepared a specific Remedial Action Plan?

California Environmental Protection Agency



II. SHORT ANSWERS.

- A. Because the CAO Project presents unusual circumstances both with respect to its scope and unique characteristics, and because substantial evidence in the record indicates the CAO Project may cause potentially-significant adverse environmental impacts, it is not categorically exempt from CEQA.
- B. Because the CAO Project has specific enough detail to prepare an adequate project description for an EIR under CEQA, and because waiting until the Remedial Action Plan is formulated to undertake environmental review could foreclose the San Diego Water Board's and the public's consideration of project modifications, project alternatives and the development of feasible mitigation measures, the San Diego Water Board should prepare the CAO Project EIR now, rather than wait for a specific Remedial Action Plan to be developed.

III. LEGAL ANALYSIS.

- A. The Shipyard Sediment Cleanup and Abatement Order Is Not Categorically Exempt from CEQA.

CEQA requires an EIR to be prepared whenever it can be fairly argued on the basis of substantial evidence in the record that a project may have a significant effect on the environment. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Public Resources Code section 21084(a) authorizes the Secretary of Resources to develop a list of classes of projects that are to be categorically exempt from the requirement to prepare environmental documents under CEQA after a determination that such classes of projects ordinarily will not have a significant effect on the environment. The Secretary's list includes, in pertinent part: (1) actions by regulatory agencies for the protection of natural resources; (2) actions by regulatory agencies for the protection of the environment; and (3) enforcement actions by regulatory agencies. (14 Cal. Code Regs., §§ 15307, 15308, 15321, respectively.) As Designated Party BAE Systems accurately points out in its January 21, 2010 comment letter, the San Diego Water Board has routinely used these categorical exemptions when taking regulatory actions, including when it issues cleanup and abatement orders. (1/21/10 BAE letter, p. 1.) However, a lead agency may not use a categorical exemption if there is a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances. (14 Cal. Code Regs., § 15300.2(c); *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52

Cal.App.4th 1165, 1198-1199.) The two-part test for when a categorical exemption may not be used articulated by the *Azusa* court is whether the circumstances of a particular project differ from the general circumstances of the projects covered by a particular categorical exemption, and whether those circumstances create an environmental risk that does not exist for the general class of exempt projects. (*Id.*, at 1207.)

For the Shipyard Sediment Cleanup and Abatement Order Project (the "CAO Project"), over 140,000 cubic yards of contaminated sediments will be removed from San Diego Bay with dredge buckets. This type of physical disturbance to the environment, including, but not limited to, sediment movement, air quality impacts from diesel emissions from dredging equipment, and potential impacts to traffic patterns and noise from equipment operations in the area where the sediments will be dewatered and from which they will be transported, differs considerably from the typical agency enforcement action or action to protect natural resources or the environment. In fact, the Cleanup Team is informed and believes that this CAO Project will be larger in scope than all previous San Diego Bay sediment dredging cleanups combined. As the San Diego Water Board is no doubt well-aware, the "typical" cleanup and abatement order commands a responsible party to develop a plan to clean up its wastes from waters of the state, or from where they are likely to be discharged to waters of the state, and does not contain a specific method for achieving this objective. The CAO Project is considerably different in scope and detail, and the potential for significant impacts to the physical environment from CAO Project activities is manifest, and documented in the December 22, 2010, Draft Technical Report and the Cleanup Team's December 22, 2009 Initial Study. Accordingly, an EIR should be prepared for the CAO Project.

B. CEQA Analysis Must Occur **Before** The San Diego Water Board Can Approve The CAO Project.

The requirement to prepare an EIR is the "heart" of CEQA. (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 72; 14 Cal. Code Regs., § 15003(a).) The EIR serves as an "environmental alarm bell" alerting the public and its responsible officials about a proposed project's potential impacts to the physical environment "**before** they have reached the ecological point of no return." (*City of Carmel-By-The-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 241, *emph. added.*) The purpose of CEQA is to compel government to make decisions with environmental consequences in mind. (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 282.) As the California Supreme Court has held, "EIR's [sic] should be prepared as early in the planning process as possible to enable environmental consequences to influence project, program or design." (*Id.*, at 283-284.) Indeed,

the Legislature has commanded that "information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce the effects shall be made available as soon as possible by lead agencies[.]" (Pub. Resources Code, § 21003.1(b).)

San Diego Coastkeeper and Environmental Health Coalition argue in their June 24, 2010 Response to Cleanup Team's Motion to Extend Discovery Deadlines ("Coastkeeper/EHC 6/24/10 Response"), that "the hearing on the Tentative CAO must move forward before the environmental analysis CEQA requires can be completed." (Coastkeeper/EHC 6/24/10 Response, p. 4, *emph. original.*) Coastkeeper/EHC go on to quote BAE's January 21, 2010 letter, arguing that "there must be a clear and definite description of the project to be analyzed" in the EIR, and that project description "will be developed *after* the Regional Board adopts the Tentative CAO[]" in the form of the Remedial Action Plan. (*Ibid.*, *emph. original.*) Neither Coastkeeper/EHC nor BAE cite any legal authority for this remarkable argument, and it is not only inconsistent with Coastkeeper/EHC's stated objective to "see the bay cleanup start as soon as possible" (6/24/10 Response, p. 6.), but also flawed.

First, the consultants interviewed by the Cleanup Team have estimated it will take 40 weeks to complete the environmental review process for the CAO Project. Simple mathematics indicates it will be comparatively faster to begin that 40-week process now, and to allow it to run concurrently with the public review period for the Tentative CAO itself, than it will be to complete public review on the Tentative CAO, hold a hearing on and adopt the CAO, prepare a Remedial Action Plan, and then begin to undertake environmental analysis under CEQA. Even if starting the cleanup "as soon as possible" were the only objective, which it is not, it would still be better to begin preparation of the EIR now, rather than to wait six months or more until hearings can be held and a Remedial Action Plan can be prepared before beginning environmental review.

Second, when directly asked by the Cleanup Team whether a specific project description could be prepared for the CAO Project EIR based on the current Tentative CAO and Draft Technical Report, all the CEQA consultants responded affirmatively. It should also be noted that the California Department of Toxic Substances Control, California State Lands Commission, California Native American Heritage Commission and the Sierra Club all submitted comments to the San Diego Water Board on its Notice of Preparation of EIR for the CAO Project, and none suggested that there is an insufficient basis for preparing a project description for the CAO Project EIR. Moreover, the Secretary's CEQA Guidelines caution that a project description "should not supply extensive detail beyond that needed for evaluation and review of the environmental impact." (14 Cal. Code

Regs., § 15124.) This guidance is consistent with CEQA's command that environmental review should shape a project.

Finally, and perhaps most importantly, when the CEQA process works properly, it often results in project changes and/or the adoption of mitigation measures that reduce the severity of environmental impacts. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736-737.) Environmental analysis under CEQA requires that a project be open for public discussion and subject to modifications **before** it is approved. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936.) A remedial action plan is a very specific document. For example, it is likely to specify a precise location for sediment dewatering, whether sediment will be disposed of at a landfill or in a confined aquatic disposal facility, the method of transporting sediments to their ultimate disposal location and many other details. Waiting until the Remedial Action Plan for the CAO Project is prepared to undertake environmental review could foreclose public participation in, and the San Diego Water Board's consideration of, the development and analysis of project alternatives, project modifications, and the development and analysis of feasible mitigation measures with respect to all of these and even unforeseen details. (See e.g., *Kings County Farm Bureau, supra*, 221 Cal.App.3d at 736-737 ["new and unforeseen insights may emerge during investigation, evoking revision of the original proposal."].) The better approach to environmental review is to enable the EIR on the CAO Project to influence the design of the Remedial Action Plan, consistent with *Bozung's* instruction that project approvals should be made "with environmental consequences in mind." (*Id.*, at 282.)

The Cleanup Team believes, consistent with *Bozung* and *City of Carmel-By-The Sea*, that the San Diego Water Board should sound "the environmental alarm bell" and prepare the EIR now – early in the planning process – so that the public can participate in the consideration and development of project alternatives, project design and mitigation measures, and so that the CAO Project's environmental consequences can influence the Project and its design as appropriate. If CEQA review is deferred until the Remedial Action Plan is prepared, the San Diego Water Board already may have reached the "ecological point of no return."

EXHIBIT 10

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

CLEANUP AND ABATEMENT ORDER NO. 95-21

CAMPBELL INDUSTRIES
MARINE CONSTRUCTION AND DESIGN COMPANY

CAMPBELL SHIPYARDS
501 EAST HARBOR DRIVE
SAN DIEGO, CALIFORNIA

SAN DIEGO COUNTY

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

NPDES PERMIT STATUS

1. On April 22, 1985, the Regional Board adopted Order No. 85-01, NPDES Permit No. CA0107646, Waste Discharge Requirements for Campbell Industries, San Diego County. Order No. 85-01 established waste discharge requirements for a the threatened discharge of pollutants from a ship construction and repair facility to San Diego Bay, a water of the United States.
2. On October 23, 1989 the Regional Board adopted Addendum No. 1 to Order No. 85-01. The addendum modifies Monitoring and Reporting Program No. 85-01 to include sediment monitoring requirements and adds the San Diego Unified Port District as a secondary liable responsible party for purposes of compliance with Order No. 85-01, if Campbell Industries fails to comply with the Order and Addenda thereto.
3. Order No. 85-01 contains an expiration date of April 22, 1990. The Regional Board can enforce the terms and conditions of an expired permit under the authority of California Code of Regulations, Title 23, Section 2235.4. Section 2235.4 provides that the terms and conditions of expired NPDES permits are automatically continued if the discharger submits a complete application for permit renewal, prior to permit expiration. On October 19, 1989 Campbell Industries submitted a timely application for renewal of Order No. 85-01. Order No. 85-01 is enforceable pursuant to the provisions of Section 2235.4.

SITE LOCATION AND HISTORY

4. Campbell Shipyards (hereinafter Campbell) is located on the northeastern shore of San Diego Bay at 501 East Harbor Drive in the City of San Diego. The site is leased by Campbell Industries from the San Diego Unified Port District.

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Campbell Shipyards

- c) PTI's bay sediment toxicity data on amphipod mortality, polychaete growth depressions, depression in total benthic infauna abundance and depression in amphipod abundance;
- d) PTI's bay sediment pore water and partition coefficient data;
- e) The pattern of higher mercury concentrations in bay sediments lie within the cleanup area defined by the copper cleanup level;
- f) PTI's analysis of risk based concentrations for soil and ground water contaminants; and
- g) The need to prevent exceedances of San Diego Bay water quality goals due to migration of contaminants from soil, ground water, and bay sediments.

CEQA EXEMPTION

48. 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 Code of Regulations.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 1 TO
CLEANUP AND ABATEMENT ORDER NO. 95-21

CAMPBELL INDUSTRIES
MARINE CONSTRUCTION AND DESIGN COMPANY

CAMPBELL SHIPYARDS
501 EAST HARBOR DRIVE
SAN DIEGO, CALIFORNIA

SAN DIEGO COUNTY

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

1. On May 24, 1995, the Executive Officer issued Cleanup and Abatement Order (CAO) No. 95-21 to Campbell Industries and Marine Construction and Design Company Holding, Inc. The order requires the cleanup of approximately 17,000 cubic yards of contaminated bay sediment containing elevated concentrations of metals and other contaminants that have accumulated in San Diego bay sediments over the years. The order also requires the cleanup of soil and ground water located at the Campbell Shipyards site.
2. Directive 7.b of CAO No. 95-21 requires Campbell Industries and Marine Construction and Design Company to complete ground water cleanup in conformance with Directive 6 of CAO No. 95-21 by June 1, 1996.
3. Directive 7.e of CAO No. 95-21 requires Campbell Industries and Marine Construction and Design Company to submit a post cleanup sampling plan to verify conformance with the cleanup levels required in Directives 3, 4, and 5 of CAO No. 95-21 by May 1, 1998.
4. Directive 7.g of CAO No. 95-21 requires Campbell Industries and Marine Construction and Design Company to complete cleanup of the site in conformance with Directives 3, 4, and 5 of CAO No. 95-21 by June 1, 1999.

Addendum No. 1 to
CAO No. 95-21

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Campbell Shipyards

5. On January 31, 1996, Campbell Industries and Marine Construction and Design Company requested that the compliance date in Directive No. 7.b be extended to coincide with Directive 7.g of June 1, 1999. This extension is requested because the ground water cleanup compliance date is out of sequence with the soil and bay sediments cleanup compliance date. Allowing cleanup of the soil and ground water to proceed concurrently would be the most cost effective procedure.
6. The compliance date of Directive 7.b (June 1, 1996) was originally selected to address the cleanup of petroleum free floating product. The Regional Board staff did not intend that ground water cleanup of dissolved contaminants be completed by this date. Directive 7.b should be revised to require cleanup of only petroleum free floating product by June 1, 1996.
7. Directives 7.e and 7.g should be revised to include completion of ground water cleanup in conformance with Directive 6.
8. This enforcement action is exempt from the provisions of the California Environmental Quality Act in accordance with Section 15321, Chapter 3, Title 14 of the California Administrative Code.

IT IS HEREBY ORDERED That pursuant to Section 13304 of the California Water Code, Campbell Industries and Marine Construction and Design Company shall comply with the following directives:

1. Directive 7.b of CAO No. 95-21 is changed to the following:
 7. b) Complete cleanup of petroleum free floating product. Date of Compliance - June 1, 1996.
2. Directive 7.e of CAO No. 95-21 is changed to the following:
 7. e) Submit a post cleanup sampling plan to verify conformance with the cleanup levels required in

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 2 TO
CLEANUP AND ABATEMENT ORDER NO. 95-21

CAMPBELL INDUSTRIES
MARINE CONSTRUCTION AND DESIGN COMPANY

CAMPBELL SHIPYARDS
501 EAST HARBOR DRIVE
SAN DIEGO, CALIFORNIA

SAN DIEGO COUNTY

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

1. On May 24, 1995, the Executive Officer issued Cleanup and Abatement Order (CAO) No. 95-21 to Campbell Industries and Marine Construction and Design Company Holding, Inc. The order requires the cleanup of approximately 17,000 cubic yards of contaminated bay sediment containing elevated concentrations of metals and other contaminants that have accumulated in San Diego Bay sediments over the years. The order also requires the cleanup of soil and groundwater located at the Campbell Shipyards site.
2. In a letter dated September 10, 1997, Campbell Industries and Marine Construction and Design Company requested an extension of the compliance dates for tasks 7.c through 7.h outlined in Directive 7 of the CAO in order to coincide with the proposed redevelopment of the shipyard facilities.
3. The Regional Board has determined that tasks 7.c through 7.e (all necessary applications, approvals, the final design plan, and post cleanup sampling plan) shall still be submitted according to the schedule in Directive 7 of the CAO. An extension for tasks 7.f through 7.h (the contract award date, completion of the cleanup, and submittal of the results of the post sampling plan) should be granted for one year to allow remediation activities to proceed concurrently with redevelopment in order to be most cost effective. However, remediation shall not be delayed beyond one year, regardless of the status of redevelopment activities.
4. The final design report required under task 1.d of this addendum shall contain two separate design plans, one based on the scenario that the shipyard will be developed into a hotel and marina, and one based on the scenario that the shipyard will continue operations and that redevelopment will not occur. This requirement will ensure that cleanup activities will proceed without delay regardless of the final disposition of Campbell Shipyards.
5. This enforcement action is exempt from the provisions of the California Environmental Quality Act in accordance with Section 15321, Chapter 3, Title 14 of the California Administrative Code.

