

Site managers should clearly describe the basis for all models used and their uncertainties when using the predicted results to make a site decision. As recognized by the NRC report (p. 65), however, "Management decisions must be made, even when information is imperfect. There are uncertainties associated with every decision that need to be weighed, evaluated, and communicated to affected parties. Imperfect knowledge must not become an excuse for not making a decision."

7. Select Site-specific, Project-specific, and Sediment-specific Risk Management Approaches that will Achieve Risk-based Goals.

EPA's policy has been and continues to be that there is no presumptive remedy for any contaminated sediment site, regardless of the contaminant or level of risk. This is consistent with the NRC report's statement (p. 243) that "There is no presumption of a preferred or default risk-management option that is applicable to all PCB-contaminated-sediment sites." At Superfund sites, for example, the most appropriate remedy should be chosen after considering site-specific data and the NCP's nine remedy selection criteria. All remedies that may potentially meet the removal or remedial action objectives (e.g., dredging or excavation, in-situ capping, in-situ treatment, monitored natural recovery) should be evaluated prior to selecting the remedy. This evaluation should be conducted on a comparable basis, considering all components of the remedies, the temporal and spatial aspects of the sites, and the overall risk reduction potentially achieved under each option.

At many sites, a combination of options will be the most effective way to manage the risk. For example, at some sites, the most appropriate remedy may be to dredge high concentrations of persistent and bioaccumulative contaminants such as PCBs or DDT, to cap areas where dredging is not practicable or cost-effective, and then to allow natural recovery processes to achieve further recovery in net depositional areas that are less contaminated.

8. Ensure that Sediment Cleanup Levels are Clearly Tied to Risk Management Goals.

Sediment cleanup levels have often been used as surrogates for actual remediation goals (e.g., fish tissue concentrations or other measurable indicators of exposure relating to levels of acceptable risk). While it is generally more practical to use measures such as contaminant concentrations in sediment to identify areas to be remediated, other measures should be used to ensure that human health and/or ecological risk reduction goals are being met. Such measures may include direct measurements of indigenous fish tissue concentrations, estimates of wildlife reproduction, benthic macroinvertebrate indices, or other "effects endpoints" as identified in the baseline risk assessment.

As noted in the NRC report (p. 123), "The use of measured concentrations of PCBs in fish is suggested as the most relevant means of measuring exposures of receptors to PCBs in contaminated sediments." For other contaminants, other measures may be more appropriate.

For many sites, achieving remediation goals, especially for bioaccumulative contaminants in biota, may take many years. Site monitoring data and new scientific information should be considered in future reviews of the site (e.g., the Superfund five-year review) to ensure that the remedy remains protective of human health and the environment.

9. Maximize the Effectiveness of Institutional Controls and Recognize their Limitations.

Institutional controls, such as fish consumption advisories and waterway use restrictions, are often used as a component of remedial decisions at sediment sites to limit human exposures and to prevent further spreading of contamination until remedial action objectives are met. While these controls can be an important component of a sediment remedy, site managers should recognize that they may not be very effective in eliminating or significantly reducing all exposures. If fish consumption advisories are relied upon to limit human exposures, it is very important to have public education programs in place. For other types of institutional controls, other types of compliance assistance programs may also be needed (e.g., state/local government coordination). Site managers should also recognize that institutional controls seldom limit ecological exposures. If monitoring data or other site information indicates that institutional controls are not effective, additional actions may be necessary.

10. Design Remedies to Minimize Short-term Risks while Achieving Long-term Protection.

The NRC report notes (p. 53) that: "Any decision regarding the specific choice of a risk management strategy for a contaminated sediment site must be based on careful consideration of the advantages and disadvantages of available options and a balancing of the various risks, costs, and benefits associated with each option." Sediment cleanups should be designed to minimize short-term impacts to the extent practicable, even though some increases in short-term risk may be necessary in order to achieve a long-lasting solution that is protective. For example, the long-term benefits of removing or capping sediments containing persistent and bioaccumulative contaminants often outweigh the additional short-term impacts on the already-affected biota.

In addition to considering the impacts of each alternative on human health and ecological risks, the short-term and long-term impacts of each alternative on societal and cultural practices should be identified and considered, as appropriate. For example, these impacts might include effects on recreational uses of the waterbody, road traffic, noise and air pollution, commercial fishing, or disruption of way of life for tribes. At some sites, a comparative analysis of impacts such as these may be useful in order to fully assess and balance the tradeoffs associated with each alternative.

11. Monitor During and After Sediment Remediation to Assess and Document Remedy Effectiveness.

A physical, chemical, and/or biological monitoring program should be established for sediment sites in order to determine if short-term and long-term health and ecological risks are being adequately mitigated at the site and to evaluate how well all remedial action objectives are being met. Monitoring should normally be conducted during remedy implementation and as long as necessary thereafter to ensure that all sediment risks have been adequately managed. Baseline data needed for interpretation of the monitoring data should be collected during the remedial investigation.

Depending on the risk management approach selected, monitoring should be conducted during implementation in order to determine whether the action meets design requirements and sediment cleanup levels, and to assess the nature and extent of any short-term impacts of remedy implementation. This information can also be used to modify construction activities to assure that remediation is proceeding in a safe and effective manner. Long-term monitoring of indicators such as contaminant concentration reductions in fish tissue should be designed to determine the success of a remedy in meeting broader remedial action objectives. Monitoring is generally needed to verify the continued long-term effectiveness of any remedy in protecting human health and the environment and, at some sites, to verify the continuing performance and structural integrity of barriers to contaminant transport.

IV. IMPLEMENTATION

EPA RPMs, OSCs, and RCRA Corrective Action project managers should immediately begin to use this guidance at all sites where the risks from contaminated sediment are being investigated. EPA expects that Federal facility responses conducted under CERCLA or RCRA will also be consistent with this directive. This consultation process does not apply to Time-Critical or emergency removal actions or to sites with only sediment-like materials in wastewater lagoons, tanks, storage or containment facilities, or drainage ditches.

Consultation Process for CERCLA Sites

To help ensure that Regional site managers appropriately consider these principles *before* site-specific risk management decisions are made, this directive establishes a two-tiered consultation procedure that will apply to most contaminated sediment sites. The consultation process applies to all proposed or listed NPL sites where EPA will sign or concur on the ROD, all Non-Time-Critical removal actions where EPA will sign or concur on the Action Memorandum, and all "NPL-equivalent" sites where there is or will be an EPA-enforceable agreement in place.

Appendix A: 11 Principles

Tier 1 Process

Where the sediment action(s) for the entire site will address more than 10,000 cubic yards or five acres of contaminated sediment, Superfund RPMs and OSCs should consult with their appropriate Office of Emergency and Remedial Response (OERR) Regional Coordinator at least 30 days before issuing for public comment a Proposed Plan for a remedial action or an Engineering Evaluation/Cost Analysis (EE/CA) for a Non-Time-Critical removal action.

This consultation entails the submission of the draft proposed plan or draft EE/CA, a written discussion of how the above 11 principles were considered, and basic site information that will assist OERR in tracking significant sediment sites. If the project manager has not received a response from OERR within two weeks, he or she may assume no further information is needed at this time. EPA believes that this process will help promote nationally consistent approaches to evaluate, select and implement protective, scientifically sound, and cost-effective remedies.

Tier 2 Process

This directive also establishes a new technical advisory group (Contaminated Sediments Technical Advisory Group—CSTAG) that will monitor the progress of and provide advice regarding a small number of large, complex, or controversial contaminated sediment Superfund sites. The group will be comprised of ten Regional staff and approximately five staff from OSWER, OW, and ORD. For most sites, the group will meet with the site manager and the site team several times throughout the site investigation, response selection, and action implementation processes. For new NPL sites, the group will normally meet within one year after proposed listing. It is anticipated that for most sites, the group will meet annually until the ROD is signed and thereafter as needed until all remedial action objectives have been met. The specific areas of assistance or specific documents to be reviewed will be decided by the group on a case-by-case basis in consultation with the site team. For selected sites with an on-going RI/FS or EE/CA, the group will be briefed by the site manager some time in 2002 or 2003. Reviews at sites with remedies also subject to National Remedy Review Board (NRRB) review will be coordinated with the NRRB in order to eliminate the need for a separate sediment group review at this stage in the process.

Consultation Process for RCRA Corrective Action Facilities

Generally, for EPA-lead RCRA Corrective Action facilities where a sediment response action is planned, a two-tiered consultation process will also be used. Where the sediment action(s) for the entire site will address more than 10,000 cubic yards or five acres of contaminated sediment, project managers should consult with the Office of Solid Waste's Corrective Action Branch at least 30 days before issuing a proposed action for public comment. This consultation entails the submission of a written discussion of how the above 11 principles

Appendix A: 11 Principles

were considered, and basic site information that will assist OSW in tracking significant sediment sites.

If the project manager has not received a response from OSW within two weeks, he or she may assume no further information is needed. States are also encouraged to follow these procedures. For particularly large, complex, or controversial sites, OSW will likely call on the technical advisory group discussed above.

EPA also recommends that both state and EPA project managers working on sediment contamination associated with Corrective Action facilities consult with their colleagues in both RCRA and Superfund to promote consistent and effective cleanups. EPA believes this consultation would be particularly important for the larger-scale sediment cleanups mentioned above.

EPA may update this guidance as more information becomes available on topics such as: the effectiveness of various sediment response alternatives, new methods to evaluate risks, or new methods for characterizing sediment contamination. For additional information on this guidance, please contact the OERR Sediments Team Leader (Stephen Ells at 703 603-8822) or the OSW Corrective Action Programs Branch Chief (Tricia Buzzell at 703 308-8632).

NOTICE: This document provides guidance to EPA Regions concerning how the Agency intends to exercise its discretion in implementing one aspect of the CERCLA and RCRA remedy selection process. This guidance is designed to implement national policy on these issues. Some of the statutory provisions described in this document contain legally binding requirements. However, this document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus it cannot impose legally binding requirements on EPA, states, or the regulated community, and may not apply to a particular situation based upon the circumstances. Any decisions regarding a particular situation will be made based on the statutes and regulations, and EPA decision-makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. Interested parties are free to raise questions and objections about the substance of this guidance and the appropriateness of the application of this guidance to a particular situation, and the Agency welcomes public input on this document at any time. EPA may change this guidance in the future.

cc: Michael H. Shapiro
Stephen D. Luftig
Larry Reed
Elizabeth Cotsworth
Jim Woolford

Appendix A: 11 Principles

Jeff Josephson, Superfund Lead Region Coordinator, USEPA Region 2
Carl Daly, RCRA Lead Region Coordinator, USEPA Region 8
Peter Grevatt
NARPM Co-Chairs
OERR Records Manager, IMC 5202G
OERR Documents Coordinator, HOSC 5202G
RCRA Key Contacts, Regions 1 - 10

October 12, 2005

File Number:

03-0284.05

Ruth Kolb
City of San Diego
9601 Ridgehaven Ct.
San Diego, CA 92123-1686

Subject: **Calscience Work Order No. 05-10-0056**
Client Reference: **City of San Diego Sampson St**

Dear Client:

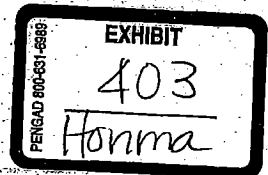
Enclosed is an analytical report for the above-referenced project. The samples included in this report were received 10/3/2005 and analyzed in accordance with the attached chain-of-custody.

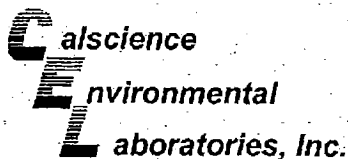
Unless otherwise noted, all analytical testing was accomplished in accordance with the guidelines established in our Quality Systems Manual, applicable standard operating procedures, and other related documentation. The original report of any subcontracted analysis is provided herein, and follows the standard Calscience data package. The results in this analytical report are limited to the samples tested and any reproduction thereof must be made in its entirety.

If you have any questions regarding this report, please do not hesitate to contact the undersigned.

Sincerely,

Calscience Environmental
Laboratories, Inc.
Robert Stearns
Project Manager





Analytical Report

City of San Diego
9601 Ridgehaven Ct.
San Diego, CA 92123-1686

Date Received: 10/03/05
Work Order No: 05-10-0056
Preparation: EPA 3545
Method: EPA 8310
Units: ug/kg

Project: City of San Diego - Sampson St

Page 1 of 2

Client Sample Number	Lab Sample Number	Date Collected	Matrix	Date Prepared	Date Analyzed	GC Batch ID
Sampson 6" - #1	05-10-0056-1	10/03/05	Solid	10/11/05	10/11/05	051010L07

Parameter	Result	RL	DF	Qual	Parameter	Result	RL	DF	Qual
Naphthalene	.70	50	1		Benzo (a) Anthracene	450	50	1	
Acenaphthylene	ND	50	1		Chrysene	210	50	1	
Acenaphthene	ND	50	1		Benzo (b) Fluoranthene	260	50	1	
Fluorene	ND	50	1		Benzo (k) Fluoranthene	160	50	1	
Phenanthrene	210	50	1		Benzo (a) Pyrene	130	50	1	
Anthracene	ND	50	1		Dibenz (a,h) Anthracene	ND	50	1	
Fluoranthene	ND	50	1		Benzo (g,h,i) Perylene	ND	50	1	
Pyrene	500	50	1		Indeno (1,2,3-c,d) Pyrene	93	50	1	
Surrogates:	REC (%)	Control Limits		Qual					
Decafluorobiphenyl	56	40-160							

Client Sample Number	Lab Sample Number	Date Collected	Matrix	Date Prepared	Date Analyzed	GC Batch ID
Sampson 12" - #2	05-10-0056-2	10/03/05	Solid	10/11/05	10/11/05	051010L07

Parameter	Result	RL	DF	Qual	Parameter	Result	RL	DF	Qual
Naphthalene	330	50	1		Benzo (a) Anthracene	ND	50	1	
Acenaphthylene	ND	50	1		Chrysene	65	50	1	
Acenaphthene	ND	50	1		Benzo (b) Fluoranthene	67	50	1	
Fluorene	ND	50	1		Benzo (k) Fluoranthene	110	50	1	
Phenanthrene	140	50	1		Benzo (a) Pyrene	59	50	1	
Anthracene	ND	50	1		Dibenz (a,h) Anthracene	ND	50	1	
Fluoranthene	ND	50	1		Benzo (g,h,i) Perylene	ND	50	1	
Pyrene	170	50	1		Indeno (1,2,3-c,d) Pyrene	ND	50	1	
Surrogates:	REC (%)	Control Limits		Qual					
Decafluorobiphenyl	109	40-160							

Client Sample Number	Lab Sample Number	Date Collected	Matrix	Date Prepared	Date Analyzed	GC Batch ID
Sampson Catch Basin - #3	05-10-0056-3	10/03/05	Solid	10/11/05	10/14/05	051010L07

Parameter	Result	RL	DF	Qual	Parameter	Result	RL	DF	Qual
Naphthalene	170	50	1		Benzo (a) Anthracene	ND	50	1	
Acenaphthylene	ND	50	1		Chrysene	ND	50	1	
Acenaphthene	ND	50	1		Benzo (b) Fluoranthene	ND	50	1	
Fluorene	ND	50	1		Benzo (k) Fluoranthene	ND	50	1	
Phenanthrene	ND	50	1		Benzo (a) Pyrene	ND	50	1	
Anthracene	ND	50	1		Dibenz (a,h) Anthracene	ND	50	1	
Fluoranthene	3300	250	5		Benzo (g,h,i) Perylene	ND	50	1	
Pyrene	91	50	1		Indeno (1,2,3-c,d) Pyrene	ND	50	1	
Surrogates:	REC (%)	Control Limits		Qual					
Decafluorobiphenyl	51	40-160							

RL - Reporting Limit DF - Dilution Factor Qual - Qualifiers

7440 Lincoln Way, Garden Grove, CA 92841-1427 • TEL: (714) 895-5494 • FAX: (714) 894-7501

SAR281647

Analytical Report

City of San Diego
 9601 Ridgehaven Ct.
 San Diego, CA 92123-1686

Date Received: 10/03/05
 Work Order No: 05-10-0056
 Preparation: EPA 3545
 Method: EPA 8310
 Units: ug/kg

Project: City of San Diego - Sampson St

Page 2 of 2

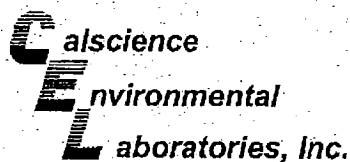
Client Sample Number	Lab Sample Number	Date Collected	Matrix	Date Prepared	Date Analyzed	QC Batch ID
Method Blank	099-07-002-582	N/A	Solid	10/11/05	10/11/05	051010607

Parameter	Result	RL	DF	Qual	Parameter	Result	RL	DF	Qual
Naphthalene	ND	50	1		Benzo (a) Anthracene	ND	50	1	
Acenaphthylene	ND	50	1		Chrysene	ND	50	1	
Acenaphthene	ND	50	1		Benzo (b) Fluoranthene	ND	50	1	
Fluorene	ND	50	1		Benzo (k) Fluoranthene	ND	50	1	
Phenanthrene	ND	50	1		Benzo (a) Pyrene	ND	50	1	
Anthracene	ND	50	1		Dibenz (a,h) Anthracene	ND	50	1	
Fluoranthene	ND	50	1		Benzo (g,h,i) Perylene	ND	50	1	
Pyrene	ND	50	1		Indeno (1,2,3-c,d) Pyrene	ND	50	1	
Surrogates	REC (%)	Control Limits		Qual					
Decafluorobiphenyl	70	40-160							

RL - Reporting Limit DF - Dilution Factor Qual - Qualifiers

7440 Lincoln Way, Garden Grove, CA 92841-1427 • TEL: (714) 895-5494 • FAX: (714) 894-7501

SAR281648



Analytical Report

City of San Diego
9601 Ridgehaven Ct.
San Diego, CA 92123-1686

Date Received: 10/03/05
Work Order No: 05-10-0056
Preparation: EPA 3545
Method: EPA 8082
Units: ug/kg

Project: City of San Diego - Sampson St

Page 1 of 1

Client Sample Number	Lab Sample Number	Date Collected	Matrix	Date Prepared	Date Analyzed	QC Batch ID
Sampson 6" - #1	05-10-0056-1	10/03/05	Solid	10/06/05	10/10/05	051006L10

Parameter	Result	RL	DF	Qual	Parameter	Result	RL	DF	Qual
Aroclor-1016	ND	50	1	1	Aroclor-1248	ND	50	1	1
Aroclor-1221	ND	50	1	1	Aroclor-1254	650	50	1	1
Aroclor-1232	ND	50	1	1	Aroclor-1260	720	50	1	1
Aroclor-1242	ND	50	1	1	Aroclor-1262	ND	50	1	1
Surrogates:	REC (%)	Control Limits		Qual	Surrogates:	REC (%)	Control Limits		
Decachlorobiphenyl	70	50-130			2,4,5,6-Tetrachloro-m-Xylene	77	50-130		

Client Sample Number	Lab Sample Number	Date Collected	Matrix	Date Prepared	Date Analyzed	QC Batch ID
Sampson 12" - #2	05-10-0056-2	10/03/05	Solid	10/06/05	10/10/05	051006L10

Parameter	Result	RL	DF	Qual	Parameter	Result	RL	DF	Qual
Aroclor-1016	ND	50	1	1	Aroclor-1248	ND	50	1	1
Aroclor-1221	ND	50	1	1	Aroclor-1254	130	50	1	1
Aroclor-1232	ND	50	1	1	Aroclor-1260	120	50	1	1
Aroclor-1242	ND	50	1	1	Aroclor-1262	ND	50	1	1
Surrogates:	REC (%)	Control Limits		Qual	Surrogates:	REC (%)	Control Limits		
Decachlorobiphenyl	70	50-130			2,4,5,6-Tetrachloro-m-Xylene	81	50-130		

Client Sample Number	Lab Sample Number	Date Collected	Matrix	Date Prepared	Date Analyzed	QC Batch ID
Sampson Catch Basin - #3	05-10-0056-3	10/03/05	Solid	10/06/05	10/10/05	051006L10

Parameter	Result	RL	DF	Qual	Parameter	Result	RL	DF	Qual
Aroclor-1016	ND	50	1	1	Aroclor-1248	ND	50	1	1
Aroclor-1221	ND	50	1	1	Aroclor-1254	260	50	1	1
Aroclor-1232	ND	50	1	1	Aroclor-1260	360	50	1	1
Aroclor-1242	ND	50	1	1	Aroclor-1262	ND	50	1	1
Surrogates:	REC (%)	Control Limits		Qual	Surrogates:	REC (%)	Control Limits		
Decachlorobiphenyl	63	50-130			2,4,5,6-Tetrachloro-m-Xylene	72	50-130		

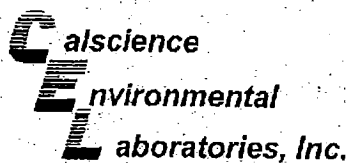
Client Sample Number	Lab Sample Number	Date Collected	Matrix	Date Prepared	Date Analyzed	QC Batch ID
Method Blank	099-07-009-734	N/A	Solid	10/06/05	10/10/05	051006L10

Parameter	Result	RL	DF	Qual	Parameter	Result	RL	DF	Qual
Aroclor-1016	ND	50	1	1	Aroclor-1248	ND	50	1	1
Aroclor-1221	ND	50	1	1	Aroclor-1254	ND	50	1	1
Aroclor-1232	ND	50	1	1	Aroclor-1260	ND	50	1	1
Aroclor-1242	ND	50	1	1	Aroclor-1262	ND	50	1	1
Surrogates:	REC (%)	Control Limits		Qual	Surrogates:	REC (%)	Control Limits		
Decachlorobiphenyl	78	50-130			2,4,5,6-Tetrachloro-m-Xylene	78	50-130		

RL - Reporting Limit DF - Dilution Factor Qual - Qualifiers

7440 Lincoln Way, Garden Grove, CA 92841-1427 • TEL: (714) 895-5494 • FAX: (714) 894-7501

SAR281649



Quality Control - Spike/Spike Duplicate

City of San Diego
9601 Ridgehaven Ct.
San Diego, CA 92123-1686

Date Received: 10/03/05
Work Order No: 05-10-0056
Preparation: EPA 3545
Method: EPA 8310

Project City of San Diego - Sampson St

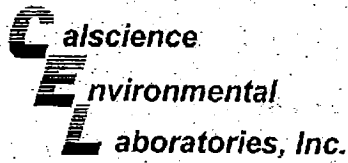
Quality Control Sample ID	Matrix	Instrument	Date Prepared	Date Analyzed	MS/MSD Batch Number
05-09-1583-3	Solid	HPLC-5	10/10/05	10/11/05	051010507

