CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

RESOLUTION NO. R2-2008-0023

AUTHORIZING ATTORNEY GENERAL
REFERRAL REGARDING NOVEMBER 7, 2007
COSCO BUSAN OIL SPILL IN SAN FRANCISCO BAY

A. WHEREAS, Regal Stone Limited owns the container shipping vessel Cosco Busan; Fleet Management Ltd. is the operator of the Cosco Busan; Hanjin Shipping Co., Ltd. leased the vessel; Synergy Maritime Ltd., operated the vessel and employed the crew; and John Cota, an individual, was the pilot of the Cosco Busan on November 7, 2007. All of the aforementioned parties are hereinafter referred to as the "Dischargers."

B. WHEREAS, on November 7, 2007, the container ship Cosco Busan struck a tower supporting the western span of the San Francisco-Oakland Bay Bridge, resulting in the discharge of approximately 53,569 gallons of bunker fuel into San Francisco Bay.

C. WHEREAS, the discharge has impacted the San Francisco Bay as far north as the Carquinez Bridge and as far south as the San Mateo Bridge, excluding rivers, streams, creeks and their tributaries, and areas of the Pacific Coast shoreline between the Point Reyes Lighthouse in Marin County and Half Moon Bay in San Mateo County.

D. WHEREAS, the discharge has adversely impacted waters of the State and the beneficial uses thereof, including but not limited to wildlife habitat, marine habitat, estuarine habitat, preservation of rare and endangered species, fish migration and spawning, commercial and sport fishing, shellfish harvesting, recreation, and navigation.

E. WHEREAS, on November 9, 2007, Governor Schwarzenegger proclaimed a State of Emergency in the City and County of San Francisco and the Counties of Alameda, Contra Costa, Marin, San Mateo, Solano and Sonoma due to the effects of this major oil spill. The Governor later issued Executive Order S-14-07 on November 13, 2007, suspending all fishing for human consumption. This order was lifted on December 1, 2007.

F. WHEREAS, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act of 1990 established the Office of Spill Prevention and Response (OSPR) within the California Department of Fish and Game and vested in the Administrator of OSPR the primary state authority to direct prevention, removal, abatement, response, containment, and cleanup efforts for spills in marine waters.

G. WHEREAS, under the National Incident Management System and California Standardized Emergency Management System guidelines, the Incident Command System was employed and a Unified Command was formed to respond to the Cosco Busan oil spill.

H. WHEREAS, the San Francisco Bay Regional Water Quality Control Board (Board) is a supporting state response agency, whose primary authority under the Porter-Cologne Water Quality Control Act (at California Water Code § 13000 et seq.; hereafter Water Code) is regulating, enforcing, and ensuring the quality of the waters of the State. OSPR staff and Board staff have and continue to communicate on the response actions relating to the bunker fuel spill.

I. WHEREAS, some or all of the Dischargers have cooperated with state and federal agencies to implement initial emergency response actions, including the containment and cleanup of free liquid and solid product.

J. WHEREAS, now that initial response actions have been undertaken, the Board finds it is necessary and appropriate to move onto the next phase of responding to the discharge by referring this matter to the California Attorney General's Office to seek judicially imposed civil penalties under applicable sections of the Water Code, to file such other applicable causes of action, and to seek other appropriate remedies.

K. WHEREAS, the Dischargers have caused or permitted bunker fuel to be deposited in or on waters of the State and are—at a minimum—civilly liable under Water Code Section 13350(a). Under Water Code Section 13350(d), a court may impose such civil liability either on a daily basis not to exceed fifteen thousand dollars ($15,000) for each day the violation occurs or on a per gallon basis not to exceed twenty dollars ($20) for each gallon of waste discharged. Dischargers may also be civilly liable under Water Code Section 13385 for discharging waste without authorization and violating the prohibitions contained in the Water Quality Control Plan for the San Francisco Bay Basin. Under Water Code Section 13385, a court may impose civil liability of up to twenty-five thousand dollars ($25,000) for each day of violation and up to twenty-five dollars ($25) for each gallon of waste discharged but not cleaned up in excess of one thousand gallons.

L. WHEREAS, Water Code Section 13350(g) requires the Board to hold a hearing, with due notice of the hearing given to all affected persons, prior to requesting the Attorney General to petition a court to impose civil liability under Water Code Section 13350. On April 9, 2008, the Board held such a hearing in compliance with Section 13350(g), and considered the testimony and evidence offered at the hearing and in the record.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Board hereby authorizes the Executive Officer to request that the Attorney General seek judicially imposed civil penalties under the Water Code, including Water Code Section 13350(a) as appropriate, bring other applicable causes of action, and/or seek other relief as may be appropriate against all or some of the Dischargers.

2. The Board hereby authorizes the Executive Officer to seek judicial civil liability in an amount that he deems appropriate and report it to the Board Chair.

I, Bruce H. Wolfe, Executive Officer, hereby certify that the foregoing is a full, true, and correct copy of the Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, at its regular meeting on April 9, 2008.

Bruce H. Wolfe
Executive Officer