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September 20, 2005

California Regional Water Quality Control Board
San Diego Region
Attn: Frank Melbourn
9174 Sky Park Court
Suite 100
San Diego, CA 92123-4340
Fax: (858) 571-6972

2005 SEP 20 P 4:3
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

RE: Designated Party Request - Cleanup and Abatement Order No. R9-2005-0126 for Discharges of Waste to Marine Sediment in San Diego Bay

Dear Mr. Melbourn,

The Port of San Diego Ship Repair Association (“SRA”) is writing to request status as a designated party in the above referenced matter, together with all rights accruing to parties under applicable law, including, but not limited to, the right to submit evidence and fully participate at all hearings relating to this matter.

SRA is an organization of more than 60 San Diego area companies created to increase industry cooperation and cohesiveness and generate greater public awareness and understanding of the ship repair industry's issues. Our members include shipbuilders, suppliers of parts and materials necessary in the construction and repair of ships, and contractors in the ship construction, repair, and maintenance sector. As there is no public ship repair yard in the Port of San Diego, the efforts of our association and its members are critical to the maintenance of the United States Naval fleet. SRA works actively with municipalities and resource agencies to ensure that the proper balance is drawn between protection of the environment and the continued vitality of our member organizations.

Because of the mission of our organization and the pursuits of our individual members, we are very concerned by the approach the Regional Board has taken in the Draft Cleanup and Abatement Order (“Draft CAO”), and the potential for substantial impacts to our organization and its members. Nearly all of our members own, operate businesses on, perform services at, or otherwise have a vested interest in coastal lands near the San Diego region's bays, harbors, ports, and other areas where marine sediment exists. Because of our members' direct ties to the physical space that will be affected by the Draft CAO, Designated Party status is absolutely appropriate for SRA. California jurisprudence regarding the notion of “standing” to challenge

administrative actions directly supports this position. For example, in *Tustin Heights Assn. v. Bd. of Supervisors* (1959) 170 Cal.App.2d 619, 636-637, a neighborhood association was held to have standing to petition an administrative action where “petitioners [were] the owners of real property within the zoned area and as such they are restricted in the use of their property by the zoning ordinance. Each of such property owners has an interest in the enforcement of the ordinance which is peculiar to him. If the ordinance is violated, he suffers special damage that is distinguishable from that suffered by the public at large.” See also, *Simons v. City of Los Angeles* (1979) 100 Cal. App. 3d 496, 501.

In addition to directly affecting our members who own property or operate facilities on property near the shipyard, the Draft CAO would directly and substantially affect all of our members who work and conduct business in those areas. Several of our members are contractor companies that work on a daily basis at the shipyards where the proposed remedial activities would take place. The employees of these and other member companies would potentially be exposed to diesel emissions and other harmful pollutants associated with the remedy proposed by the Regional Board.

The scope and intensity of the cleanup the Board is contemplating may also result in adverse economic impacts to our members, assuming that the proposed approach is even feasible from a technical standpoint. These economic impacts are wholly distinct from the direct economic impact on the named parties subject to the Draft CAO. The disruption of economic activity that may result if there is large scale dredging or other remedial activities in the port would affect all of our members that own property, have operations, or perform contract services at the port. In particular, the very livelihood of this latter group may be affected if remedial activities physically interfere with economic activity at the port, or if the ongoing economic pursuits of the named parties are diminished because they are forced to spend time and resources on a costly cleanup project.

These interests are particular to our members. Our particular interests cannot and will not be adequately represented by the named parties to the Draft CAO. Though the named parties may share some of our concerns, their interests are distinct from ours. They will bear the responsibility, financial and otherwise, of implementing the conditions of an adopted CAO and their participation at the proceedings will focus on these issues. During these proceedings, they cannot be expected to adequately champion the particularized concerns of our members with respect to economic activity, environmental impacts, and other potential concerns.¹ Because of these concerns, we must be afforded the opportunity to fully challenge the Draft CAO as an impacted Party.

Because of its precedential effect, our organization also fundamentally opposes the Regional Board’s conclusion that due to the mere presence of certain chemicals in Bay sediments, a large-

¹ In this regard, we object to the Board’s requirement in the Notice of Pre-Hearing Conference that we describe the evidence to be presented at the proceedings. Until we see the Draft Technical Report and revised Draft CAO, it is impossible for us to know what evidence we will put forth during the proceedings. Notwithstanding this objection, we would anticipate putting forth evidence showing how our members would be impacted by the CAO, and challenging whether the evidence in the record justifies the terms of the Draft CAO.

scale sediment removal project is necessary, irrespective of actual water quality. Any Regional Board action that addresses marine sediments should be based upon a reasoned, scientifically defensible approach that takes into account the realistic potential effects on human health and marine populations where the sediments are located.

If the Regional Board's approach in this Draft CAO becomes precedent unsupported sediment standards could be proposed at other locations where our members engage in economic activity, our members could also be substantially and directly affected by future Regional Board actions. From a practical standpoint, the cost to our members of complying with these types of conditions would be exorbitant, without a corresponding benefit to human health or marine communities. Costs aside, the measures that would have to be taken in order to comply with the Draft CAO would be extraordinarily complicated from an engineering standpoint. Such measures would substantially affect our right and privilege to use and enjoy our property. They would likely also affect the rights and privileges of adjacent landowners and tenants, and would potentially create unnecessary adverse environmental impacts in the coastal zone (e.g., re-suspension of historical contaminants, diesel emissions from dredging machines and trucks that would be required to carry out the measures of the Draft CAO, direct physical impacts to the existing marine environment and human activity, etc.).

The Regional Board's actions are also a matter of statewide importance. If conditions like those being contemplated by the San Diego Regional Board become an example for other Regional Boards' approaches to marine sediments in coastal areas throughout California, both California's economy and its environment will be adversely impacted. Any small benefit that could potentially be achieved by large-scale sediment dredging and the other onerous conditions in the Draft CAO would clearly be outweighed by other environmental and economic consequences to the State. SRA therefore opposes the scientifically unsound, standardless approach that the Regional Board is proposing to take with the Draft CAO. We must be permitted to challenge this approach before it adversely affects our members and becomes precedent in the San Diego region and throughout the state.²

For the foregoing reasons, we respectfully request Designated Party status for the matter referenced above. We appreciate in advance your consideration of this request.

Sincerely,

Peter Litrenta
Executive Director

cc: Mr Michael Chee
Mr. Sandor Halvax
Mr. David Merk

² Several of our members own, or operate at, facilities near marine areas throughout the State, and thus would be affected by similar actions by other Regional Boards.

Mr. Brian Gordon
Mr. Scott Tulloch
Mr. Vincent Gonzalez
Mr. H. Allen Fernstrom
Mr. Christopher J. McNevin
Mr. Roy Thun
Ms. Laura Hunter
Mr. David Barker