Parameter	MS %REC	MSD %REC	%REC CL	RPD	RPD-CL	Qualifiers
Benzo (b) Fluoranthene	89	105	40-160	17	0-20	
Benzo (k) Fluoranthene	92	110	40-160	17	0-20	
Benzo (a) Pyrene	99	117	40-160	17	0-20	
Dibenz (a,h) Anthracene	103	138	40-160	29	0-20	4
Benzo (g,h,i) Perylene	90	105	40-160	16	0-20	
Indeno (1,2,3-c,d) Pyrene	90	113	40-160	23	0-20	4

RPD - Relative Percent Difference CL - Control Limit

7440 Lincoln Way, Garden Grove, CA 92841-1427 • TEL: (714) 895-5494 • FAX: (714) 894-7501

SAR281650



Quality Control - Spike/Spike Duplicate

City of San Diego
 9601 Ridgehaven Ct.
 San Diego, CA 92123-1686

Date Received: 10/03/05
 Work Order No: 05-10-0056
 Preparation: EPA 3545
 Method: EPA 8082

Project City of San Diego - Sampson St

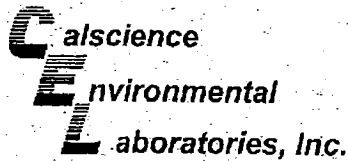
Quality Control Sample ID	Matrix	Instrument	Date Prepared	Date Analyzed	MS/MSD Batch Number
05-10-0064-6	Solid	GC 10	10/06/05	10/10/05	051006510

Parameter	MS %REC	MSD %REC	%REC CL	RPD	RPD CL	Qualifiers
Aroclor-1260	133	93	50-135	35	0-25	4

RPD - Relative Percent Difference CL - Control Limit

7440 Lincoln Way, Garden Grove, CA 92841-1427 • TEL: (714) 895-5494 • FAX: (714) 894-7501

SAR281651



Quality Control - LCS/LCS Duplicate

City of San Diego
9601 Ridgehaven Ct.
San Diego, CA 92123-1686

Date Received: N/A
Work Order No.: 05-10-0056
Preparation: EPA 3545
Method: EPA 8310

Project: City of San Diego - Sampson St

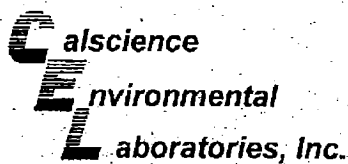
Quality Control Sample ID	Matrix	Instrument	Date Prepared	Date Analyzed	LCS/LCSD Batch Number
099-07-002582	Solid	HPLC 5	10/11/05	10/11/05	05101007

Parameter	LCS %REC	LCSD %REC	%REC CL	RPD	RPD CL	Qualifiers
Benzo (b) Fluoranthene	150	154	40-160	3	0-20	
Benzo (k) Fluoranthene	155	153	40-160	1	0-20	
Benzo (a) Pyrene	159	158	40-160	1	0-20	
Dibenz (a,h) Anthracene	159	160	40-160	0	0-20	
Benzo (g,h,i) Perylene	158	156	40-160	1	0-20	
Indeno (1,2,3-c,d) Pyrene	143	145	40-160	1	0-20	

RPD - Relative Percent Difference, CL - Control Limit

7440 Lincoln Way, Garden Grove, CA 92841-1427 • TEL: (714) 895-5494 • FAX: (714) 894-7501

SAR281652



Quality Control - LCS/LCS Duplicate

City of San Diego	Date Received:	N/A
9601 Ridgehaven Ct.	Work Order No:	05-10-0056
San Diego, CA 92123-1686	Preparation:	EPA 3545
	Method:	EPA 8082

Project: City of San Diego - Sampson St.

Quality Control Sample ID	Matrix	Instrument	Date Prepared	Date Analyzed	LCS/LCSD Batch Number
099-07-009-734	Solid	GC 10	10/06/05	10/10/05	05100610

Parameter	LCS %REC	LCSD %REC	%REC CL	RPD	RPD CL	Qualifiers
Aroclor-1260	74	78	50-135	5	0-25	

RPD = Relative Percent Difference CL = Control Limit

7440 Lincoln Way, Garden Grove, CA 92841-1427 • TEL: (714) 895-5494 • FAX: (714) 894-7501

SAR281653

Glossary of Terms and Qualifiers

Work Order Number: 05-10-0056

Qualifier	Definition
*	See applicable analysis comment.
1	Surrogate compound recovery was out of control due to a required sample dilution, therefore, the sample data was reported without further clarification.
2	Surrogate compound recovery was out of control due to matrix interference. The associated method blank surrogate spike compound was in control and, therefore, the sample data was reported without further clarification.
3	Recovery of the Matrix Spike or Matrix Spike Duplicate compound was out of control due to matrix interference. The associated LCS and/or LCSD was in control and, therefore, the sample data was reported without further clarification.
4	The MS/MSD RPD was out of control due to matrix interference. The LCS/LCSD RPD was in control and, therefore, the sample data was reported without further clarification.
5	The PDS/PDSD associated with this batch of samples was out of control due to a matrix interference effect. The associated batch LCS/LCSD was in control and, hence, the associated sample data was reported with no further corrective action required.
A	Result is the average of all dilutions, as defined by the method.
B	Analyte was present in the associated method blank.
C	Analyte presence was not confirmed on primary column.
E	Concentration exceeds the calibration range.
H	Sample received and/or analyzed past the recommended holding time.
J	Analyte was detected at a concentration below the reporting limit and above the laboratory method detection limit. Reported value is estimated.
N	Nontarget Analyte.
ND	Parameter not detected at the indicated reporting limit.
Q	Spike recovery and RPD control limits do not apply resulting from the parameter concentration in the sample exceeding the spike concentration by a factor of four or greater.
U	Undetected at the laboratory method detection limit.
X	% Recovery and/or RPD out-of-range.
Z	Analyte presence was not confirmed by second column or GC/MS analysis.

CALSCIENCE ENVIRONMENTAL LABORATORIES, INC.

7440 LINCOLN WAY
GARDEN GROVE, CA 92841-1432
TEL: (714) 895-5494 • FAX: (714) 894-7501

CHAIN OF CUSTODY RECORD

Date: 10.3.05
Page: 1 of 1

LABORATORY CLIENT: Port of San Diego
ADDRESS: 3105 Pacific Island Drive
CITY: San Diego, CA ZIP: 92101
TEL: (619) 481-1877 FAX: (619) 481-1877
E-MAIL: ESD@portofsan-diego.com

CLIENT PROJECT NAME / NUMBER: San Diego City San Diego
PROJECT CONTACT: Paul Brown
SAMPLE NO. (SIGNATURE): [Signature]
COELT LOG CODE: 09.525.8636

P.O. NO.: _____
LAB USE ONLY: 0 - 0 - 0 - 5 10
COOLER RECEIPT: TEMP = _____ °C

REQUESTED ANALYSES

LAB USE ONLY	GEMS ID	SAMPLE ID	SAMPLING		NO. OF CONT.	MATRIX	TPH (g)	TPH (l)	HALOCARBONS (B021B)	VOCs (B260B)	VOCs (B035 & B260B) in Gases	SVOCs (B270C)	PEST (B081A)	PCBs (B082)	EOL / DECP (504.14 or 18011)	CAC, T22 METALS (6010B)	PMAs (B310)	VOCs (T0-14A) or (T0-15)	
			DATE	TIME															
1		San Diego #1-A	10/3/05	13:05	1	soil													
2		San Diego #2	10/3/05	13:05	1	soil													
3		San Diego #3	10/3/05	13:05	1	soil													

Reinquished by: (Signature) [Signature] Received by: (Signature) [Signature] Date: 10/3/05 Time: 1430

Reinquished by: (Signature) [Signature] Received by: (Signature) [Signature] Date: 10/3/05 Time: 1430

Reinquished by: (Signature) [Signature] Received for Laboratory by: (Signature) [Signature] Date: 10/3/05 Time: 1430

DISTRIBUTION: White with final report, Green to File, Yellow and Pink to Client.
Please note that pages 1 and 2 of our TFCs are printed on the reverse side of the Yellow and Pink copies respectively.



CITY OF
 SAN DIEGO
 METROPOLITAN WASTEWATER DEPARTMENT
 ENVIRONMENTAL MONITORING & TECHNICAL SERVICES DIVISION
 WASTEWATER CHEMISTRY LABORATORY
 5530 Kiewit Drive
 La Mesa, CA 91942
 (619) 668-3215



0056

SAMPLING REPORT & CHAIN OF CUSTODY RECORD

Project/Client: _____
 Contact Name: _____
 Phone: _____

Sampler: James P. Tabert
 Contact Name: Robert
 Phone: 619.575.8636

Type of Sampling Equipment/How sample obtained/other sampling notes:

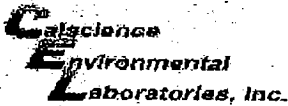
Sample Information: (All information is required)

Date/Time Sample Taken	Sampler	Source / Location	Sample Type/Description	Grab / Composite	Total vol/wt mLs / Gms	Number of containers	Container Type	Preservative	Analyses requested	Sample Log Number (Lab use only)
10/13/05	5-ported sampler	San Joaquin #1	soil	grab	80Z	1	6x	---	PCB, PAH	
10/13/05	5-ported sampler	San Joaquin #2	soil	grab	40Z	1	6x	---	PCB, PAH	
10/13/05	5-ported sampler	San Joaquin #3	soil	grab	40Z	1	6x	---	PCB, PAH	

Chain-of-Custody

Relinquished by:	Received by:	Date & Time	Location	Comments
Relinquished by: <u>James P. Tabert</u> Name: JAMES P. TABERT Sign: [Signature]	Received by: <u>Robert</u> Name: [Signature] Sign: [Signature]	Date & Time: 10/13/05 Location: 13:10		
Relinquished by: <u>Robert</u> Name: [Signature] Sign: [Signature]	Received by: <u>Robert</u> Name: [Signature] Sign: [Signature]	Date & Time: 10/13/05 Location: 14:30		
Relinquished by: <u>Robert</u> Name: [Signature] Sign: [Signature]	Received by: <u>Robert</u> Name: [Signature] Sign: [Signature]	Date & Time: 10/13/05 Location: Lab		

See instructions on reverse for completing this form.
 FIGURE 24



WORK ORDER #:

05 - 10 - 0056

Cooler 1 of 1

SAMPLE RECEIPT FORM

CLIENT: Post of S.D.

DATE: 10/3/15

TEMPERATURE - SAMPLES RECEIVED BY:

CALSCIENCE COURIER:

Chilled, cooler with temperature blank provided.

Chilled, cooler without temperature blank.

Chilled and placed in cooler with wet ice.

Ambient and placed in cooler with wet ice.

Ambient temperature.

3.9°C Temperature blank.

LABORATORY (Other than CalScience Courier):

°C Temperature blank.

°C IR thermometer.

Ambient temperature.

Initial: *[Signature]*

CUSTODY SEAL INTACT:

Sample(s): _____ Cooler: _____ No (Not Intact): _____ Not Applicable (N/A):

Initial: *[Signature]*

SAMPLE CONDITION:

	Yes	No	N/A
Chain-Of-Custody document(s) received with samples.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sample container label(s) consistent with custody papers.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sample container(s) intact and good condition.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Correct containers for analyses requested.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proper preservation noted on sample label(s).....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VOA vial(s) free of headspace.....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Tedlar bag(s) free of condensation.....	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Initial: *[Signature]*

COMMENTS:

Public Workshop & CEQA Scoping Meeting

For

TMDLs for Toxic Pollutants in
Sediment for the Mouths of
Paleta, Chollas, and Switzer
Creeks

October 14, 2008



Today's Agenda

• Public Workshop:

- Overview of 303(d) and TMDLs
- Overview of Basin Planning Process
- Timeline for this TMDL Project
- Presentation of Toxic Pollutants TMDLs
 - Public Input and Comment

• CEQA Scoping Meeting

- Public Input and Comment on Physical Impact on the Environment from TMDL Implementation

Clean Water Act Section 303(d)

- As enacted in 1972, §303(d) of the Clean Water Act requires States to:
 - Identify waters not meeting State water quality standards -- §303(d) list
 - Develop a TMDL for each pollutant, for each listed water body

Total Maximum Daily Loads

The Purpose of TMDLs is to ...
Attain Water Quality Objectives and
Restore Beneficial Uses

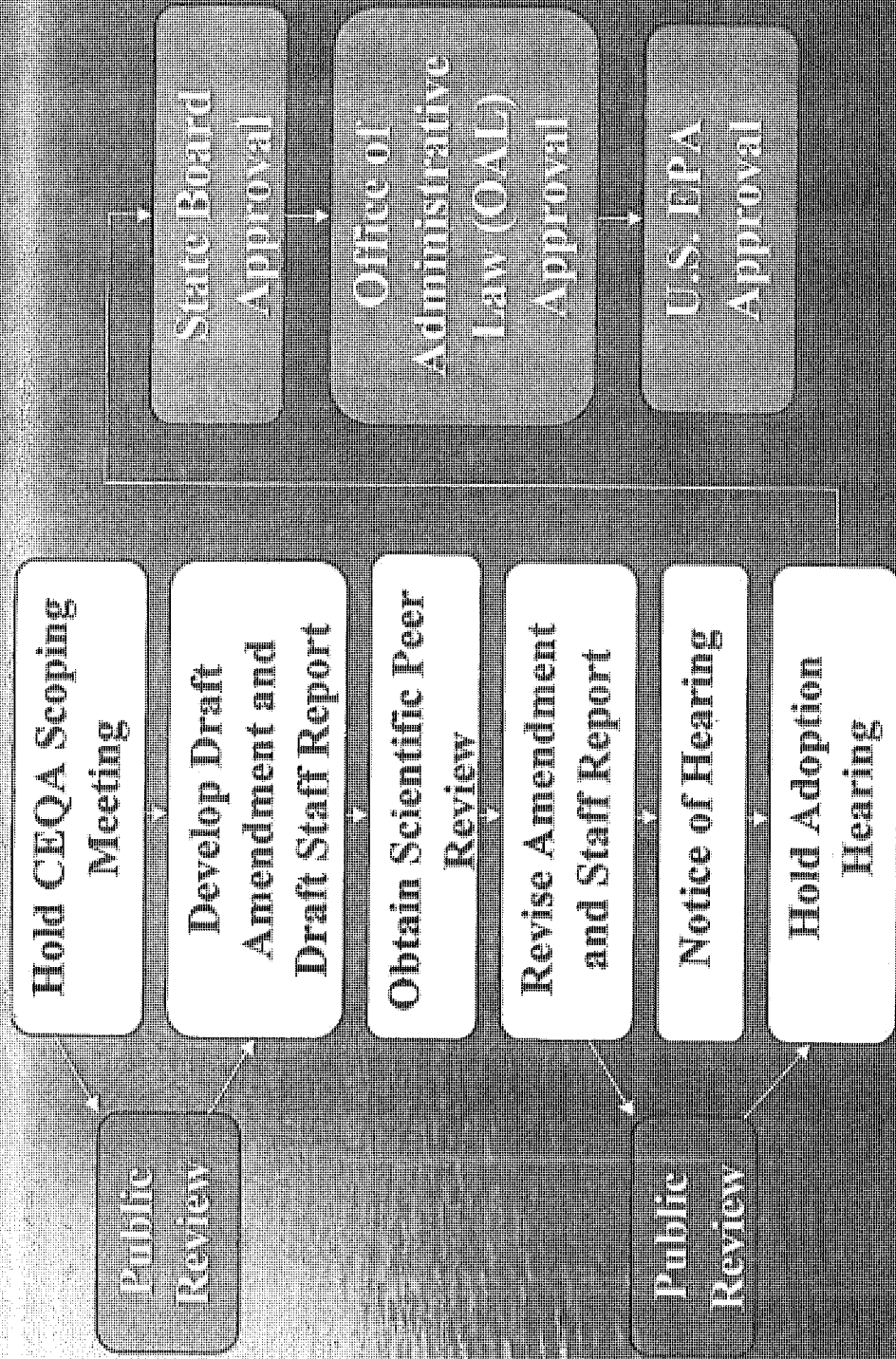
A TMDL is defined as ...
The amount of a pollutant that a
waterbody can receive and still meet
water quality standards

$$\text{TMDL} = \sum \text{WLA} + \sum \text{LA} + \text{Bkg} + \text{MOS}$$

Elements of TMDL Development

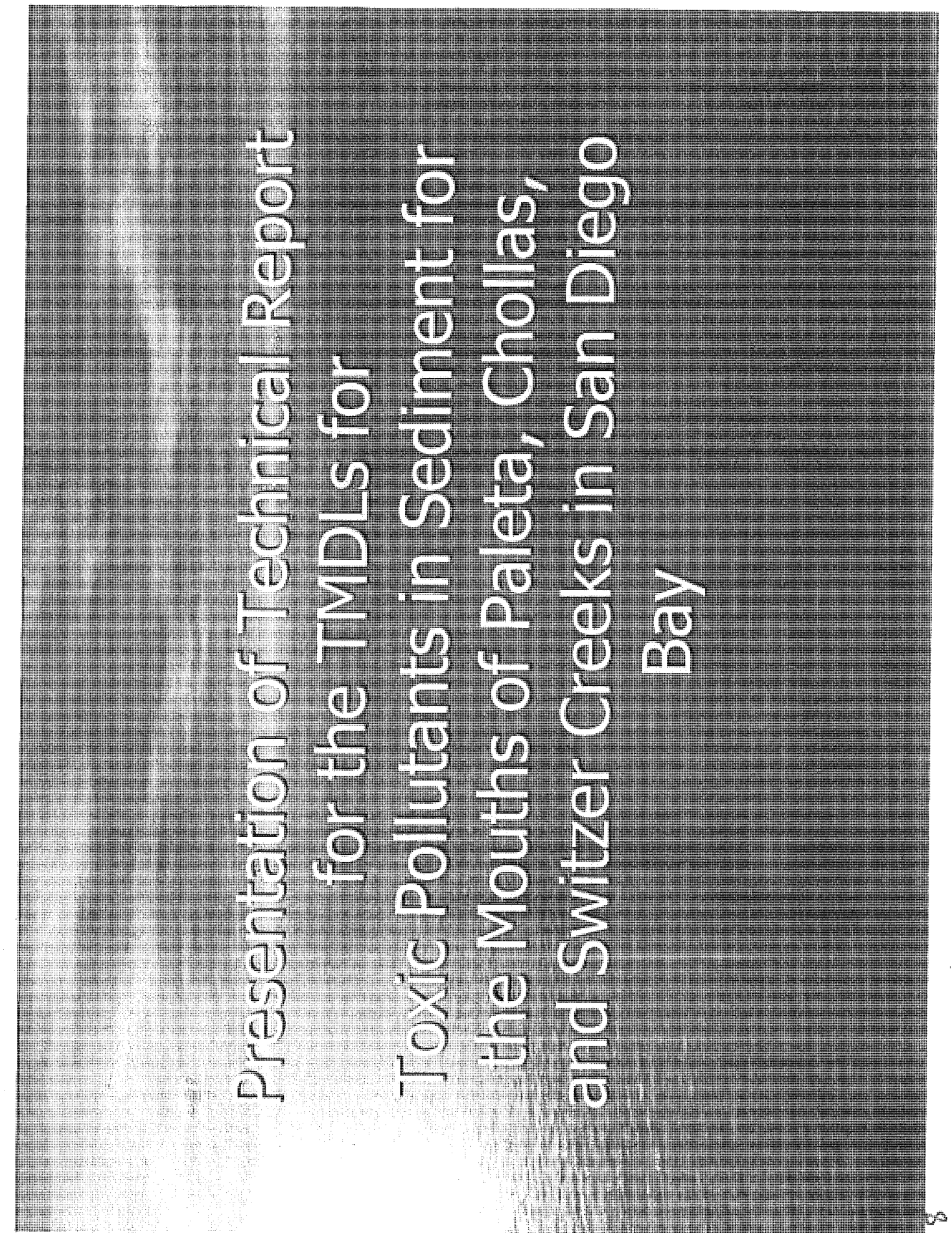
- Problem Statement
- Numeric Targets
- Source Analysis
- Linkage Analysis
- TMDL & Pollutant Load Allocations (WLA & LA)
- Margin of Safety (MOS)
- Seasonal Variation & Critical Condition
- Implementation and Monitoring Strategy