EXHIBIT 11

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.

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.

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.

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.

- and will not result in less than the amount in the return.*
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

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:

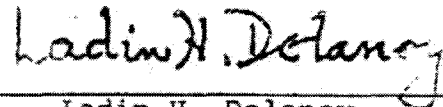
1. On December 12, 1985, the Regional Board Executive Officer issued Cleanup and Abatement Order No. 85-91, Paco Terminals Inc., National City, San Diego County. Order No. 85-91 was issued to Paco Terminals Inc. (Paco Terminals) for violations of Order Nos. 79-72 and 84-50, NPDES Permit No. CA0107930. 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;

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

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 4
TO
CLEANUP AND ABATEMENT 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. On February 27, 1989, the Regional Board adopted Addendum No. 3 to Cleanup and Abatement Order No. 85-91. Addendum No. 3 named the Port District as a responsible party under Cleanup and Abatement Order No. 85-91.
4. The Comprehensive Water Quality Control Plan Report, San Diego Basin (9) (Basin Plan), contains the following Prohibition under the authority of Water Code Section 13243:

"The dumping or deposition from shore or from vessels of oil, garbage, trash or other solid municipal, industrial or agricultural waste directly into waters subject to tidal action or adjacent to waters subject to tidal action in any manner which may permit it to be washed into the waters subject to tidal action is prohibited."
5. Paco Terminals ceased operations at the 24th Street Marine Terminal in December 1986. Order No. 84-50 expired on November 26, 1989, and Paco Terminals did not submit a renewal application for its NPDES permit. Hence, as owner of the facility, the Port District is partially responsible for potential waste discharges from the facility. As shown in Finding Nos. 6 through 10 of this Order, Regional Board staff inspections and a technical report prepared by the

9. On May 26, 1989, Regional Board staff inspected Paco Terminals and collected sediment samples from the strip of dirt between the paved area and San Diego Bay (Area B) and near the pier face next to the container crane rails (Area D). Areas B and D are shown in Attachment 1 to this Order. The copper concentrations in Areas B and D were found to be as high as 61,400 mg/Kg and 5,190 mg/Kg, respectively, during this inspection. These results indicate that copper ore from the Paco Terminals operation has been discharged to those locations. Rainfall runoff could wash this material into San Diego Bay.
10. On November 1, 1989, Regional Board staff inspected Paco Terminals and collected sediment samples in the dirt area directly south of the 24th Street Marine Terminal. The samples were collected in Area C shown in Attachment 1 to this Order. The copper concentrations in Area C were found to be as high as 166,000 mg/Kg. These results indicate that copper ore from the Paco Terminals operation has been discharged to this location. The sample results confirmed that copper ore had been discharged to Area C as discussed in Finding No. 8 of this Order in an area where rainfall runoff would wash this material into San Diego Bay.
11. The copper ore wastes at the 24th Street Marine Terminal described in Finding Nos. 6 through 10 of this Order have been deposited adjacent to waters subject to tidal action (e.g., San Diego Bay) in a manner which permit the wastes to be washed into San Diego Bay in violation of the Basin Plan Prohibition described in Finding No. 4 of this Order.
12. 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, Paco Terminals and the Port District shall comply with the following:

1. Paco Terminals and the Port District shall not deposit or discharge copper into San Diego Bay or at any place where it would be eventually transported into San Diego Bay.
2. Paco Terminals and the Port District shall submit a report by March 15, 1990, describing the areal and vertical extent of copper contamination at the 24th Street Marine Terminal including dirt areas, paved areas and storm drains. The report shall include a remediation plan and time schedule to

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 5
TO
CLEANUP AND ABATEMENT 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 to 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 Executive Officer 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. On February 27, 1989, the Regional Board adopted Addendum No. 3 to Cleanup and Abatement Order No. 85-91. Addendum No. 3 named the Port District as a responsible party under Cleanup and Abatement Order No. 85-91.
4. On January 19, 1990, the Regional Board Executive Officer issued Addendum No. 4 to Cleanup and Abatement Order No. 85-91. Addendum No. 4 required Paco Terminals and the Port District to evaluate copper contamination at the 24th Street Marine Terminal and complete cleanup of any contamination at the site by September 1, 1990.
5. Addendum No. 2 to Order No. 85-91 contained a time schedule for removal of copper contaminated sediment from a portion of San Diego Bay by dredging. The compliance dates stated in the time schedule were based on a proposal to dispose of contaminated dredged material at an ocean disposal site approved by the US Army Corps of Engineers and the Environmental Protection Agency (EPA). In January, 1990,

Paco Terminals and the Port District elected not to pursue ocean disposal of contaminated sediments due to a preliminary indication by EPA that ocean disposal was not a viable option. Therefore, it is necessary to modify the tasks and compliance dates listed in the time schedule contained in Directive No. 3 of Addendum No. 2 to Cleanup and Abatement Order No. 85-91.

6. Beginning in January, 1990, Paco Terminals and the Port District have been negotiating with a mining company to examine the feasibility of removing copper contaminated sediment from San Diego Bay, transporting the sediment to a copper production facility, and extracting the copper ore from the Bay sediments. The mining company has determined that sediment samples will need to be collected and analyzed to determine if copper can be extracted from the Bay sediments.
7. 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, Paco Terminal and the Port District shall comply with the following:

1. Directive Nos. 2 and 3 of Addendum No. 2 to Order No. 85-91 are hereby rescinded.
2. Paco Terminals and the Port District shall reduce the sediment copper concentration in the affected portion of San Diego Bay to a sediment copper concentration less than 1000 mg/kg.
3. Paco Terminals and the Port District shall achieve compliance with Directive No. 2 of this Order in accordance with the following time schedule:

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 6
TO
CLEANUP AND ABATEMENT 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 Executive Officer 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. On February 27, 1989, the Regional Board adopted Addendum No. 3 to Cleanup and Abatement Order No. 85-91. Addendum No. 3 named the San Diego Unified Port District as a responsible party under Cleanup and Abatement Order No. 85-91.
4. On January 19, 1990, the Regional Board Executive Officer issued Addendum No. 4 to Cleanup and Abatement Order No. 85-91. Addendum No. 4 required Paco Terminals and the Port District to evaluate copper contamination at the 24th Street Marine Terminal and complete cleanup of any contamination at the site by September 1, 1990.
5. On November 5, 1990, the Regional Board adopted Addendum No. 5 to Cleanup and Abatement Order No. 85-91. Addendum No. 5 established a revised time schedule for cleanup of copper contaminated sediment from San Diego Bay adjacent to the 24th Street Marine Terminal.

6. Monitoring of the copper ore contaminated sediment in San Diego Bay adjacent to the 24th Street Marine Terminal is necessary to determine if any dispersion of the copper ore or adverse effects on the beneficial uses of San Diego Bay are occurring until such time as cleanup is complete.
7. The copper ore discharged to San Diego Bay from the 24th Street Marine Terminal was in the form of copper concentrate, a rendered form of cupric ferrous sulfide ore known as chalcopyrite. This form of ore contains constituents other than copper, including silver, lead, zinc, mercury, and arsenic.
8. Beginning in January, 1990, Paco Terminals and the Port District have been negotiating with several mining companies to examine the feasibility of removing copper contaminated sediment from San Diego Bay, transporting the sediment to a copper production facility, and extracting the copper ore from the Bay sediments. The mining companies have determined that sediment samples will need to be collected and analyzed to determine if copper can be extracted from the Bay sediments. Subsequent to the adoption of Addendum No. 5 to Order No. 85-91, Paco Terminals and the Port District requested that the compliance date for informing the Regional Board whether or not this cleanup alternative will be pursued be extended approximately one month.
9. At the time when Addendum No. 5 to Cleanup and Abatement Order No. 85-91 was issued, Paco Terminals had filed for, and was in the process of obtaining, bankruptcy status. The compliance dates contained in Addendum No. 5 were developed based on a time schedule with which the Port District alone could comply. On January 4, 1991, the Regional Board received notice that the bankruptcy case for Paco Terminals was dismissed by the court on December 28, 1990. Therefore, the compliance dates contained in Addendum No. 5 should be modified to reflect the fact that Paco Terminals is no longer involved in bankruptcy proceedings.
10. 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, Paco Terminal and the Port District shall comply with the following:

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ADDENDUM NO. 8
TO
CLEANUP AND ABATEMENT ORDER NO. 85-81

PACO TERMINALS INC.
SAN DIEGO UNIFIED PORT DISTRICT

The California Regional water quality Control Board, San Diego Region, (hereinafter Regional Board) finds that:

1. On December 17, 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 Executive Officer issued Addendum No. 1 to Cleanup and Abatement Order No. 85-91 and, on November 21, 1988, the Regional Board Executive Officer issued Addendum No. 2 to Cleanup and Abatement Order No. 85-91.
3. On February 27, 1989, the Regional Board adopted Addendum No. 3 to Cleanup and Abatement Order No. 85-91. Addendum No. 3 named the Port District as a responsible party under Cleanup and Abatement Order No. 85-91.
4. On January 19, 1990 the Regional Board Executive Officer issued Addendum No. 4 to Cleanup and Abatement Order No. 85-91. Addendum No. 4 required Paco Terminals and the Port District to evaluate copper contamination at the 24th Street Marine Terminal site and complete cleanup of any contamination at the site by September 1, 1990.
5. On November 5, 1990, the Regional Board adopted Addendum No. 5 to Cleanup and Abatement Order No. 85-91. Addendum No. 5 established a revised time schedule for cleanup of copper contaminated sediment from San Diego Bay adjacent to the 24th Street Marine Terminal.
6. On January 28, 1991, the Regional Board adopted Addendum No. 6 to Cleanup and Abatement Order No. 85-91. Addendum No. 6 established a revised time schedule for cleanup of the copper contaminated sediment.

12. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Title 14, CCR, Chapter 3, Section 15321.

IT IS HEREBY ORDERED THAT, pursuant to California Water Code Section 13304, Paco Terminals and the Port District shall comply with the following:

1. Paco Terminals and the Port District shall reduce the sediment copper concentration in the affected portion of San Diego Bay to a sediment copper concentration less than 1,000 mg/kg (dry weight).
2. Paco Terminals and the Port District shall achieve compliance with Directive No. 1 of this Addendum in accordance with the following time schedule:
 - a) Obtain a decision from the Cypress Mines by March 1, 1993 on 1) whether or not the company will accept or reject the dredged material; 2) the limiting sediment copper concentration the company will accept; and 3) the volume of dredged material the company will accept.
 - b) Submit complete applications (including the supplemental report of waste discharge information requested in the Regional Boards letter dated November 30, 1992), by March 1, 1993, for all permits and other governmental approvals needed to implement cleanup to the 1,000 mg/kg (dry weight) copper cleanup level.
 - c) Submit a plan, by March 1, 1993, including a detailed description of the activities to be conducted and a time schedule for completion of each task, to complete cleanup to the 1,000 mg/kg (dry weight) copper cleanup level. Implementation of the plan shall be carried out in accord with Directive(s) 2.d - 2.g unless otherwise directed by the Regional Board Executive Officer.
 - d) Initiate dredging of copper contaminated sediment by October 1, 1993.
 - e) Complete dredging of copper contaminated sediment by February 1, 1994.
 - f) Submit Results of the Post Cleanup Sampling Plan by April 1, 1994.

EXHIBIT 12

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

CLEANUP AND ABATEMENT ORDER NO. R9-2004-0258

FOR

TDY INDUSTRIES, INC.

(f/k/a TELEDYNE INDUSTRIES, INC.)

TDY HOLDINGS, LLC

AND

TELEDYNE RYAN AERONAUTICAL COMPANY

2701 NORTH HARBOR DRIVE, SAN DIEGO, CALIFORNIA

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

JURISDICTION

- 1. WASTE DISCHARGES.** Between the early 1940's and mid-1999, Ryan Aeronautical Company and its successors (Teledyne Ryan Aeronautical Company, Teledyne Industries, Inc. (n/k/a TDY Industries, Inc.), and TDY Holdings, LLC), hereinafter collectively referred to as "TDY", conducted aerospace component manufacturing operations on 44 acres of land at 2701 North Harbor Drive in San Diego. The land was leased from the City of San Diego and, subsequently, from the San Diego Unified Port District and is located between Lindbergh Field and Convair Lagoon, a part of San Diego Bay (hereinafter referred to as the "Site"). TDY caused or permitted waste from its manufacturing operations, including polychlorinated biphenyls (PCBs), several trace metals, and volatile organic chemicals, to be discharged to San Diego and Convair Lagoon through municipal separate storm water conveyance systems (SWCS) on the Site. TDY deposited waste (such as PCBs) from its manufacturing operations in the catch basins and collection sumps associated with the SWCS on the Site and inside the SWCS; waste has been and probably will be discharged to San Diego Bay from the SWCS. TDY also caused or permitted the discharge of waste (such as heavy metal and volatile organic chemicals) from its manufacturing operations to soils and ground water on the Site; the waste constituents may eventually migrate to San Diego Bay via various preferential pathways. PCB, volatile organic chemicals and heavy metals waste from TDY's manufacturing operations has caused and threatens to cause conditions of pollution, contamination, and nuisance by exceeding applicable water quality objectives for toxic pollutants in San Diego Bay.
- 2. PERSONS RESPONSIBLE.** Ryan Aeronautical Company operated at the Site from its inception in the early 1940s until approximately 1969. In 1969, Ryan Aeronautical Company became known as Teledyne Ryan Aeronautical Company after becoming a wholly owned subsidiary of Teledyne Industries, Inc. In 1999, TDY Holdings, LLC assumed certain liabilities of Teledyne, Inc. and Teledyne Industries, Inc. changed its name to TDY Industries,

- d. These potential discharges to San Diego Bay threaten to cause applicable water quality objectives in San Diego Bay to be exceeded and pollution conditions in San Diego Bay.

STATUTORY AND REGULATORY FINDINGS

17. **LEGAL AND REGULATORY AUTHORITY.** This Order is based on (1) Section 13267 and Chapter 5, Enforcement and Implementation commencing with Section 13300 of the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000); (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board and the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the Regional Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board policies, including State Water Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies.
18. **CEQA EXEMPTION.** This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.

ORDER DIRECTIVES

IT IS HEREBY ORDERED that, pursuant to Sections 13267 and 13304 of the California Water Code, Teledyne Ryan Aeronautical Company, TDY Holdings LLC, and TDY Industries, Inc., (hereinafter Discharger(s)), shall comply with the following directives:

A. CLEANUP AND ABATE DISCHARGES

1. **Duty to Comply.** The Discharger(s) shall take all corrective actions⁶ necessary to:
 - a. Investigate, cleanup, and abate discharges of PCBs, volatile organic chemicals, and heavy metals (hereinafter waste constituents) at the Site;
 - b. Achieve compliance with site-specific cleanup levels as prescribed by the Regional Board and;
 - c. Terminate illicit waste discharges to the onsite storm water conveyance system (SWCS) and achieve compliance with the terms and conditions of Order No. 97-03-DWQ,

⁶ Corrective Actions include the following phases of cleanup and abatement described in Directives B through F of this Cleanup and Abatement order: (1) Site Investigation and Characterization phase; (2) Remedial Investigation and Feasibility Study phase; (3) Remedial Action Plan Implementation phase; and (4) Cleanup and Abatement Completion Verification phase.

