925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725

The Port of
LONG BEACH

Alexis Straus
Director, Water Division
United States Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Subject: Response and Comments on the Storm Water Program Audit Report

Reference: Port of Long Beach and Port of Los Angeles Municipal Separate Storm Sewer System and California Industrial General Storm Water Permit Compliance Audit Report, November 2007

Dear Ms. Straus:

The Port of Long Beach (Port) has reviewed the U.S. EPA's Port of Long Beach and Port of Los Angeles Municipal Separate Storm Sewer System and California Industrial General Storm Water Permit Compliance Audit Report of November 2007. We appreciate your comments regarding our cooperation and participation during the audit review, as well as the identification of the Port of Long Beach's program elements which exceed the compliance requirements in the permit. As your observations indicate, these efforts are evidence of the effort and dedication that our staff exert, to maintain a strong program for water quality in the Harbor. The Port has worked closely with the Regional Water Quality Control Board to develop a programmatic approach to permit compliance which meets or exceeds permit requirements, and which has been "tailored" to the unique situation of a "landlord" port.

As discussed in the Executive Summary of the Audit Report, the Port was found to be in compliance with the MS4 Permit portion of the audit (page i). We are pleased with this conclusion and look forward to ensuring that we maintain and exceed compliance with the MS4 Permit in the future. We also understand that the audit team found potential violations at some facilities. These potential violations are being taken very seriously, and corrective actions are already underway (see Attachment A) according to the required time frames. Further discussion of the potential violations and enforcement letters will be addressed in separate communications.

The Port appreciates the audit team's efforts in recognizing both the strengths of our Master Storm Water Program (Program), as well as identifying areas where improvements could be made. It is clear that the audit team put a great deal of consideration into how the ideal program might look in the future. We are committed to continual improvement of the Program and appreciate all recommendations. However, the choice of wording and descriptions used in the audit report could lead to misperceptions by readers. Considering that the report will be a public document, this is of considerable concern to the Port. As we discussed with your staff in our meeting of November 27, 2007, information presented within the Audit Report, without appropriate context, will be misleading or confusing to the public or interested parties. We

believe it is imperative that this context be included in the report, and the following proposed changes be considered before it is released as a public document.

- We respectfully request that the EPA consider separating the Audit Report "compliance findings" from the evaluation of the strengths and weakness of the Port's Master Storm Water Program.
- Replace the word "deficiency" with a more accurate word or phrase. If the documents format and the term "deficiency" cannot be changed, we would urge the EPA to consider adding a statement in the discussion of each noted "deficiency" making it clear to the reader that the deficiency is not a compliance issue, but rather a potential consideration for future program or permit development.
- Include context of why and how the Program was developed in collaboration with the Regional Water Quality Control Board as a model program. Many of the deficiencies, compliance concerns, and recommendations for change noted are contrary to direction given or agreed upon during the development of the Program.
- Add clarification to the discussion of the Port's monitoring, harbor 303(d) listings and TMDL development to accurately reflect the purpose and use of the data collection, the Port's role in the development of TMDLs, and overall efforts to improve water quality in the Harbor.
- Provide clarity regarding EPA's intent behind the recommendation that individual facilities submit NOIs. As written, the reader may conclude that the Port inappropriately obtained coverage for our tenants and some private property owners. Additionally, the recommendation could lead the reader to believe that the EPA is directing each facility to obtain individual coverage now, prior to a new permit or Program being developed.

Specific issues associated with the Port's concerns and potential misconceptions cited above are listed. (see Attachment B).

We look forward to working with the EPA to provide additional background and context, to ensure that the potential for misunderstanding by the reader is limited. To that end, we again respectfully request that you consider the following:

- Separate the audit findings from the program evaluation
- Replace the word "deficiency" with a more accurate word or add a statement to each deficiency noted, clarifying that they are not compliance issues
- Include the necessary background and context throughout the document
- Clarify and provide context to the discussion of monitoring data and 303(d) listings
- Provide context and background to EPA's recommendation regarding each facility obtaining individual permits

It is the Port's desire to ensure that our storm water program is a model for all other ports, and we look forward to continuing to work cooperatively with EPA and the RWQCB to that end. Guided by our award-winning Green Port Policy, the Port of Long Beach is committed to improving water quality in the harbor and going beyond environmental compliance. We thank you for your continued cooperation with our efforts.