Overview of Basin Planning Process



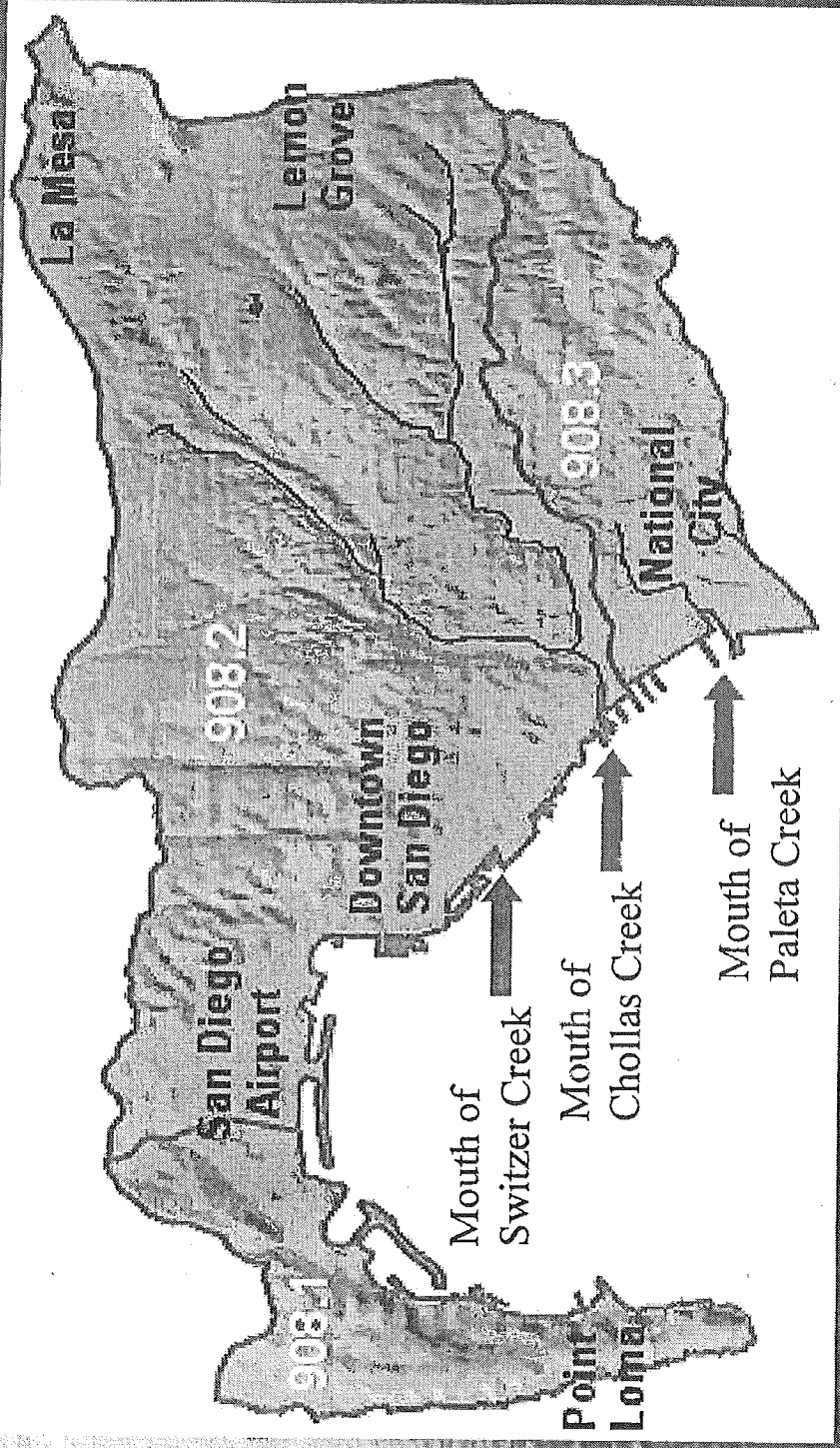
TMDL Project Timeline

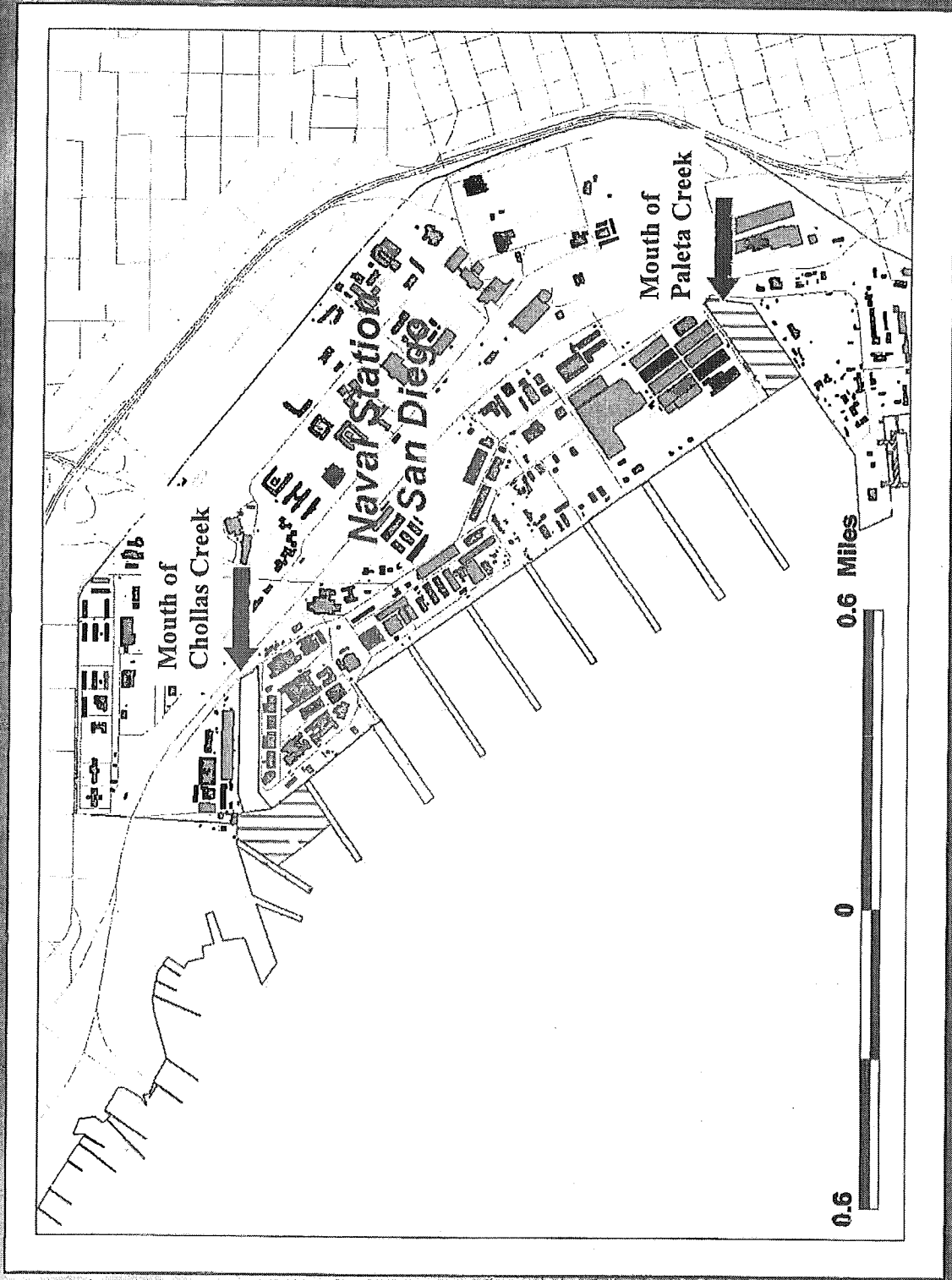
- January 2009 –
 - Complete Draft TMDL Staff Report for Peer Review
- April - May 2009 –
 - Address Peer Review Comments
 - Complete CEQA Documentation
 - Prepare TMDL Staff Report and Basin Plan Amendment for Public Review
- August 2009 – Regional Board Hearing

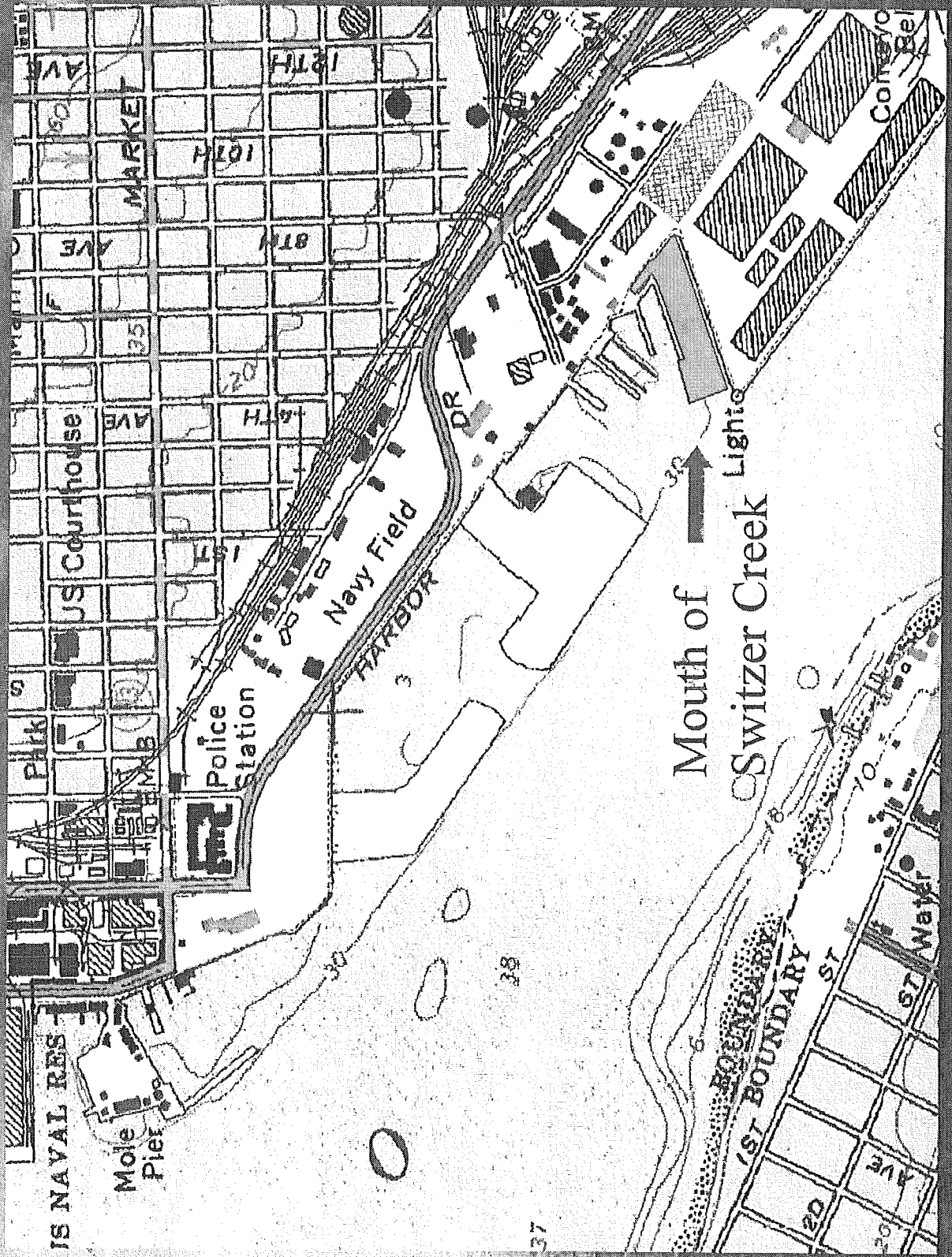


Presentation of Technical Report
for the TMDLs for
Toxic Pollutants in Sediment for
the Mouths of Paleta, Chollas,
and Switzer Creeks in San Diego
Bay

Pueblo San Diego Sub-watershed







Mouth of Switzer Creek

Light

IS NAVAL RES

Mole Pier

Police Station

Navy Field HARBOR

MARKET AVE

US Courthouse

BOUNDRARY

ST Water

Ave

20

30

ST

10

20

30

40

50

60

70

80

90

100

37

39

30

30

30

30

30

30

30

30

30

30

30

30

30

30

30

30

Toxic Pollutants in Sediment TMDLs

- Problem Statement
- Sources
- Numeric Targets
- Linkage Analysis
- TMDLs / Allocations
- Margin of Safety
- Implementation Plan

Problem Statement

- 303 (d) Listed based on Bay Protection Toxic Cleanup Program Data – Toxic Hotspots
- Toxicity and Pesticide Narrative Objectives
- Phase I & Phase II Studies (2004-2005)
 - Verified the Impairment
 - Identified Cause of Impairment (TIE)

Sources

- Identified Sources
 - Urban/Storm Water Runoff
 - Cities, Caltrans, School Districts, Hospitals, Military
 - Various urban pollutants including oil/gas/grease, legacy pesticide laden soils, and creosote telephone pole locations
 - Storm Water from Industrial Facilities & Construction Sites
 - Atmospheric Deposition

Sources – Cont.

• Identified Sources – cont.

- Sediment Flux
- Sediment Resuspension
- Leaching from Creosote Pilings
- Ballast Water
- Oil Spills
- Bilge Water

Sources by Watershed – Paleta Creek

- Urban / Storm Water Runoff
 - City of San Diego
 - National City
 - San Diego Unified School District (SDUSD)
 - National School District
- Naval Station
- Caltrans

Sources by Watershed –

Chollas Creek

Urban / Storm Water Runoff

- City of San Diego
- City of La Mesa
- City of Lemon Grove
- SD Unified School District
- La Mesa Spring Valley School District
- Lemon Grove School District

- NASSCO

- Naval Station

- Caltrans

Sources by Watershed – Switzer Creek

- Urban / Storm Water Runoff
 - City of San Diego
 - SDUSD
 - San Diego City College
 - U.S. Navy Hospital
- 10th Avenue Marine Terminal
- Campbell Industries
- Caltrans

What is a Numeric Target?

- Identifies specific goals for TMDLs that equate to attainment of water quality objectives and provide the basis for data analysis and final TMDL allocations.
- Established to ensure that water quality objectives are met and that beneficial uses are protected.

CWA 303(d) List

- **Mouths of Chollas Creek and Paleta Creek (7th Street Channel):**
 - Sediment Toxicity
 - Benthic Community Effects
- **Mouth of Switzer Creek:**
 - Chlordane
 - Lindane
 - PAHs

Contaminants of Concern Identified from TIE Study

**For the Mouths of Chollas
Creek and Paleta Creek:**

- Chlordane
- Non-Polar Organics (PAHs, PCBs,
DDTs)

Numeric Target Values Considered

- Natural Background levels
- Background levels for Shipyards Sediment Site in San Diego Bay
- Screening Values such as ERLs, ERLMs, & TELs
- Risk assessment values to address bioaccumulation in wildlife and humans
- Sediment Quality Guidelines for CA – available on the State Board Website

Sediment Quality Objectives Values

- "U.S." Logistic Regression Model
 - Uses the 20% Threshold Value
 - Field, et al., 2002. Env. Tox. and Chem., 21:9:1993-2005.
- California Logistic Regression Model
 - Uses the 33% Threshold Value for screening
 - <http://www.swrcb.ca.gov/bptcp/sediment.html>
- We are proposing using a 20% Threshold Value as the Numeric Target.

Screening Levels and Background Levels for Pollutants in San Diego Bay Sediments

	Units	ERL (1)	ERM (1)	CA LRM (2) T20	CA LRM (2) T33	Background (3)
HMW PAHs	µg/kg	1,700	9,600	2500	5300	673
LMW PAHs	µg/kg	552	3160	786	1600	--
p,p'-DDT	µg/kg	1.19 (TEL)	4.77 (PEL)	4.71	7.30	--
PCBs	µg/kg	22.7	180	110	300	84
Chlordane	µg/kg	0.5	6.0	2.8	3.9	--

(1) Long et al., 1995

(2) Sediment Quality Objectives for the State of California

(3) Background levels for Shipyard Sediment Site in San Diego Bay

Numeric Targets

Total PCBs	110 $\mu\text{g}/\text{kg}$	(So. Cal LRM T20)
Total PAHs	3,286 $\mu\text{g}/\text{kg}$	(So. Cal LRM T20)
Chlordane	2.8 $\mu\text{g}/\text{kg}$	(So. Cal LRM T20)
Lindane	0.32 $\mu\text{g}/\text{kg}$	(TEL)

Linkage Analysis

- Watershed Model (LSPC)
 - Links Sources to the Receiving Water
- Bay Model (EFDC)
 - Simulates Assimilative Capacity using the output of the Watershed Model and other sources.
 - It has four sub-models: hydrodynamic, water quality, sediment transport, & toxics.

TMDL Waste Load Allocation Scenarios

- Scenario 1: The bed sediment is set at the Numeric Target Level (NT), and existing loads coming from the watershed.
- Scenario 2: The bed sediment is set at the NT, and watershed load reduced to the NT.
- Scenario 3: The bed sediment is set at the NT, and reducing water loads to less than NT until bed sediment concentrations can be sustained at or below the NT.

TMDLs and Allocations

Waterbody	PCBs			Reduction Required	
	TMDL/WLA	Existing Load		g/d	%
	g/d	g/d			
Paleta Creek	6.35E-02	6.35E-02		0.00E+00	0%
Chollas Creek	2.47E-01	2.47E-01		0.00E+00	0%
Switzer Creek	3.27E-02	3.27E-02		0.00E+00	0%

TMDLs and Allocations

PAHs					
Waterbody	TMDL/WLA	Existing Load	Reduction Required		
	g/d		g/d	g/d	%
Paleta Creek	0.05E+02	1.08E+02	1.03E+02	95.5%	
Chollas Creek	8.51E+01	4.07E+02	3.22E+02	80%	
Switzer Creek	2.80E+01	3.50E+01	7.00E+00	20%	
Chlordane					
Waterbody	TMDL/WLA	Existing Load	Reduction Required		
	g/d		g/d	g/d	%
Paleta Creek	2.23E-03	5.14E+00	5.14E+00	100%	
Chollas Creek	1.37E-01	1.09E+01	1.08E+01	99%	
Switzer Creek	4.50E-02	3.09E+00	3.04E+00	99%	
Lindane					
Waterbody	TMDL	Existing Load	Reduction Required		
	g/d		g/d	g/d	%
Switzer Creek	7.64E-03	3.27E-02	2.50E-02	77%	

Allocations

- Waste Load Allocation (WLA) at bottom of watershed
- Allocate based on percent area in Watershed
- Qualitative assessment to determine contributing Land Uses, then allocate to those sources based on percent of land area

Margin of Safety

An Implicit MOS is included by the use of conservative assumptions in the model analysis

1. Used the high rainfall year for loading analysis
2. Used historic data as a constant value for background value in San Diego Bay
3. Did not assume that there was any loss of pollutants from the Bay source
4. Used $\frac{1}{2}$ the detection limit value for PCBs from watershed
5. Did not include a degradation rate for toxics

Question: Do we need an Explicit MOS?

Implementation Plan

- Implementation Plan
 - Compliance Time (10 years)
 - Interim Targets (phase in reductions over time)
- Implementation Actions
 - Actions to consider for Load Reductions
 - Actions to consider for addressing Legacy Pollutants

Implementation Strategy for Load Reductions

- Actions may include:
 - Source control of sediment transport: Structural & Non Structural BMPs
 - Prevention of pollutants entering streams: Structural & Non Structural BMPs
 - Creek restoration to prevent sediment erosion
 - Creosote piling replacement
 - Creosote Telephone Pole Removal

Implementation Strategies for Contaminated Bay Sediment

- Actions may include:
 - No Action
 - Dredging
 - Some Combination of Dredging and Capping
 - Other Ideas?

Regional Board Staff Contact Information

• Cynthia Gorham-Test

phone: 858-467-2957

e-mail: ctest@waterboards.ca.gov

• Lisa Honma

phone: 858-467-2960

email: lhonma@waterboards.ca.gov

From: "Ruth Kolb" <RKolb@sandiego.gov>
To: <LHonma@waterboards.ca.gov>
Date: 11/21/2005 7:35:51 AM
Subject: Re: Questions regarding catch basin near SWM

File Number:

03-0284.05

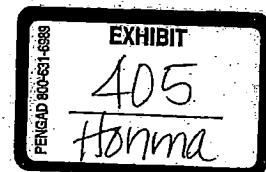
Good Morning Lisa,
SDG&E was issued a NOV. A colleague and I met with SDG&E representatives on site. SDG&E cleaned the catch basin and are in the process of trying to determine the origination of the 6-inch and 12-inch storm drains that enter the City's catch basin. R

Ruth Kolb
Storm Water Program
City of San Diego
1970 B Street, MS 27A
San Diego, CA 92102
(619) 525-8636 office
(619) 525-8641 fax
rkolb@sandiego.gov

>>> "Lisa Honma" <LHonma@waterboards.ca.gov> 11/17/2005 3:42 PM >>>
Ruth, I was just speaking with Shaun Halvax at SWM and he mentioned that the City had issued and then rescinded an NOV based on elevated sediment levels in a catch basin near their site. He said that the catch basin drained off of SDG&E. I was wondering whether you followed up with SDG&E about it and what was the result?

I'm trying to put together a record regarding SDG&E's role in the Shipyard CAO. Any information would be appreciated. Thanks a bunch. Lisa

CC: "Chris Zirkle" <CZirkle@sandiego.gov>, "Tim Miller" <MillerT@sandiego.gov>



WBSD002889



2247 San Diego Avenue
Suite 135
San Diego, CA 92110
(619) 260-0730
Fax (619) 260-0726
www.envamerica.com

SAN DIEGO COUNTY
WATER QUALITY
CONTROL BOARD

2005 JUN 15 P 4: 48

Mr. John H. Robertus
Executive Officer
Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123
fax (858) 571-6972
rb9agenda@waterboards.ca.gov

June 15, 2005

Attn: Agenda for Sediment Cleanup

Re: Comments on Tentative CAO R9-2005-0126 dated April 29, 2005

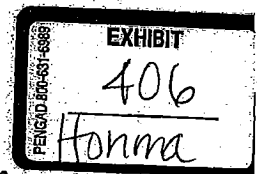
Dear Mr. Robertus:

We provide the following comments for consideration by the Regional Water Quality Control Board (RWQCB) members and staff. Please note that the following technical comments on the Tentative CAO are summary in nature, due to the RWQCB only releasing summary-level findings without supporting data and calculations, references or citations, or Staff Report. These comments were prepared by ENV America, consultant to SDG&E.

Comments on "PERSONS RESPONSIBLE," Finding 8 "SDG&E"

We disagree with the RWQCB finding that there are data or other technical information that support naming SDG&E as a discharger in the Tentative CAO. In Finding 8 the RWQCB makes statements about SDG&E's former operations at Silver Gate power plant, and concludes that these statements are the basis for naming SDG&E as a discharger. (While the RWQCB does not cite a reference for the statements made about SDG&E's operations, it appears that the RWQCB has taken these observations from SDG&E's Investigation Order (IO) reports prepared by ENV America Incorporated (2004a¹ and 2004b²)).

The available data presents a compelling argument that SDG&E was not and is not a discharger to marine sediments. We draw your attention to the primary conclusion from



¹ ENV America, 2004a, Site Assessment Report, Landside Tidelands Lease Area, Silver Gate Power Plant, San Diego, California. July 14. Prepared for SDG&E. Provided to RWQCB in July 2004.

² ENV America, 2004b, Technical Report for RWQCB Investigation Order No. R9-2004-0026, Silver Gate Power Plant, San Diego, California. July 14. Prepared for SDG&E. Provided to RWQCB in July 2004.

the IO report, and SDG&E's pending site assessment work. The primary conclusion and recommendation from SDG&E's IO report was:

"The Exponent (2003) sediment sampling stations in the SDG&E wharf leasehold and the north portion of SWM's wharf leasehold were spaced over 100 feet apart [very sparse], and there were only three sediment sampling stations in SDG&E's leasehold. The [available] data indicate that SDG&E discharges were not a cause of sediment contamination. Additional data are recommended to conclude with certainty that SDG&E discharges were not a cause of sediment contamination."
(ENV America 2004b, page 34)

Recognizing that there is uncertainty, SDG&E is planning to conduct its own sampling of bay sediments. On May 16, 2005, the RWQCB was provided with SDG&E's workplan to independently sample and analyze sediments to determine if SDG&E operations contributed to sediment contamination (ENV America 2005³). SDG&E plans to conduct sampling in July of 2005, and to publish the results by November 2005.

Given that there is little evidence that SDG&E was or is a discharger, the RWQCB should refrain from considering SDG&E to be a discharger until SDG&E has completed its own sediment sampling, analysis and data evaluation, and there are sufficient data to conclude with certainty whether SDG&E was or was not a contributor to contamination in bay sediments.

The following explains why specific statements in Finding 8 of the Tentative CAO are erroneous or misleading.