EXHIBIT 13

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

**CLEANUP AND ABATEMENT ORDER NO. R9-2005-0033
FOR**

**MIKE BINGHAM
FIELDSTONE COMMUNITIES INC.
Morro Hills Villages C, D, E, G
Oceanside, San Diego County**

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

1. Mike Bingham, Fieldstone Communities Inc. (hereinafter *dischargers*) owns and operates the Morro Hills Villages C, D, E, and G construction project. The project encompasses approximately 79.5 acres of the 422-acre Morro Hills Villages and Golf Course master planned community, which is located at the intersection of Douglas Drive and Vandegrift Blvd. in the City of Oceanside.
2. Storm water runoff from the Morro Hills site discharges to the City of Oceanside's Municipal Separate Storm Sewer System (MS4) and discharges to Pilgrim Creek, a tributary to the San Luis Rey River. Discharges of storm water runoff from the construction site are regulated pursuant to State Water Resources Control Board (SWRCB) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity*. The *dischargers* have coverage under Order No. 99-08-DWQ, were assigned WDID No. 937C321382 and have a Storm Water Pollution Prevention Plan.
3. Fieldstone Communities Villages C, D, E, and G have coverage under California Regional Water Quality Control Board, San Diego Region (SDRWQCB) Order No. 2001-184, *Waste Discharge Requirements and Section 401 Water Quality Certification for the Richland Calabasas, L.P. Morro Hills Villages and Golf Course Project, San Diego County*.
4. The Morro Hills Villages site is located in the Mission Hydrologic Subarea (903.11) of the San Luis Rey Hydrologic Unit (903.00) as described in the *Water Quality Control Plan, San Diego Basin (9), 1994* (hereafter Basin Plan). The Basin Plan designates the beneficial uses of Pilgrim Creek and its tributaries as Agricultural Supply (AGR), Industrial Service Supply (IND), Contact Recreation (REC-1), Non-contact Recreation (REC-2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE).
5. On November 16, 2004, December 31, 2004, and January 4, and 12, 2005, the *dischargers* had discharged sediment and sediment-laden water into the City of Oceanside's MS4 and to Pilgrim Creek, in violation of Order No. 99-08-DWQ. These

discharges have caused or threaten to cause a condition of pollution or nuisance and threaten to impair the beneficial uses of Pilgrim Creek and the San Luis Rey River.

6. As of November 16, 2004, the *dischargers* violated Order No. 99-08-DWQ by not implementing adequate erosion and sediment control Best Management Practices (BMPs) on a site wide basis, which resulted in the multiple discharges of sediment laden water to the City of Oceanside's MS4. The site lacked any erosion control BMPs in the Village G portion of the site, and there were inadequate or failing erosion control BMPs in Villages C & D. In addition, the Village G sediment control basins lacked the proper design and capacity to capture and treat the volume of runoff generated from prior significant storm events, which resulted in the pumping by the dischargers of unfiltered sediment laden water to the City of Oceanside MS4 on January 4, 2005.
7. The *dischargers* have discharged and threaten to continue discharging sediment and sediment-laden water in violation of the Basin Plan's Waste Discharge Prohibitions No. 1 and Order No. 2001-184 Prohibition A.1 by discharging waste to waters of the State in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code Section 13050.
8. The *dischargers* have discharged and threaten to continue discharging sediment and sediment laden water in violation of the Basin Plan's Waste Discharge Prohibitions No. 14 by discharging sand, silt, clay or other earthen materials in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters.
9. Unless the *dischargers* immediately implement an adequate storm water management plan (including designing, implementing and maintaining adequate BMPs), discharges of sediment and sediment laden water from the site will continue to occur, threatening to cause a condition of pollution and nuisance in Pilgrim Creek and the San Luis Rey River.
10. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
11. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED that, pursuant to Section 13304 and 13267 of Division 7 of the California Water Code, Mike Bingham, Fieldstone Communities Inc. (hereinafter *dischargers*) shall:

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

CLEANUP AND ABATEMENT ORDER NO. R9-2008-0036

FOR

**BULLDOG CONCRETE PUMPING
OSCAR MOLINA PEREYRA
LINDA MICHELLE PEREYRA
249 SOUTH 33RD STREET
SAN DIEGO, CALIFORNIA 92113**

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

1. Bulldog Concrete Pumping is a concrete paving company operating in San Diego, California. Bulldog Concrete Pumping is owned and operated by Oscar Molina Pereyra and Linda Michelle Pereyra (hereinafter, Dischargers).
2. Bulldog Concrete Pumping is responsible for the un-permitted discharge of concrete slurry (water and concrete material) on numerous occasions to Chollas Creek between 2004 and 2005. The discharges occurred via overflow from a vacant lot adjacent to the 3300 block of Logan Avenue and Gregory Street.
3. During 2004 and 2005, the Dischargers rented the vacant lot from Mr. Lonnie Pleasant located at the 3300 block of Logan Avenue and Gregory Street. Drainage from the lot is discharged directly to Chollas Creek, about 1 mile upstream of the creek mouth where it joins San Diego Bay.
4. Chollas Creek is approximately 30 miles long, and drains a watershed of approximately 16,273 acres. Designated existing beneficial uses of inland surface waters in Chollas Creek in the Water Quality Control Plan for the San Diego Basin (Basin Plan) include Non-contact Water Recreation (REC 2), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD). Contact Water Recreation (REC 1) is identified as a potential beneficial use.
5. The Chollas Creek watercourse is defined as a water of the State as defined by section 13050(e) of the California Water Code (WC).
6. Pursuant to WC section 13260, "any person discharging waste or proposing to discharge waste, within any region that could affect the quality of the waters of the state..." shall file a report of waste discharge.
7. On numerous occasions before April 6, 2005, the Dischargers caused and/or permitted the discharge of concrete slurry waste from the vacant lot directly into

12. Any person that violates California Water Code Sections 13260(a) is guilty of a misdemeanor and may subject the dischargers to civil liability in accordance with Section 13261³ and 13265⁴ of the Water Code.
13. Cleanup of the unauthorized discharges of concrete slurry waste into Chollas Creek from Bulldog Concrete Pumping is necessary to abate the conditions of pollution and the ongoing threat to water quality impacts.
14. Pursuant to WC section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
15. In accordance with WC section 13267 (b), these findings provide the Dischargers with a written explanation with regard to the need for remedial action and identify the evidence that supports the requirement to implement cleanup and abatement activities and submit follow-up reports.
16. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to Section 13225, 13267, and 13383 of Division 7 of the Water Code, Oscar Pereyra, and Linda Pereyra individually and d.b.a. Bulldog Concrete Pumping, shall do the following:

1. By **October 17, 2008** submit a draft Creek Restoration and Monitoring Plan (Plan), including any necessary permits, prepared by a qualified professional with at least five years professional experience in stream restoration work. The Plan shall address the actions that will be taken to restore Chollas Creek to its pre-discharge state and comply with the Directives of this order. The Plan will be provided to the Regional Board prior to implementation. A final Plan shall be submitted by **November 21, 2008**.
2. By **January 7, 2009** cleanup and abate existing and threatened pollution associated with the unauthorized discharge of waste into Chollas Creek by:

³ WC section 13261 (a) states that: Any person failing to furnish a report under 13260 when so requested by a regional board is guilty of a misdemeanor and may be liable civilly...

⁴ WC section 13265 (a) states that: Any person discharging waste in violation of WC 13264, after such violations has been called to his attention in writing by the regional board, is guilty of a misdemeanor and may be liable civilly... Each day of such discharge shall constitute a separate offense.

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

**CLEANUP AND ABATEMENT ORDER NO. R9-2003-0230
FOR**

**CALIFORNIA DEPARTMENT OF TRANSPORTATION
(CALTRANS)
I-5 AND I-805 WIDENING
SAN DIEGO, CA**

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

1. Caltrans owns and operates the Interstates 5 and 805 widening construction project (5/805 Widening Project) between La Jolla Village Dr. and Via De La Valle in San Diego, CA. The site is located in the Penasquitos Hydrologic Area (906.00) as described in the "Water Quality Control Plan, San Diego Basin (9)" (hereafter Basin Plan).
2. Caltrans is permitted to discharge stormwater from the 5/805 Widening Project and all of its construction projects by State Water Resources Control Board (SWRCB) Order No. 99-06-DWQ, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000003, National Pollutant Discharge Elimination System Permit, Statewide Storm Water Permit, and Waste Discharge Requirements (WDRs) for State of California, Department of Transportation (Caltrans).

Discharge Specification H.2 of Order No. 99-06 directs Caltrans to comply with all requirements of the State Water Resources Control Board (SWRCB) General Waste Discharge Requirements (WDRs) for Statewide Storm Water Permit Construction Activities (Construction General Permit), with exception of the administrative process of filing Notice of Intent and/or Terminations. The current State Board NPDES permit regulating Stormwater from Construction projects is Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) No. CAS000002.

3. The 5/805 Widening Project crosses Soledad Canyon Creek, Los Penasquitos Creek, and Carmel Valley Creek. The Basin Plan has designated the following beneficial uses for the three creeks: Agricultural Supply (AGR), Industrial Supply (IND), Potential Contact Water Recreation (REC1), Non-Contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD).
4. Water from Soledad Canyon Creek, Los Penasquitos Creek, and Carmel Valley Creek discharge into the Los Penasquitos Lagoon, portions of which are

10. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this Order.
11. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et Seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED that, pursuant to Section 13304 of Division 7 of the California Water Code, that Caltrans or its agents, successors, or assigns, shall:

1. Upon receipt of this Order, abate all effects of the threatened discharge of waste into Soledad Canyon Creek, Los Penasquitos Creek, Carmel Valley Creek, and Los Penasquitos Lagoon.
2. Caltrans shall immediately implement, in compliance with all requirements of the State Board Construction Storm Water Permit No. 99-08-DWQ, the following:
 - a. Implementation of an effective and appropriate combination of sediment and erosion controls on all disturbed areas.
 - b. Implementation of specific BMPs to prevent the discharge of sediment, gravel and sediment-laden water to Soledad Canyon Creek, Los Penasquitos Creek, Carmel Valley Creek and Los Penasquitos Lagoon.
 - c. Implementation of BMPs to divert on-site drainage and concentrated storm water runoff from discharging to disturbed areas.
 - d. Implementation of BMPs to eliminate the tracking of sediment onto public or private roads.
 - e. Implementation of a comprehensive maintenance program to ensure continued BMP effectiveness.
3. Caltrans shall develop and implement by June 23, 2003 a water quality sampling plan to be implemented for the duration of the construction project. At a minimum daily water quality samples shall be taken when construction activities are occurring within a creek. Samples shall also be taken during the first two hours of a rain event and after the rain event. The plan shall include, but not be limited to:
 - a. Monitoring sites upstream, downstream, and within the construction project and rationale for choosing the sites.
 - b. Sampling for Total Suspended Solids, Settleable Solids, Suspended Sediment Concentration, and Turbidity using appropriate analytical methods.
 - c. Trigger levels for the four sampling parameters.
 - d. Action plan to be implemented when a trigger level is exceeded.

California Regional Water Quality Control Board
Santa Ana Region

Cleanup and Abatement Order No. R8-2008-0064
For
San Bernardino County Department of Airports
Chino Airport

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

FACTUAL BACKGROUND

1. Chino Airport is located in the City of Chino, on property bounded approximately by Merrill Avenue on the north, Euclid Avenue on the west, Kimball Avenue on the south, and private property on the east.
2. In the mid-to-late 1980s, trichloroethylene (TCE) was detected in groundwater samples obtained from several private production wells downgradient (south and southwest) of the Chino Airport (hereinafter Airport), at concentrations as high as 44 micrograms per liter ($\mu\text{g/l}$). These wells were primarily used for irrigation of agricultural lands.
3. In 1989, the San Bernardino County Department of Airports (hereinafter County) identified areas at the Airport that were potential sources of past discharges of TCE. In 1990, the County submitted to the Regional Board a prioritized list of potential source areas at the Airport and a preliminary time schedule for investigating those areas.
4. On October 31, 1990, the Regional Board's Executive Officer issued Cleanup and Abatement Order (CAO) No. 90-134 to the County. The CAO required the County to: remove from Airport property and properly dispose of all wastes that were possibly continuing sources of organic solvent discharges; conduct a field investigation, including at least soil and soil gas sampling, to define the lateral and vertical extent of any TCE that may have been present in the soil at the potential source areas on Airport property; install and perform sampling of groundwater monitoring wells to define the lateral and vertical extent of TCE in groundwater; and submit a work plan to cleanup or abate the discharges of waste in the groundwater contamination attributable to the Airport.
5. In the early 1990s, the County removed and properly disposed of all wastes that were possibly continuing sources of organic solvent

21. California Water Code Section 13304 allows the Regional Board to recover reasonable expenses from responsible parties for overseeing cleanup and abatement activities. It is the Regional Board's intent to recover such costs for regulatory oversight work conducted in accordance with this order.
22. This enforcement action is being taken by a regulatory agency to enforce a water quality law. Such action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.) in accordance with Section 15321, Article 19, Division 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED THAT, pursuant to Section 13267 and Section 13304, Article 1, Chapter 5, Division 7, of the California Water Code, the County shall submit technical and monitoring reports, and cleanup the waste or abate the effects of the waste that has, or probably will be, discharged into waters of the state, in accordance with the following tasks:

1. Implement the work plan submitted in December 2007. Submit a technical report by December 30, 2008 that includes the results of the completed well installation activities and sampling, as described in the work plan.
2. Submit a remedial action plan within 60 days after the Executive Officer determines that the technical report submitted in accordance with Item 1, above, defines the lateral and vertical extent of VOCs in groundwater sufficiently to allow preparation of a remedial action plan. The remedial action plan shall be implemented in accordance with a time schedule approved by the Executive Officer.
3. Prepare, implement and submit technical reports for any additional work plans that the Executive Officer deems necessary to sufficiently characterize the lateral and vertical extent of VOCs in soil and groundwater that are discharging, have been discharged, or threaten to be discharged as a result of waste discharges that have occurred at the Airport. The work plans shall be submitted and implemented in accordance with time schedules approved by the Executive Officer.
4. Submit any remedial action plans that the Executive Officer deems necessary as a result of the technical reports submitted in accordance with Item 3, above. The remedial action plans shall be submitted and implemented in accordance with time schedules approved by the Executive Officer.

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER NO. 00-007
CITY OF BENICIA
BENICIA, SOLANO COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (the Board), finds that:

1. The City of Benicia (Benicia or the discharger) discharges waste with high fecal bacteria levels from the municipal storm drain outfall located near 2nd Street into the Benicia Marina, adjacent to the Carquinez Strait.
2. Benicia's discharge impairs the ability of the receiving water to support Non-Contact Recreation (REC-2) in violation of the San Francisco Bay Basin Water Quality Control Plan for the Suisun Basin (7) Water Quality Objective, and creates a condition of pollution and /or nuisance.
3. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) in accordance with Administrative Code § 15108.
4. Pursuant to Water Code § 13304, the Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.