Regards,

Robert Kanter

Robert Kanter, Ph.D.
Managing Director of Environmental Affairs
and Planning

Attachments

c: Wayne Nastri, US EPA
Steven John, US EPA
Nance Woo, US EPA
Amy Miller, US EPA
Jeremy Johnstone, US EPA
Tracy Egoscue, LA RWQCB
Xavier Swamikannu, LA RWQCB
Ivar Ridgeway, LA RWQCB
Paula Rasmussen, LA RWQCB
Tom Leary, City of Long Beach

Attachment A: EPA Findings of Violations and Order of Compliance Letters

925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725

The Port of
LONG BEACH

November 19, 2007

David Neal
Principal
Georgia Pacific LLC
d/b/a Georgia Pacific Gypsum
1401 West Pier D Street
Long Beach, California 90813

Re: EPA Findings of Violations and Order for Compliance

Dear Mr. Neal:

On May 14, 2007, the United States Environmental Protection Agency (EPA) conducted a Clean Water Act compliance inspection at Georgia Pacific LLC d/b/a Georgia Pacific Gypsum's Long Beach marine cargo handling facility to determine if it was in compliance with terms of the National Pollution Discharge Elimination System (NPDES) General Permit under which the Port of Long Beach and its tenants operate. A copy of EPA's May 14 inspection report is enclosed. On November 9, 2007, the EPA issued its Findings of Violation and Order for Compliance (copy enclosed) for a number of issues that require immediate attention by you. The following is a list of the areas EPA alleges need correction:

1. Implement interim control measures;

2. Develop and implement a schedule for maintenance of the sump and weir;

3. Revise the Storm Water Pollution Prevention Plan for the Facility; and

4. Complete additional tasks identified in the Order, within the time specified by the Order.

The Order for Compliance requires, among other things, that you immediately take all necessary measures to comply with the General Permit and that interim cleanup and housekeeping measures related to such alleged violations be completed within 30 days of November 9, 2007.

Pursuant to the federal Clean Water Act and the California Porter Cologne Water Quality Control Act, the Long Beach Municipal Code prohibits non-storm water discharges into its municipal storm drain system. (*See e.g.* Long Beach Municipal Code § 18.95.010; 42 U.S.C. §§ 1251 *et seq.*; Cal. Water Code §§ 13000 *et seq.*) The

failure to comply with the Municipal Code may result in the City initiating civil and criminal enforcement proceedings against you.

Based on the foregoing, it is imperative that, in accordance with the applicable law, you take immediate steps to comply with the Findings of Violation and Order for Compliance. Please advise me in writing by November 26, 2007, of the corrective measures that you have taken to rectify this matter as any response by the Port to EPA is due within 30 days of November 9, 2007. Please also copy me on all correspondence with EPA on this matter. We look forward to your immediate attention to this matter.

Respectfully,

Robert Kanter

Dr. Robert Kanter
Managing Director of Environmental Management and Planning

Attachments: EPA Inspection Report
EPA Findings of Violations and Order for Compliance

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925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725

The Port of
LONG BEACH

November 19, 2007

Marty Marcum
Manager
Mitsubishi Cement Corporation
1100 Pier F Avenue
Long Beach, California 90802

Re: EPA Findings of Violations and Order for Compliance

Dear Mr. Marcum:

On May 15, 2007, the United States Environmental Protection Agency (EPA) conducted a Clean Water Act compliance inspection at Mitsubishi Cement Corporation's Long Beach marine cargo handling facility to determine if it was in compliance with terms of the National Pollution Discharge Elimination System General Permit (General Permit) under which the Port of Long Beach and its tenants operate. A copy of EPA's May 15 inspection report is enclosed. On November 9, 2007, the EPA issued its Findings of Violation and Order for Compliance (copy enclosed) for a number of issues that require immediate attention by you. The following is a list of the areas EPA alleges need correction:

1. Implement interim corrective measures;

2. Conduct site specific sampling and analysis of storm water discharges at the facility; and

3. Complete additional tasks identified in the Order, within the time specified by the Order.

The Order for Compliance requires, among other things, that you immediately take all necessary measures to comply with the General Permit and that interim cleanup and housekeeping measures related to such alleged violations be completed within 30 days of November 9, 2007. The Order for Compliance further requires submission within 30 days of November 9, 2007, of a Notice of Completion, including a list of interim measures taken, the date each interim measure was completed, the person responsible for overseeing completion of each interim measure, and copies of documents associated with the completion of the interim measures, such as contracts, permits, manifests, and photographs.

The lease between you and the Port requires you to comply with all applicable laws. (Lease, ¶ 13.) To the extent you fail to do so, the Port has a right, which it will exercise if necessary, to enter the property and remedy those failures. (Lease, ¶ 10, 10.1.) The lease further contains an indemnity provision obligating you to pay for any costs to the Port arising out of your operations. (Lease, ¶ 17.) To the extent there are any monetary fines resulting from the Findings of Violation and Order for Compliance, such fines, if levied, will be passed on to you under terms and conditions of your lease with the Port.