The RWQCB erroneously concludes that operational history and site assessment data from former wastewater ponds indicates that the ponds discharged or threaten to discharge PCBs or other contaminants to San Diego Bay. The RWQCB correctly states that SDG&E operations included discharging of wastes to holding ponds, but the RWQCB errs when it states that the detection of PCBs in one of two former ponds is evidence that SDG&E was a source of PCBs detected in the bay sediments. Substantial data and information refute the RWQCB's linking of PCBs in bay sediments to SDG&E operations, and the data strongly indicate that PCBs and PCTs detected in sediment originated from releases in the vicinity of the shipyard marine railways and the landward end of Pier 1.

- The concentration trends in the sediment data strongly indicate that the primary source of PCBs and PCTs in the northern end of Exponent Sediment Investigation study area was in the vicinity of the shipyard marine railways at the landward end of Pier 1 (ENV America 2004b, 2005) (in particular, see Figure 5 in ENV America [2005], which presents and illustrates a more complete record of PCB data than was presented in Exponent's Sediment Investigation).

³ ENV America, 2005, Sediment Sampling Workplan, Silver Gate Power Plant, San Diego, California. March 29. Prepared for SDG&E. Provided to RWQCB on May 16, 2005.

- PCBs were detected in only two samples from one of SDG&E's former wastewater ponds, at a maximum concentration of 2.8 ppm Aroclor 1260 (ENV America, 2004a), which is a concentration far lower than was detected in bay sediments. The maximum concentration of total PCBs detected in bay sediments in the north end of the Exponent Sediment Investigation study area was 34 ppm (location SW08, which also had the highest concentration of PCTs) (ENV America 2005). If the former wastewater ponds were a source of PCBs detected in bay sediments, then one would expect to see the highest PCB concentrations in the former wastewater ponds. The concentration trends do not indicate that the former wastewater ponds were a source of PCBs – on the contrary, the concentration trends indicate that the shipyard was the primary source of PCBs. The concentration trends indicating that the shipyard is the primary source of PCBs is consistent with literature about PCBs and ships.
 - PCBs are a known problem in the shipbreaking industry, and in older vessels PCBs are encountered in a variety of materials, including "...rubber products such as hoses, plastic foam insulation, cables, silver paint, habitability paint, felt under septum plates, plates on top of the hull bottom, and primary paint on hull steel." (OSHA Fact Sheet, "Shipbreaking," 2001)
 - "PCBs are found throughout older vessels and it is likely your ship scrapping facility will be faced with managing large quantities of PCBs." ("Guide for Ship Scrappers," USEPA 315-B0-00-001)
- The affected soil beneath the former wastewater ponds does not threaten to discharge to the bay. ENV America (2004a) demonstrated that (1) the affected soil of the former wastewater ponds is buried beneath several feet of clean soil and pavement, which means the affected soil is not a current or potential future source of contaminated surface runoff, if left undisturbed; and (2) the groundwater samples collected from beneath the former wastewater ponds did not have detectable PCBs (PCBs generally do not migrate in groundwater). ENV America (2004a) demonstrated that the groundwater concentrations beneath the former wastewater ponds are below applicable regulatory criteria and there is no threat to the bay via the groundwater migration pathway.
- The plant records indicate that former wastewater ponds were used for treatment or disposal of the power plant bilge trench water; and given that no PCBs were detected in the power plant's bilge trenches, it is unlikely that the source of PCBs detected in the former wastewater pond was the power plant operations. The power plant's bilge trenches were the receiver or collector of many of the low volume liquid waste discharges from the power house. If PCBs had been released in the power house, then it is likely that PCBs would have been detected in the bilge trenches.

- A number of records (photographs, an engineering drawing and lease records) document that the shipyard subleased the land parcel containing the wastewater ponds, and in the late 1960s or early 1970s the shipyard operations are appears to have encompassed the open wastewater pond. Records also indicate that the shipyard constructed decking above the wastewater pond to enable shipbuilding or ship repair activities to be performed over the pond area.
- PCBs were not used in appreciable quantities in the power plant and substation. The only known uses of PCBs in the powerhouse were in small closed systems such as in capacitors and fluorescent light ballasts (similar to the use of PCBs in many older commercial or residential buildings). The transformers in SDG&E's Silver Gate substations and switchyard did not contain PCB dielectric fluids, and contained only trace PCBs.

SDG&E is continuing to research records on PCB uses and occurrences at Silver Gate power plant, and will provide additional supporting documentation to the RWQCB in a future transmittal.

There is no conclusive evidence linking SDG&E discharges to contamination in found in marine sediments. The IO report (ENV America 2004b) addressed the RWQCB's earlier allegations⁴ that SDG&E's operations contributed to elevated concentrations of cadmium, chromium, mercury, nickel and PCTs in marine sediment. We note that the RWQCB through issuing the new Tentative CAO, without maintaining earlier allegations, concurs with ENV America's (2004b) conclusion that data indicate that SDG&E did not contribute to elevated concentrations of cadmium, mercury, nickel and PCTs in marine sediment.

The following comments address the RWQCB's new allegations in the Tentative CAO that SDG&E's non-contact cooling water discharges contributed pollutants to marine sediments, including chromium, iron, copper, total suspended solids (TSS) and petroleum hydrocarbon (on the basis of waste discharge monitoring records).

- The patterns of contaminant distribution in sediment do not indicate that the cooling water discharges were a source of contaminants in sediment – on the contrary, the concentration trends indicate that the shipyard and City storm water discharges were the source of contaminants in sediment. (see Exponent Sediment Investigation; and ENV America, 2004b and 2005.)
- SDG&E's historical chromium exceedances in cooling water were minor, and the form of chromium found in bay sediments at the shipyard is unlikely to have come from SDG&E's discharges, but is likely to have come from shipyard discharges. ENV America (2004b) documented that the only known use of

⁴ Finding 10 of Investigation Order No. R0-2004-0026.

chromium at Silver Gate power plant was sodium dichromate, which was used as a corrosion inhibitor in the service water system. Exponent's Sediment Investigation and Technical Memorandum of April 6, 2004, documented that in sediments more than 80 percent of the relative mass of chromium was present as iron-chromium oxide, and 60 percent of the relative mass of chromium was present as chalcopyrite, copper-zinc oxide, and slag. The major source of the primary chromium forms found in sediment was most likely shipyard wastes, such as sand blasting grit (blasting grit is commonly ore slag, a source of the mineral chalcopyrite and other forms of chromium), alloy steels and other metal debris (most alloy steels contain chromium, and stainless steel contains over 10 percent chromium), and paint debris (chromium is used in many pigments). Major waste streams in current and historical shipyard operations are sand blast grit, steel debris and paint debris.

- SDG&E's historical iron and TSS exceedances in cooling water were minor, and are not relevant, because iron and TSS are not rare constituents, nor are they identified as chemicals of concern in the shipyard cleanup.

Comment on "FACTUAL BACKGROUND"

Finding 11 in the Tentative CAO in its entirety states:

"SEDIMENT QUALITY INVESTIGATION. Unless otherwise explicitly stated, the RWQCB's finding and conclusions in this Cleanup and Abatement Order are based on the data and other technical information contained in the report prepared by NASSCO's and Southwest Marine's consultant, Exponent entitled *NASSCO and Southwest Marine Detailed Sediment Investigation, September 2003.*"

Finding 11 is incorrect. We find that the RWQCB, in drafting the Tentative CAO, presents data and much other technical information that was not contained in the Exponent Sediment Investigation. For instance, the Tentative CAO presents a "Summary of Economic Feasibility Evaluation" (Finding 33) that appears to be based on engineering calculations by NOAA, presented in the following documents.

Memorandum from NOAA to RWQCB, dated February 23, 2005. Re: Calculation of Dredging Volumes at the NASSCO and Southwest Marine Shipyards for Alternative Remedial Scenarios.

Memorandum from NOAA to RWQCB, dated March 14, 2005. Addendum to Memorandum dated February 23, 2005, Re: Calculation of Dredging Volumes at the NASSCO and Southwest Marine Shipyards for Alternative Remedial Scenarios.

Memorandum from NOAA to RWQCB, dated April 12, 2005. Re: Calculation of post-dredging area weighted averages at the NASSCO and Southwest Marine Shipyards for Alternative Remedial Scenarios.

Memorandum from NOAA to RWQCB, dated May 12, 2005. Re: Calculations of Dredging Volumes at the NASSCO and Southwest Marine Shipyards for Five Times Baseline Remedial Scenario Using TBT, PCB and Benzo(a)pyrene (BAP).

We observed that the Sediment Investigation report available to us (via posting on the RWQCB's website) is dated October 2003, and is not dated September 2003 as cited in the Tentative CAO. We request that the RWQCB provide us a copy of the September 2003 report, if the citation was correct.

Comment on Finding 15, "BASELINE SEDIMENT QUALITY CONDITIONS," and Finding 31, "BACKGROUND SEDIMENT QUALITY"

We note that the RWQCB has published background sediment chemistry levels that are different than those published in Exponent's Sediment Investigation. Please explain why and how the RWQCB calculated new background concentrations, particularly in light of the extensive plans, correspondence and discussion that preceded Exponent's development of background concentrations.

Comments on evaluation of baseline risk in

Aquatic life beneficial use impairment (Findings 12 to 21)

Aquatic-dependent wildlife beneficial use impairment (Findings 22 to 25)

Human health beneficial use impairment (Findings 26 to 29)

We note that the RWQCB and Exponent in evaluating baseline risk used substantially different assumptions and input values, and arrived at substantially different conclusions about impairment of beneficial uses. We found it difficult to review or understand the RWQCB's risk assessments, because the RWQCB did not provide explanations in the Tentative CAO to explain why and how the RWQCB deviated from project guidance, project plans, and Exponent's Sediment Investigation results. Please explain why and how the RWQCB chose to use different assumptions and input values for evaluating risk.

We noted a large number of apparent inadequacies in the risk evaluations, and to minimize the length of these comments we directed our comments to only the human health risk assessment (Findings 26-29). These same comments or similar comments also apply to the risk assessments the RWQCB performed for aquatic-dependent wildlife (Findings 22-25).

The RWQCB incorrectly used a fractional intake (FI) of 1 for the screening (Tier I) and baseline (Tier II) human health risk assessments. Given that the shipyard area is now and will continue to be an operating shipyard with strict, enforced prohibitions on public fishing access, it is inappropriate to use a fractional intake of 1 to conduct risk assessments using tissue concentrations from fish and shellfish with high site fidelity. The approach used to perform baseline risk assessments in California when there is no foreseeable change in site use is to conduct risk assessments using reasonable assumptions and inputs based on the current site use or planned future site use. The RWQCB should recalculate the baseline human health risk assessment using an appropriate exposure scenario and inputs based on the current and planned site use.

The RWQCB presents generalized conclusions that do not adequately portray baseline risks, and possibly incorrectly portray baseline risks. For instance, the RWQCB in Finding 29 states that they quantified (calculated) the baseline carcinogenic risks and hazard quotients for four assessment areas and one reference (background) area, but the RWQCB presented only one assumption (the FI) of the dozen or more the assumptions necessary to establish a baseline risk assessment and the RWQCB did not present the quantified results (the numerical results), except to say that the undisclosed numbers were above or below a particular risk index number. For instance, in just one example, the RWQCB in Finding 29 indicates that the concentrations from whole body Sand Bass caught inside the SWM leasehold had an undisclosed carcinogenic risk number above 1×10^{-6} , the same fish species from the background area had an undisclosed carcinogenic risk number above 1×10^{-6} , PCBs presented 96 percent of the cumulative cancer risk, and the RWQCB concluded that the area inside the SWM leasehold poses a theoretical increased cancer risk. Because the RWQCB did not present the numerical results from the risk assessment, the RWQCB has not demonstrated whether there is a significant difference between background risk and site risk, the RWQCB has not revealed the amount of increase in the theoretical cancer risk, and the RWQCB has presented insufficient data to contribute to and initiate a meaningful and detailed discussion about baseline risk. We request that the RWQCB publish the full results of the risk assessment.

Comment on Finding 33, "ECONOMIC FEASIBILITY CONSIDERATIONS"

The Tentative CAO does not present quantified risk levels associated with the cleanup levels of 5x, 10x, 15x and 20x background for TBT, BaP and PCBs. In the table in Finding 33, the RWQCB indicates that they determined what the "long-term effects" may be for cleanup to 5x, 10x, 15x and 20x background for TBT, BaP and PCBs. The "long-term effects" are ranked on a scale of 10 (+5 to -5), and the assigned scores appear to be qualitative scores. On a project of this magnitude having an abundance of scientific data, the RWQCB should evaluate effects on beneficial uses using scientific relationships between chemistry and risk (i.e. quantified risk assessments).

Comment on Finding 34, "ALTERNATIVE SEDIMENT CLEANUP LEVELS"

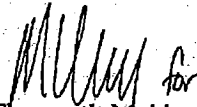
The cleanup levels proposed by the RWQCB are not consistent with Section II.a.9 of SWRCB Resolution No. 92-49, (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*), which states that the RWQCB shall... "Prescribe cleanup levels which are consistent with appropriate levels set by the RWQCB for analogous discharges that involve similar wastes, site characteristics, and water quality considerations..." The RWQCB is currently proposing cleanup levels that are based on baseline risk assessment exposure scenarios and assumptions that are inconsistent with the current practice in California, and the RWQCB is proposing cleanup levels that are far lower than previously set for analogous projects at Campbell Shipyard, Shelter Island Boat Yard, America's Cup Harbor, Paco Terminals and Teledyne Ryan. The RWQCB should revise its risk assessment models to use appropriate site-specific exposure scenarios and input values consistent with the standard practices used in California, and the RWQCB should prescribe cleanup levels consistent with the prior cleanups in San Diego Bay.

The cleanup levels that the RWQCB is proposing for metals are without precedence, and are probably not practical to achieve in the field. We note that the RWQCB is proposing cleanup levels that are approximately equal to background (see table below), and appear to have no foundation in risk assessment. The proposed cleanup levels for metals appear to have been chosen by selecting the predicted residual concentrations that would exist after cleanup of TBT, BaP and PCB. We recommend the RWQCB consider using risk-based cleanup levels for metals, and establish cleanup levels only for those metals that significantly contribute to risk.

Chemical	Units	RWQCB proposed CU level	RWQCB CU level as multiples of background	RWQCB background 95% UPL	Exponent background 95% UPL
Arsenic	mg/kg	10	1.33	7.5	9
Cadmium	mg/kg	1	3.03	0.33	0.29
Chromium	mg/kg	81	1.42	57	57
Copper	mg/kg	200	1.65	121	120
Lead	mg/kg	90	1.70	53	48
Mercury	mg/kg	0.7	1.23	0.57	0.56
Nickel	mg/kg	20	1.33	15	17
Silver	mg/kg	1.6	1.36	1.1	1
Zinc	mg/kg	300	1.56	192	210
Tributyltin	ug/kg	110	5	22	5.1
Benzo(a)pyrene	ug/kg	1010	5	202	-
PCB, total congeners	ug/kg	420	5	84	36

Thank you for the opportunity to submit these comments. We look forward to your response.

Sincerely,
ENV America Incorporated



Thomas J. Mulder, PG, CHg, CEG
 (619) 260-0730, extension 21

cc: Tom Alo, RWQCB
 Ken Rowland, SDG&E
 Vincent Gonzales, Sempra Energy



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 USEPA



Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

TO: Southwest Marine, Inc. File

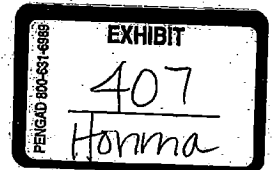
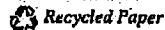
FROM: Lisa Honma
Environmental Scientist

DATE: November 27, 2006

SUBJECT: Third Annual Statistical Analysis Report, December 1996

The above referenced report was missing and could not be attached to Armando DeQuesada's transmittal letter submitted on December 27, 1996. However, another copy was submitted under separate cover by Sandor Halvax of Southwest Marine, Inc. on December 29, 1996.

California Environmental Protection Agency



SAR013568
SAR013568



California Regional Water Quality Control Board San Diego Region



Linda S. Adams
Secretary for
Environmental Protection

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

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

TO: Southwest Marine, Inc. File

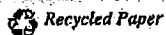
FROM: Lisa Honma
Environmental Scientist

DATE: November 28, 2006

SUBJECT: Drydock Submergence/Emergence Water Video Tape

The above referenced video tape was missing and could not be attached to Sandor Halvax's transmittal letter dated January 28, 1999.

California Environmental Protection Agency



SAR013661
SAR013661



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 USEPA



Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

TO: Southwest Marine, Inc. File

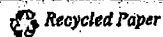
FROM: Lisa Honma
Environmental Scientist

DATE: November 29, 2006

SUBJECT: October – December 1997 Quarterly Effluent Monitoring Report, Spill/Illicit Discharge Log, and Floating Drydock Submergence/Emergence Water

The above referenced documents were missing and could not be attached to Sandor Halvax's transmittal letter, dated January 30, 1998.

California Environmental Protection Agency



SAR013665
SAR013665



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 USEPA



Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

TO: Southwest Marine, Inc. File

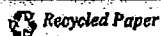
FROM: Lisa Horna
Environmental Scientist

DATE: November 29, 2006

SUBJECT: Eleventh Semi-Annual Marine Sediment Monitoring Report, December
1997

The above referenced document is missing.

California Environmental Protection Agency



SAR013725
SAR013725



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 USEPA



Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

TO: Southwest Marine, Inc. File

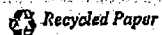
FROM: Lisa Honma
Environmental Scientist

DATE: November 29, 2006

SUBJECT: 1996 Chemical Utilization Audit

The above referenced document was missing and could not be attached to Sandor Halvax's transmittal letter dated June 30, 1997.

California Environmental Protection Agency



SAR013869
SAR013869

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

IN THE MATTER OF:)
)
TENTATIVE CLEANUP AND ABATEMENT)
ORDER NO. R9-2011-0001)
)
)
_____)

**DEPOSITION OF BENJAMIN TOBLER
San Diego, California
SEPTEMBER 29, 2010**

**REPORTED BY BRIDGET L. MASTROBATTISTA
REGISTERED MERIT REPORTER, CSR NO. 7715**



530 B Street
Suite 350
San Diego, CA
92101

800 649 6353 toll free
619 260 1069 tel
619 688 1733 fax

bookadepo.com

Reporting
Videography
Trial Presentation
Global Reach
Complex Cases
Accurate, Fast

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF:)
)
TENTATIVE CLEANUP AND ABATEMENT)
ORDER NO. R9-2011-0001)
)
)
_____)

DEPOSITION OF BENJAMIN TOBLER,
taken by the Attorneys for BAE Systems San Diego Ship
Repair, Inc. and Southwest Marine, commencing at the
hour of 10:06 a.m. on Wednesday, September 29, 2010, at
401 B Street, Suite 1700, San Diego, California, before
Bridget L. Mastrobattista, Registered Merit Reporter,
CSR No. 7715, in and for the State of California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

For the Designated Party National Steel and Shipbuilding Company:

LATHAM & WATKINS, LLP

BY: JEFFREY P. CARLIN, ESQ.

KELLY E. RICHARDSON, ESQ.

600 West Broadway, Suite 1800

San Diego, California 92101

P.619.236.1234

F.619.696.7419

For BAE Systems San Diego Ship Repair, Inc. and
Southwest Marine:

DLA PIPER LLP US

BY: MATTHEW B. DART ESQ.

MICHAEL S. TRACY, ESQ.

401 B Street, Suite 1700

San Diego, California 92101

P.619.699.3620

F.619.764.6620

For Sempra Energy, San Diego Gas & Electric Company:

SEMPRA ENERGY

BY: JILL TRACY, ESQ.

101 Ash Street

San Diego, California 92101

P.619.699.5112

F.619.699.5189

For the City of San Diego:

GORDON & REES LLP

BY: BRIAN M. LEDGER, ESQ.

101 West Broadway, Suite 1600

San Diego, California 92101

P.619.230.7729

F.619.696.7124

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED:

For the State Water Resources Control Board:
STATE WATER RESOURCES CONTROL BOARD
SENIOR STAFF COUNSEL, OFFICE OF ENFORCEMENT
BY: CHRISTIAN CARRIGAN, ESQ.
1001 I Street, P.O. Box 100
Sacramento, California 95812
P.916.322.3626
F.916.539.1819

For the San Diego Unified Port District:
ALLEN MATKINS
BY: SANDI L. NICHOLS, ESQ.
Three Embarcadero Center, 12th Floor
San Francisco, California 94111-4074
P.415.837.1515
F.415.837.1516

For the San Diego Coastkeeper:
SAN DIEGO COASTKEEPER
BY: JILL WITKOWSKI, ESQ.
2820 Roosevelt Street, Suite 200A
San Diego, California 92106-6146
T.619.758.7743, ext. 109
F.619.223.3676

For Port of San Diego:

BROWN & WINTERS
BY: LISA D. O'NEAL, ESQ.
120 Birmingham Drive, Suite 110-F
Cardiff-By-The-Sea, California 92007
P.760.633.4485
F.760.633.4427

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS: BENJAMIN TOBLER

EXAMINATION	PAGE
BY MR. DART	6, 152, 164
BY MR. CARLIN	64
BY MR. LEDGER	93, 157
BY MS. NICHOLS	107, 159
BY MS. TRACY	126
BY MS. WITKOWSKI	146

T O B L E R E X H I B I T S

TOBLER EXHIBITS:	MARKED
300 First Amended Notice of Deposition of Benjamin Tobler	13
301 San Diego Water Board Cleanup Team's Witness Designation	28
302 Document entitled "Watershed Monitoring and Modeling in Switzer, Chollas, and Paleta Creek Watersheds"	69
303 Resolution No. R9-2007-0043	82
304 Letter dated June 3, 2003 to Mr. Chee from Shaw Environmental, Inc.	87
305 Facility Inspection Report	140

1 BENJAMIN TOBLER,

2 having been first duly sworn, testified as follows:

3

4

EXAMINATION

5

BY MR. DART:

6

Q Good morning, Mr. Tobler. My name is Matt Dart

7

I'm one of the attorneys for BAE Systems in this matter.

8

There are other counsel here representing other parties

9

that may introduce themselves if they choose to ask

10

questions at a later time.

11

Could you please state and spell your name for

12

the record, please?

13

A Benjamin Tobler, B-E-N-J-A-M-I-N. Tobler,

14

T-O-B-L-E-R.

15

MR. CARRIGAN: Mr. Dart, before we go too much

16

into the deposition, I wanted to advise that Mr. Tobler

17

will not be offering an expert report in this matter.

18

MR. DART: Thank you.

19

MR. CARRIGAN: Go ahead.

20

MR. DART: Do you want to talk about documents

21

off the record or do you want to keep it on?

