



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Acting Secretary for
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
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Edmund G. Brown Jr.
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NOTICE OF OPPORTUNITY FOR DESIGNATED PARTIES TO SUBMIT COMMENTS, EVIDENCE AND LEGAL ARGUMENT AND FOR INTERESTED PERSONS TO SUBMIT NON-EVIDENTIARY COMMENTS

SAN DIEGO BAY SHIPYARD SEDIMENT SITE TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2011-0001 AND DRAFT TECHNICAL REPORT

NOTE: This notice affects the rights and obligations of any person, whether Designated Party or Interested Person, who has an interest in the above matter. Please read it carefully and forward it to any other persons who have an interest in this proceeding. Additional information related to this proceeding is available at the following website: www.waterboards.ca.gov/sandiego.

NOTICE IS HEREBY GIVEN THAT the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) will accept comments, evidence and legal argument concerning Tentative Cleanup and Abatement Order No. R9-2011-0001 (TCAO) and its associated Draft Technical Report (DTR) for the San Diego Bay Shipyard Sediment Site, San Diego County. The TCAO/DTR were prepared by the San Diego Water Board Cleanup Team (Cleanup Team).

The TCAO alleges that elevated levels of pollutants above San Diego Bay background conditions exist in the San Diego Bay bottom marine sediments along the eastern shore of central San Diego Bay extending approximately from the Sampson Street Extension to the northwest and Chollas Creek to the southeast, and from the shoreline out to the San Diego Bay main shipping channel to the west (Shipyard Sediment Site). The TCAO identifies National Steel and Shipbuilding Company (NASSCO), BAE Systems San Diego Ship Repair Facility (BAE Systems), the City of San Diego, Star & Crescent Boat Company, Campbell Industries, San Diego Gas & Electric Company, the United States Navy and the San Diego Unified Port District as responsible for having caused or permitted the discharge of waste to the Shipyard Sediment Site resulting in the accumulation of waste in the marine sediment. The TCAO further alleges that the contaminated marine sediment has caused conditions of pollution or nuisance in the San Diego Bay, adversely affecting aquatic life, aquatic-dependent wildlife, and human health beneficial uses of San Diego Bay. If adopted, the TCAO would direct the

California Environmental Protection Agency

responsible parties to terminate all illicit discharges and implement all necessary corrective actions to remediate contaminated marine sediment.

The TCAO and DTR were released on September 15, 2010. A copy of the TCAO and DTR and related information can be found on the San Diego Water Board website at http://www.waterboards.ca.gov/sandiego/water_issues/programs/shipyards_sediment/2005_0126cut2.shtml. Since the initial version of the TCAO/DTR was released in 2005 as Tentative Order No. R9-2005-0126, it has been revised several times. On April 4, 2008, the Cleanup Team released an Indexed Electronic Administrative Record (the Shipyard Administrative Record) for the proceeding. The Cleanup Team updated the record electronically on November 5, 2010. Pursuant to the extended discovery schedule in this matter, the discovery period for Designated Parties concluded on March 11, 2011.

The Designated Parties to this proceeding include the entities identified in the TCAO as responsible parties as follows: NASSCO, BAE Systems, the City of San Diego, Star & Crescent Boat Company, Campbell Industries, San Diego Gas & Electric Company, the United States Navy and the San Diego Unified Port District. In addition, the San Diego Water Board has identified BP, Chevron, a subsidiary of ChevronTexaco, San Diego Coastkeeper, Environmental Health Coalition, the San Diego Port Tenants Association, and the San Diego Water Board Cleanup Team as Designated Parties. The San Diego Coastkeeper and Environmental Health Coalition frequently have been referred to collectively as the "Environmental Parties." All other persons wishing to participate may do so only as interested persons.

With this Notice, the San Diego Water Board is establishing the schedule for Designated Parties and Interested Persons to submit comments, evidence and legal argument concerning the TCAO/DTR. As the Environmental Parties pointed out in their April 6, 2011, communication, the need for hearing briefs later in the process appears duplicative with submittal of legal argument pursuant to this schedule. While the San Diego Water Board may, at a later date, consider allowing optional hearing briefs that will summarize the Designated Parties' positions prior to hearing, the Designated Parties are on notice that they should submit all legal argument in accordance with the enclosed schedule in order for legal arguments on the TCAO/DTR to be timely.

A subsequent notice will be issued to allow for public comment on the Draft Environmental Impact Report being prepared by the Cleanup Team and anticipated to be released on June 17, 2011. A notice of public hearing for the evidentiary hearing tentatively scheduled for November 9-10, 2011 also will be issued at a later date. The Second Amended Order of Proceedings, issued on May 2, 2008, will be amended in the near future to incorporate this schedule, the remaining procedural schedule, and to provide more detail about the hearing format for this matter.

Therefore, the following deadlines for comments are hereby established:

1. On or before **5 p.m. on May 26, 2011**: Designated Parties except for the Cleanup Team shall submit written comments on the TCAO/DTR including and not limited to technical issues, evidence, and legal argument.¹ Interested Persons shall submit any written non-evidentiary comments on the TCAO/ DTR.
2. On or before **5 p.m. on June 16, 2011**: Designated Parties except for the Cleanup Team shall submit any reply comments on technical issues, rebuttal evidence, and rebuttal legal argument. Interested Persons shall submit any written non-evidentiary reply comments on the TCAO/DTR.
3. On or before **5 p.m. on August 16, 2011**, the Cleanup Team shall submit response to comments on technical issues, evidence, and legal argument. No new evidence is permitted.