Based on the foregoing, it is imperative that, pursuant to the terms of the lease and applicable law, you take immediate steps to comply with the Findings of Violation and Order for Compliance. Please advise me in writing by November 26, 2007, of the corrective measures that you have taken to rectify this matter as any response by the Port to EPA is due within 30 days of November 9, 2007. Please also copy me on all correspondence with EPA on this matter. We look forward to your immediate attention to this matter.

Respectfully,

Robert Kantar

Dr. Robert Kantar
Managing Director of Environmental Management and Planning

Enclosures: EPA Inspection Report
EPA Findings of Violations and Order for Compliance

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925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725

The Port of
LONG BEACH

November 19, 2007

Tim Fout
Manager
New NGC Incorporated
d/b/a National Gypsum
1850 Pier B Street
Long Beach, California 90813

Re: EPA Findings of Violations and Order for Compliance

Dear Mr. Fout:

On May 14, 2007, the United States Environmental Protection Agency (US EPA) conducted a Clean Water Act compliance inspection at New NGC Incorporated d/b/a National Gypsum's Long Beach marine cargo handling facility to determine if it was in compliance with terms of the National Pollution Discharge Elimination System General Permit (General Permit) under which the Port of Long Beach and its tenants operate. A copy of EPA's May 14 inspection report is enclosed. On November 9, 2007, the EPA issued its Findings of Violation and Order for Compliance (copy enclosed) for a number of issues that require immediate attention by you. The following is a list of the areas EPA alleges need correction:

1. Construct interim control measures;

2. Create and implement a schedule for maintenance of the sump and weir;

3. Revise the Storm Water Pollution Prevention Plan for the Facility; and

4. Complete additional tasks identified in the Order, within the time specified by the Order.

The Order for Compliance requires, among other things, that you immediately take all necessary measures to comply with the General Permit and that interim cleanup and housekeeping measures related to such alleged violations be completed within 30 days of November 9, 2007.

The lease between you and the Port requires you to comply with all applicable laws. (Lease, ¶ 15.) The lease further requires you, at your own cost and expense, to maintain the property "in a safe, clean, wholesome, and sanitary condition under all applicable federal, state, municipal and other laws, ordinances, rules, and

regulations." (Lease, ¶ 7.) The lease further contains an indemnity provision obligating you to pay for any costs to the Port arising out of your operations. (Lease, ¶ 13.) To the extent there are any monetary fines resulting from the Findings of Violation and Order for Compliance, such fines, if levied, will be passed on to you under terms and conditions of your lease with the Port.

Based on the foregoing, it is imperative that pursuant to the terms of the lease and applicable law that you take immediate steps to comply with the Findings of Violation and Order for Compliance. Please advise me in writing by November 26, 2007, of the corrective measures that you have taken to rectify this matter as any response by the Port to EPA is due within 30 days of November 9, 2007. Please also copy me on all correspondence with EPA on this matter. We look forward to your immediate attention to this matter.

Respectfully,

Robert Kanter

Dr. Robert Kanter
Managing Director of Environmental Management and Planning

Enclosures: EPA Inspection Report
EPA Findings of Violations and Order for Compliance

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925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725

The Port of
LONG BEACH

November 19, 2007

Ron Santelik
Lunday Thagard Company
1405 Pier C. Street
Long Beach, California 90802

Re: EPA Findings of Violations and Order for Compliance

Dear Mr. Santelik:

On May 14, 2007, the United States Environmental Protection Agency (EPA) conducted a Clean Water Act compliance inspection at Lunday Thagard Company's Long Beach marine cargo handling facility to determine if it was in compliance with terms of the National Pollution Discharge Elimination System (NPDES) General Permit under which the Port of Long Beach operates. A copy of EPA's May 14 inspection report is enclosed. On November 9, 2007, the EPA issued its Findings of Violation and Order for Compliance (copy enclosed) for a number of issues that require immediate attention by you. The following is a list of the areas EPA alleges need correction:

1. Perform interim measure of implementing appropriate spill/leak Best Management Practices for the loading, storage, and maintenance areas;

2. Develop a Monitoring Plan for the Facility;

3. Revise the Storm Water Pollution Prevention Plan for the Facility; and

4. Complete additional tasks identified in the Order, within the time specified by the Order.

The Order for Compliance requires, among other things, that you immediately take all necessary measures to comply with the General Permit and that interim cleanup and housekeeping measures related to such alleged violations be completed within 30 days of November 9, 2007. The Order for Compliance further requires submission within 30 days of November 9, 2007, of a Notice of Completion, including a list of interim measures taken, the date each interim measure was completed, the person responsible for overseeing completion of each interim measure, and copies of documents associated with the completion of the interim measures, such as contracts, permits, manifests, and photographs.

Pursuant to the federal Clean Water Act and the California Porter Cologne Water Quality Control Act, the Long Beach Municipal Code prohibits non-storm water discharges into its municipal storm drain system. (*See e.g.* Long Beach Municipal Code § 18.95.010; 42 U.S.C. §§ 1251 *et seq.*; Cal. Water Code §§ 13000 *et seq.*) The failure to comply with the Municipal Code may result in the City initiating civil and criminal enforcement proceedings against you.