IT IS HEREBY ORDERED, pursuant to Section 13304, of Division 7 of the California Water Code, that Benicia shall cleanup the waste discharged, abate the effect of the discharge, and take other remedial actions as follows:

A. Prohibition

The discharge of waste or hazardous materials that will significantly degrade water quality, and adversely affect beneficial uses of the waters is prohibited.

B. Remedial Measures

1. Benicia shall identify the source of the wastes discharged, cleanup the wastes discharged as much as practicably possible, and abate their effects, in accordance with the time schedules detailed in the acceptable work plan in 3. below.

2. Starting in the week following the date of this Order, Benicia shall conduct a weekly water quality monitoring for fecal coliform bacteria in the storm sewer manhole directly upgradient of the Marina outfall.
3. By March 31, 2000, Benicia shall submit in writing to the Board a work plan with time schedule, acceptable to the Executive Officer, to cleanup the wastes as much as practicably possible and abate their effects, as well as a monitoring plan to locate the source of the waste. Furthermore, Benicia shall submit all bacteriological monitoring results received by the date of the work plan submittal, along with interpretations and conclusions derived from the results.
4. Benicia shall submit written quarterly progress reports including bacteriological monitoring results to the Board according to the following schedule:

<u>Reporting Period</u>	<u>Due Date</u>
February, March and April	May 15
May, June and July	August 15
August, September and October	November 15
November, December and January	February 15

5. If Benicia is delayed, interrupted or prevented from meeting one or more of the completion dates specified in this Order, Benicia shall promptly notify the Executive Officer in writing with recommended revised completion dates. The Board may consider revisions to this Order.

As described in Finding 4 above, upon receipt of a billing statement for costs incurred pursuant to Section 13304 of the Water Code, the discharger shall reimburse the Board.

Pursuant to California Water Code Sections 13304 and 13350, if a discharger fails to comply with the provisions of this Order, the Board may schedule a hearing to consider assessing civil monetary penalties and to consider requesting the Attorney General to take appropriate enforcement action against the discharger, including injunctive and civil monetary remedies.

Lawrence P. Kolb
Acting Executive Officer

Date

California Regional Water Quality Control Board
North Coast Region

CLEANUP AND ABATEMENT ORDER No. R1-2009-0128
(Replaces CLEANUP AND ABATEMENT ORDER No. R1-2009-0023)

And

ORDER REQUIRING TECHNICAL AND/OR MONITORING REPORTS FOR THE
INVESTIGATION OF POLLUTION

For

Harwood Products, Limited Partnership
Arthur H. Harwood and Morris J. Harwood,
General Partners of Harwood Investments Company
Harwood Products, Incorporated
Wells Fargo Bank, N.A

14210 Branscomb Road
Branscomb

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Harwood Products, Limited Partnership, Arthur H. Harwood and Morris J. Harwood, General Partners of Harwood Investments Company, Harwood Products, Incorporated ("Harwood"), operated a sawmill, wood treatment facility and wood waste disposal site at 14210 Branscomb Road, Branscomb, California, between 1950 and 2008. Wells Fargo Bank N.A ("Wells Fargo"), Harwood's lender, was granted a security interest in all of Harwood's assets, both real and personal. Harwood and Wells Fargo are hereinafter referred to as "Dischargers". The property is located in the southeast quarter of Section 22, Township 21 North, Range 16 West, Mount Diablo Baseline and Meridian (Assessors Parcel Numbers 013-910-10, 11, 12, 13, 18, 21 and 013-920-03).
2. Site operations included a teepee burner, planing mill, vehicle maintenance and truck wash area, lumber storage, wood treatment by spray booth and dip tank, petroleum above ground storage tanks, storm water and leachate collection systems, chemical storage, and a wood waste disposal site.

Solid Waste Disposal Site

3. The solid waste disposal site is approximately 27 acres and encompasses a gully which is tributary to the South Fork Eel River. Originally, the owners and operators proposed that a seven acre disposal site would received approximately 28,000

26. The issuance of this cleanup and abatement order is an enforcement action being taken for the protection of the environment and, therefore, is exempt from the provisions of CEQA in accordance with sections 15308 and 15321, title 14 of the California Code of Regulations.
27. Failure to comply with the terms of this Order may result in enforcement under the Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267(b) and 13304, the Dischargers shall cleanup and abate the discharge and threatened discharges forthwith and shall comply with the following provisions of this Order, including the submittal of technical and monitoring reports identified below:

1. The Dischargers shall conduct all work under the direction of a California registered civil engineer or professional geologist experienced in surface water, soil, landfill, and groundwater investigation and remediation. All work plans and technical reports submitted to the Regional Water Board shall be signed and stamped by a licensed professional.
2. The Dischargers shall take no action that causes or permits or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be discharged into waters of the state.
3. The Dischargers shall coordinate investigation and cleanup activities of the surface waters, soils, landfill, and groundwater with Regional Water Board staff, Mendocino County Environmental Health staff, and staff of other regulatory agencies involved in the cleanup of the Site and closure of the waste management unit.
4. The Harwood Branscomb mill historically has discharged sediments in stormwater runoff due to the volume of both raw logs and finished lumber that had filled most of the active portions of the sawmill site. With the absence of these materials as well as the absence of mill machinery, controlling sediments and other pollutants contained in storm water runoff can best be achieved by erosion source control methods. The Dischargers must **immediately** implement practices to control sediments and other pollutants that threaten to discharge to the Eel River in stormwater runoff. These include the following:

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

CLEANUP AND ABATEMENT ORDER NO. R9-2004-0420
FOR

JAMES McCANN
JRMC REAL ESTATE, INC.
JRM HOLDINGS INC
JRM ERTC I, L.P.
Escondido Research and Technology Center
Escondido, San Diego County

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

1. James McCann, JRMC Real Estate, Inc., JRM Holdings Inc., JRM ERTC I, L.P. (hereinafter *dischargers*) owns and operates the Escondido Research and Technology Center (ERTC) construction project, located between Harmony Grove Road and Vineyard within the City of Escondido.
2. Storm water runoff from the ERTC site discharges to the City of Escondido Municipal Separate Storm Sewer System (MS4), which discharges to Escondido Creek less than 1-mile from the project. Discharges of storm water runoff from the construction site are regulated pursuant to State Water Resources Control Board (SWRCB) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity*. The *dischargers* have coverage under Order No. 99-08-DWQ with WDID No. 937C320081 and have a Storm Water Pollution Prevention Plan.
3. The ERTC site is located in the Escondido Creek Hydrologic Area (904.60) of the Carlsbad Hydrologic Unit (904.00) as described in the *Water Quality Control Plan, San Diego Basin (9), 1994* (hereafter Basin Plan). The Basin Plan designates the beneficial uses of Escondido Creek as Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Contact Recreation (REC-1), Non-contact Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD).
4. Escondido Creek is a tributary to San Elijo Lagoon, which is designated by the SWRCB as a Clean Water Act Section 303(d) Impaired Waters for sedimentation/siltation.
5. On February 22, 2003 and October 18, 20, and 27, 2004, the *dischargers* had discharged sediment and sediment-laden water into the City of Escondido MS4, Escondido Creek, and San Elijo Lagoon in violation of Order No. 99-08-DWQ. These discharges have caused or threaten to cause a condition of pollution or nuisance and threaten to impair the beneficial uses of Escondido Creek and San Elijo Lagoon.

6. As of October 1, 2004, the *dischargers* violated Order No. 99-08-DWQ by not implementing Best Management Practices (BMPs) on portions of the site, by implementing inadequate BMPs including spray applied erosion control on other portions of the site, and by not adequately maintaining BMPs designed to control and reduce sediment discharges from the ERTC site during rain events to the Best Available Technology Standard.
7. The *dischargers* have discharged and threaten to continue discharging sediment and sediment-laden water in violation of the Basin Plan's Waste Discharge Prohibitions Nos. 1 and 14 by:
 - a. Discharging waste to waters of the State in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code Section 13050; and
 - b. Discharging sand, silt, clay or other earthen materials in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters.
8. Unless the *dischargers* immediately implement an adequate storm water management plan (including designing, implementing and maintaining adequate BMPs), discharges of sediment and sediment laden water from the site will continue to occur, threatening to cause a condition of pollution and nuisance in Escondido Creek and exacerbating the sediment impairment conditions in San Elijo Lagoon.
9. Water quality monitoring of the storm water runoff is necessary to quantify the volume of sediment loading discharging from the site and to evaluate the effectiveness of the BMPs implemented on the project.
10. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
11. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.
12. **IT IS HEREBY ORDERED** that, pursuant to Section 13304 and 13267 of Division 7 of the California Water Code, James McCann, JRMC Real Estate, Inc., JRM Holdings Inc., JRM ERTC I, L.P. (hereinafter *dischargers*) shall:
 1. Immediately initiate efforts to abate the potential effects of threatened discharges of wastes into Escondido Creek and San Elijo Lagoon and take remedial action to cease discharging waste in violation of Order 99-08-DWQ and the Basin Plan.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2007-0701

FOR

JESSE M. LANGE DISTRIBUTOR INC., A CALIFORNIA CORPORATION

JOHN P. CROWSTON,

AND

REBECCA L. CROWSTON

BUTTE COUNTY

This Cleanup and Abatement Order (hereafter Order) is issued to Jesse M. Lange Distributor Inc., a California Corporation, John P. Crowston, and Rebecca L. Crowston, hereafter Dischargers, based on provisions of California Water Code Section 13304, which authorizes the Regional Water Quality Control Board, Central Valley (Regional Water Board) to issue an Order, and Water Code section 13267, which authorizes the Regional Water Board to require preparation and submittal of technical and monitoring reports.

The Regional Water Board finds, with respect to the Dischargers' acts or failure to act, the following:

INTRODUCTION

1. Jesse M. Lange Distributor Inc., a California Corporation (hereafter Lange Distributor) is current fee title owner of Butte County Assessors' Parcel Number 040-320-013, 1.41 acres, Chico, Butte County, Section 1, T21N, R1E, MDB&M. On the parcel, John P. Crowston and Rebecca L. Crowston co-own and operate the corporation at 11226 Midway. William Crowston previously owned and operated the corporation. Lange Distributor is a petroleum fuel retailer and convenience store, but was formerly a bulk fuel supplier.
2. The Regional Water Board Executive Officer issued Cleanup and Abatement Order No. 99-709 (hereafter 1999 CAO) and Amended Cleanup and Abatement Order No. 99-709 (hereafter Amended 1999 CAO) to Jesse M. Lange Distributing, Inc. Lange Distributor has partially cleaned up free phase gasoline and dissolved petroleum constituents from the parcel in response to those Orders.
3. The discharge has migrated off-site into land owned by the City of Chico, Pacific Gas and Electric Company (hereafter PG&E), former North Valley Iron (hereafter NVI), former Western Petroleum Marketers, Inc., and Kinder Morgan Energy Partners, SFPP, L.P. See Attachment 1, a map of pollution in shallow groundwater. The extent of waste discharged to deeper groundwater is not fully defined.

DISCHARGER LIABILITY

36. As described in Findings 9 through 11, the Dischargers are subject to an order pursuant to Water Code section 13304 because the Dischargers have caused or permitted waste to be discharged or deposited where it has discharged to waters of the state and has created, and continues to threaten to create, a condition of pollution or nuisance. The condition of pollution is a priority violation and issuance or adoption of a cleanup or abatement order pursuant to Water Code Section 13304 is appropriate and consistent with policies of the Water Board
37. This Order requires investigation and cleanup of the site in compliance with the Water Code, the applicable Basin Plan, Resolution 92-49, and other applicable plans, policies, and regulations.
38. As described in Findings 12 through 17, the Dischargers are subject to an order pursuant to Water Code section 13267 to submit technical reports because existing data and information about the site indicate that waste has been discharged, is discharging, or is suspected of discharging, at the property, which is or was owned and/or operated by the Dischargers named in this Order. The technical reports required by this Order are necessary to assure compliance with Section 13304 of the California Water Code, including to adequately investigate and cleanup the site to protect the beneficial uses of waters of the state, to protect against nuisance, and to protect human health and the environment.
39. If the Dischargers fail to comply with this Order, the Executive Officer may request the Attorney General to petition the superior court for the issuance of an injunction.
40. If the Dischargers violate this Order, the Dischargers may be liable civilly in a monetary amount provided by the Water Code.
41. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), pursuant to Title 14 CCR Section 15321(a)(2). The implementation of this Order is also an action to assure the restoration of the environment and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), in accordance with Title 14 CCR, Sections 15308 and 15330.
42. Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Title 23 CCR Sections 2050-2068. The regulations may be provided upon request and are available at www.swrcb.ca.gov. The State Board must receive the petition within 30 days of the date of this Order.

State of California

California Regional Water Quality Control Board
Santa Ana Region

Cleanup and Abatement Order No. R8-2008-0095
For
Lake Elsinore Realty #2, LLC

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter, Regional Board) finds that:

BACKGROUND

- 1) On April 28, 2008, Lake Elsinore Realty #2, LLC (hereinafter, the discharger) submitted an application for an after-the-fact Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for discharges of fill to an ephemeral drainage channel located at 32371 Corydon Road in the City of Lake Elsinore.
- 2) On December 11, 2007, U.S. Army Corps of Engineers ("Corps") staff contacted the discharger's representatives by telephone, alleging that activities occurring at 32371 Corydon Road were resulting in the discharge of fill to waters of the U.S. Corps staff directed the discharger to obtain an after-the-fact permit from the Corps.
- 3) On May 19, 2006, the Corps issued a Cease and Desist Order ("CDO") to the discharger. The CDO indicates that the discharges cited occurred at 32371 Corydon Road in early 2006. According to the Corps' CDO, fill was discharged to seasonal pools and wetlands in the Back Basin area adjacent to Lake Elsinore.
- 4) Regional Board records indicate that in late 2006, Elsinore Realty #1, LLC obtained coverage under State Board Order No. 99-08-DWQ, General Waste Discharge Requirements for Discharges of Storm Water Associated with Construction Activities, for the construction of Corydon Industrial, 32543 Corydon Road. The addresses 32371 and 32543 Corydon are both located at the Corydon Industrial site, which currently consists of two industrial buildings and one vacant parcel.
- 5) Prior to construction of Corydon Industrial, a drainage channel conveyed storm water runoff across and through the site from a culvert under Corydon Road. Corps staff believes that this channel supplied water to a seasonal pool and wetland immediately to the northwest of Corydon Industrial, in the Lake Elsinore Back Basin area.

AUTHORITY – LEGAL REQUIREMENTS

- 10) California Water Code Section 13376 requires, in part, that, "Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state or any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge."
- 11) Furthermore, CWC Section 13376 states, in part, "The discharge of pollutants or dredged or fill material or the operation of a publicly owned treatment works or other treatment works treating domestic sewage by any person except as authorized by waste discharge requirements or dredged or fill material permits is prohibited."
- 12) Clean Water Act Section 401 requires, in part, "Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State."
- 13) CWC Section 13304(a) states, in part, "Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste."
- 14) This enforcement action is being undertaken by a regulatory agency to enforce a water quality law. Such action is categorically exempt from provisions of the California Environmental Quality Act (CEQA) according to CEQA Guidelines Section 15321 in Article 19, Division 3, Title 14 of the California Code of Regulations.

of the discharges on the adjacent property at this time. The purpose of describing the adjacent seasonal pool is to relate the potential for discharges of fill at Corydon Industrial to impact the existing or potential beneficial uses of the seasonal pool.