22

MR. CARRIGAN: You can go ahead on.

23

BY MR. DART:

24

Q Have you ever been deposed before, Mr. Tobler?

25

A No.

1 Q In that case I will talk about a few of the
2 ground rules, make it easier for you and help things go
3 smoothly.

4 I'm going to ask you a series of questions
5 today, and it's your job to give your best answer
6 accurately and truthfully.

7 The court reporter to my right, to your left,
8 will take down everything that I say and everything that
9 you say, and at the end of day there will be a
10 transcript that will be produced. And you'll have the
11 opportunity later on to review it.

12 As the court reporter is taking down everything
13 that we say, it's important that we try to speak slowly
14 and clearly and not speak over each other. She can only
15 take down one person talking at a time.

16 That being so, I will try to wait for you to
17 finish your answer before I ask another question and I
18 would ask that you try to wait for me to finish my
19 question before you answer. Even if you're anticipating
20 the answer as is often the case.

21 If you don't hear a question or don't
22 understand it, please ask me to repeat it or to rephrase
23 it. I'd be happy to do so. If you answer a question,
24 I'm going to assume that you understood the question.

25 From time to time you may hear objections from

1 your own lawyer or from lawyers representing other
2 parties here. Those objections are just for the record,
3 and they're for someone else, a trier of fact to rule
4 upon later on.

5 You're still under on obligation to answer the
6 question, unless your attorney instructs you not to
7 answer the question and you agree to take his advice.

8 Do you understand that?

9 A I do.

10 Q Although this is a relatively informal setting
11 in a conference room, you are testifying under oath as
12 if you were in a court of law.

13 Do you understand that?

14 A I do.

15 Q After the transcript is prepared that I
16 referenced earlier, you'll have the opportunity to
17 review it and make any changes that you feel are
18 appropriate.

19 However, if you make any substantive changes to
20 your answers, myself or counsel for other parties will
21 have the right to comment upon that later on and it may
22 affect your credibility.

23 Do you understand that?

24 A I do.

25 Q Are you taking any medications or drugs today

1 that would affect your ability to give your best
2 testimony today?

3 A No.

4 Q Is there any other reason that you can think of
5 why you would not be able to give your best testimony
6 here today?

7 A No.

8 Q If you need to take a break at any time, just
9 let us know. We can stop the transcript and go off the
10 record. Okay?

11 A Okay.

12 Q We're here today to talk about your role as a
13 member of the San Diego Regional Water Quality Control
14 Board Cleanup Team in reference to Tentative Cleanup and
15 Abatement Order No. R9-2011-0001, Publicly Released
16 September 15, 2010 in the accompanying Draft Technical
17 Report.

18 Are you familiar with that CAO and DTR?

19 A Somewhat familiar.

20 Q Are you comfortable with my abbreviation of CAO
21 meaning Cleanup and Abatement Order?

22 A Yes.

23 Q Same question with respect to DTR for Draft
24 Technical Report?

25 A Yes.

1 Q And today, unless we say otherwise, I'm going
2 to -- if I say CAO or DTR, I'm going to be referring to
3 the most recent iteration of that Cleanup and Abatement
4 Order. Okay?

5 A Okay.

6 Q Also, if I refer to the Shipyard Sediment Site,
7 or "the Site," I will be referring to the Shipyard
8 Sediment Site as that is defined in the CAO and DTR.

9 Are you okay with that?

10 A Yes.

11 Q Yours is not the first deposition taken in this
12 matter. At the first deposition there were a series of
13 master exhibits that were introduced. And those were
14 designated because the parties assumed that those would
15 be carried over to each deposition.

16 For example, Master Exhibit 1 is the most
17 recent version of the CAO, and Master Exhibit 2 is the
18 most recent of the DTR. And I will clarify that if and
19 when I ask questions about that.

20 But I wanted you to be aware if I refer to the
21 master exhibits, I will be referring to exhibits that
22 will be used in every deposition; whereas if I use any
23 depositions that are solely for you today, I will be
24 referring to the Tobler exhibits, and those will start
25 at the number 300.

1 Do you understand that?

2 A Yes, I do.

3 Q Did you meet with anyone to prepare for this
4 deposition today?

5 A My attorney.

6 Q When was that?

7 A About 20 minutes ago just prior to coming into
8 this room.

9 Q Is that the only preparation you've done for
10 purposes of this deposition?

11 A There was one other meeting about a month ago
12 when there were depositions looming that got cancelled,
13 and that's when we met prior, and there was some
14 instruction about depositions, much like you gave me.

15 Q Who is the "we" that you are referring to in
16 that meeting?

17 A Oh, it was myself and our attorney and the --
18 there was a group of other people from the Regional
19 Board that were scheduled to be deposed. Yeah, I
20 think those that were scheduled to be deposed, I
21 think.

22 Q Did you review any documents in preparation for
23 today's deposition?

24 A Yeah. That was part of the instruction was to
25 familiarize ourselves with those portions of the

1 documents that we contributed to.

2 MR. CARRIGAN: Be careful not to tell counsel
3 anything that we talked about as attorney and client.

4 THE WITNESS: Okay.

5 MR. CARRIGAN: Okay.

6 BY MR. DART:

7 Q And that's correct. I'm not going to ask you
8 about the content of your communications with
9 Mr. Carrigan or other counsel, but I do want to know
10 what documents did you review for preparation of this
11 deposition?

12 A The DTR.

13 Q Given that that meeting was a month ago, was it
14 the prior version of the DTR that was released on
15 December 22, 2009, if you recall?

16 A The version that I reviewed was the current
17 one.

18 Q Did you review any other documents in
19 preparation for today's deposition, either at or during
20 that meeting or subsequent to it?

21 A Yes. I made a search for documents that I may
22 have had in my possession. I found four e-mails that
23 related to this case that was part of the request in the
24 deposition, legal papers that I received, and so I did
25 that search and forwarded to my attorney the e-mails

1 that I found.

2 Q Did you bring those documents with you today,
3 those e-mails?

4 A No.

5 Q Did you bring any documents with you today?

6 A No.

7 MR. DART: Mr. Carrigan, did you bring any
8 documents on behalf of the witness for production today?

9 MR. CARRIGAN: The four e-mails that were
10 provided were all from Mr. Melbourn of the advisory team
11 and counsel for all parties were cc'd on each of those
12 documents.

13 MR. DART: I want to mark what's going to be
14 Tobler Exhibit 300, which is the First Amended Notice of
15 Deposition of Benjamin Tobler.

16 Would anybody like a copy of that notice?

17 (Tobler Exhibit 300 was marked.)

18 BY MR. DART:

19 Q Okay. Mr. Tobler, have you seen Exhibit Tobler
20 300, the Deposition Notice, before?

21 A Yes. I saw an electronic -- what seems to be
22 an electronic copy of it.

23 Q Did you review the Attachment A to the
24 Deposition Notice listing the requested document?

25 A Yes, I did.

1 Q And did you search for those documents that may
2 be responsive to those requests?

3 A Yes, I did.

4 Q How did you go about that search?

5 A I reviewed Attachment A and for each category
6 where there was a request for documents 1 through 16, I
7 guess. I read those requests and where I searched
8 accordingly and found what I was able to find and
9 provided to my attorney what I was able to find.

10 Q And the extent of that -- results of that
11 search were the four e-mails that you referenced
12 earlier?

13 A Yes.

14 Q Where did you search?

15 A I searched in my cubicle for any types of
16 printed documents that might pertain. I searched my
17 computer and my computer files, and those were the
18 documents that I found.

19 Q What is your practice in terms of retaining
20 records for the work that you do for the Regional Board?

21 A Where there are official documents, they are
22 always filed. Where there are personal communications,
23 there are sometimes filed, if, depending upon our
24 judgment, they are significant. Where in our best
25 judgment they're not significant, we delete them to keep

1 our clutter in our computers down.

2 Q When you say "filed," what do you mean by
3 filed?

4 A That would be -- they would be filed under the
5 case number, and the paper document would then be
6 submitted for filing.

7 As I understand it now, they are just
8 electronically processing all of those things, and, you
9 know, there is an administrative staff that
10 electronically processes them and puts them into the
11 appropriate file.

12 Q Do you keep a hard copy of the documents for a
13 particular matter that you send for filing?

14 A No.

15 Q Do you keep an electronic copy?

16 A No. Electronic copy is generally made and then
17 stored in the main file.

18 (Mr. Ledger enters the deposition room.)

19 BY MR. DART:

20 Q Do you keep hard-copy documents anywhere other
21 than your work station at home, for example, or another
22 office?

23 A No.

24 Q Did you not search those -- those types of
25 areas because your practice is to not keep hard copies

1 in places other than your office?

2 A Yes.

3 Q In terms of the electronic search, how did you
4 go about the electronic search for documents responsive
5 to the Deposition Notice?

6 A I looked through all of my -- we work with
7 GroupWise, and GroupWise provides you the ability to
8 make folders of your own to store stuff. So for -- so
9 for current work that I'm doing, I may have a folder for
10 it.

11 For work -- after a while the folder becomes
12 not important because the work has moved on and it's
13 been filed and what. And so sometimes those folders get
14 deleted just as part of our file maintenance within our
15 computers.

16 So I didn't have any files for the shipyards or
17 NASSCO remaining. They -- I must have gotten rid of
18 most of them. I haven't worked on the case in probably
19 three or four or five years. I don't know. It's been a
20 long time.

21 And so I just did a search in all of my -- in
22 my in box and -- to see if I could find anything. And
23 the four e-mails that I found from Mr. Melbourn were the
24 ones that I found.

25 Q Going back for a second to the electronic

1 locally saved documents, so can you verify that you
2 searched your local document sources on your computer
3 and confirmed that you didn't have any responsive
4 documents to the Deposition Notice?

5 A Yeah, I did a thorough search, and I'm
6 confident that's everything that I have.

7 Q I appreciate that. Thank you.

8 In terms of your e-mail system, do you keep
9 e-mail folders for a particular matter?

10 A Yeah. That's the folders I spoke about just a
11 few moments ago.

12 Q And you searched both those and if you have it,
13 a general in box for e-mails that might be responsive to
14 the document request?

15 A Yes.

16 Q And the result of that were the four e-mails
17 that you referenced?

18 A Right.

19 Q What about your sent file? Did you search
20 electronically for sent e-mails that you might have sent
21 that would be responsive to the document request?

22 A Yeah. I searched all my files.

23 Q Did you do that manually or did you run any
24 kind of a -- use the search tool, if you have one, on
25 that e-mail system?

1 A I did it manually. I don't -- I keep my system
2 pretty clean and it didn't take me that long.

3 Q You talked about the practice of occasionally
4 deleting files. Does your office or even within your
5 group have a particular policy with respect to deleting
6 documents related to the projects you work on?

7 A Not one that I'm aware of. I -- it's Best
8 Professional Judgment as I -- but that's just
9 speculation on my part. But it's never been formally --
10 I've never seen any formal policy on it.

11 Q Aside from a formal policy, are you aware of
12 any automatic deletions that take place?

13 A No. There's none. It's a very foolproof-type
14 system.

15 Q So is it left up to the individual to determine
16 when and if documents are no longer relevant such that
17 they may be deleted?

18 A Yeah.

19 Q And with respect to the shipyard matters, what
20 can you recall, if anything, about your decisions in
21 terms of deleting files related to the shipyard?

22 A This is years ago, and so it would just be
23 speculating, just based on who I generally am. But
24 having not worked on shipyard matters for a given amount
25 of time, probably a year or two, every year we have an

1 office cleanup where we're encouraged to clean both our
2 cubicles and the aisles and -- you know, and also to
3 freshen up our computer files or delete those that are
4 unnecessary, so -- so that is one time where we're
5 encouraged to clean up our files.

6 Q And as part of that process, you believe it was
7 likely that you cleaned up your older shipyard files?

8 A Yeah. Probably. Although I clean my files
9 frequently anyway. I just don't like clutter.

10 Q What did you retain locally on the shipyard
11 files, to the extent that you recall, that was not filed
12 or otherwise sent to somebody?

13 A I can't say anything to that. I don't recall
14 really.

15 Q Do you generally keep hard copy, paper,
16 handwritten notes about matters you're working on or do
17 you keep notes on the computer in some sort of a note
18 system?

19 A I write it on a block of paper. I keep notes
20 like that.

21 Q And --

22 A But then I throw them away. I don't have any
23 historical notes. I mean, it's --

24 Q Is there anyone outside of the Regional Board
25 offices that may be holding, or that you know is holding

1 any of your records related to the Shipyard Sediment
2 Site?

3 A No.

4 Q Are you aware that certain parties to this CAO
5 DTR proceeding, including the Cleanup Team, have been
6 involve in mediation sessions over the years?

7 A Yes.

8 Q Did you participate in any of those mediation
9 sessions?

10 A One.

11 Q Do you understand that all of the
12 communications made in the context of that mediation are
13 confidential?

14 A Yes.

15 Q And do you understand that being so, that you
16 are not to disclose the contents of those communications
17 at this deposition here today?

18 A I understand that.

19 Q Just talk generally about your background.
20 Could you describe any formal education that
21 you have beyond high school.

22 A I have a Bachelor of Arts in philosophy from
23 the University of Oregon and a Bachelor of Science in
24 civil engineering from the University of Tennessee.

25 Q What were the years for those two degrees?

1 A The first one, the philosophy, 1989. The
2 second one, engineering, 1998.

3 Q Did you take any other courses or instruction
4 after high school other than those two degrees that you
5 referenced?

6 A The State offers training, and so I've done
7 some training.

8 Q I'll limit it to courses or instruction related
9 to your work at the Regional Board.

10 A Well, if the training, I mean, that's related
11 to Regional Board work, certainly.

12 Q Do you have any other professional
13 certifications?

14 A I don't.

15 Q Are you a member of any professional societies
16 related to your work at the Regional Board?

17 A I think all my memberships have expired.

18 Q Could you describe for us your work experience
19 following -- well, there appears to be a gap between
20 your two degrees, so could you describe your work
21 experience following your philosophy B.A. in '89.

22 A Yeah. Sure.

23 MR. CARRIGAN: This will be interesting.

24 THE WITNESS: Well, there wasn't as big of a
25 demand for philosophers as there is now. So I -- I

1 worked watering plants. I started my own housecleaning
2 business. And then I got tired of that and decided to
3 travel the world on my bicycle. And did that for a
4 number of years and ended up in Switzerland where I --
5 I'm a Swiss citizen and an American citizen through my
6 mom.

7 I worked as a carpenter. I worked as a mailman
8 up in the Swiss Alps for about a year. I taught
9 English, and then I realized that if I was going to get
10 married and have some kids, I need to go back to school.

11 So I -- I pursued civil engineering because I
12 wanted to actually do something with all of these great
13 ideas I had in my head. And was able to complete that.

14 And then in -- after I got that degree, I
15 wanted to come live somewhere sunny and went -- looked
16 for jobs here in San Diego. Got a job in private
17 development with Boyle Engineering and worked for, among
18 other things, the Marriott, Disney, Universal Studios
19 doing various private development-type projects.

20 Q Through Boyle Engineering?

21 A Through Boyle Engineering.

22 And got into regulatory consulting, and found
23 that my liking was for the environmental laws and
24 started looking to get a job somewhere in an
25 environmental field, and the position at the Regional

1 Board came up, and I was fortunate enough to get it.

2 Q When did you get involved with the regulatory
3 consulting work?

4 A Probably around 2000 or so. It was a couple
5 years after I started in private.

6 Q And who was that with?

7 A Boyle, but then also URS, who I was with just
8 prior to coming to the Regional Board.

9 Q What were your job titles at Boyle and URS?

10 A I was a project manager, although I didn't have
11 my professional licensure. That was covered through our
12 technical assistant, but I managed the projects.

13 Q Were you working on water resource issues?

14 A Yeah. Boyle had a very large public utilities
15 clientele, Olivenhain Water District, et cetera, so I
16 became familiar with reservoirs and infrastructure.

17 Q What year did you begin with the Regional Board
18 and in what capacity?

19 A I think it was in 2001. And I came in as a
20 water resource control engineer. That's the title I
21 have now. They put me in the NPDES Municipal Discharge
22 Unit, because I had experience working with cities and
23 agencies and knew how the system worked. And they were
24 lacking that, I guess.

25 Q Are you still employed by the Regional Board in

1 that position?

2 A No. I stayed there for about three years, and
3 then for the next five, I have been working in the TMDL
4 Unit for Total Maximum Daily Loads. I've done that for
5 five years and just now have been transferred to the
6 Landfills and WDR unit for Waste Discharge Requirement
7 Unit.

8 Q For those first three years as the water
9 resource control engineer, you said it was -- it
10 involved the NPDES permits. What sort of work were you
11 doing during that time?

12 A Regulating the Cities and Counties to ensure
13 that they complied with the requirements of their NPDES
14 permits.

15 Q Did that involve inspection, sampling, testing,
16 that sort of thing?

17 A It involved inspections, a lot of outreach and
18 presentations, inspections of construction sites,
19 mainly, but also going over City's and County's internal
20 records to see if they were meeting compliance.

21 Q Were you involved at all in the issuing of
22 notices of violations due to dischargers?

23 A Yes, to the -- quite a few construction sites.
24 And also I recall the City of San Diego for violations
25 of their construction sites. Probably quite a few

1 Cities received notices of violation.

2 Q So if that was for three years, was it more or
3 less 2004 when you moved from that capacity to the TMDL
4 unit?

5 A Yeah, I think that's the right year.

6 Q And if you could just give us an overview of
7 what your duties and responsibilities have been in the
8 TMDL unit of the Regional Board for the last five years.

9 A TMDLs are the development of a program for
10 impaired water bodies. We identify a water body that's
11 impaired for pollutants and then we determine how much
12 of that pollutant can actually go into the water body
13 without impairing it.

14 Dilution is the solution. That's kind of a
15 common phrase, but water bodies have pollutants in them,
16 but it's only at a certain level that they become
17 detrimental to what is our mission.

18 Once they're identified, we -- we set a limit
19 to that pollutant so that it -- the impairment will be
20 reduced and go away.

21 And then we identify the major dischargers of
22 that pollutant, and then we assign reductions that those
23 dischargers need to meet -- to meet so that the
24 pollutant doesn't affect the water body anymore.

25 Q Have you worked on -- if you could, list the

1 major TMDL projects that you've worked on in San Diego
2 County.

3 A I worked on the Chollas Creek Metals TMDL.
4 I worked on the Region-Wide Bacteria Team TMDL.
5 And most recently I've been working on the Los
6 Penasquitos Lagoon Sediment TMDL and the Tijuana River
7 Trash and Sediment TMDLs.

8 Q What's your role in the Los Penasquitos and the
9 Tijuana TMDLs, as far as sediment issues?

10 A I -- I am the lead, but as of October 1st, I
11 won't be the lead. But let's say I was the lead -- I am
12 the lead -- for developing the TMDL and for -- for
13 ensuring that it -- it meets both our requirements and
14 Federal requirements and that it's technically and
15 scientifically sound.

16 Q What are the contaminants at issue in the Los
17 Penasquitos TMDL?

18 A Sediment.

19 Q Sediment is the contaminant?

20 A Is the contaminant, yes.

21 Q And same question with respect to the
22 Tijuana TMDL.

23 A It -- for Tijuana it's sediment and trash. Not
24 to say that there aren't many other pollutants, but we
25 have to address them one at a time, and these are the

1 ones that we addressed.

2 Q While you've been with the Regional Board, have
3 you been involved in any other cleanup projects in
4 San Diego Bay aside from the shipyard matter?

5 A No.

6 Q And I believe you indicated earlier that you
7 have not been deposed before; is that correct?

8 A Right.

9 Q Have you ever provided testimony at trial?

10 A No. Well, in my divorce, but that's not
11 relevant.

12 Q I agree.

13 Have you provided any testimony in an
14 administrative matter such as the one currently pending
15 in the shipyard matter?

16 A We have board hearings, and so we -- I've
17 provided presentations at board hearings and testimony
18 to the Board based on their questions.

19 Q And which matters did you provide that
20 testimony?

21 A Chollas Creek Metals TMDL. Bacteria TMDL.

22 Q In either of those two administrative
23 proceedings that you just referenced, did you testify as
24 an expert witness?

25 A No, not as far as I know.

1 Q Have you ever prepared an expert report?

2 A No.

3 Q In this Shipyard Sediment Site proceeding, are
4 you aware that you're designated as a witness by the
5 Cleanup Team?

6 A Yes.

7 Q Do you know what capacity you're designated as?

8 A No.

9 Q Are you aware that you're designated as a
10 potential expert?

11 A I wasn't until now.

12 Q I want to mark as the Tobler Exhibit 301 the
13 San Diego Water Board Cleanup Team's Witness
14 Designation.

15 (Tobler Exhibit 301 was marked.)

16 BY MR. DART:

17 Q Mr. Tobler, do you see your name on
18 Exhibit 301?

19 A I do.

20 Q And could you read the second-to-last and
21 third-to-last paragraphs on Page 2, let me know when
22 you're done?

23 A Sure.

24 "Each of the" --

25 MR. CARRIGAN: You can just read it to

1 yourself. He may have a question about it.

2 THE WITNESS: Okay.

3 Okay.

4 BY MR. DART:

5 Q Is it correct, as stated in this document, that
6 you've agreed to testify at the hearing in this Shipyard
7 Sediment Site matter?

8 A I agree.

9 Q Do you intend to offer expert opinion in the
10 scope of your expertise at the hearing?

11 A Yes.

12 Q What is your anticipated subject matter of your
13 expert opinion?

14 A That I'll be asked questions about what
15 portions of the DTR that I contributed to.

16 Q We'll talk about those sections in just a
17 minute.

18 I want to go over just a list of topics that
19 you may or may not consider yourself to be an expert in,
20 and I just want your assessment as to whether you
21 consider yourself an expert in that field. Okay?

22 A Okay.

23 Q Do you consider yourself to be an expert in the
24 field of marine ecology?

25 A No.

1 Q Same question with respect to sediment
2 toxicology.

3 A No.

4 Q Same question with respect to environmental
5 chemistry.

6 A No.

7 Q Do you consider yourself to be an expert in the
8 field of ecotoxicology?

9 A No.

10 Q Same question with respect to ecological risk
11 assessment.

12 A No.

13 Q Same question with respect to human toxicology.

14 A No.

15 Q Do you consider yourself to be an expert in the
16 field of human health risk assessment?

17 A No.

18 Q Same question with respect to economic
19 feasibility of sediment remediation.

20 A No.

21 Q Same question with respect to the field of
22 technological feasibility of sediment remediation.

23 A No.

24 Q Do you consider yourself to be an expert in the
25 field of bioaccumulation?

1 A No.

2 Q Same question with respect to remedial design.

3 A No.

4 Q Finally, same question with respect to remedial
5 monitoring.

6 A No.

7 Q What field, if any, do you consider yourself to
8 be an expert in?

9 A Construction. Construction management.
10 Regulatory requirements.

11 Q What sort of regulatory requirements?

12 A For TMDLs and for NPDES permittees. CEQA.

13 Q Did you utilize any of those fields of
14 expertise in connection with your work at the Regional
15 Board on the shipyard sediment matter?