Based on the foregoing, it is imperative that, in accordance with the applicable law, you take immediate steps to comply with the Findings of Violation and Order for Compliance. Please advise me in writing by November 26, 2007, of the corrective measures that you have taken to rectify this matter as any response by the Port to EPA is due within 30 days of November 9, 2007. Please also copy me on all correspondence with EPA on this matter. We look forward to your immediate attention to this matter.

Respectfully,

Robert Kanter

Dr. Robert Kanter
Managing Director of Environmental Management and Planning

Enclosures: EPA Inspection Report
EPA Findings of Violations and Order for Compliance

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925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725

The Port of
LONG BEACH

November 19, 2007

Art Gonzales
Terminal Manager
Baker Commodities, Inc.
Pier D, Berth 30
Long Beach, California 90802

Re: EPA Findings of Violations and Order for Compliance

Dear Mr. Gonzales:

On May 15, 2007, the United States Environmental Protection Agency (US EPA) conducted a Clean Water Act compliance inspection at Baker Commodities, Inc.'s Long Beach marine cargo handling facility to determine if it was in compliance with terms of the National Pollution Discharge Elimination System General Permit (General Permit) under which the Port of Long Beach and its tenants operate. A copy of EPA's May 15 inspection report is enclosed. On November 9, 2007, the EPA issued its Findings of Violation and Order for Compliance (copy enclosed) for a number of issues that require immediate attention by you. The following is a list of the areas EPA alleges need correction:

1. Revise the Facility's Storm Water Pollution Prevention Plan (SWPPP);

2. Submit a Spill Prevention, Control, and Countermeasures Plan (SPCC Plan) for the Facility; and

3. Complete additional tasks identified in the Order, within the timeframes specified therein.

The Order for Compliance requires, among other things, that you immediately take all necessary measures to comply with the terms and conditions of the General Permit. The Order for Compliance also requires submission within 30 days of November 9, 2007, of a revised SWPPP that includes a complete assessment and description of potential pollutant sources. This includes the requirement that, within 30 days, you will submit and implement a SPCC Plan as specified in the SWPPP.

The Revocable Permit between you and the Port requires you to comply with all applicable laws. (Permit, ¶ 10.) The Permit further requires you, at your own risk, cost, and expense to maintain the property in good order, condition, and repair. (Permit, ¶ 7.) The Permit further contains an indemnity provision obligating you to pay for any costs to the Port arising out of your operations. (Permit, ¶ 15.) To the extent there are any monetary fines resulting from the Findings of Violation and Order for Compliance, such fines, if levied, will be passed on to you under terms and conditions of your Permit with the Port.

Based on the foregoing, it is imperative that, pursuant to the terms of the Permit and applicable law, you take immediate steps to comply with the Findings of Violation and Order for Compliance. Please advise me in writing by November 26, 2007, of the corrective measures that you have taken to rectify this matter as any response by the Port to EPA is due within 30 days of November 9, 2007. Please also copy me on all correspondence with EPA on this matter. We look forward to your immediate attention to this matter.

Respectfully,

Robert Kanter

Dr. Robert Kanter
Managing Director of Environmental Management and Planning

Enclosures: EPA Inspection Report
EPA Findings of Violations and Order for Compliance

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925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725

The Port of
LONG BEACH

November 19, 2007

Michael Shanks
Senior Vice President, Corporate Planning
International Transportation Service, Inc.
1281 Pier J. Ave.
Long Beach, California 90802

Re: EPA Findings of Violations and Order for Compliance

Dear Mr. Shanks:

On May 14, 2007, the United States Environmental Protection Agency (EPA) conducted a Clean Water Act compliance inspection at International Transportation Service, Inc.'s Long Beach marine cargo handling facility to determine if it was in compliance with terms of the National Pollution Discharge Elimination System General Permit (General Permit) under which the Port of Long Beach and its tenants operate. A copy of EPA's May 14 inspection report is enclosed. On November 9, 2007, the EPA issued its Findings of Violation and Order for Compliance (copy enclosed) for a number of issues that require immediate attention by you. The following is a list of the areas EPA alleges need correction:

1. Perform certain activities regarding implementation of Best Management Practices (BMPs) at the facility; and

2. Complete the tasks identified in the Order, within the timeframes specified therein.

The Order for Compliance requires, among other things, that you immediately take all necessary measures to comply with the General Permit and that interim cleanup and housekeeping measures related to such alleged violations be completed within 30 days of November 9, 2007. The Order for Compliance further requires submission within 30 days of November 9, 2007, of a Notice of Completion, including a list of interim measures taken, the date each interim measure was completed, the person responsible for overseeing completion of each interim measure, and copies of documents associated with the completion of the interim measures, such as contracts, permits, manifests, and photographs. The Order for Compliance further requires that within 30 days of receipt of the order a report be submitted to EPA detailing the costs associated with complying with the Order.