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

CLEANUP AND ABATEMENT ORDER NO. R9-2005-0017

BULEN FAMILY TRUST

**LOVETT'S ONE HOUR DRY CLEANERS
1378 EAST GRAND AVENUE
ESCONDIDO, CALIFORNIA
SAN DIEGO COUNTY**

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

JURISDICTION

1. **DISCHARGE OF SOLVENT WASTE.** From 1973 until the present, a dry cleaner facility, currently doing business as Lovett's One Hour Dry Cleaners, has operated at 1378 East Grand Avenue in Escondido, California (Site) on land leased from the Bulen Family Trust. Historically, previous operators of the dry cleaning facility (collectively referred to as Lovett's) caused or permitted waste from its dry cleaning operations, including tetrachloroethylene (PCE) and trichloroethylene (TCE), to be discharged to ground water underlying the Site and to be deposited in soil at the Site from which waste has been and probably will be discharged to ground water. Waste from Lovett's Dry Cleaning operations has caused and threatens to cause conditions of pollution, contamination, and nuisance by exceeding applicable water quality objectives for chlorinated solvent chemical waste constituents.
2. **PERSONS RESPONSIBLE.** Mr. Khosrou Tahbaz currently operates Lovetts and has since 1999. Evidence shows that the release occurred prior to 1999. Unidentified persons who were operators of the dry cleaning facility prior to 1999 may also be associated with the discharge. The Bulen Family Trust has been the fee title owner of the Site since 1963 and leased the Site to Mr. Tahbaz and other dry cleaning operators. The Bulen Family Trust is referred to as "Discharger" in this Cleanup and Abatement Order.

SOLVENT WASTE DISCHARGES

3. **WASTE DISCHARGES.** Dry cleaning operations at the Site include the use of Tetrachloroethylene (PCE) and Trichloroethylene (TCE) as solvents in the dry cleaning process. Site investigations have found elevated PCE and TCE concentrations in soil at 55,000 ug/kg (PCE) at 14 feet below ground surface (bgs) and 260,000 ug/kg (TCE) at 2 feet bgs. Site investigations have also found TCE, PCE, and their associated chemical breakdown products, *cis*-1,2-dichloroethylene (*c*-DCE), *trans*-1,2-dichloroethylene (*t*-DCE) in ground water underlying the Site in concentrations in excess of applicable *Water Quality Control Plan for the San Diego Basin* (Basin Plan) water quality objectives. Chlorinated solvent waste concentrations remain elevated at the Site because to date no cleanup or abatement actions have been undertaken by the Discharger(s).
4. **BASIN PLAN PROHIBITION VIOLATION:** The discharge of chlorinated solvent waste constituents from the Lovett's Dry Cleaners is a violation of Waste Discharge

Prohibition No. 1 of the Water Quality Control Plan for the San Diego Region (9) (Basin Plan). Prohibition No. 1 states "The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050, is prohibited."

5. **SITE INVESTIGATION.** The Discharger(s) have failed to complete site investigations needed to delineate the vertical and horizontal extent of waste from dry cleaning operations in soil and ground water. The Discharger must establish the vertical and horizontal extent of chlorinated solvent waste (PCE, TCE & their degradation products) and any other waste constituents with sufficient detail to identify affected or threatened waters of the state and provide the basis for decisions regarding subsequent cleanup and abatement actions, if any are determined by the Regional Board to be necessary.
6. **CLEANUP AND ABATEMENT ACTIONS.** Efforts to assess the impacts to soil and ground water from this release of waste occurred between 1998 and 2004 and included drilling 18 soil borings and installing 5 ground water monitoring wells. Soil vapor samples were also collected. Soil containing chlorinated solvent waste has not been removed from the Site and no treatment of ground water to reduce in situ dissolved concentrations of chlorinated solvent waste has occurred.

STATUTORY AND REGULATORY FINDINGS

7. **LEGAL AND REGULATORY AUTHORITY.** This Cleanup and Abatement Order is based on (1) Section 13267 and Chapter 5, Enforcement and Implementation commencing with Section 13300 of the Porter-Cologne Water Quality Control Act (Division 7 of the Water Code, commencing with Section 13000); (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board and the *Water Quality Control Plan for the San Diego Basin* (Basin Plan) adopted by the Regional Board including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board policies, including State Water Board Resolution No. 68-16 (*Statement of Policy with Respect to Maintaining High Quality of Waters in California*) and Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies.
8. **CEQA EXEMPTION.** This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.

ORDER DIRECTIVES

IT IS HEREBY ORDERED, pursuant to Sections 13267 and 13304 of the California Water Code, The Bulen Family Trust (hereinafter the "Discharger") shall comply with the following Directives:

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

CLEANUP AND ABATEMENT ORDER NO. R9-2007-0226

**FOR
NORTH COUNTY TRANSIT DISTRICT**

**SPRINTER RAIL PROJECT
ALONG THE RAIL CORRIDOR FROM
OCEANSIDE, CA TO ESCONDIDO, CA**

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

1. The North County Transit District (NCTD) owns and operates the Sprinter Rail construction project (hereinafter project), located along 22 miles of the rail corridor and adjacent staging areas within the Cities of Oceanside, Vista, San Marcos, and Escondido, and within the County of San Diego. The project's total disturbed acreage is approximately 280 acres.
2. Storm water runoff from the project discharges directly into waters of the State and to the Municipal Separate Storm Sewer System (MS4) ultimately discharging to Loma Alta Creek, Buena Vista Creek, Buena Creek, San Marcos Creek, Escondido Creek and unnamed tributaries thereto. Downstream receiving waters include, but are not limited to, Loma Alta Slough, Buena Vista Lagoon, Lake San Marcos, Agua Hedionda Lagoon, and the Pacific Ocean.
3. Discharges of storm water runoff from the construction site are regulated pursuant to State Water Resources Control Board (State Board) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity* (hereinafter referred to as the Stormwater Permit). NCTD enrolled in the Stormwater Permit on August 7, 2003 with a Storm Water Pollution Prevention Plan. The State Board assigned the project Waste Discharge Identification number 9 37C322900.
4. The *Water Quality Control Plan, San Diego Basin (9), 1994* designates the following potential and designated beneficial uses for the project's receiving waters:
 - a. Pacific Ocean Coastal Waters: Industrial Process Supply (IND), Navigation (NAV), Contact Water Recreation (REC1), Non-Contact Water Recreation (REC2), Commercial and Sport Fishing (COMM),

oversee cleanup of such waste, abatement of the affects thereof, or other remedial actions required by the Order.

11. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Action (CEQA) (Public Resources Code, Section 210000 et seq.) in accordance with section 15108, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED THAT, PURSUANT TO SECTIONS 13304 AND 13267 OF THE CALIFORNIA WATER CODE, North County Transit District (NCTD), shall forthwith initiate efforts to cleanup or abate the potential effects of threatened discharges of wastes. The following actions shall constitute the minimum necessary to abate the effects of the discharge:

1. Implement forthwith, in compliance with all requirements of the State Board Construction Storm Water Permit No. 99-08-DWQ, the following:
 - a. An effective and appropriate combination of sediment and erosion controls on all disturbed areas;
 - b. Specific BMPs to prevent the discharge of sediment and sediment-laden water to the MS4 and waters of the State.
 - c. Specific measures to prevent pollution, erosion and sediment transport from off-site runoff flowing through construction areas and storage yards.
 - d. A comprehensive maintenance program to ensure continued BMP effectiveness.
2. NCTD shall certify full compliance with the Stormwater Permit requirements in accordance with the SWPPP. Demonstration of compliance shall be by a 'third party or independent' registered professional with expertise in erosion control techniques, and shall be signed under penalty of perjury by the named certified professional with registration number properly affixed. Until full compliance is achieved, NCTD shall submit a series of status reports describing steps that have been taken, steps that will be taken to achieve compliance and a prioritized schedule to achieve compliance with the Stormwater Permit. The first status report will be due 30 days from issuance of this CAO and subsequent reports submitted every 15 days thereafter.
3. In addition to the post-construction BMPs outlined in the revised Final Water Quality Plan submitted November 14, 2006 to the Regional Board, by January 31, 2008, NCTD shall submit to the Regional Board a plan to abate the existing and threatened pollution associated with the unauthorized discharges along the project's right of way as well as areas

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION
895 Aerovista Place, Suite 101
San Luis Obispo, California 93401-7906
CLEANUP OR ABATEMENT ORDER NO. R3-2005-0014**

Issued to

**Olin Corporation and Standard Fusee Corporation
425 Tennant Avenue, Morgan Hill
Santa Clara County**

The California Regional Water Quality Control Board, Central Coast Region (Regional Board) finds:

1. Olin Corporation and Standard Fusee Corporation (Dischargers), discharged or permitted the discharge of potassium perchlorate to waters of the state from a manufacturing facility located at 425 Tennant Avenue, Morgan Hill (Site), as shown on **Figure 1**. The Site is located approximately 30 miles southeast of San Jose and 0.5 miles west of Highway 101 in the City of Morgan Hill. The Site is in Santa Clara Valley, and is surrounded primarily by commercial property. Rural Residential, Agricultural and Urban land uses exist beyond and downgradient of the Site.
2. The Site is owned by Olin Corporation and consists of a 13-acre parcel located in southern Morgan Hill. The property is zoned light industrial with Assessor Parcel Number 817-029-028. Olin Corporation manufactured signal flares at the Site for about 32 years from 1956 to 1988. Standard Fusee Corporation leased the Site and manufactured signal flares for approximately seven years, from 1988 to 1995. Potassium perchlorate was used by the Dischargers to manufacture flares from 1956 to 1995. The Dischargers stored and used potassium perchlorate, strontium nitrate, chlorate, and other chemicals at the Site as ingredients of highway safety flares. Perchlorate contamination is suspected to originate from the Dischargers' use of an unlined evaporation pond to dispose of wastes from the cleaning of the ignition material mixing bowls, on-site burning of cardboard flare coatings, and accidental spills.
3. Olin Corporation was the sole property owner from at least 1956 to the present, had knowledge of the activities that resulted in the discharge and the legal ability to control the property and prevent the discharge. Both Olin Corporation and Standard Fusee Corporation, conducted activities that caused waste to be discharged or deposited where it was discharged into waters of the state and where it has created and threatens to create a condition of pollution or nuisance. If additional information is submitted that indicates other parties caused or permitted any perchlorate containing waste to be discharged into waters of the state in a manner that contributed to the perchlorate plume that resulted from the Dischargers' activities at the Site, the Regional Board will consider adding them to this Order. The results of investigations, described in **Findings 25 & 28** below, have confirmed the presence of chemicals used by the Dischargers in onsite soil and underlying groundwater.

has interfered with the municipal and domestic use by thousands of people of the affected groundwater, who use both private and public supply wells and occurred during, or as a result of, the disposal of perchlorate-containing waste. The plume constitutes both pollution and nuisance.

37. Notification

The Regional Board has notified the Dischargers and all interested agencies and persons of its intent pursuant to California Water Code Section 13304 to prescribe this Cleanup and Abatement Order to the Dischargers. The Regional Board has made every reasonable attempt to notify these individuals and has provided them with an opportunity to submit their written views and recommendations.

38. California Environmental Quality Act

This enforcement action is being taken for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et seq.) in accordance with Sections 15307 and 15308, Chapter 3, Title 14, California Code of Regulations. The issuance of this Order is also an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq.), pursuant to Section 15321(a)(2), Title 14, CCR.

39. Cost Recovery

Pursuant to Section 13304 of the California Water Code, the Regional Board is entitled to, and may seek, reimbursement for all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of wastes or to oversee cleanup of such waste, abatement of the effect thereof, or other remedial action pursuant to this Order.

40. Reporting

Section 13267(b)(1) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

As described in this Order, existing data and information about the Site indicates that waste has been discharged or is discharging from the facilities described above, which facilities are owned or operated, or formerly owned or operated by the Dischargers named in this Order. This Order requires monitoring, work plans and reports pursuant to Water Code Section 13267.

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

CLEANUP AND ABATEMENT ORDER NO. R9-2005-0259

FOR

**PALMILLA, LLC
41975 WINCHESTER ROAD
TEMECULA, CA 92590**

AND

**DENDY REAL ESTATE AND INVESTMENT COMPANY, INC.
27368 VIA INDUSTRIA, SUITE 105
TEMECULA, CA 92590**

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

1. Palmilla, LLC owns a 14-acre parcel located in the County of Riverside, within the municipality of Murrieta. The site is located at the northwest corner of Jackson Avenue and Nutmeg Street (APN 949-020-037), within the incorporated boundaries of the City of Murrieta (Conditional Use Permit No. 02-401). The site is located in the Murrieta Hydrologic Area (902.30) of the Santa Margarita Hydrologic Unit (902) as described in the "Water Quality Control Plan, San Diego Basin (9)" (hereinafter Basin Plan).
2. An unnamed creek and unnamed tributary are identified on the parcel described in Finding No. 1 in biological surveys conducted on the parcel in 2000 by TeraCor Resource Management (*Presence/Absence Report for the Quino Checkerspot Butterfly, June 2000* and *Presence/Absence Report for the Coastal California Gnatcatcher, November 2000*) and in the *Borrow Site Grading Plan* submitted to the State Water Resources Control Board with a Notice of Intent (dated May 24, 2000) for coverage under the Statewide General Construction NPDES stormwater permit (Order No. 99-08-DWQ). The Basin Plan has established the following designated beneficial uses for this inland surface water: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PROC), Ground Water Recharge (GWR), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and the following potential beneficial use: Contact Water Recreation (REC-1).

9. On June 10, 2004 supplemental information provided to support the application for Section 401 Water Quality Certification for the proposed project revised the estimated impacted drainage length on site to 1,045 linear feet (0.05 acre).
10. On June 23, 2004, pursuant to 23 CCR § 3836(b) and (c), the application for Section 401 Water Quality Certification for the proposed project was denied without prejudice for lack of supplying supplemental information that had been requested and for lack of a final CEQA documentation.
11. On April 6, 2005 the Regional Board inquired by email correspondence to Dendy Real Estate & Investment Company, Inc., and its agents regarding the status of the proposed project and a timeline for providing supplemental information and completing proposed mitigation.
12. On August 8, 2005 the Regional Board notified by email correspondence to Dendy Real Estate & Investment Company, Inc. and its agent that no project revision submittals had been provided since September 7, 2004, and that the Regional Board would consider the existing section 401 application as effectively expired on September 15, 2005 unless project deficiencies had been satisfactorily addressed. No response has been received to date.
13. The State Water Resources Control Board has notified Palmilla, LLC that it is delinquent in submitting annual fees related to the General Construction NPDES Storm Water requirements for the subject site (WDID no. 9 33C31307, invoice no. 0432118 dated April 7, 2005).
14. An active restoration effort is needed to restore water quality functions and beneficial uses and to protect the unnamed creek and its tributary from long-term, adverse consequences of the discharge and related earth-moving and vegetation clearing activities on the parcel described in Finding No. 1.
15. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
16. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.