16 A No.

17 Q Not on TMDLs?

18 A The portion of the DTR that I worked on was not
19 related to TMDLs.

20 MR. TRACY: O for 1.

21 MR. CARRIGAN: Are you going to count?

22 It's okay. You're doing great. You're doing
23 great. You're doing just fine.

24 THE WITNESS: Telling the truth.

25 MR. DART: You are. Inside joke.

1 MR. TRACY: I was just making a joke with
2 Mr. Carrigan. Has nothing to do with your testimony,
3 sir.

4 THE WITNESS: It's all good.

5 BY MR. DART:

6 Q Have you authored any publications in the
7 fields of regulatory requirements including but not
8 limited to TMDLs and NPDES and/or CEQA?

9 A No.

10 Q Have you lectured in any of those fields?

11 A I've given presentations on requirements.
12 Lectured to me sounds as if it's an academic setting.
13 It wasn't that it was just part of my job to explain the
14 regulatory requirements to the various dischargers.

15 Q So the audience was -- were dischargers, and it
16 was in connection with a Regional Board proceeding?

17 A Not with a proceeding in particular. For
18 example, when I was working with the Cities and Counties
19 on their construction -- on their requirements relating
20 to construction, I gave presentations to all of the
21 Cities and Counties to explain our requirements.

22 Also, I've done the same with TMDLs which also
23 requires CEQA. So I typically do explain what is
24 actually required. That's part of what we do is
25 outreach.

1 Q And has your expertise in those subsets of
2 regulatory requirement, has your expertise been
3 developed while you've been working at the Regional
4 Board?

5 A Yes.

6 Q Are you a member of any environmental
7 organization?

8 A I'm sorry, let me back up.

9 Q Sure.

10 A I came to the Regional Board with a lot of
11 construction experience. So those portions weren't
12 learned on the job with the Regional Board.

13 And I didn't hear your last question. Sorry.

14 Q Just to clarify, on top of your clarification,
15 your expertise, what I was referring to were what I
16 thought you had testified to as you consider yourself an
17 expert in the field of regulatory requirements and
18 within that field subsets related to TMDLs, NPDES and
19 CEQA.

20 A Right.

21 Q And that expertise has been developed while
22 you've been at the Regional Board for eight or nine
23 years now?

24 A Yes.

25 Q The question I was then asking, are you a

1 member of any environmental organizations?

2 A No.

3 Q Have you ever worked for or consulted with an
4 environmental group?

5 A With my philosophy degree in hand, I worked for
6 OSPER, which is Oregon environmental group something or
7 other. I can't even quite recall the name. But it was
8 OSPER. I worked for a few weeks going door to door
9 advocating for the spotted owl or something like that,
10 so -- but that was, you know, years ongoing.

11 Q In connection with your work at the Regional
12 Board, the expertise that you've developed there, have
13 you consulted or worked --

14 A No.

15 Q -- for any environmental groups in terms of
16 those, that expertise?

17 A No.

18 Q Let's talk about your role on the Cleanup Team
19 in connection with the shipyard matter. Okay?

20 A Okay.

21 Q When were you appointed to the Cleanup Team in
22 this matter?

23 A 2004. It was my first assignment when I came
24 to the TMDL group. No, it wasn't the first. It was the
25 second, but we have many assignments. My first was to

1 start with Chollas Metals TMDL, but quickly all our
2 efforts got absorbed by the shipyard effort.

3 Q So you began working on the Chollas Metals
4 TMDL. Then you were appointed to the shipyard sediment
5 Cleanup Team, and your work became a part of the
6 shipyard matter.

7 Was that your testimony?

8 A Right. And I believe that was even before it
9 broke into Cleanup and Advisory Team.

10 Q Do you know why you were appointed to the
11 Cleanup Team?

12 A They needed somebody to go through 130 feet of
13 records.

14 Q What were those records related to?

15 A All of the historical files that the Regional
16 Board had in its record room concerning all of the
17 dischargers in this matter.

18 Q I think you said it earlier, but let me just
19 confirm it: Are you currently a member of the Cleanup
20 Team?

21 A Yes.

22 Q Has there been any period of time since you
23 were appointed until today that you were not a member of
24 the Cleanup Team?

25 A No.

1 Q So you've been at the Regional Board
2 consecutively for that entire period?

3 A Yes.

4 Q So going back to what you mentioned about the
5 130 feet of records, if you could just describe in a
6 thumbnail sketch, if you could, what your contributions
7 were to the development of the CAO and DTR, and then
8 we'll perhaps go into it in a little more detail.

9 A Okay. In the DTR, there are sections for each
10 one of the dischargers that outlines the requirement for
11 the evidence that we can use and all the evidence that
12 we were able to put together, I was able to find.

13 And I did this for all of the parties that are
14 involved, with the exception of the Port, which at the
15 time wasn't considered a discharger, as I recall.

16 Q Can you tell me again when the last time you
17 worked on the shipyard sediment matter, when that date
18 was, approximately?

19 A 2006 or 2007 was when I completed all of the
20 evidentiary investigation and then one time after that
21 for mediation.

22 Q I want to go through some other topics that
23 relate to the CAO DTR and just ask you if you've had any
24 involvement in that section. Just to tie off some of
25 the other topics that I will cover. Okay?

1 A Sure.

2 Q In connection with any iteration of the CAO or
3 DTR, I believe you testified about the evidentiary
4 investigation, but did you have any involvement in
5 determining who would be listed as a person responsible?

6 A I had a voice in that, yes.

7 Q We'll come back to any of these topics. We'll
8 go through the list first. Okay?

9 And so you -- based on your testimony, is it
10 correct to say that you had involvement in -- well, let
11 me back up.

12 You talked about the -- reviewing the evidence
13 and the investigation. Did you have any involvement in
14 the actual drafting of the sections related to any
15 particular party?

16 A Yes, I drafted them.

17 Q And is it correct that all parties -- you
18 drafted the sections for all parties except for the
19 Port?

20 A Right.

21 Q What about Star & Crescent?

22 A That's not familiar to me.

23 Q And I can represent to you that they were added
24 in a recent version of the DTR that may have been
25 subsequent to your involvement.

1 A It must have been.

2 Q So you drafted the sections of -- involving

3 BAE?

4 A Yes.

5 Q NASSCO?

6 A Yes.

7 Q And City of San Diego?

8 A Yes.

9 Q Campbell Industries?

10 A Yes. There are a couple names, as I recall.

11 Q MARCO/Campbell?

12 A Yeah. Yeah.

13 Q Chevron?

14 A Yes.

15 Q BP?

16 A Yes.

17 Q SDG&E?

18 A Yes.

19 Q And the Navy?

20 A Yeah.

21 Q Moving to the next topic. Did you have any
22 involvement -- in connection with any iteration of the
23 CAO DTR, did you have any involvement with the Aquatic
24 Life Impairment Analysis?

25 A No.

1 Q Same question with respect to the --

2 A Let me answer that a little more clearly.

3 Q Sure.

4 A I saw a couple presentations, preparatory
5 presentations, but it's not my field of expertise and --
6 but that was my involvement. I saw them.

7 Q You didn't contribute to the analyses that are
8 set forth?

9 A No.

10 Q And that's going to be the scope of my
11 questions as to whether you --

12 A Okay.

13 Q -- contributed to the analysis set forth, not
14 whether you had viewed or become familiar with it
15 through some other way.

16 A Okay.

17 Q In connection with any iteration of the CAO or
18 DTR, did you have any involvement with the selection of
19 the sediment quality reference stations?

20 A No.

21 Q Same question with respect to the Aquatic
22 Dependent Wildlife Impairment Analysis.

23 A No.

24 Q Same question with respect to the Aquatic
25 Dependent Wildlife Risk Assessment.

1 A No.

2 Q Same question with respect to the Human Health
3 Impairment Analysis.

4 A No.

5 Q Did you have any involvement with the Human
6 Health Risk Assessment?

7 A No.

8 Q Same question with respect to the Technological
9 Feasibility Analysis.

10 A No.

11 Q Same question with respect to the Economic
12 Feasibility Analysis.

13 A No.

14 Q Did you have any involvement in the alternative
15 cleanup level?

16 A No.

17 Q Same question with respect to the Proposed
18 Remedial Footprint.

19 A No.

20 Q Same question with respect to the Preliminary
21 Remedial Design.

22 A No.

23 Q Did you have any involvement with respect to
24 the Remedial Monitoring Program?

25 A No.

1 Q And same question with respect to the Remedial
2 Action Implementation Schedule.

3 A No.

4 Q As part of your work into the -- reviewing the
5 evidence and the drafting of the actual historical
6 allegations against the various parties, did anyone
7 assist you in that work?

8 A No.

9 Q The whole 130 feet of records was on your
10 shoulders?

11 A Yes. Three times.

12 Q What do you mean by three times?

13 A I was instructed to look for specific things, I
14 can't even recall -- I was instructed to look for
15 violations the first time, which I did.

16 Q Violations of?

17 A Anything possible, NPDES permits or basin plan
18 prohibition violations.

19 Q Who instructed you to look for those?

20 A My supervisor.

21 Q And who was that at the time?

22 A Craig Carlisle.

23 Q What other instructions were you given in terms
24 with -- in connection with your work regarding the
25 allegations against the parties?

1 A That was it.

2 Q And going back, can you explain again what you
3 mean by three times?

4 A Yeah. I just -- I can't recall exactly why I
5 went back three times, but there was -- it was because
6 after they reviewed what I found, they wanted something
7 more specific to it, like the date or the -- I had
8 missed something in the review. And probably partly my
9 fault in lack of foresight, I would say. So it -- it
10 ended up that I ended up doing it three times, and I
11 know that number.

12 Q Were you submitting draft sections or draft
13 findings in between each of those reviews?

14 A Yes.

15 Q As to each of the parties that we talked about?

16 A Yes.

17 Q Who else other than Craig Carlisle, if anybody,
18 would provide you comments in response to your draft
19 sections or findings?

20 A David Barker also did.

21 Q How were those comments provided to you?

22 A In a meeting after they had had a chance to
23 review what I gave them and after consideration of all
24 that was said in the meeting, they asked for other more
25 specific things. And I went back and started over.

1 Q You would go back and look at the same body of
2 records?

3 A Right.

4 Q Did you consult with anyone else outside of the
5 Regional Board in connection with your investigation
6 into the factual and historical allegations?

7 A No.

8 Q And you think that work concluded sometime in
9 2006 or 2007.

10 A Right.

11 Q We'll talk about particular parties, I imagine,
12 or at least I will, as to at least one or two and other
13 counsel might want to talk about their sections. We'll
14 come back to that in a few minutes.

15 Let me just ask you about a couple other issues
16 in terms of whether or not you were involved in certain
17 issues. Okay?

18 A Okay.

19 Q Is it correct to say that you were involved in
20 the development of the Chollas Creek TMDL for copper,
21 lead and zinc?

22 A Yes.

23 Q What about the Chollas Creek TMDL for diazinon?

24 A No.

25 Q Were you involved in the Chollas Creek TMDL for

1 the mouth of Chollas Creek?

2 A No.

3 Q What was your role in connection with the
4 Chollas Creek TMDL for metals?

5 A I assumed that TMDL as lead at roughly the
6 halfway point. I replaced one of my colleagues. He
7 moved out of the unit. I moved into it, and I took over
8 for him and finished it.

9 Q Who was that colleague?

10 A James Smith. He's now currently our assistant
11 executive officer.

12 Q Is that the James Smith that's a member of the
13 Advisory Team?

14 A Yes.

15 Q Was your work on that TMDL in the TMDL unit as
16 opposed to the other unit that Mrs. Gorham was involved
17 in?

18 A We were in the same unit, but that unit did
19 both TMDLs and shipyard work. So most of us were doing
20 TMDLs and worked on the shipyard. I -- after I finished
21 the Chollas Creek Metals TMDL, then my sole focus became
22 the evidentiary investigation.

23 Q When was the Chollas Creek TMDL for metals
24 finished?

25 A 2005 is an estimate.

1 Q Were you involved in the development of the
2 administrative record for the shipyard sediment matter?

3 A Any document that I produced that's included in
4 the DTR goes into the administrative record, but I
5 wasn't a part of putting the administrative record
6 together. That is generally assigned to one person for
7 its management.

8 Q Is that 130 feet that you referenced, was that
9 the administrative record at the time?

10 A No. I'm sure it included that, but also many
11 other documents, including reference materials, I would
12 assume.

13 Q Who was the person responsible for compiling
14 and developing the administrative record?

15 A I'd have to guess. I don't know. I could
16 probably give you a good guess.

17 MR. CARRIGAN: You don't have to guess.

18 MR. DART: That's true.

19 MR. CARRIGAN: If you can -- if you have an
20 idea or you want to give your testimony, we can qualify
21 it. You may believe it's someone, but don't take a
22 guess.

23 BY MR. DART:

24 Q We're entitled to your best estimate. For
25 example, I could ask you what is the length of this

1 table, and you could give me your best estimate by
2 visualizing it, but if I asked you what is the length of
3 the table at my house, that would be a guess because
4 you've never seen it. You don't know if I even have a
5 table at my house. That's kind of the distinction we
6 generally use.

7 So you're free to qualify, as your counsel
8 advised you, any answer you like, but we're entitled to
9 your best estimate if you have one. Okay?

10 A It was probably Tom Alo. He started it. And I
11 assumed that he was working on it at the time.

12 Q So did you have any decision-making authority
13 in terms of what was placed into the administrative
14 record and what wasn't?

15 A No.

16 Q Did you say that any of the materials that you
17 used or worked with were put into the administrative
18 record?

19 A I'm sure that that evidentiary investigation
20 that I did, the DTR in its earlier iteration got into
21 the administrative record. I'm sure that happened.

22 Q I have a binder of documents I just want to
23 show you. It's one example here. I'm not going to mark
24 it as an exhibit, but it's an e-mail. It's -- the
25 administrative record number is SAR 068177, and it looks

1 like an e-mail from Mike Chee to Tom Alo, back in 2002,
2 and at the top it has your name, which to me indicates
3 that you printed the e-mail.

4 A Yeah, I probably did print it.

5 Q So if that was -- assuming that's the case, do
6 you know how or why an e-mail that appears not to be to
7 or from you could be printed by you and end up in the
8 administrative record?

9 A From time to time, as I recall, we were asked
10 to print out any and all information that we had on the
11 shipyards. I'm sure that's the reason why I printed it
12 out. I saw it as a -- an e-mail I had about the
13 shipyards, and I printed it out and handed it.

14 Q Did you review anybody else's e-mail
15 communications that you were not copied on in connection
16 with determining whether it was in or out of the
17 administrative record?

18 A No.

19 Q So although it may not appear from that, you
20 think that the only e-mails you would have printed and
21 put into the administrative record are ones that you
22 sent or received?

23 A Can you repeat that again?

24 Q I'm trying to confirm whether or not you
25 reviewed anybody else's e-mails that you were not copied

1 on.

2 A No. I didn't review anybody else's e-mails,
3 only -- only from my machine.

4 And actually, looking at this sticker here, the
5 file number sticker that's on there, I made those file
6 number stickers, and so this was a part of the filing
7 process. I filed stuff, but I didn't assemble the
8 administrative record. That must have been done by
9 somebody else.

10 Q Could I have that back, please.

11 A Yeah.

12 Q Did you have any -- do you have any experience
13 with striking or removing anything from the
14 administrative record?

15 A No.

16 Q Are you aware of any circumstances whereby
17 anyone else at the Board struck or removed things from
18 the administrative record in the shipyard sediment
19 matter?

20 A No.

21 Q Are you familiar with the Advisory Team in this
22 shipyard sediment CAO proceeding?

23 A I'm familiar, yes.

24 Q Are you familiar with their purpose?

25 A Yes.

1 Q What is your understanding of their purpose?

2 A To -- I have to admit I don't know all their
3 purposes, but the one that I do know of is that they are
4 there to advise the executive officer and the Board of
5 all legal and regulatory requirements that relate to
6 this proceeding.

7 Q Are you aware of the prohibition on ex parte
8 communications between the Advisory Team and the Cleanup
9 Team members?

10 A Yes.

11 Q Have you had any such ex parte communications
12 with a member of the Advisory Team?

13 A No.

14 Q We've been going about an hour and 15 minutes
15 now. If it's all right with you, we'd like to take a
16 short break.

17 A Sure.

18 Q Say ten minutes or so?

19 A Sure.

20 MR. DART: Go off the record.

21 (A recess was taken.)

22 BY MR. DART:

23 Q Mr. Tobler, I have had the reporter put in
24 front of you two Master exhibits. Master Exhibit 1 is
25 the most recent version of the CAO, and Master

1 Exhibit 2 is the most version of the DTR.

2 Do you have those in front of you?

3 A Yes, I do.

4 Q And I want to talk about some of the factual
5 and historical allegations related to BAE Systems.

6 Could you please turn to Page 3-2 of the DTR.

7 A Okay.

8 Q And I recognize that I believe you said you
9 haven't worked on this in a few years and that you
10 drafted these sections for prior versions. So for each
11 of these -- each section we talk about, if you take a
12 scan over it, and if you think that it includes material
13 you didn't work on, would you please let me know?

14 A If it --

15 Q If --

16 A To clarify --

17 Q If it includes new sections or new information
18 that you did not author, could you please let me know?
19 Okay?

20 A Okay. I will take a minute here, I guess.

21 Q Let's just start with the 3. -- 3.1 in the BAE
22 section, the facility description.

23 Did you draft that section?

24 A Yes, I did.

25 Q What did you look at or what did you review to

1 come up with the factual information contained in
2 Section 3.3.1?

3 A The information we had in our files and for the
4 most recent stuff, I also did an Internet search.

5 Q What information did you have in your files
6 that reflected this facility description?

7 A Address. Perhaps the acreage.

8 It's hard for me to be specific, but I do know
9 that the two sources that I did look at were what we had
10 in the files.

11 And then I also went on the Internet to the
12 various dischargers' websites. Most of them had them,
13 as I recall. And so for things like facility acreage, I
14 may have looked at the Internet, the most
15 up-to-date-type thing.

16 Q Did you interview anyone in connection with
17 drafting Section 3.3.1?

18 A No.

19 Q Did you receive any objections from BAE or
20 other parties related to this factual section?

21 A No.

22 MS. TRACY: Objection; vague and ambiguous as
23 to time.

24 BY MR. DART:

25 Q Your answer was what?

1 A No.

2 Q Did you visit BAE's facility?

3 A Yes.

4 Q When was that?

5 A We went -- when I say "we," me and not exactly
6 sure who, but it was a group of people involved in this,
7 and we were given a couple of tours, as I recall, maybe
8 one or two during those years that I worked on this.

9 Q Was that tour in connection with your
10 investigation in drafting of these factual sections?

11 A Yes.

12 Q Who gave you the tour, if you recall?

13 A I think it was NASSCO. I can't recall
14 specifically, but I remember going to NASSCO and having
15 someone show us the facilities that were closest to the
16 waterfront, like BAE.

17 And at the end, I think it was like a mutual
18 type of tour, but also then we went and saw Chevron and
19 BP and SDG&E as -- with representatives from them. I
20 don't recall the Navy tour. But that's -- that's what
21 we did.

22 Q With respect to the next three sections of the
23 BAE portion, 3.3.2, Activities Conducted by BAE Systems,
24 3.3.3, Materials Used by BAE Systems, and 3.3.4, Waste
25 Generated by BAE Systems, could you scan over those and

1 let me know if you drafted those sections.

2 A Yes, I did.

3 Q Where did you get your information used in
4 order to draft these sections?

5 A From the files.

6 Q Do you recall what documents this information
7 was sourced from in the file?

8 A No, I don't.

9 Q Do you recall, in general, what type of
10 documents they were sourced from?

11 A Past inspection reports or reports that the
12 various entities had provided to us.

13 Q Other than reports provided by -- other than --
14 strike that.

15 And other than any documents provided by BAE
16 Systems, did you do anything to independently verify the
17 information contained in the other reports you
18 referenced?

19 A Can you ask the question again, please.

20 Q Yeah. My question is with respect to those
21 three sections, did you rely solely on the documents
22 that you reviewed, or did you do anything to
23 independently verify the information that you reviewed?

24 A I didn't independently verify anything further.
25 I assumed that all the documentation in the files were

1 legitimate.

2 Q And accurate?

3 A Yes.

4 Q Did you interview anybody to compile any
5 portion of the information reflected in Sections 3.3.3
6 through 3.3. -- I'm sorry, 3.3.1 through 3.3.4?

7 A No.

8 Q In terms of those sections where it references
9 activities conducted by BAE and materials used by BAE
10 and waste generated by BAE, did you undertake any
11 analysis with respect to any differences between
12 Southwest Marine's activities, materials, and wastes
13 versus those of BAE Systems?

14 A No.

15 Q Would you assume that their practices were
16 consistent?

17 A I was instructed by my supervisors that I was
18 to conduct the investigation for all the activities that
19 historically happened at the site. So I didn't
20 differentiate between who actually owned it during what
21 times.

22 Q Is that response -- are you referencing the
23 historical activities at the site by BAE Systems and its
24 predecessor --

25 A Yes.

1 Q -- Southwest Marine?

2 A Yes.

3 Q Who was your supervisor that gave that
4 instruction?

5 A Craig Carlisle.

6 Q Can I direct your attention to Page 3-6. It's
7 Section 3.3.5. Do you see the first line where it says,
8 "San Diego Water Board inspectors observed" and then it
9 describes an observation.

10 A Uh-huh. Yes.

11 Q Did you take -- strike that.

12 Did you talk to those San Diego Water Board
13 inspectors regarding that information?

14 A No, I didn't.

15 Q Is that information reflected in documents?

16 A Yes.

17 Q And did you take that information at face
18 value?

19 A Yes.

20 Q With respect to Section 3.3.5 and its three
21 subsections regarding inspections and sampling, did you
22 inquire if BAE Systems had any objection to the
23 information reflected there?

24 A No.

25 Q Did you receive any objection from BAE

1 regarding that information?

2 A I don't recall. I don't think so.

3 Actually I never saw any objection to any of
4 this, so I would say no.

5 Q Do you know if BAE had objections to those
6 factual assertions under Section 3.3.5?

7 MR. CARRIGAN: Calls for speculation. Lacks
8 foundation.

9 You can answer if you know.

10 THE WITNESS: I forgot what he asked.

11 MR. CARRIGAN: Okay. Go ahead.

12 BY MR. DART:

13 Q My question was, other than receiving any
14 objections or making any inquiries of BAE, did you
15 otherwise become aware that BAE had any objection to
16 these factual sections?