The Preferential Assignment Agreement (Agreement) between you and the Port requires you to comply with all applicable laws. (Agreement, ¶ 4.7.) To the extent you fail to do so, the Port has a right, which it will exercise if necessary, to enter the property and remedy those failures. (Agreement, ¶ 11, 11.1.) The Agreement further contains an indemnity provision obligating you to pay for any costs to the Port arising out of your operations. (Agreement, ¶ 4.7.3, 11.) To the extent there are any monetary fines resulting from the Findings of Violation and Order for Compliance, such fines, if levied, will be passed on to you under terms and conditions of your Agreement with the Port.

Based on the foregoing, it is imperative that pursuant to the terms of the Agreement and applicable law that you take immediate steps to comply with the Findings of Violation and Order for Compliance. Please advise me in writing by November 26, 2007, of the corrective measures that you have taken to rectify this matter as any response by the Port to EPA is due within 30 days of November 9, 2007. Please also copy me on all correspondence with EPA on this matter. We look forward to your immediate attention to this matter.

Respectfully,

Robert Kanter

Dr. Robert Kanter
Managing Director of Environmental Management and Planning

Enclosures: EPA Inspection Report
EPA Findings of Violations and Order for Compliance

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925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725

The Port of
LONG BEACH

November 19, 2007

Ken Dobson
Branch Manager
Morton International, Inc.
1050 Pier F. Ave.
Long Beach, California 90802

Re: EPA Findings of Violations and Order for Compliance

Dear Mr. Dobson:

On May 15, 2007, the United States Environmental Protection Agency (EPA) conducted a Clean Water Act compliance inspection at Morton International, Inc.'s Long Beach marine cargo handling facility to determine if it was in compliance with terms of the National Pollution Discharge Elimination System General Permit (General Permit) under which the Port of Long Beach and its tenants operate. A copy of EPA's May 15 inspection report is enclosed. On November 9, 2007, the EPA issued its Findings of Violation and Order for Compliance (copy enclosed) for a number of issues that require immediate attention by you. The following is a list of the areas EPA alleges need correction:

1. Implement interim corrective measures;

2. Conduct site specific sampling and analysis of storm water discharges at the facility; and

3. Complete additional tasks identified in the Order, within the time specified by the Order.

The Order for Compliance requires, among other things, that you immediately take all necessary measures to comply with the General Permit and that interim cleanup and housekeeping measures related to such alleged violations be completed within 30 days of November 9, 2007. The Order for Compliance further requires submission within 30 days of November 9, 2007, of a Notice of Completion, including a list of interim measures taken, the date each interim measure was completed, the person responsible for overseeing completion of each interim measure, and copies of documents associated with the completion of the interim measures, such as contracts, permits, manifests, and photographs.

The lease between you and the Port requires you to comply with all applicable laws. (Lease, ¶ 9.) To the extent you fail to do so, the Port has a right, which it will exercise if necessary, to enter the property and remedy those failures. (Lease, ¶ 8.1.) The lease further contains an indemnity provision obligating you to pay for any costs to the Port arising out of your operations. (Lease, ¶ 13.) To the extent there are any monetary fines resulting from the Findings of Violation and Order for Compliance, such fines, if levied, will be passed on to you under terms and conditions of your lease with the Port.

Based on the foregoing, it is imperative that pursuant to the terms of the lease and applicable law that you take immediate steps to comply with the Findings of Violation and Order for Compliance. Please advise me in writing by November 26, 2007, of the corrective measures that you have taken to rectify this matter as any response by the Port to EPA is due within 30 days of November 9, 2007. Please also copy me on all correspondence with EPA on this matter. We look forward to your immediate attention to this matter.

Respectfully,

Robert Kanter

Dr. Robert Kanter
Managing Director of Environmental Management and Planning

Enclosures: EPA Inspection Report
EPA Findings of Violations and Order for Compliance

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925 Harbor Plaza, Long Beach, CA 90802 Tel 562.437.0041 Fax 562.901.1725

The Port of
LONG BEACH

November 19, 2007

Sal Ferrigno
Branch Manager
Pacific Coast Container, Inc.
1521 Harbor Scenic Drive
Long Beach, California 90802

Re: EPA Findings of Violations and Order for Compliance

Dear Mr. Ferrigno:

On May 15, 2007, the United States Environmental Protection Agency (EPA) conducted a Clean Water Act compliance inspection at Pacific Coast Container, Inc.'s Long Beach marine cargo handling facility to determine if it was in compliance with terms of the National Pollution Discharge Elimination System General Permit (General Permit) under which the Port of Long Beach and its tenants operate. A copy of EPA's May 15 inspection report is enclosed. On November 9, 2007, the EPA issued its Findings of Violation and Order for Compliance (copy enclosed) for a number of issues that require immediate attention by you. The following is a list of the areas EPA alleges need correction:

1. Remove trash and sediment throughout the Facility;

2. Create an updated site map for the Storm Water Pollution Prevention Plan for the Facility; and

3. Complete additional tasks identified in the Order, within the time specified by the Order.

The Order for Compliance requires, among other things, that you immediately take all necessary measures to comply with the General Permit and that interim cleanup and housekeeping measures related to such alleged violations be completed within 30 days of November 9, 2007. The Order for Compliance further requires submission within 30 days of November 9, 2007, of a Notice of Completion, including a list of interim measures taken, the date each interim measure was completed, the person responsible for overseeing completion of each interim measure, and copies of documents associated with the completion of the interim measures, such as contracts, permits, manifests, and photographs.

The Preferential Assignment Agreement (Agreement) between you and the Port requires you to comply with all applicable laws. (Agreement, ¶ 4.7.) To the extent you fail to do so, the Port has a right, which it will exercise if necessary, to enter the property and remedy those failures. (Agreement, ¶ 11, 11.1.) The Agreement further contains an indemnity provision obligating you to pay for any costs to the Port arising out of your operations. (Agreement, ¶ 4.7.4, 16.) To the extent there are any monetary fines resulting from the Findings of Violation and Order for Compliance, such fines, if levied, will be passed on to you under terms and conditions of your Agreement with the Port.

Based on the foregoing, it is imperative that, pursuant to the terms of the Agreement, you take immediate steps to comply with the Findings of Violation and Order for Compliance. Please advise me in writing by November 26, 2007, of the corrective measures that you have taken to rectify this matter as any response by the Port to EPA is due within 30 days of November 9, 2007. Please also copy me on all correspondence with EPA on this matter. We look forward to your immediate attention to this matter.

Respectfully,

Robert Kanter

Dr. Robert Kanter
Managing Director of Environmental Management and Planning

Enclosures: EPA Inspection Report
EPA Findings of Violations and Order for Compliance

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Attachment B: Specific Comments and Recommendations

1. The recommendations for programmatic improvements are helpful and worthy of further discussions; however, the Port is concerned about the use of the term "deficiency" in the audit report. While page 7 of the Audit report defines the term as "deficiencies describe portions of a program or management practices which are not necessarily in non-compliance with permit compliance, but could be improved upon to better protect water quality through recommended modifications". We are concerned that use of the term deficiency implies the program is **deficient or non-compliant with permit conditions**. Because this audit report will be a public document and the information contained within could easily be taken out of context it is important that more accurate terminology be utilized. This report is 35 pages long and the term is only defined in a single place early in the document. We recommend use of the header "Recommendations for Programmatic Changes" instead of the term "deficiencies". Further, in several cases the recommendations made appear to be directed at the Regional Water Quality Control Board for consideration in the re-issuance of new permits rather than actions for the Port, in these instances that clarification should be made.

2. The recommendations section on Page 29 of the audit report mischaracterizes the roles and responsibilities of both the Port and members under the Program. The significant mischaracterization leads the Port to believe that the overall Program design and implementation may have been misunderstood by the audit team. The audit report states the following:

> *"The General Permit states that each covered facility is to manage storm water on-site using a pollution prevention team (Section A.3.a.) "within the facility organization". Such teams are intended to be responsible for SWPPP and BMP implementation and revision, the identification of non-storm water discharges, and inspection of potential pollutant sources. The audit team contends that by requiring the pollution prevention team and the corresponding responsibilities to be placed "within the facility organization", the General Permit acknowledges that people "within the facility organization" can best facilitate BMP implementation."*

The Port is in complete agreement with the audit team's assessment above. It is for this reason that the Port and the Regional Water Quality Control Board developed the Program's current structure. Under the Program the Port is responsible for administrative type functions and for looking at activities throughout the Harbor from a holistic approach, while individual facilities are responsible for the activities described above. It is the individual facilities, not the Port, that are responsible for day to day storm water prevention within a terminal (facility), SWPPP development, BMP implementation, etc., The audit then goes further to state

> *" However, in the case of the POLB, the entity responsible for BMP implementation is not "within the facility organization", and consequently may not be in the best position to implement facility-specific BMPs."*

This statement directly contradicts that fundamental structure of the Program. Given this misunderstanding, the Port is very concerned that many of the "deficiency" and

recommendations for change outlined in the audit report were made without a complete understanding of how the Program is structured and implemented.