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

**CLEANUP AND ABATEMENT ORDER NO. R9-2003-0158
FOR**

**PIONEER BUILDERS INC.
C/O PACIFIC ENVIRONMENTAL PLANNING
33862 BARCELONA PLACE
DANA POINT, CALIFORNIA 92629**

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

1. Pioneer Builders Inc. owns a 2-acre parcel located in the County of Orange, within the municipality of Dana Point. The site is located on the north side of Camino Capistrano, between Paseo Pinzon and Calle Anejo, at 35262 and 35272 Camino Capistrano (Tentative Tract Map No. 16197). The site is located in the San Clemente Hydrologic Area (901.30) of the San Juan Hydrologic Unit (901) as described in the "Water Quality Control Plan, San Diego Basin (9)" (hereinafter Basin Plan).
2. An unnamed creek runs through the southern portion of the parcel described in Finding No. 1. The Basin Plan has established the following designated beneficial uses for this inland surface water: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and the following potential beneficial use: Contact Water Recreation (REC-1).
3. On or before January 24, 2003, Pioneer Builders Inc. caused and/or permitted the clearing of vegetation, grading and the discharge of fill into the unnamed creek. These activities have obstructed the surface flow and eliminated the ability of the creek to support water quality functions impacting beneficial uses in violation of Waste Discharge Prohibition No. 1 of the Basin Plan.
4. On or before January 24, 2003, Pioneer Builders Inc. caused and/or permitted the discharge of pollutants and/or fill to waters of the United States without authorization of an NPDES permit or a dredged or fill material permit (subject to the exemption described in California Water Code Section 13376) in violation of Waste Discharge Prohibition No. 3 of the Basin Plan.
5. On or before January 24, 2003, Pioneer Builders Inc. caused and/or permitted the clearing of vegetation, grading, and stockpiling of material near the unnamed creek in a manner that caused or threatened to cause a condition of pollution or nuisance.

California Environmental Protection Agency

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6. Pioneer Builders Inc. failed to file a report of waste discharge and 401 Water Quality Certification application with the Regional Board prior the discharge of wastes/pollutants to waters of the United States/waters of the state in violation of California Water Code Section 13376. Section 13376 states in part that any person discharging pollutants or fill material to navigable waters of the United States shall file a report of the discharge in compliance with Section 13260 requirements. Section 13260 requires that any person discharging waste that could affect the quality of waters of the state shall file a report of the discharge.
7. Between January 22 and March 24, 2003 Pioneer Builders Inc. conducted soil disturbance activities in excess of one acre at the site without obtaining coverage under the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ in violation of California Water Code Section 13376.
8. At some time between January 24, 2003, and March 24, 2003, Pioneer Builders Inc. caused and/or permitted the discharge of sediment laden storm water directly into the municipal separate storm sewer system and subsequently to downstream receiving waters in violation of Waste Discharge Prohibition No. 8 of the Basin Plan.
9. An active restoration effort is needed to protect the unnamed creek from long-term, adverse consequences of the discharge and cleanup activities, and to restore water quality functions and beneficial uses.
10. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
11. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED that, pursuant to Section 13304 and Section 13267 of Division 7 of the California Water Code:

1. Pioneer Builders Inc. shall forthwith initiate efforts to cleanup and abate the effects of the unauthorized discharge of waste to waters of the state by removing the waste material and restoring the beneficial uses of the waters of the State on the site (property at 35262 and 35272 Camino Capistrano, Tentative Tract Map No. 16197).
2. By August 15, 2003, Pioneer Builders Inc. shall have completed on-site restoration of the beneficial uses of the unnamed creek.

California Regional Water Quality Control Board
North Coast Region

CLEANUP AND ABATEMENT ORDER No. R1-2009-0044

For

Redwood Empire Cleaners
Ms. Mildred Sanchez

69 West Mendocino Avenue
Willits, California

Mendocino County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. Redwood Empire Cleaners (Site) is located at 69 West Mendocino Avenue, in Willits, assessor's parcel number 005-2247-04. Ms. Mildred Sanchez is the current property owner, the former owner and operator of Redwood Empire Cleaners. Ms. Sanchez purchased the Site in 1949. Redwood Empire Cleaners was in operation from 1949 through 2004. Operations included the use of tetrachloroethene (PCE).
2. In 2004, PCE and associated breakdown products and other volatile organic compounds were identified in monitoring wells associated with a cleanup site known as Hathaway Property, Regional Water Board Case No. 1TMC537, located at 150 South Main Street, in Willits. A groundwater investigation was conducted at the Hathaway Property related to a discharge from a heating oil tank, and is not considered a source of the PCE contamination. A No Further Action letter was issued for the Hathaway Property site on August 3, 2005.
3. Redwood Empire Cleaners is located within 500 feet of the impacted monitoring wells on the Hathaway Property site. On May 11, 2005 a 13267 Order was issued to Ms. Sanchez requiring submittal of a workplan to conduct a preliminary site investigation to determine if Redwood Empire Cleaners is a source of the PCE contamination identified off-site. The workplan was submitted to the Regional Water Board on March 21, 2008.
4. In June 2008, a preliminary investigation was conducted at the Site, including the collection of soil gas, soil and groundwater samples. PCE was reported in soil gas up to 1,200,000 $\mu\text{g}/\text{m}^3$, PCE in soil up to 191 parts per million (ppm), and PCE in groundwater up to 3,000 part per billion (ppb). Other volatile organic compounds were also detected in soil gas, soil and groundwater during the June 2008 investigation.
5. The chemical PCE is a human carcinogen, and is listed by the State of California, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, as a chemical known to the State to cause cancer. PCE degrades to trichloroethene

California Environmental Quality Act (Public Resources Code, section 21000 et seq.) ("CEQA").

16. The issuance of this Cleanup and Abatement Order is an enforcement action being taken for the protection of the environment and, therefore, is exempt from the provisions of CEQA in accordance with title 14, California Code of Regulations, sections 15308 and 15321.
17. Reasonable costs incurred by Regional Water Board staff in overseeing cleanup or abatement activities are reimbursable under Water Code section 13304 (c) (1).
18. Any person affected by this action of the Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If the Dischargers choose to appeal the Order, the Dischargers are advised that they must comply with the Order while the appeal is being considered. The appeals process is enclosed as Attachment B.
19. This Order in no way limits the authority of the Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the facility consistent with the Water Code. This Order may be revised by the Regional Water Board Executive Officer as additional information becomes available.
20. Failure to comply with the terms of this Order may result in enforcement under the Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code Sections 13267 and 13304, the Dischargers shall cleanup and abate the discharge and threatened discharge forthwith and shall comply with the following provisions of this Order:

- A. All work shall be conducted in accordance with all applicable local ordinances and under the direction of a California Professional Geologist or Civil Engineer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION

CLEANUP AND ABATEMENT ORDER NO. 01-104
AGAINST

RIVERSIDE COUNTY WASTE MANAGEMENT DEPARTMENT, OPERATOR
UNITED STATES DEPARTMENT OF INTERIOR – BUREAU OF LAND MANAGEMENT, OWNER
DESERT CENTER SANITARY LANDFILL
CLASS III LANDFILL
North Desert Center – Riverside County

The Executive Officer of the California Regional Water Quality Control Board, Colorado River Basin Region, finds that:

1. Riverside County Waste Management Department, (hereinafter referred to as the discharger), 1995 Market St., Riverside, California 92501-1719, operates the Desert Center Sanitary Landfill (hereinafter referred to as the Landfill) located north of Desert Center in Riverside County.
2. The land that the Landfill is located on, is owned by the United States Department of Interior, with administration by the Bureau of Land Management (hereinafter also referred to as the discharger) 6221 Box Springs Boulevard, California 92505
3. The Landfill is located four miles north of Desert Center and 1/4 mile west of Kaiser Road. It lies within the east 1/2 of the southeast 1/4 of Section 33 and the west 1/2 of the southwest 1/4 of Section 34, T4S, R15E, SBB&M.
4. The Landfill is located on a 162-acre parcel of land. Landfilling occurs on seven acres.
5. The Landfill is unlined, and does not have a leachate collection and removal system.
6. The Landfill started accepting waste in 1972. In 1975, the Landfill became subject to Waste Discharge Requirements (WDRs) under Board Order No. 75-065. The WDRs were updated and superseded by Board Order No. 83-072. On September 15, 1993, the WDRs were amended when Board Order No. 93-071, amending all Municipal Solid Waste Landfill Board Orders to comply with Federal Regulations, was adopted by the Regional Board. On September 17, 1998, The WDRs were again updated by Board Order 98-002.
7. The Landfill presently accepts about 3.5 tons-per-day of Class III non-hazardous solid waste from the communities of Eagle Mountain, Desert Center, and Lake Tamarisk. The wastes received at the Landfill are:
 - a. Residential
 - b. Mixed Municipal
 - c. Agricultural
 - d. Construction/demolition
 - e. Tires
 - f. Dead Animals
8. The total capacity of the Landfill, including refuse and cover material is 409,612 cubic yards, (yd³). The remaining capacity of the Landfill as of January 5, 2000 is approximately 135,243 yd³, and the net remaining capacity is 19,320 tons.
9. The discharger submitted a final Solid Waste Assessment Test (SWAT) report on December 13, 1990. During the SWAT investigation, the discharger installed three ground water monitoring wells, along with three vadose zone soil borings. Monitoring well EMW-1 is constructed upgradient, and monitoring wells EMW-2 and EMW-3 are constructed downgradient of the Landfill.

21. Pursuant to Section 13304 of the California Water Code, the dischargers are hereby notified that the Board is entitled to, and may seek, reimbursement for all reasonable costs actually incurred by the Board to investigate unauthorized discharges of waste to water, and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this Cleanup and Abatement Order. The dischargers shall reimburse the Regional Board upon receipt of a billing statement for these costs.
22. Riverside County has caused or permitted the discharge of waste or wastewater from the unlined Landfill to the waters of the State and has created a condition of pollution.
23. This enforcement action is being taken for the protection of the environment and is therefore exempt from the California Environmental Quality Act pursuant to Section 15321, Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, that pursuant to Sections 13304 and 13267 of Division 7 of the California Water Code, the dischargers, their agents or assigns shall prepare technical reports and shall cleanup or abate the effect of the release of hazardous constituents described in Findings No. 12, 13 and 14 of this Cleanup and Abatement Order by complying with the following:

1. By June 15, 2001, submit an amended Report of Waste Discharge (ROWD), establishing an Evaluation Monitoring Program (EMP). The dischargers in the amended ROWD shall:
 - a. Propose changes in the water quality monitoring system.
 - b. Include a detailed description of measures to be taken for assessing the nature and extent of the release.
 - c. Propose changes in ground water monitoring frequency.
2. By December 31, 2002, submit a report of findings from the EMP about the completion of field activities and results of laboratory analyses. The report shall:
 - a. Fully delineate the vertical and lateral extent of the release to soil and ground water.
 - b. Characterize the site hydrology such that an adequate assessment of contaminant migration pathways can be made.
3. By January 31, 2003, complete and submit an Engineering Feasibility Study (EFS) report for the Corrective Action Program.
4. By June 30, 2003, submit a progress report to the Regional Board's Executive Officer that details the progress being made toward the submittal of final corrective action recommendation.
5. By December 31, 2003, submit a final recommendation for establishing a Corrective Action Program (CAP). Additional field or laboratory work required, including additional test borings, test wells, aquifer hydraulic testing, and laboratory analysis will be part of this submittal.
6. By June 30, 2004, submit to the Regional Board's Executive Officer a progress report indicating progress made toward the implementation of the Corrective Action Program.
7. By July 30, 2004, implement the Corrective Action Program to remediate all soil and groundwater pollution. Cleanup efforts shall continue until such time as the Regional Board's Executive Officer considers the site to be remediated to the fullest possible extent, based on the available technology.

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

**CLEANUP AND ABATEMENT ORDER NO. R9-2005-0044
FOR**

**ROBERT HENNINGER
FLORIDA SOUTH CHASE L.P.
Morro Hills Villages and Golf Course
Oceanside, San Diego County**

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

1. Robert Henninger, Florida Southchase L.P. (hereinafter *dischargers*) owns and operates the Morro Hills Villages and Golf course construction project. The dischargers are responsible for 305.7-acres of the 422-acre master planned community, located at the intersection of Douglas Drive and Vandegrift Blvd. In the City of Oceanside.
2. Storm water runoff from the Morro Hills Villages and Golf Course site discharges to the City of Oceanside's Municipal Separate Storm Sewer System (MS4) and discharges to Pilgrim Creek, a tributary to the San Luis Rey River. Discharges of storm water runoff from the construction site are regulated pursuant to State Water Resources Control Board (SWRCB) Order No. 99-08-DWQ, *National Pollutant Discharge Elimination System No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity*. The *dischargers* have coverage under Order No. 99-08-DWQ, were assigned WDID No. 937C320478 and have a Storm Water Pollution Prevention Plan.
3. The Morro Hills Villages and Golf Course project has coverage under California Regional Water Quality Control Board, San Diego Region (SDRWQCB) Order No. 2001-184, *Waste Discharge Requirements and Section 401 Water Quality Certification for the Richland Calabasas, L.P. Morro Hills Villages and Golf Course Project, San Diego County*.
4. The Morro Hills Villages and Golf Course site is located in the Mission Hydrologic Subarea (903.11) of the San Luis Rey Hydrologic Unit (903.00) as described in the *Water Quality Control Plan, San Diego Basin (9), 1994* (hereafter Basin Plan). The Basin Plan designates the beneficial uses of Pilgrim Creek and its tributaries as Agricultural Supply (AGR), Industrial Service Supply (IND), Contact Recreation (REC-1), Non-contact Recreation (REC-2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE).
5. On November 16, 2004, December 31, 2004, and January 4, and 12, 2005, the *dischargers* had discharged sediment and sediment-laden water into the City of Oceanside's MS4 and Pilgrim Creek, in violation of Order No. 99-08-DWQ. These

discharges have caused or threaten to cause a condition of pollution or nuisance and threaten to impair the beneficial uses of Pilgrim Creek and the San Luis Rey River.

6. As of November 16, 2004, the *dischargers* violated Order No. 99-08-DWQ by not implementing adequate erosion and sediment control Best Management Practices (BMPs) on areas under active construction, which resulted in the multiple discharges of sediment laden water to the City of Oceanside's MS4. Areas under active construction lacked any erosion control BMPs on finished slopes, and sediment control basins (with the exception of Village K basin) lacked the proper design and capacity to capture and treat the volume of runoff generated from prior significant storm events, which resulted in the discharge of sediment laden water off-site and eventually into the City of Oceanside's MS4 and Pilgrim Creek on multiple occasions.
7. The *dischargers* have discharged and threaten to continue discharging sediment and sediment-laden water in violation of the Basin Plan's Waste Discharge Prohibitions No. 1 and Order No. 2001-184 Prohibition A.1 by discharging waste to waters of the State in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in California Water Code Section 13050.
8. The *dischargers* have discharged and threaten to continue discharging sediment and sediment laden water in violation of the Basin Plan's Waste Discharge Prohibitions No. 14 by discharging sand, silt, clay or other earthen materials in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters.
9. Unless the *dischargers* immediately implement an adequate storm water management plan (including designing, implementing and maintaining adequate BMPs), discharges of sediment and sediment laden water from the site will continue to occur, threatening to cause a condition of pollution and nuisance in Pilgrim Creek and the San Luis Rey River.
10. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
11. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED that, pursuant to Section 13304 and 13267 of Division 7 of the California Water Code, Mike Bingham, Fieldstone Communities Inc. (hereinafter *dischargers*) shall:

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. R5-2007-0731

FOR
RONALD AND BETTY LOGAN
AND
NORTH CONTINENT LAND AND TIMBER, INC
NEW ERA MINE
BUTTE COUNTY

This Order is issued to Ronald and Betty Logan and North Continent Land and Timber, Inc., owners and operator, respectively, of the New Era Mine in Butte County based on provisions of California Water Code Section 13304, which authorizes the Regional Water Quality Control Board, Central Valley Region (Regional Water Board) to issue a Cleanup and Abatement Order (Order) and on California Water Code Section 13267, which authorizes the Regional Water Board to require the submittal of technical and monitoring reports.