Written comments must comply with the format in Appendix A.

Designated Parties must distribute their written submittals electronically to the San Diego Water Board and all Designated Parties.

IF YOU HAVE ANY QUESTIONS

Questions concerning this Notice may be addressed to Frank Melbourn by email at fmelbourn@waterboards.ca.gov or telephone number 858-467-2973.



Grant Destache, Chair and Presiding Officer for Prehearing Proceedings

Dated: 4/12/2011

¹ The proposed schedule allowed Designated Parties other than the Cleanup Team 31 days and 14 days to submit initial and reply comments, evidence and legal argument, respectively. The Environmental Parties, NASSCO and those joining NASSCO's comments also requested more times for initial and reply submittals. The San Diego Water Board notes that the TCAO and DTR in their most current form have been publicly available for almost seven months and the parties have had an extensive opportunity to conduct discovery on prior versions as well as the September 15, 2010 TCAO/DTR. Therefore, while the San Diego Water Board will allow more than the originally proposed time for initial and reply submittals, it is not necessary to extend the time for as long as some Designated Parties request. It is appropriate to retain an approximately 60 day response to comment timeframe for the Cleanup Team as the Cleanup Team must wait for submittals to begin its responses and rebuttal.

APPENDIX A

COMMENT FORMAT

SHIPYARD SEDIMENT SITE

INSTRUCTIONS: Designated Parties to the Cleanup and Abatement Order (CAO) Proceeding, excluding the San Diego Water Board Cleanup Team, and Interested Persons shall submit all comments as follows:

Designated Parties may submit comments on technical issues, legal argument, and evidence on the Tentative CAO (TCAO) and Draft Technical Report (DTR) to the San Diego Water Board with copies to all other Designated Parties.

Interested persons may submit non-evidentiary policy statements or comments on the TCAO and DTR to the San Diego Water Board.

Designated Parties to the proceeding shall provide the following information on the cover page of their submittal:

| | |
|---|-------|
| Designated Party Name: | _____ |
| Represented by Representative Company/Agency: | _____ |
| Representative Street Address: | _____ |
| City, State, Zip Code: | _____ |
| Phone Number: | _____ |
| Email Address: | _____ |

For Designated Parties, each separate comment,¹ legal argument, or piece of evidence in the submittal must be preceded by the appropriate Information Table 1, 2, or 3 (shown below) with the required information filled in. Consolidating comments that refer to the same document type (ie, TCAO, DTR, or SAR²) is not acceptable. While one page can contain multiple comments, each comment must be preceded by its own separate information table. Comments which do not conform to this format may be stricken by the presiding Hearing Officer and excluded from the administrative record.

¹ A "comment" is defined as any reasonably segregable issue, concern, or argument.

² The term "Shipyard Administrative Record" refers to a) the indexed administrative record in electronic format provided by the San Diego Water Board to the Designated Parties and b) other documents designated by the San Diego Water Board for inclusion in the administrative record and available on the San Diego Water Board website.

Information Table 1.

| Tentative CAO No. R9-2011 - 0001 | |
|---|--|
| Date of Submittal | |
| TCAO Finding or Directive Number | |
| TCAO Page, Paragraph, and Sentence Number | |
| Concise Summary of Issue | |
| Indicate if Issue is Comment, Legal Argument, or Evidence | |

Information Table 2.

| Draft Technical Report for Tentative CAO No. R9-2011-0001 | |
|---|--|
| Date of Submittal | |
| DTR Section Number | |
| DTR Page, Paragraph, and Sentence Number | |
| Concise Summary of Issue | |
| Indicate if Issue is Comment, Legal Argument, or Evidence | |

Information Table 3.

| Shipyard Administrative Record | |
|---|--|
| Document Name | |
| Document Date | |
| SAR Number ³ | |
| Page, Paragraph, and Sentence Number | |
| Concise Summary of Issue | |
| Indicate if Issue is Comment, Legal Argument, or Evidence | |

³ An individual Shipyard Administrative Record (SAR) Number is assigned to every document in the electronic Shipyard Administrative Record.

For Interested Persons, each non-evidentiary policy statement or comment must be preceded by Information Table 4 with the required information filled in. Consolidating non-evidentiary policy statements or comments that refer to the same document type (i.e. the TCAO, DTR, or SAR⁴) is not acceptable. While one page can contain multiple statements or comments, each separate policy statement or comment must be preceded by its own separate information table. Policy statements or comments which do not conform to this format may be stricken by the presiding Hearing Officer and excluded from the administrative record.

Information Table 4.

| Non-Evidentiary Policy Statements or Comments Submitted by Interested Persons | |
|---|----------------|
| Indicate if Policy Statement or Comment is on TCAO, DTR, or SAR | |
| Name of "Person" and Organization Document is From | |
| Document Date | |
| Document Type | Public Comment |
| Page, Paragraph, and Sentence Number | |
| Concise Summary of Issue | |

⁴ The term "Shipyard Administrative Record" refers to a) the indexed administrative record in electronic format provided by the San Diego Water Board to the Designated Parties and b) other documents designated by the San Diego Water Board for inclusion in the administrative record and available on the San Diego Water Board website.