17 A No.

18 Q Can I direct your attention to Page 3. -- I'm
19 sorry, 3-8, the Table 3-1 that is broken into sections.

20 Do you see that?

21 A Yes, I do.

22 Q Do you recall what the source of that
23 information is?

24 A No, I don't. Not specifically. In fact, this
25 table doesn't look familiar to me. It may have been

1 added later, and I can probably -- your last couple
2 questions on the inspections and sampling, the 3.3.5.1
3 through 3.3.5.3 don't seem very familiar to me either.
4 They may have been added subsequently.

5 Some of this looks very familiar. Or somewhat
6 familiar. This just doesn't. I'm sorry.

7 Q I appreciate that. That's okay.

8 I direct your attention to Page 3-19,
9 Section 3.6 entitled "BAE Systems Waste Discharges."

10 Do you see that?

11 A Yes, I do.

12 Q Did you draft the information above the table
13 on that page?

14 A I'm fairly sure I did, yes.

15 Q With respect to that information under
16 Section 3.6 and above the table, did you do anything to
17 independently verify the information contained there?

18 A I'm not clear what you mean by "independently
19 verify." If you mean verify, did I find these --
20 evidence of it in the files, yes. I don't know how I
21 could --

22 Q Assuming that's the case, you found that
23 information in the file or in the records, did you do
24 anything to independently verify the information outside
25 of the records; for example, interview anyone?

1 A No, I -- that was it. I found it in the
2 records.

3 Q And you took those records at face value?

4 A Yes.

5 Q Did you prepare the table that's reflected in
6 3-4 that goes over the next several pages?

7 A Yes, I did.

8 Q Again with respect to the information reflected
9 in the Table 3-4, does that information come from the
10 records that you reviewed?

11 A Yes.

12 Q And did you accept that information at face
13 value?

14 A Yes, I did.

15 Q When you said that you accepted that
16 information at face value for the table referenced, is
17 it correct, then, that you did not do anything to
18 determine whether or not those discharges were from
19 sources other than from BAE?

20 A One more time with the question, please.

21 Q The information reflected in Table 3-4,
22 BAE Systems Discharges, I believe you indicated that you
23 accepted the information contained in the records you
24 reviewed; is that correct?

25 A Right.

1 Q So am I correct in concluding that you did not
2 do anything to determine whether those discharges were
3 from a source other than from BAE?

4 A The records I've reviewed were specific to BAE.
5 They were inspection reports or documentation of citizen
6 complaints or BAE's own reports that were submitted to
7 us.

8 So I -- beyond taking those at face value, I
9 didn't look to verify any of those documents any
10 further.

11 Q Do you know whether the discharges that are
12 listed in that table -- let me back up.

13 Do you see in the Source column where it
14 indicates BAE Spill Report, for example in Table 3-6?

15 A Yes.

16 Q Do you know whether those spill reports require
17 the identification of the source of the discharge?

18 A I don't know if they're required, but some of
19 them may have that information in there.

20 Q Would you agree that those spill reports
21 reflect discharges at BAE's facility, but don't identify
22 the source of the discharge?

23 MS. TRACY: Objection. The document -- the
24 spill reports received in the DTR and the administrative
25 record and the document speaks for itself.

1 MR. CARRIGAN: I'm going to join.

2 MS. NICHOLS: Join.

3 BY MR. DART:

4 Q You can answer.

5 A Please ask it again.

6 Q Can you read the question back, please.

7 A I'm new to these proceedings and I'm listening
8 to everyone.

9 Q I understand. We'll have the question read
10 back.

11 MR. LEDGER: To avoid the cacophony of joins,
12 can we have a stipulation that an objection by one is an
13 objection by all? Is everybody agreeable to that?

14 MS. TRACY: So stipulated.

15 MR. CARRIGAN: Yeah, I will stipulate to that.

16 MS. NICHOLS: So stipulated.

17 MR. CARLIN: So stipulated.

18 MR. TRACY: No, I'm not going to stipulate to
19 that.

20 MR. CARRIGAN: So we'll just join if Mike
21 objects we'll --

22 MS. NICHOLS: For this deposition. My
23 stipulation is for this deposition.

24 MR. CARRIGAN: Yeah, I agree. Limit it to this
25 deposition.

1 MR. TRACY: All right. For this deposition I
2 agree.

3 MR. LEDGER: Yes.

4 MR. CARRIGAN: So here we go. That was just
5 all talking again. She will read back the question.
6 Listen carefully and then respond.

7 (The pending question was read.)

8 THE WITNESS: Not necessarily.

9 BY MR. DART:

10 Q What is that response based upon?

11 A Because typically in the spill report, it does
12 say where it came from. I don't know if that's a
13 requirement, but frequently it does say where it came
14 from.

15 Q When you say where it comes from, what do you
16 mean?

17 A As an example, a half a cup of paint was
18 dropped into the bay. It's BAE's spill report. It
19 happened on BAE's property. It happened to someone who
20 spilled the paint on BAE's property. So the assumption
21 there is that it came from BAE.

22 Q That's an assumption?

23 A That's an assumption.

24 Q Does that assumption exclude the possibility of
25 other operators discharging on BAE's facility?

1 MR. CARRIGAN: I want to make the
2 document-speaks-for-itself objection with respect to
3 each and every one of the reports discussed.

4 You can answer.

5 MR. LEDGER: Overbroad.

6 THE WITNESS: Could you read that back, please.

7 (The pending question was read.)

8 MS. TRACY: I'd also like to object as vague
9 and ambiguous as to time.

10 THE WITNESS: One more time, please.

11 (The pending question was read.)

12 THE WITNESS: Within the realm of possibility,
13 no, it doesn't exclude that. Anything is possible, I
14 suppose.

15 BY MR. DART:

16 Q Are you familiar with the requirements of the
17 spill reports that we've been talking about?

18 MS. TRACY: Objection; vague and ambiguous.

19 THE WITNESS: I did not review the specific
20 requirements of what spill reports are supposed to
21 contain, no.

22 Depending upon which permit they're operating
23 under, and there were a number of permits that they were
24 operating under, those requirements may or may not
25 change.

1 BY MR. DART:

2 Q Do you know whether the spill reports reflected
3 in Table 3-6 that have dates, required BAE to identify
4 only the facility as a source or the actual operator as
5 the source?

6 MS. TRACY: Objection; vague and ambiguous and
7 overbroad as to time. The discharge reports in
8 Table 3-6 begin March of '98 through November of 2002.

9 THE WITNESS: Could you read it back one more
10 time, please.

11 (The pending question was read.)

12 THE WITNESS: No, I don't know.

13 MR. TRACY: I'm sorry, what was the answer?

14 (Answer read.)

15 MR. DART: I don't have any further questions
16 at this time. I'm going to reserve my rights to ask
17 some follow-up questions after other attorneys have had
18 a chance to ask some questions and I've had a chance to
19 look at my notes.

20 And I appreciate your time, Mr. Tobler. I'm
21 going to pass the baton to another attorney, and they
22 can tell us whether they want to take a break before
23 they begin.

24 MR. CARLIN: I'm happy to go next and would
25 like a five-minute break first, if that's okay.

1 THE WITNESS: Sure.

2 MR. DART: Go off the record.

3 (A discussion off the record was held.)

4

5

EXAMINATION

6 BY MR. CARLIN:

7 Q Good afternoon, Mr. Tobler. My name is
8 Jeff Carlin. I represent NASSCO in these proceedings.

9 You testified this morning that you thought you
10 had expertise in the regulatory requirement is for TMDL;
11 is that correct?

12 A Yes.

13 Q You also testified that when you had the lead
14 role in the TMDL for the Penasquitos and Tijuana TMDLs,
15 your job, in broad terms, was to ensure that the TMDLs
16 were technically and scientifically sound?

17 A Yes.

18 Q And you indicated that you took over in a lead
19 role for the TMDL for metals in Chollas Creek about
20 halfway through the process?

21 A Right.

22 Q Do you recall what year that was?

23 A 2004.

24 Q And during your work in a lead role in the TMDL
25 for metals, would you agree that your duty was to ensure

1 that the TMDL was technically and scientifically sound?

2 A No, not at that point. It was fairly advanced
3 and complete, and what remained was for the presentation
4 to the Regional Board members, we responded to some
5 public comments just prior to that. But most of the
6 technical and scientific foundation for that TMDL had
7 already been completed, if not all.

8 Q So what was largely the scope of your lead role
9 in connection with the TMDL?

10 A To respond to the comments that came in from
11 various entities, including public, and -- and to adjust
12 the TMDL accordingly to those comments, if required; and
13 then to prepare and give a presentation to the Board
14 members at the adoption hearing.

15 And subsequently it got adopted, and I then
16 assembled the administrative record and sent that in
17 completion to Sacramento for their approval and office
18 OAL, Office of Administrative Law Approval, which then
19 made the TMDL official.

20 Q When you said you sent it to Sacramento for
21 their review, you're referring to the State Water Board?

22 A Yes.

23 Q We'll come back to the Chollas Creek Metals
24 TMDL later.

25 You indicated earlier that you did not do any

1 work on the TMDL for the mouth of Chollas Creek?

2 A That's correct.

3 Q Did you do any work related to the mouth of
4 Chollas Creek TMDL for its CEQA review?

5 A I may have -- let me ask this question. Is --
6 is the mouth of Chollas bundled together with Switzer
7 and Paleta or is it just separate? I'm not sure,
8 because I did do a CEQA review presentation for Switzer
9 and Paleta.

10 Q I can represent to you that my understanding is
11 that there have been some presentations of all three of
12 those creeks bundled together.

13 A Okay. Well, then it may be the case that, yes,
14 I did -- I did prepare a CEQA scoping meeting for that
15 in which I just presented to the interested stakeholders
16 the general requirements for CEQA and asked for their
17 input, but after that presentation, I haven't done
18 anything with it since.

19 Q Do you recall when that presentation was?

20 A Two or three years ago, it seems.

21 Q And since that time you've had no further
22 involvement with the mouth of Chollas Creek TMDL?

23 A None. In fact, I had very limited
24 understanding of the TMDL itself. I just came in as
25 basically the CEQA guy who was soliciting information,

1 so...

2 Q And you've had no personal role in an
3 assessment of whether or not the implementation of the
4 mouth of Chollas Creek TMDL might have a significant
5 environmental impact under CEQA?

6 A I participated in none of that.

7 Q I'd like to refer you to Page 1-3 of Master
8 Exhibit 2, which is the DTR.

9 A Okay.

10 Q Would you take a look at Figure 1-1. It's
11 labeled the Shipyard Sediment Area.

12 A Yes.

13 Q I just wanted to confirm Chollas Creek, it
14 borders the south end of the Shipyard Sediment Site?

15 A Yes.

16 MR. CARRIGAN: You're asking for --

17 MR. CARLIN: Just trying to provide some
18 background foundation, Counsel.

19 BY MR. CARLIN:

20 Q And the mouth of Chollas Creek comes out of the
21 San Diego Bay; is that correct?

22 A Correct.

23 Q And the mouth of Chollas Creek is bounded by a
24 pier to the north that's labeled Berth 5 and Berth 6 and
25 also by a pier to the south?

1 A That's correct.

2 Q And in the future if I refer to a NASSCO pier
3 on the mouth of Chollas Creek, I will be referring to
4 the pier in this diagram that slows up as Berth 5 and
5 Berth 6.

6 Does that make sense?

7 A Yes.

8 Q Can you tell me what a watershed is generally?

9 A Sure. A watershed is an area that collects
10 rainfall, is distinctive to itself and drains that
11 rainfall in various valleys that it contains.

12 It's a basin, and ultimately -- usually they
13 discharge, in some cases there's some middle -- or a
14 high water table in the middle, somewhere in the middle.

15 In most cases watersheds have an -- an area
16 where the water flows out of, I guess.

17 Q Now, in connection with your work on the
18 Chollas Creek Metals TMDL, I assume you developed some
19 familiarity with the Chollas Creek watershed?

20 A Somewhat.

21 Q Can you give me sort of a thumbnail sketch
22 overview of the Chollas Creek watershed. What I'm
23 looking for is general characteristics, size and so
24 forth.

25 A Can't recall quite the size.

1 I do recall something like 200,000 people
2 living within it. It's densely populated.

3 Has industrial, residential, commercial land
4 uses within it as well as very small areas of natural
5 areas.

6 It's a -- it's quite a densely populated urban
7 watershed.

8 Q Is it your understanding that the Chollas Creek
9 watershed is the largest watershed draining into
10 San Diego Bay?

11 A I would probably agree with it, with what you
12 said, although I can't say for certain. I didn't -- I'm
13 not knowledgeable if it's the biggest or not. But it
14 seems that's probable, yeah.

15 Q Do you have an understanding of whether or not
16 the Chollas Creek watershed contributes more pollutants
17 into San Diego Bay than any other watershed?

18 MR. CARRIGAN: Lacks foundation.

19 MR. LEDGER: Calls for speculation.

20 THE WITNESS: I can't say that with certainty,
21 no.

22 MR. CARLIN: Mark this as 302.

23 (Tobler Exhibit 302 was marked.)

24 BY MR. CARLIN:

25 Q We marked as Exhibit 302 a presentation

1 entitled "Watershed Monitoring and Modeling in Switzer,
2 Chollas and Paleta Creek Watersheds,"" authored by
3 Kenneth Schiff.

4 Have you ever seen this document before?

5 A No, I haven't.

6 Q Are you familiar with Kenneth Schiff?

7 A I am.

8 Q What do you know about Mr. Schiff?

9 A He has an excellent reputation and that the
10 Regional Board has worked in partnership with -- with
11 him and SCCWRP, as we call it, Southern California
12 Coastal Water Research Project. Has an excellent
13 reputation.

14 Q And you're familiar with Mr. Schiff's work
15 generally?

16 A Yes.

17 Q I'd like to direct you to slide -- it's 31,
18 including the cover page. Unfortunately, again, these
19 aren't numbered, but show you the page I'm looking for.
20 It's entitled, "Average Annual Pollutant Loads,
21 1996 through 2005."

22 A Okay.

23 Q Okay. This is a list of pollutant loads
24 measured from '96 through 2005. As you can see at the
25 top, it represent loads for Chollas, Paleta and Switzer

1 Creeks.

2 If you take a look at copper, on the top left,
3 would you agree that the pollutant load for Chollas is
4 greater than for Paleta and Switzer?

5 MR. CARRIGAN: Objection. The document speaks
6 for itself.

7 MR. CARLIN: Just asking --

8 MR. CARRIGAN: Are you asking him is that what
9 the document says?

10 MR. CARLIN: Just asking him to confirm what
11 the document says, Counsel.

12 MR. CARRIGAN: Sure.

13 THE WITNESS: Yes, that's what the document
14 says.

15 BY MR. CARLIN:

16 Q Okay. If you could take a minute just to look
17 at the document and go through each of the pollutants, I
18 would appreciate it.

19 A I already have.

20 MR. CARRIGAN: Are you just going to ask him to
21 confirm what the document says or do you have a question
22 for this witness about his own knowledge?

23 MR. CARLIN: I'm going to ask him to confirm
24 what the document says. Then I'm going to ask a
25 follow-up question, which I'm entitled to do.

1 THE WITNESS: Yeah, I took a look at it.

2 BY MR. CARLIN:

3 Q Okay. And if you look at it, you will see that
4 Chollas Creek, the pollutant load is greater than those
5 for Paleta and Switzer for all but chlordane and PCBs?

6 MR. CARRIGAN: Same objection.

7 THE WITNESS: That's what the document says.
8 And probably also mercury falls within that, because
9 there's an equal sum there.

10 BY MR. CARLIN:

11 Q And given Mr. Schiff's reputation and his work
12 that you mentioned earlier, after looking at this
13 document, would you agree that Chollas Creek contributes
14 more pollutants at least than Paleta and Switzer?

15 MR. CARRIGAN: Objection; document speaks for
16 itself. Calls for speculation. Lacks foundation.

17 (The witness and counsel confer off the
18 record.)

19 BY MR. CARLIN:

20 Q You can still answer the question.

21 MR. CARRIGAN: Yeah, you can answer. You can
22 answer.

23 BY MR. CARLIN:

24 Q In fact, you're required to answer.

25 A Yes. It -- it looks like from this report, and

1 I have no -- no reason at all to suspect what Ken Schiff
2 does from this report, it definitely looks like Chollas
3 is the major contributor.

4 Q Based on your work on the Chollas Creek TMDL
5 for metals, is it your understanding that pollutants
6 occur in toxic levels at Chollas Creek?

7 MR. LEDGER: Objection; vague and ambiguous.

8 THE WITNESS: Yes. They -- there are toxic
9 levels of pollutants in Chollas Creek.

10 BY MR. CARLIN:

11 Q Do you know which pollutants?

12 A I know for certain zinc. That's a metal. Lead
13 and copper. And those were all addressed in the TMDL
14 that I completed, the Chollas Creek Metals TMDL.

15 And there wouldn't be a TMDL unless the levels
16 were too high. So I can say that for those three -- I
17 don't know if the other pollutants that are listed here
18 are also impairments in the watershed. I don't know. I
19 don't have the -- all the pollutants memorized. I could
20 find out for you.

21 Q Now I'd like you to describe for me urban
22 runoff.

23 A Urban runoff is a combination of the rain that
24 falls onto an urban area and the pollutants that rain
25 collects, but also, it's not just necessarily rain. It

1 can also be discharges that come from various entities
2 that live within that urban environment oversprinkling
3 lawns, for example, or fire systems frequently get
4 cleaned and they're discharged. Although that is
5 illegal, they just go ahead and discharge them too.

6 So any type of water that drains from an urban
7 area into a street and gutter or -- and/or into a urban
8 creek, all that that water picks up along the way,
9 including pollutants and sediment and what, that is
10 urban discharge.

11 Q How is urban runoff discharged into Chollas
12 Creek?

13 A Through all those mechanisms that I was
14 describing. Perhaps a more complete description would
15 be that typically it falls onto any surface area within
16 an urban environment, flows to the lowest point, which
17 in an urban environment is typically engineered so that
18 it captures that flow and can drain it, usually with
19 gravity, into a collection system, including curbs and
20 gutters and storm drains, and then usually eventually
21 into an urban creek, a natural-type conveyance system,
22 and from there typically out of the watershed into
23 either a river or a bay or an ocean.

24 Q With respect to a point source discharged into
25 Chollas Creek that would convey urban runoff, can you

1 identify any of those for me?

2 A A point source within Chollas Creek? I'm
3 asking for clarification.

4 Q Just asking, you described the urban runoff
5 process. I'm asking how it actually gets into Chollas
6 Creek at the end of that process.

7 MS. NICHOLS: Asked and answered.

8 THE WITNESS: It flows with gravity, typically,
9 sometimes pump stations.

10 BY MR. CARLIN:

11 Q What constituents are commonly found in urban
12 runoff to Chollas Creek, to your knowledge, based on
13 your knowledge working at the Regional Board?

14 A I know for certain that zinc and lead and
15 copper, that's the metals TMDL that I worked on. I know
16 diazinon was a TMDL that has also been completed and
17 therefore that must be one of the pollutants.

18 But I don't know any of the other pollutants
19 offhand. Again, I could look at the 303D list which is
20 the federal list for -- that we developed for all of the
21 pollutants in all of the water bodies. One look at that
22 and I could answer that question for you, but I don't
23 have it in front of me.

24 Q Aside from urban runoff, are you aware of any
25 other sources that would contribute metals to

1 Chollas Creek?

2 A There's some speculation and it's possible that
3 aerial deposition can do that too. Although I haven't
4 seen any definitive type of study or report that
5 confirms that.

6 Q So urban runoff is clearly the most significant
7 source?

8 MS. NICHOLS: Objection; calls for expert
9 opinion outside of this witness' expertise.

10 MR. LEDGER: Speculation.

11 MR. CARLIN: Let me rephrase.

12 BY MR. CARLIN:

13 Q I asked you for the source of metals into
14 Chollas Creek, and we talked about urban runoff. I
15 asked you if you were aware of any other sources, and
16 you mention aerial deposition is a speculative
17 possibility; is that right?

18 A Right.

19 Q Are you aware of any other potential sources?

20 MS. NICHOLS: Same objection.

21 THE WITNESS: I'm not aware of any other.

22 BY MR. CARLIN:

23 Q So based on your knowledge, urban runoff is the
24 most significant source of metal to Chollas Creek?

25 MR. LEDGER: Objection.

1 MS. NICHOLS: Same objection.

2 THE WITNESS: One more time.

3 BY MR. CARLIN:

4 Q You've identified urban runoff as a source of
5 metal into Chollas Creek.

6 A Right.

7 Q You've identified aerial deposition as a
8 speculative source --

9 A Right.

10 Q -- for metals into Chollas Creek.

11 Are you aware of any other potential sources of
12 metals into Chollas Creek?

13 A No.

14 MS. NICHOLS: I just want to interject
15 an objection as to whether you're distinguishing Chollas
16 Creek from the mouth of Chollas Creek.

17 MR. CARLIN: My question is specific to Chollas
18 Creek.

19 THE WITNESS: And that's how I took it, and I'm
20 not aware of any other significant contribution of those
21 constituents.

22 BY MR. CARLIN:

23 Q You mentioned diazinon a moment ago. Is
24 diazinon something that -- a chemical that is to Chollas
25 Creek via urban runoff?

1 MR. CARRIGAN: Lacks foundation.

2 THE WITNESS: It used to, but -- and that's why
3 we had the TMDL developed and -- but what's happened is
4 that diazinon got outlawed by USEPA, and it's -- so the
5 source of which was the sale of diazinon got eliminated.

6 And it's actually one of the success stories
7 for our TMDL, although we take credit for it, but I
8 don't know if we can.

9 MR. CARLIN: Go ahead. Take credit any time
10 you have a chance to, right? That's what I do.

11 MR. LEDGER: Aristotle said that.

12 BY MR. CARLIN:

13 Q Diazinon is a pesticide, right?

14 A Right.

15 Q Well, do you know what type of land use or
16 activity within the Chollas Creek watershed is a source
17 or sources that contribute to copper making its way into
18 urban runoff?

19 A Copper primarily has been identified to come
20 from the slow deterioration of brake pads. Most brake
21 pads have a significant amount of copper in them, and as
22 they slowly get worn down through braking, that is the
23 primary source. It falls to the streets from our cars
24 and then gets collected by rain or other urban discharge
25 and that's how it get into the creeks.