The Executive Officer of the Regional Board, finds that:

1. Ronald and Betty Logan, 4095 Dry Creek Road, Oroville, California, 95965 own the New Era Mine (Assessor Parcel Number 041-080-027) approximately 10 miles north of Oroville. The mine is operated by North Continent Land and Timber, Inc., 4950 Cohasset Road, Suite 10, Chico, CA 95973. Ronald and Betty Logan, and North Continent Land and Timber, Inc are designated hereafter as Dischargers. The mine comprises approximately 18 acres adjacent to Dry Creek, Butte County in Section 1, T21N, R3E MDB&M. Runoff from the mine drains to Dry Creek, a tributary to Butte Creek and the Sacramento River.
2. On 2 August 2007, Regional Water Board staff, responding to a complaint, inspected the mine and found significant land clearing activities being conducted as part of the mining operation that exposed large areas of bare soil to erosion, with the threatened discharge of waste to Dry Creek which runs immediately adjacent to the cleared area.
3. Regional Water Board staff notified the mine operator of the need for proper erosion and sediment control measures, the high potential for the discharge of sediment to Dry Creek and the requirement that the Dischargers obtain a General Industrial Storm Water Permit (General Permit) and develop a site specific Storm Water Pollution Prevention Plan (SWPPP). The operator submitted a SWPPP to Regional Water Board staff on 13 September 2007 and their Notice of Intent to Comply with the General Industrial Storm Water Permit was received by the State Water Resources Control Board on 31 October 2007.
4. On 5 December 2007, Regional Water Board staff accompanied representatives from Butte County who were performing an inspection of the mine to determine compliance with the Surface Mining and Reclamation Act (SMARA). During this inspection Regional Water Board staff noted extensive and expanded ground disturbance since

13. Section 13267(b)(1) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

14. The technical reports required by this Order are necessary to assure compliance with this Order and to protect the waters of the state. The technical reports are necessary to demonstrate that appropriate methods will be used to clean up waste discharged to surface waters and to ensure that cleanup complies with the California Water Code and Basin Plan requirements. The Dischargers are required to submit the technical reports because, as described in Findings 1 through 7, the Dischargers own the property and operate the mine that is the source of the discharges of waste and conducted the activities that are causing the discharges of waste.
15. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
16. Any person adversely affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review the action. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at www.waterboards.ca.gov/centralvalley or will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to Sections 13260, 13267 and 13304 of the California Water Code, Ronald and Betty Logan, and North Continent Land and Timber Inc., shall:

1. Cleanup the waste and abate, forthwith, the soil, sediment, and earthen materials discharged or placed near or into surface waters or surface water drainages or where such material could reasonably be expected to pass into surface waters including the previously identified Dry Creek and the drainage at the south edge of the property in accordance with the schedule in No. 2 below.
2. Compliance with No. 1 above shall include, but not necessarily be limited to, the following measures:

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

CLEANUP AND ABATEMENT ORDER NO. R6T-2009-0135

WDID NO. 6A090905008

**REQUIRING THE UNITED STATES FOREST SERVICE – LAKE TAHOE BASIN
MANAGEMENT UNIT AND G. D. NIELSON CONSTRUCTION, INC. TO CLEAN UP
AND ABATE THE THREATENED DISCHARGE OF WASTE EARTHEN MATERIALS
TO SURFACE WATERS OF THE LAKE TAHOE BASIN,
TALLAC CREEK BRIDGE REPLACEMENT PROJECT, SOUTH LAKE TAHOE**

EL DORADO COUNTY

The California Regional Water Quality Control Board, Lahontan Region (Water Board) finds:

FINDINGS

1. The Tallac Creek Bridge Replacement Project, WDID No. 6A090905008 (the "Project") is regulated under a Clean Water Act Section 401 Water Quality Certification (WQC) issued July 28, 2009 and the *Water Quality Control Plan for the Lahontan Region* (Basin Plan).
2. The U. S. Forest Service – Lake Tahoe Basin Management Unit (LTBMU) is the property owner and Project operator. G. D. Nielson Construction, Inc. is the construction contractor for the Project under contract with the LTBMU. The LTBMU is subject to this Order because, as the property owner and operator of the Project, it knows or should know of the project conditions creating the threatened discharge of waste that is the subject of this Order and has the ability to control such conditions. Similarly, G. D. Nielson Construction, Inc. is subject to this Order because, as the construction contractor for the Project, it knows or should know of the project conditions creating the threatened discharge of waste that is the subject of this Order and has the ability to control such conditions. The LTBMU and G.D. Nielson Construction, Inc. are hereafter referred to as the "Dischargers" for purposes of this Order.
3. The Project includes replacing an undersized 4-foot x 6-foot x 44-foot corrugated metal arch culvert with a concrete bridge structure to pass Tallac Creek under Spring Creek Road (Forest Road 1307). The Project also includes constructing a temporary access road across/within Tallac Creek upstream of the bridge structure location. A portion of the creek channel will also be reconstructed providing a stabilized low-flow pathway and improved fish passage conditions. A clear-water diversion to bypass creek flows around the active construction area within the creek is another critical Project element.

21. The discharges described in Finding Nos. 7 through 9 constitute violations of the Basin Plan prohibition cited above, and subsequently WQC Standard Condition No. 4. The threatened waste discharges described in Finding Nos. 12 through 14 should they occur, have the ability to alter water quality to the extent that beneficial uses are adversely affected, which at a minimum, constitutes a condition of threatened pollution.

The term, "pollution" is defined by Water Code section 13050, subdivision (l)(1) as, "an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) The waters for beneficial uses; (B) Facilities which serve these beneficial uses."

Tallac Creek is a surface water within the South Tahoe Hydrologic Area (HA). The beneficial uses of such surface waters are listed in the Basin Plan and in part include: municipal and domestic supply (MUN), water contact recreation (REC-1), non-contact water recreation (REC-2), commercial and sportfishing (COMM), cold freshwater habitat (COLD), wildlife habitat (WILD), and spawning, reproduction, and development (SPWN). As noted above and in the WQC, Tallac Creek is a tributary to Lake Tahoe, which also has these beneficial uses identified in the Basin Plan. Increases in sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream users (MUN). Sediment-laden discharges and the resulting turbidity can also affect the aesthetic enjoyment (REC-2) of the creek, and the public's boating experience in Lake Tahoe (REC-2), and impact sport fishing opportunities due to adverse effects on fish habitat (COMM). Additionally, the increased sedimentation associated with sediment-laden discharges can adversely impact stream invertebrate habitat and/or spawning beds through deposition of silts (COLD and SPWN), and adversely affect food sources and feeding habits for fish and other organisms (WILD).

The earthen fill associated with the temporary access road and unstable soils within the portion of Tallac Creek to be reconstructed have the ability to alter the water quality of Tallac Creek and Lake Tahoe, both waters of the state and of the United States, to a degree that unreasonably affects the waters for beneficial uses and facilities that serve the beneficial uses specified for both waters by the Basin Plan as described above. These conditions, therefore, at a minimum, constitute a condition of threatened pollution. The Water Board is therefore authorized to issue this Order pursuant to Water Code section 13304.

22. This enforcement action is being taken to enforce the provisions of the California Water Code and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et. seq.) in accordance with California Code of Regulations, title 14, section 15321.

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

**CLEANUP AND ABATEMENT ORDER NO. R9-2003-0178
FOR**

**SAN DIEGO COUNTRY ESTATES HOME OWNERS ASSOCIATION
24157 SAN VICENTE ROAD
RAMONA, CA 92065**

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

1. San Diego Country Estates Home Owners Association (hereafter Discharger) owns a parcel of land bounded by Ramona Oaks Road to the north, Cleveland National Forest to the east, private homeowners and Cleveland National Forest to the south and Pappas Road to the west. The site is located within the Gower Hydrologic Subarea (907.23) of the San Diego Hydrologic Unit (907) as described in the "Water Quality Control Plan, San Diego Basin (9)" (hereafter Basin Plan).
2. San Vicente Creek runs through the parcel described in Finding No. 1 roughly parallel to Ramona Oaks Road. San Vicente Creek drains into the San Vicente Reservoir. The Basin Plan has established the following designated beneficial uses for San Vicente Creek: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PROC), Contact Water Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), and Wildlife Habitat (WILD).
3. On or before March 27, 2003, San Diego Country Estates Home Owners Association caused and/or permitted the damming of San Vicente Creek and the discharge of waste consisting of masonry waste, horse bedding, green waste, and boulders into San Vicente Creek. These activities have obstructed the natural surface flow and eliminated the ability of San Vicente Creek to support water quality functions and beneficial uses in violation of the Basin Plan. Pursuant to California Water Code (CWC) Section 13243, the Basin Plan has specified that "the discharge of waste to inland surface waters, except in cases where the discharge complies with applicable receiving water quality objectives, is prohibited.
4. Pursuant to CWC section 13260, "any person discharging waste or proposing to discharge waste, within any region that could affect the quality of the waters of the state..." shall file a report of waste discharge. The Regional Board received no application/report of waste discharge for wastes documented in San Vicente Creek.

5. A cleanup effort is needed because the discharged waste causes and threatens a condition of pollution and nuisance in San Vicente Creek. The effects of the waste need to be abated to prevent further water quality impacts and beneficial use degradation to San Vicente Creek.
6. An active restoration effort is needed to protect San Vicente Creek from long-term adverse consequences of the discharge and cleanup activities, as well as abate the effects of increased erosion and a discharge of pollutants downstream resulting from the discharge of wastes, and to restore water quality functions and beneficial uses.
7. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required, by this Order.
8. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED that, pursuant to Section 13304 of Division 7 of the California Water Code:

1. The Discharger shall forthwith initiate efforts to cleanup the waste and abate all effects of the discharges of wastes into and near San Vicente Creek, and take any other remedial actions, which may be necessary to abate the effects of the discharged wastes.
2. By June 16, 2003, the Discharger shall develop and submit to this Board a plan to cleanup and abate the waste discharged into San Vicente Creek. The cleanup and abatement plan must include, but not be limited to:
 - a. Identification of specific activities and methodologies that will be used in removing all wastes.
 - b. Measures to prevent additional water quality impacts during the cleanup process.
 - c. A discussion of measures to be taken by the discharger to prevent further discharges of waste to San Vicente Creek. These measures shall include but are not limited to ongoing prevention, education, training, public participation, inspection, and enforcement practices.
3. Upon Regional Board approval of the cleanup and abatement plan, the Discharger shall implement the plan. By August 1, 2003, the Discharger shall submit a report that documents that all required cleanup and abatement activities have been taken in accordance with the Regional Board approved plan and that all necessary approvals for the cleanup and restoration work were obtained.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

REVISED CLEANUP AND ABATEMENT ORDER R5-2008-0713-R01
FOR
STATE OF CALIFORNIA, DEPARTMENT OF PARKS AND RECREATION
AND
SAN FRANCISCO PUBLIC UTILITIES COMMISSION, HETCH HETCHY WATER AND POWER
MITCHELL RAVINE
ALAMEDA COUNTY

This Order is issued to the State of California, Department of Parks and Recreation (State Parks) and the San Francisco Public Utilities Commission, Hetch Hetchy Water and Power (Hetch Hetchy), based on provisions of California Water Code (CWC) section 13304, which authorizes the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) to issue a Cleanup and Abatement Order (CAO), and CWC section 13267, which authorizes the Central Valley Water Board to require the submittal of technical reports.

The revisions to this Order are based on the Board's recognition that remediation activities must include the stabilization of upstream waste rock piles (the "Waste Rock Site") that were not included in the original Order.

The Executive Officer of the Central Valley Water Board finds the following:

1. State Parks is the owner of the Carnegie State Vehicular Recreation Area (SVRA) in Alameda County. Hetch Hetchy is a department of the San Francisco Public Utilities Commission.
2. Mitchell Ravine is a watershed within the SVRA. Mitchell Ravine is tributary to Corral Hollow Creek which flows into the Sacramento-San Joaquin River Delta, a water of the United States.
3. Hetch Hetchy owns the road and has a road easement parallel to Mitchell Ravine, within State Parks property. Hetch Hetchy uses this road easement to access Hetch Hetchy-owned property south of the SVRA to service a water tunnel shaft and to conduct general road maintenance. In June 2008, Hetch Hetchy graded about 2.5 acres of Mitchell Ravine, purportedly to maintain the road (the "Road Grading Site"). These grading activities significantly impacted Mitchell Ravine and the biological resources in the area. The grading activities at the Road Grading Site have created conditions which, if unabated, will allow a significant amount of sediment to move downstream and will impact water quality in lower Mitchell Ravine and Corral Hollow Creek.
4. The grading occurred on two parcels with the following Assessor's Parcel Numbers: APN 099A-2220-001-19 in Section 30, T3S, R4E, MDB&M and APN 099A-2200-001-036 and -37 in Section 31, TS, R4E, MDB&M.
5. For purposes of this Order, Hetch Hetchy is considered primarily responsible for cleanup activities. This is due to the fact that Hetch Hetchy's construction activities caused the

perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

The technical reports required by this Order are necessary to ensure compliance with this CAO and to ensure the protection of water quality. Evidence in the Central Valley Water Board's files indicate that Hetch Hetchy's actions created the conditions which have led to issuance of this Order, which is why Hetch Hetchy is required to submit the reports. State Parks owns the land where the discharges of sediment are occurring, and is also subject to this Order pursuant to CWC section 13267.

21. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to California Code of Regulations, title 14, section 15321(a)(2).

IT IS HEREBY ORDERED that, pursuant to CWC sections 13304 and 13267, Hetch Hetchy Water and Power shall cleanup and abate the impacts to Mitchell Ravine at the Road Grading Site and at the Waste Rock Site in accordance with the scope and schedule set forth below.

Any person signing a document submitted under this Order shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

1. **Effective immediately**, and continuing until this Order is rescinded, Hetch Hetchy shall ensure that monitoring reports are submitted prior to and after any rain events. These reports will be submitted monthly by the **10th day of the following month** (e.g. the October monthly report is due by 10 November). These reports must include the results of site monitoring, as required by the Construction Storm Water General Permit, in the form of both written inspection reports and photographs.
2. **Effective immediately**, and continuing until notified by the Executive Officer, Hetch Hetchy shall submit monthly progress reports describing its progress toward compliance with this Order. The reports shall provide a cumulative listing of completed tasks. The reports are due on the **10th day of the month** following the reporting period. The first report shall cover March 2010 and is due **10 April 2010**.
3. Hetch Hetchy shall maintain coverage under the Construction Storm Water General Permit and shall implement the 401 Water Quality Certification requirements until the stabilization and restoration project is fully complete and this Order is rescinded.