3. The audit report cites as a deficiency the fact that the POLB is both providing educational visits and is the General Permit holder (page 11). The audit report gives no evidence that a conflict of interest currently exists or that the level of education being provided to the facilities is sub-standard under the MS4 Permit. To the contrary, we believe that by providing a model SWPPP, training materials, and a compendium of storm water BMPs to choose from, more site visits than required and other resources to the facilities, and the Port has demonstrated we exceed the educational requirements under the MS4 Permit. Furthermore, the audit report lists this element of the Program as a positive attribute on Page 9.

Currently the POLB is not required (as acknowledged in the audit report) to conduct "compliance inspections". If such inspections were required in future permits issued by the Regional Board, great consideration would need to be given on the best way to structure that program. This bullet item appears to be more suited as comment to the Regional Board for consideration when drafting future permits. We believe that leaving the item as written may cause the reader to misunderstand the Ports compliance status and our level of effort.

4. The audit report cites that 33% of facilities were in compliance while 52% had minor deficiencies and 14% had significant compliance issues (page 11). While the report acknowledges that this compliance rate is consistent with other industrial inspection results, the discussion does not indicate if the facilities are similar "port" facilities and further implies that the Port is ineffective in increasing compliance rates. However, subsequently, on page 35, the audit report states:

> *"The results of the General Permit inspections identify **26%** of the inspected POLA facilities as posing a significant threat to storm water quality compared to 14% for inspected POLB facilities. This discrepancy in potential threat to storm water quality may be due in part to the differences in management approach between the two ports. The POLB facilities are inspected annually and are in communication with the POLB regarding storm water inspections, SWPPPs and BMPs"*

These statistics would suggest, as the audit report states, <u>that the Port's program has been effective at increasing compliance compared to other similar "port" facilities</u> (e.g. POLA). Be assured that it is the Port's goal to have 100% compliance at all facilities and we will work diligently toward that end; however, as written, the "deficiency" described on page 11 could easily be taken out of context or misunderstood by a reader to mean that the Port's Program and efforts are ineffective. Clarification should be added to this item to reflect the audit teams finding that the Program has resulted in the reduction of non-compliance rates.

5. While the auditors acknowledge the Port's frequency of inspections exceeds compliance requirements, the auditors state that follow up to non-compliance at member facilities is insufficient (page 11) and the POLB does not have an enforcement escalation procedure (page 12). It is important to note that neither non-compliance follow-up nor enforcement escalation is required under the current permits. The current MS4 permit does not require the Port to act in a regulatory role, but rather requires educational visits. "As noted in item number two above, "this deficiency noted" would be more suited as a recommendation to the Regional Board for consideration when drafting future Permits. While the Port understands this may be the intent

behind the listed deficiency, we believe that leaving the item as written may cause the reader to misunderstand the Ports compliance status and our level of effort.

6. The audit report cites as "Deficiencies" the Port's inclusion of private property owners and all Port tenants in the Harbor District under one NOI. The deficiencies as written do not provide the background the reader must have to understand why the Program is structured in its current form. In 1992, the Port worked closely with the Regional Water Quality Control Board to establish the program that would include private property owners and tenants under a single NOI. Since 1992, both the Regional Board and EPA have been aware and supportive of this approach. During the last audit in 2000, the EPA and Regional Board did not list this issue as a deficiency; in fact, the Port has understood that this was the Agencies preferred approach. The Port understands that this audit team believes that requiring all facilities to submit individual NOIs may be appropriate in the future and the approach warrants careful consideration; however, leaving the deficiencies as written will lead the reader to believe that the Port has acted "improperly" (page 16), when, in fact, we were acting at the direction and approval of the Regional Board. Additionally, the recommendation could lead the reader to believe that the EPA is directing each facility to obtain individual coverage now, prior to a new permit or Program being revised. The Port will work cooperatively with the Agencies on a new program approach if that is deemed appropriate.

7. The audit report cites "inspections conducted by the Port are typically announced one working day prior to the inspection" (page 17) as a deficiency. Under the existing permit conditions, there is no requirement that the Port conduct site inspections. Given the current MS4 permit requirements which place POLB in the role of conducting educational visits providing advance notice to ensure the proper staff is available to be trained seems appropriate. This item as written would lead the reader to believe that the Port is improperly notifying facilities prior to our visits and that the Port is a regulatory agency, which it is not.