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

**CLEANUP AND ABATEMENT ORDER NO. R9-2006-0016
UNITED STATES MARINE CORPS
MARINE CORPS BASE CAMP PENDLETON
LAS PULGAS LANDFILL
SAN DIEGO COUNTY**

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

JURISDICTION

1. **WASTE DISCHARGE:** From 1980 until the present, the United State Marine Corps (USMC) has owned and operated the Las Pulgas Sanitary Landfill, located within the boundaries of USMC Base Camp Pendleton in San Diego County, approximately 0.2 miles north of Basilone Road in Area 43, Sections 28 and 29, T9S, R5W, SBB&M. Past discharges of waste into the Las Pulgas Landfill have resulted in a release of waste constituents, creating an existing condition of pollution in groundwater resources located within the San Onofre Hydrologic subarea. The USMC has discharged solid wastes from Marine Corps Base Camp Pendleton into the Las Pulgas Landfill Phase 1 Expansion waste management unit (Unit) since approximately May 2000. The Phase 1 Expansion Unit is underlain by a defective composite liner system in violation of waste discharge requirements prescribed by the Regional Board. The USMC threatens to cause or permit the release of waste constituents from the Phase 1 Expansion Unit through the defective composite liner system to soils and ground water underlying the Las Pulgas Landfill, creating or exacerbating a condition of pollution in the ground water underlying the landfill by exceeding applicable water quality objectives. The USMC is also discharging leachate from the Las Pulgas Landfill and allowing it to pond in an uncontrolled manner in violation of waste discharge requirements prescribed by the Regional Board. The USMC threatens to cause or permit the release of the ponded leachate into Las Flores Creek and create a condition of pollution by exceeding applicable California Toxics Rule water quality criteria for pollutants in Los Flores Creek.
2. **PERSONS RESPONSIBLE:** The Department of the Navy owns the property encompassing the Las Pulgas Landfill. The USMC is the owner and operator of the Las Pulgas Landfill. The USMC is referred to as "Discharger" in this Cleanup and Abatement Order (CAO).

REGULATORY AND FACTUAL BACKGROUND

3. **ALTERNATIVE LINER DESIGN.** The Phase 1 Expansion Unit at the Las Pulgas Landfill employed an engineered alternative composite liner design as allowed by Title 40 Code of Federal Regulations (CFR Title 40), section 258.40(a)(1) and (c), CCR

6. **CEQA EXEMPTION:** This enforcement action is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with section 15321 (Enforcement Actions by Regulatory Agencies), Chapter 3, Title 14 of the California Code of Regulations.

ORDER DIRECTIVES

IT IS HEREBY ORDERED that, pursuant to sections 13267 and 13304 of the California Water Code, the U.S. Marine Corps (hereinafter the Discharger), shall comply with the following directives:

A. PROHIBITIONS

1. The discharge of municipal solid waste into the Phase 1 waste management unit (WMU)¹ shall be terminated forthwith until such time as all deficiencies in the liner systems (basal and sideslope liners), leachate collection and removal system (LCRS)², and foundation/subgrade construction deficiencies have been corrected or resolved to the satisfaction of the Regional Board. The Discharger shall post and maintain a clearly visible sign at the entrance to the Phase 1 WMU prohibiting further discharges of waste into the Phase 1 WMU at the Las Pulgas Landfill.
2. Management of wastes from the Phase 1 WMU shall not create, contribute to, or exacerbate a condition of pollution or nuisance, as defined by the California Water Code section 13050.

B. CORRECTIVE ACTION PLAN

1. By **December 31, 2006**, the Discharger shall prepare and submit to the Regional Board a Corrective Action Plan (CAP) for the Phase 1 WMU to either:
 - a. Undertake corrective construction of the Phase 1 WMU to achieve compliance with all applicable requirements of CCR Title 27 and Order No. 2000-54 "*Waste Discharge Requirements for the U.S. Marine Corps, Marine Corps Base Camp Pendleton, Las Pulgas Landfill, San Diego County*" and addenda thereto. The CAP shall contain the information described in Directive B.2; or alternatively

¹ **Waste management Unit or Unit** means an area of land, or a portion of a waste management facility, at which waste is discharged. The term includes containment features and ancillary features for precipitation and drainage control and for monitoring (CCR Title 27 §20164).

² **LCRS – Leachate Collection and Removal System** means that portion of the waste management unit's containment system that is designed and constructed (pursuant to §20340) to collect all leachate that reaches it, and convey such leachate to a designated collection area to minimize the buildup of leachate head on any underlying liner. The term does not include systems that are designed to collect groundwater outside the Unit's liner, if any, including groundwater that has been polluted by leachate (CCR Title 27 §20164).

California Regional Water Quality Control Board
North Coast Region

Cleanup and Abatement Order
No. R1-2010-0058

For
URJ Camp Newman
APN # 028-070-015

Sonoma County

This Cleanup and Abatement Order (Order) is issued to URJ Camp Newman, (hereinafter Discharger), based on provisions of California Water Code (CWC) §13304, which authorizes the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) to issue a Clean and Abatement Order, and CWC §13267, which authorizes the Regional Water Board to require preparation and submittal of technical and monitoring reports.

The Executive Officer of the Regional Water Board finds that:

1. The Discharger owns land located at 4088 Porter Creek Road, in Sonoma County, identified as Sonoma County Assessor's Parcel Number (APN) 028-070-015 (Site). The Site is situated within the Russian River watershed. Drainage from the Site discharges to an unnamed tributary to Porter Creek. Porter Creek is tributary to Mark West Springs Creek, which flows to the Russian River.
2. The Discharger owns a dam that it operates as a recreational facility associated with a summer youth camp.
3. On May 5, May 6, and May 17, 2010, Regional Water Board staff documented the following at the Site:
 - a. The impoundment, owned and operated by the Discharger, had been emptied, which resulted in the discharge of impounded water and entrained fine sediments to an unnamed tributary and Porter Creek. This discharge occurred over a period of two to three weeks starting sometime in April of 2010.
 - b. A minimum of 43 cubic yards of material was deposited in the unnamed tributary downstream of the dam. In addition, sediment deposition extended for the entire reach of Porter Creek that staff were able to observe, which was approximately 620 feet downstream from the confluence of the unnamed tributary with Porter Creek. The sediments discharged from the impoundment coated the streambed in the observed riffles and glides to the degree that any salmonid eggs or alevin still in redds are likely to have perished. The fine sediments were found throughout the streambed, but most prominently on the channel margins, in pools, and behind boulders, logs, and other flow obstructions. The color and texture of the sediments makes them easy to distinguish from other sediments.

known as the Sediment TMDL Implementation Policy, on November 29, 2004. This Policy was adopted through Resolution R1-2004-0087. The Sediment TMDL Implementation Policy states that Regional Water Board staff shall control sediment pollution by using existing permitting and enforcement tools. The goals of the Policy are to control sediment waste discharges to impaired waterbodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment. The control of sediment discharges may result in improvements in temperature conditions. This order controls and reduces sediment discharges and therefore constitutes early implementation for the sediment and temperature impairments.

17. Pursuant to CWC §13304 (c)(1), the Regional Water Board is entitled to and can seek reimbursement for reasonable costs incurred to investigate the unauthorized discharge of wastes, to oversee clean up of the wastes, supervising clean up and abatement activities, or taking other remedial actions required by this order.
18. The technical reports required pursuant to this Order are needed to provide information to the Regional Water Board regarding the condition of pollution caused or contributed by the Discharger's activities to waters of the state. The benefits to be obtained from a technical report include enabling the Regional Water Board to determine the impacts of the condition of pollution on beneficial uses and to provide information that will be used to determine what corrective actions are necessary to assess, abate, and control the pollution. Based on the nature and possible consequences of the discharges, the burden of providing the required reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
19. This is an enforcement action taken by a regulatory agency for the protection of the environment and is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, §§21000 *et seq.*), in accordance with California Code of Regulations, title 14, §§15308 and 15321.
20. Failure to comply with the terms of this Order may subject the Discharger to an enforcement action under the Water Code, including administrative civil liabilities under CWC §§13350, and/or 13385. Liability imposed could range up to ten thousand dollars (\$10,000) per day or twenty-five dollars (\$25) per gallon of waste discharged in excess of 1,000 gallons.
21. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with CWC §13320 and title 23, California Code of Regulations, §§2050-2068. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Executive Officer to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order.
22. Note that even if reconsideration is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal

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

CLEANUP AND ABATEMENT ORDER NO. R9-2004-0039

**COUNTY OF SAN DIEGO
VALLEY CENTER SANITARY LANDFILL
SAN DIEGO COUNTY**

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

1. The County of San Diego owns and previously operated the Valley Center Landfill.
2. The Valley Center Landfill is located about 1.6-miles west of Valley Center Road, and 0.5-miles north of Betsworth Road (Section 10, Township 11 south, Range 2 west of the San Bernardino Base and Meridian (SBB&M) co-ordinate system.
3. Between the years 1958 to 1978, the County of San Diego discharged wastes into the Valley Center Landfill. Upon completion of waste disposal operations, the County of San Diego covered the wastes with soil and began implementation of maintenance and monitoring pursuant to Order No. 95-29, Waste Discharge Requirements for Post-Closure Maintenance for County of San Diego, Valley Center Sanitary Landfill, and addenda thereto.
4. The Basin Plan establishes the following beneficial uses for the surface waters of the Moosa Hydrologic Subarea (3.13) and groundwater in the Lower San Luis Rey Hydrologic Area (3.10) located in the San Luis Rey Hydrologic Unit:

Inland Surface Waters	Ground Water
Agricultural supply	Municipal and domestic supply
Industrial service supply	Agricultural supply
Water contact recreation	Industrial service supply
Non-contact water recreation	
Warm fresh-water habitat	
Wildlife habitat	

5. Since 1994, a variety of waste constituents have been identified in samples collected from groundwater wells and groundwater "seeps" located at the Valley Center Landfill. Water samples collected at the Valley Center Landfill have historically contained the following constituents at concentrations exceeding the

10. Although the County of San Diego has monitored, detected, and reported concentrations of waste constituents in groundwater, and in downgradient groundwater seeps, delineation of the full extent of impacts to water quality has not been completed at this time.
11. CCR Title 27, § 20080(g) provides that persons responsible for discharges at waste management units that were closed, abandoned, or inactive on or before November 27, 1984 (CAI Units), may be required to develop and implement a corrective action program.
12. CCR Title 27 authorizes the Regional Board to require the County of San Diego to implement an Evaluation Monitoring Program (EMP) pursuant to the California Code of Regulations (CCR) Title 27, §20425.
13. CCR Title 27 authorizes the Regional Board to require the County of San Diego to develop and implement a Corrective Action Program (CAP) pursuant to CCR Title 27, §20430.
14. On June 18, 1992, the State Water Resources Control Board adopted Resolution No. 92-49: "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code Section 13304." Resolution No. 92-49 was further amended on April 21, 1994 and October 2, 1996.
15. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code §21000, *et seq.*) in accordance with CCR Title 14, Chapter 3, §15321.

IT IS HEREBY ORDERED, pursuant to Section 13304 of the California Water Code, the County of San Diego (hereinafter the "*discharger*") shall cleanup and abate the effects of the discharge and comply with the following Directives:

A. EVALUATION MONITORING PROGRAM (EMP)

By **February 1, 2005**, the discharger shall submit to the Regional Board an updated Report of Waste Discharge (RWD) containing all the information required by CCR Title 27, § 20425. The final technical report shall contain all site-specific data collected during the investigation, including the following information:

1. **Site Conceptual Model:** The discharger shall provide the Regional Board with a Site Conceptual Model (SCM). The SCM is a written or pictorial representation of the release scenario, the likely distribution of wastes at the site, as well as potential pollutant migration pathways and receptors. The SCM shall identify and describe the types of wastes present including their distribution in space and time, and how the wastes are changing in space and time.

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF TENTATIVE
CLEANUP AND ABATEMENT ORDER
NO. R9-2010-0002 (SHIPYARD
SEDIMENT CLEANUP)

**[PROPOSED] ORDER GRANTING NASSCO'S
MOTION REQUESTING DETERMINATION
THAT TENTATIVE CLEANUP AND
ABATEMENT ORDER NO. R9-2010-0002 IS
EXEMPT FROM THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT (CEQA)**

1 Pending before the California Regional Water Quality Control Board, San Diego Region
2 (Regional Board) is National Steel and Shipbuilding Company's (NASSCO) Motion Requesting
3 Determination That Tentative Cleanup and Abatement Order No. R9-2010-0002 is Exempt from
4 the California Environmental Quality Act (CEQA). Having read and considered the motion and
5 other evidence and argument presented in connection with the motion, the Regional Board
6 hereby **GRANTS** the Motion, and finds that Tentative Cleanup and Abatement Order R9-2010-
7 002 is categorically exempt from CEQA, pursuant to sections 15307, 15308 and 15321 of Title
8 14 of the California Code of Regulations.

9 **IT IS SO ORDERED.**

10 Dated: _____

11 David King
12 Presiding Officer and Chairman
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8 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

9 SAN DIEGO REGION

10 IN THE MATTER OF TENTATIVE
11 CLEANUP AND ABATEMENT ORDER
NO. R9-2010-0002 (SHIPYARD
12 SEDIMENT CLEANUP)

DECLARATION OF SERVICE

Action Filed: July 23, 2010
Assigned To: Presiding Officer, David King.

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1 I am a resident of the State of California, over the age of eighteen years, and not a
2 party to the within action. My business address is Latham & Watkins, 600 West Broadway,
3 Suite 1800, San Diego, California 92101. On July 23, 2010, I served the within document(s):
4

5 **NATIONAL STEEL AND SHIPBUILDING COMPANY'S NOTICE OF MOTION
6 AND MOTION REQUESTING DETERMINATION THAT TENTATIVE CLEANUP
7 AND ABATEMENT ORDER NO. R9-2010-0002 IS EXEMPT FROM THE
8 CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

9 **DECLARATION OF JEFFREY P. CARLIN IN SUPPORT OF NATIONAL STEEL
10 AND SHIPBUILDING COMPANY'S NOTICE OF MOTION AND MOTION
11 REQUESTING DETERMINATION THAT TENTATIVE CLEANUP AND
12 ABATEMENT ORDER NO. R9-2010-0002 IS EXEMPT FROM THE CALIFORNIA
13 ENVIRONMENTAL QUALITY ACT (CEQA)**

14 **[PROPOSED] ORDER GRANTING NASSCO'S MOTION REQUESTING
15 DETERMINATION THAT TENTATIVE CLEANUP AND ABATEMENT ORDER
16 NO. R9-2010-0002 IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL
17 QUALITY ACT (CEQA)**

18 **BY E-MAIL:** I caused the above-referenced documents to be converted in digital
19 format (.pdf) and served by electronic mail to the addresses listed below.

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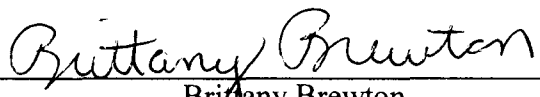
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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **July 23, 2010**, at San Diego, California.



Brittany Brewton