8. The audit report cites that Port staff are not communicating bench mark values to member facilities and implies that the Port does not consider or evaluate the storm water monitoring data (Page 18). The report also provides a considerable discussion of POLB storm water monitoring data and the Harbors 303(d) listing (pages 14-15). The Port believes that this discussion lacks background and context necessary for the reader to fully understand the current status of the water quality in the Harbor and leaves the reader with the impression that the 303(d) listings are caused by deficiencies in the Port's Program, <u>which is categorically false</u>. Furthermore, the discussion ignores the very active role the Port is playing in assessing and improving up-on current water conditions. The Port believes that a more complete background should be considered by the audit team when drafting the audit report, including:

a. The Port recognizes our unique role in the development of the Dominguez Channel TMDL given our end of pipe location in the watershed and the fact that our Harbor falls within the listed water bodies. We have demonstrated our commitment to provide significant technical and finicial resources to this process but, as written, the monitoring data and 303d list discussion implies that the Port is the sole cause of the listings, has data directly linking us to the listing and is not utilizing the data or taking action to rectify the problem.

   As noted in the audit report, the Los Angeles and Long Beach Harbor complex is listed on the Section 303(d) list requiring the development of TMDLs. The Audit Report presents a table of POLB Monitoring data and discusses the percentage of data exceeding the USEPA Multi-sector Parameter Benchmark Value (PBV) and restates the

303(d) listings (page 15). This seemingly implies that storm water discharge from the Port of Long Beach is directly linked to the Port's storm water quality without taking into consideration that the Port of Long Beach comprises 3,200 acres or 5 square miles while the Dominguez Channel Watershed is comprised of 345 square miles, Los Angeles River Watershed is comprised of 824 square miles and the San Gabriel River Watershed comprises 689 square miles. The Port of Long Beach land area represents only 5 square miles of a total combined watershed area of 1,858 square miles or 0.27% of the Dominguez, Los Angeles and San Gabriel River watersheds. These highly urbanized watersheds represent significantly greater potential to contribute to the overall pollutant loading into the San Pedro Harbor.

The table on page 15 of the audit report could be interpreted as the Port being the sole cause of the listings because the report doesn't include any discussion of other sources in the watershed areas. These data can only be placed into context when considered together with mass emissions measurements and estimated pollutant loading from Dominguez, Los Angeles, and San Gabriel Rivers. According to the County of Los Angeles Department of Public Works 2006-2007 Storm Water Monitoring Report (http://ladpw.org/wmd/NPDES) the mass emissions monitoring in Dominguez Channel resulted in at least 75% of the samples exceeding water quality standards for the following constituents: enterococcus, fecal coliform, total coliform, total aluminum, total copper, total lead, total zinc, ammonia and cyanide. The same report indicated storm water emissions monitoring in Los Angeles River resulted in at least 75% of the samples exceeding water quality standards for: bacterial indicators, total aluminum, total copper, total lead, total zinc and cyanide and the San Gabriel River storm water monitoring resulted in at least 75% of the samples exceeding water quality standards for bacterial indicators, total aluminum and total copper.

The POLB is actively participating in the Dominguez Channel and the Los Angeles and Long Beach Harbors Toxic and Metals TMDL development with EPA and the RWQCB for 303(d) listings in the harbor. The Port provided and the EPA is using the data collected from our monitoring program in the TMDL modeling effort. The POLB conducted several voluntary monitoring efforts to supplement the data being used for TMDL development by EPA and thereby improve the robustness of the data set used in TMDL modeling. In 2006, the Port of Long Beach conducted a characterization of sediment contaminant flux for the Inner Harbor and Outer Harbor water bodies to support sediment TMDL development.

During the same timeframe, the entire water column at each station was profiled using a multi-parameter water quality instrument at twenty stations, collecting measures of conductivity, temperature and depth (CTD). Additionally, a mid-water sample at each station was taken and analyzed for 160 different chemical constituents. In addition to supporting EPA's and the RWQCB's TMDL development efforts, this data set provides valuable information about existing sediment conditions in the Harbor.

b. The audit report cites as a deficiency the fact that information relative to parameter benchmark value exceedances has not been communicated to member facilities and identifies that this information should be used to assess effectiveness of BMPs. The monitoring program approved by the Regional Board and highlighted in the Audit Report as a strength, is intended to provide a "regional or sub-watershed level assessment of data" (page 28) and is not intended to assess individual BMPs.

The Port has also been actively engaged in the improvement of harbor water quality through the implementation of BMPs (structural and non-structural) in advance of permit requirements. The Port has developed a policy of requiring storm water treatment units in any new development projects and the first treatment units have already been installed. We regularly review our water quality information and proactively take steps to improve water quality in the harbor.

c. The Port has been an active participant in many efforts aimed at improving the understanding of water quality conditions in the Harbor and watershed. The Port actively participated in the development of the Dominguez Watershed Management Master Plan. The Port contributed to the development of land use specific storm water pollutant loading information by conducting pollutograph monitoring at several Port specific land use types for a research project conducted by the Southern California Coastal Waters Research Project. Additionally, the Port participated in the Southern California Bight Research Monitoring Project conducted in 2003.

EPA/LARWQCB/CITY-PORT OF LONG BEACH
STORMWATER MEETING
NOVEMBER 27, 2007

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