1 Q Are you aware of any other significant sources
2 of copper?

3 MS. NICHOLS: Vague and ambiguous.

4 THE WITNESS: I know that certain marine paints
5 include a copper component, keeps supposedly the hull
6 from fouling or what or -- or from barnacle growth or
7 those types of things.

8 That was a -- there was a copper TMDL that was
9 done on Shelter Island which -- which specifically
10 addressed the copper in paints.

11 BY MR. CARLIN:

12 Q I will ask the same question for lead. What
13 type of land use or activity associated with lead that
14 makes its way into urban runoff directed to Chollas
15 Creek?

16 A Lead is a little bit more of a mystery. But
17 some speculation comes -- speculation. Some estimates
18 say that it can frequently come from the tire weights
19 that are on tires.

20 And I'm also aware that there are some --
21 there's lead in paints also, but those are about the
22 only two that I can recall off the top of my head.

23 Q How about zinc?

24 A The main problem with zinc is that it's
25 chain-link fencing, quite frankly. It's everywhere.

1 The chain-link fence is anodized with zinc to keep it
2 from corroding. It's a cheap way of keeping it from
3 corroding. Zinc-coated nails are also the same idea.
4 They don't rust. So that's the main source.

5 Q Your work on the DTR on the sections that you
6 drafted, do you recall doing any work on the potential
7 for stormwater plumes from Chollas Creek to be dispersed
8 into San Diego Bay?

9 A I didn't analyze stormwater plumes.

10 Q Do you recall reviewing any studies or analyses
11 regarding stormwater plumes into San Diego Bay?

12 A No.

13 Q I'd like to give you a copy of a study. It's
14 entitled "Storm Water Toxicity in Chollas Creek in San
15 Diego Bay." It's authored by Kenneth Schiff, Steven
16 Bay, and Dario Diehl, it looks like.

17 Can you take a look at this and -- for a
18 minute.

19 A Yeah. I -- I've taken a look at it and
20 actually looking at some of these diagrams, including
21 the plume diagrams, I have seen stuff like this before.
22 But -- but I can't recall with any specificity.

23 Q Do you recall -- do you recall if you have ever
24 reviewed that particular study before?

25 A I haven't.

1 Q I'd like to refer you to Page 10-92 of Master
2 Exhibit 2. Look at Section 10.10.1 entitled "Chollas
3 Creek Outflow."

4 A Okay.

5 Q Take a minute to familiarize yourself with
6 that. My question is whether or not you recall drafting
7 this -- this analysis in connection with your work on
8 the DTR.

9 A I didn't draft this.

10 Q Do you know who did?

11 A No.

12 Q If you could also turn to Page 4-14.

13 A Okay.

14 Q Did you draft Section 4.7.13?

15 A No, I didn't.

16 Q Do you know who did?

17 A No, I don't. Sorry.

18 Q Do you know if that analysis was in the DTR
19 while you were -- while you were still actively involved
20 in preparing the DTR?

21 A I can't be certain, but I don't think it was.

22 Q The court reporter has marked as Exhibit 303
23 Resolution No. R9-2007-0043. This is the -- A
24 Resolution Adopting Amendment to the Water Quality
25 Control Plan to Incorporate TMDLs for Dissolved Copper,

1 Lead, and Zinc in Chollas Creek.

2 (Tobler Exhibit 303 was marked.)

3 BY MR. CARLIN:

4 Q This is the TMDL that you worked on, correct?

5 A Yes. Oh, yes.

6 Q Now, earlier you had testified that before you
7 took over James Smith had the lead role in this TMDL?

8 A Correct.

9 Q So would James Smith had been the person that,
10 at least before you took over, had the responsibility
11 for the technical and scientific basis --

12 A Yes.

13 Q -- of the TMDL?

14 A Yes.

15 Q Is James Smith also referred to as Jimmy Smith?

16 A Yes.

17 Q In addition to you and Mr. Smith, do you recall
18 who else assisted with the TMDL?

19 A Well, Julie Chan was a supervisor that
20 definitely assisted in it. She was much more familiar
21 with it than I was, although I was the one who gave the
22 presentation to the Board.

23 The technical report for this has within the
24 first few pages a full listing of all of the people who
25 participated in it. So I'm not quite sure who all they

1 were, but if you have a copy of that, you would find the
2 names of all of the people that participated.

3 Q Actually I happen to have a copy of that in
4 front of me. So I will ask you is Leslie Dobalain --

5 A Dobalain, yes.

6 Q Do you recall her working with you on the TMDL?

7 A Not with me, no. But she must have worked with
8 Jimmy.

9 Q Before you -- before you started?

10 A With the TMDL unit, yes.

11 Q Before you took over as lead on the TMDL for
12 metals, did you work on that same TMDL in another
13 capacity?

14 A No.

15 Q We discussed earlier the TMDL was -- was
16 implemented for copper, lead and zinc, correct?

17 A Right.

18 Q And how did the TMDL aim to address these
19 contaminants?

20 A A TMDL sets the upper limit of the various
21 pollutants that a water can assimilate and still remain
22 healthy. We set the upper limit based on scientific
23 information.

24 Then we determine how -- how much of a
25 reduction is needed in order to meet that upper limit

1 that's allowable, and we assign the major dischargers
2 required reductions that they need to attain within a
3 certain amount of time.

4 We don't tell them how to do it. We give
5 general recommendations of how it could be done, but to
6 keep the State safe from lawsuits, basically, we can't
7 specifically say how.

8 But we do make recommendations of general types
9 of management practices that could be used.

10 Q And ultimately you issue what's called Waste
11 Load Allocations?

12 A Correct.

13 Q And what does a Waste Load Allocation mean?

14 A It means the upper limit of pollutant that is a
15 specific entity can discharge with -- without
16 transgressing the requirements of the TMDL.

17 Q Is my understanding correct that those persons
18 or entities that are covered by the TMDL for metals are
19 those responsible for point source municipal separate
20 storm sewer system discharges to Chollas Creek?

21 THE COURT REPORTER: I'm sorry, could you
22 repeat that, the end of that?

23 MR. CARLIN: Point source municipal separate --
24 (Discussion off the record.)

25 MR. LEDGER: Madam Court Reporter, could you

1 read back the question that was posed.

2 (The pending question was read.)

3 BY MR. CARLIN:

4 Q Should say municipal --

5 A Multiple, municipal.

6 Q Are you familiar with the term MS4?

7 We'll move forward with MS4. You will know
8 what I'm talking about?

9 A MS4. Yes.

10 Q Okay. So --

11 MS. NICHOLS: What is the question that is
12 posed?

13 MR. CARLIN: Let me rephrase the question.

14 BY MR. CARLIN:

15 Q Am I correct in understanding that the persons
16 or entities covered by the TMDL for metals are those
17 persons responsible for point source MS4 discharges of
18 copper, lead, and zinc to Chollas Creek?

19 MS. NICHOLS: Calls for a legal conclusion.

20 MR. CARRIGAN: Go ahead. You can answer.

21 THE WITNESS: I think basically you're correct,
22 yes. Although, it's not just waste-load allocations
23 that are included. There are also load allocations
24 without the waste word, and those come from other
25 sources that are typically over land-type discharges.

1 So the waste-load allocations, yes, they do
2 come typically from the MS4s, but most TMDLs also have a
3 load allocation that comes from more unregulated
4 sources, basically.

5 BY MR. CARLIN:

6 Q Can you point me, looking at the TMDL, to those
7 entities that would be responsible for the load
8 allocations you just described as opposed to the waste
9 load allocations.

10 MR. LEDGER: Calls for a legal conclusion.

11 THE WITNESS: I may have confused the issue.
12 It appears that only waste-load allocations are in this
13 TMDL. That's not typical, but it's been a while. And
14 this may be one of those exceptions where there are just
15 waste-load allocations.

16 I can't identify just briefly looking through
17 here that there are load allocations in this document.

18 BY MR. CARLIN:

19 Q Okay. Thank you.

20 To your knowledge, does -- is NASSCO currently
21 a stormwater discharger?

22 MR. CARRIGAN: Lacks foundation.

23 You can answer if you know.

24 THE WITNESS: Yes, it is.

25 Oh, let me temper that. Well, let me change

1 it. I'm not sure which one of the facilities down there
2 has provide -- has implemented management measures to
3 make it completely self-contained. It may be either
4 NASSCO or BAE but -- or both, but I think it's one of
5 them that has installed infrastructure to make it
6 self-contained.

7 BY MR. CARLIN:

8 Q Maybe I can refresh your recollection a little
9 bit. Mark this as 304.

10 (Tobler Exhibit 304 was marked.)

11 BY MR. CARLIN:

12 Q I marked as Exhibit 304 is a June 3rd,
13 2003 letter to Mike Chee from Shaw Environmental, Inc.

14 Could you take a minute to read it, please.

15 A Okay. I've read it.

16 Q Is this the letter that you're referring to a
17 minute ago?

18 A I don't know.

19 MR. CARRIGAN: Misstates testimony.

20 MS. NICHOLS: Yeah.

21 THE WITNESS: I don't know if I -- I don't
22 believe I've seen this letter before. My knowledge of
23 NASSCO self-containment was from the tour that we did.

24 BY MR. CARLIN:

25 Q Okay. If you look at the very first sentence

1 in the letter, it indicates that the letter verifies the
2 capacity of the overall stormwater contaminant system at
3 the NASSCO shipyard in San Diego, California exceeds the
4 100-year, 24-hour storm event.

5 Do you see that?

6 A Yes.

7 Q Do you see on the first bullet point at the
8 bottom of the page of the letter indicates "Stormwater
9 runoff is now contained or controlled by perimeter
10 containment berms or walls, and by pumping or draining
11 the contained runoff to a combination of aboveground
12 storage tanks, the wastewater treatment plant, and into
13 the Graving Dock"?

14 A I see that, yes.

15 Q And then if you go to the second page, you can
16 see that it's signed by Michael Williams and stamped
17 with a Registered Professional Engineering stamp?

18 A Yes.

19 Q So based on your review of this letter, would
20 you agree that NASSCO is not -- NASSCO is a -- does not
21 discharge stormwater?

22 MR. CARRIGAN: Lacks foundation. Improper use
23 of the document. Document speaks for itself.

24 MR. LEDGER: Calls for speculation.

25 THE WITNESS: I have no reason to doubt any

1 Registered Professional Engineer's stamp. And based on
2 this certification, I would agree with Mr. Michael
3 Williams that his assessment is probably valid.

4 But as a regulator, I'm trained to look for
5 those small areas that perhaps have been missed, and my
6 experience tells me that those can frequently be there
7 based on the inspections that I've done, not necessarily
8 at NASSCO, but many sites.

9 And so I would say that, yes, I think, based on
10 this, I have no reason to believe that NASSCO isn't
11 mostly self-contained.

12 BY MR. CARLIN:

13 Q Do you have any -- are you aware of any portion
14 of the NASSCO site that is not self-contained for
15 stormwater?

16 A The ships that are docked aren't self-contained
17 for stormwater necessarily.

18 Some of the banks -- these are thinking just
19 off the top of my head, but some of the banks that go
20 from the NASSCO site down to the bay I don't believe are
21 contained within the berming system.

22 Those are just a couple of quick things that I
23 would think of, and it's difficult when you have a site
24 to contain it entirely, because you're limited to
25 drainage patterns and bermable areas and collection

1 areas.

2 So I would have to inspect, and I'm fairly
3 certain that based on an inspection I could probably
4 find some areas that aren't contained. Probably, I
5 would guess, those wouldn't be significant areas.

6 Q I would like to discuss with you the timing of
7 compliance for the TMDL for metals. Refer you to
8 Paragraph 13 of the TMDL. Take a minute to review that,
9 I'd appreciate it.

10 A Okay.

11 Q And if you could also take a look at
12 Attachment A to the resolution, Pages 6 and 7 for a
13 minute, particularly Items 1 and 17 of Table 4.

14 A Okay.

15 Q Am I correct in interpreting these documents
16 that full compliance with the TMDL for metals is not
17 required until October of 2028?

18 A That's correct.

19 Q That's 20 years after adoption of the amendment
20 to the Basin Plan to implement the TMDLs?

21 A That's correct.

22 Q And the effective date of the Chollas Creek
23 Metals TMDL is October 22nd, 2008?

24 A That's correct.

25 Q Do you think it's possible that full compliance

1 with the TMDLs cannot be achieved within 20 years?

2 MS. NICHOLS: Calls for speculation.

3 MR. CARRIGAN: Vague.

4 THE WITNESS: I think it's not only possible
5 but it's probably probable.

6 BY MR. CARLIN:

7 Q Why do you say that?

8 A Because of the nature of metals and dissolved
9 metals in stormwater, it's extremely difficult to remove
10 metals -- dissolved metals from water.

11 At this point the -- without getting into
12 space-age technology, which is extremely cost
13 prohibitive, the only possible fix for the problem is a
14 system of sand filters. Sand filters do filter out
15 metals, but even sand filters only get you into the
16 general ballpark for meeting compliance.

17 In other words, the best sand filters right now
18 only just barely get you to the ballpark of compliance.
19 There's no margin of safety with it.

20 So it's -- it's very possible that after 20
21 years and a lot of infrastructure improvements, a lot,
22 even it's possible that the compliance won't be met. In
23 fact, it's probably probable unless technology comes to
24 the rescue.

25 That's part of the reason why TMDLs, which

1 typically only get a ten-year period, why this one got a
2 20-year period and why there are interim reductions that
3 we're requiring the 80 percent at ten years. We can
4 probably get to 80 percent with the technology that we
5 have.

6 Q I'd like to direct you to Page 5 on
7 Attachment A to the TMDL. Table at the bottom of
8 Page 5.

9 A Okay.

10 Q This table indicates that by compliance
11 Year 10, 20 percent exceedance of the WLAs is allowable.

12 Is any -- is there any reduction mandated in
13 Years 1 through 9?

14 A No, they're not mandated.

15 Q And then from Years 10 through 19, 20 percent
16 is the allowable exceedance for that entire period?

17 A Yes.

18 MR. CARRIGAN: Jeff, is this a good time to
19 break for lunch? I don't want to interrupt your line of
20 questioning, but --

21 MR. CARLIN: I think it actually is, Chris, if
22 that works for others?

23 MS. TRACY: How much more time do you have?

24 MR. CARLIN: I think I could finish in a half
25 hour.

1 MS. TRACY: Okay.
2 MR. CARRIGAN: Let's break.
3 MR. DART: Go off the record.
4 (A lunch recess was taken.)
5

6 EXAMINATION

7 BY MR. LEDGER:

8 Q Good afternoon, Mr. Tobler. My name is
9 Brian Ledger. I represent the City of San Diego.

10 A Great. Nice to meet you.

11 Q If you could turn to Chapter 4 of the DTR
12 addressing the City of San Diego.

13 Do you have that?

14 A Okay.

15 Q Do you see that?

16 A Yes. Yes, I see it. Thank you.

17 MS. NICHOLS: "Finding 4"?

18 MR. LEDGER: That's where I'm starting, yes.

19 BY MR. LEDGER:

20 Q Did you write any of that section under
21 "Finding 4" before 4.1?

22 MR. CARRIGAN: Just at the beginning, 4.0, just
23 that part.

24 THE WITNESS: I'm going to take a moment and
25 just look through the section in general, because I'm

1 not sure I recognize any of this and I may not have
2 authored it. So let me just see if I can maybe pull up
3 some recollection.

4 BY MR. LEDGER:

5 Q Okay.

6 A I don't believe I authored any of this. This
7 was four or five years ago when I did author a good
8 portion of this DTR, and I had it in my head because
9 they were named a discharger and were associated with
10 it, but I don't really recall any -- authoring any of
11 this. I'm sorry.

12 Q When you say "any of this," are you referring
13 to -- to simply that first Finding No. 4 on Page 4-1 or
14 to the entire chapter?

15 A No, I believe the entire chapter. None of it
16 seems to ring any bells here. Somebody else must have
17 done it. Sorry, I hope I don't waste your time.

18 Q Not a problem.

19 Do you know -- do you know who did work on it?

20 A I'd have to guess. I don't think it was --
21 maybe the City of San Diego wasn't named early on, were
22 they -- I'm not sure. It's possible that they weren't
23 named early on, and if -- so -- and I don't recall
24 seeing it as I was working on these chapters. So it
25 must have happened since I worked on it, and I would

1 just have to speculate.

2 Q If you don't know, you don't know.

3 A I don't know, no.

4 Q If I can refer you to Table 1.1.

5 MS. TRACY: 1-1?

6 MR. LEDGER: 1-1. Thank you. It's figure --

7 I'm sorry, Figure 1-1.

8 MR. CARRIGAN: Do you have a page reference?

9 MR. LEDGER: Yeah, 1-3.

10 MR. CARRIGAN: Okay.

11 THE WITNESS: Okay.

12 BY MR. LEDGER:

13 Q Do you see Berth 1 and Berth 2 dated on this --
14 on this page?

15 A Yes.

16 Q Okay. Do you recognize that as the 28th Street
17 Pier?

18 A You saying that just brought my recollection
19 up, yeah, I believe that's right.

20 Q Okay. I believe you testified earlier today
21 that you're not a fate and transport expert; is that
22 correct?

23 A That's correct.

24 Q So you've never made any determinations
25 regarding the migration of any pollutants discharged

1 from Chollas Creek north of the 28th Street Pier; is
2 that accurate?

3 A That's accurate.

4 Q Let me turn you to Page 5.1.

5 A Okay.

6 Q See the name Star & Crescent Boat Company
7 there?

8 A I do.

9 Q And do you have any knowledge of Star &
10 Crescent Boat Company?

11 A No. That name was entirely unfamiliar to me up
12 until today.

13 Q Okay. Is it your recollection that Star &
14 Crescent Boat Company was -- was not named in the prior
15 tentative CAOs?

16 A Yeah. I'm -- I would have known if that had
17 been. I had never seen it before. So, yeah, it was
18 added after I was involved with this.

19 Q Okay. Did you play any role in drafting this
20 Chapter 5?

21 A No.

22 Q Do you know who did?

23 A Well, I didn't play any role, but it looks like
24 the format that I initially created for the rest of them
25 was used.

1 Q Okay.

2 A So -- but that's an inadvertent role.

3 Q And prior versions of the DTR you did play a
4 role in -- well, what role did you play in drafting the
5 sections regarding liability for the City of San Diego?

6 A None.

7 Q And so that's for the prior DTRs as well?

8 A Prior DTRs as well, yeah.

9 Q And you don't know who drafted the prior
10 versions?

11 A Sorry, I don't. I could find out for you.

12 Q Did you ever speak with anybody at the Board
13 regarding the naming of the City of San Diego as a
14 responsible party?

15 A I may have heard some conversations about the
16 City of San Diego, but I wasn't involved in any
17 discussions about it to any degree.

18 I don't recall myself having any opinions or
19 discussions on it. I just remember that the City of
20 San Diego was involved because it's, you know, a port
21 within their jurisdiction, and that's pretty much all I
22 can recall.

23 Q Okay. Did you draft the -- well, strike that.

24 Are you aware that prior DTR versions contained
25 chapters addressing companies under the name of MARCO?

1 A MARCO is familiar, yes.

2 Q Did you work on the drafting of those chapters?

3 A Yes.

4 Q Do you recall what information you reviewed
5 when you wrote this -- prior -- I'm sorry. Let me
6 rephrase that.

7 Do you recall what documents you relied upon in
8 drafting those chapters addressing MARCO in the prior
9 versions of the DTR?

10 A Yeah, it was the same as all of the other ones,
11 just the files that we have on hand. Those were what I
12 reviewed.

13 And it seems that with MARCO, there was some
14 ownership that was associated with Campbell; am I right?
15 Seems like they were involved. And so I was looking for
16 anything and everything that we had under both of those
17 names.

18 Q Okay.

19 A And then also trying to figure out -- what was
20 it? There was some question as to when ownership
21 changed hands, and I recall having a difficult time
22 tracking down additional information for MARCO. That's
23 about all I can recall.

24 Q Did you feel like the information you had
25 regarding the -- these companies that fell under the

1 name or umbrella name of MARCO, that you had somewhat
2 limited information regarding them?

3 A Yeah. There was somewhat limited information
4 regarding that specifically. Certainly in comparison to
5 the other ones, the other dischargers that -- whose
6 files I reviewed.

7 Q Have you spoken with anybody at the Board
8 regarding the inclusion of Star & Crescent Boat Company
9 in the new CAO and DTR?

10 A No. The name was entirely unfamiliar to me
11 until this morning.

12 Q Do you recall -- strike that..

13 Did you draft the portions of the prior DTR
14 addressing the oil companies?

15 A Meaning BP and Chevron?

16 Q Correct.

17 A Yes, I did.

18 Q As to BP, can you recall what research you did
19 prior to drafting that chapter in the old DTR?

20 A Yeah. I reviewed all the files that we had. I
21 probably did an Internet search for any most recent
22 documentation for, you know, kind of that introductory
23 information.

24 But I did a thorough review of the files that
25 we had three times and just distilled out of that all of

1 the violations and evidence that we had from that.

2 Q Did you come to the conclusion that BP would
3 be -- appropriately be named as a discharger when you
4 did that work?

5 A We made those decisions kind of by consensus
6 with my supervisor Craig and Dave Gibson. Ultimately
7 their opinions carried more weight than mine, but as I
8 recall, yes, I felt that there was sufficient evidence
9 to include BP.

10 Q Was that a recommendation that -- that you
11 made?

12 A Yes.

13 Q You felt you did a sufficient amount of
14 research to make that determination?

15 A I did a thorough researching job on the files
16 that we have, and given the information that I had,
17 yeah, it was sufficient.

18 Q Okay. Is the same true as to Chevron?

19 A I did the same amount of research. It was
20 thorough, all our files, but in my opinion, I didn't
21 feel that Chevron warranted inclusion.

22 Q Do you have a recollection as to why you felt
23 that way?

24 A Only general terms. As I recall, my overall
25 opinion of Chevron was that they did a very good job as

1 a permittee in meeting their requirements throughout the
2 time that they were in operation and under supervision
3 and regulation by us.

4 And that even though they did have some
5 discharges, their cleanup efforts were equally or better
6 than most cleanup efforts that I've come across.

7 And that some of their other discharges, zinc
8 for example, I recall specifically was consistent with
9 the chain-link fencing that they had around their
10 facility and that most facilities anywhere in San Diego
11 have.

12 So I felt that what we had as evidence was
13 weak. That's the recommendation that I gave to my
14 supervisors and...

15 Q Now, you notice in the new CAO that BP is not
16 named; is that correct?

17 A I wasn't aware of that until today, but --
18 actually, no, I was aware that they were potentially not
19 named a few years ago, but I assume because they were
20 in the draft report that they were still named. But I
21 was told that by --

22 MR. CARRIGAN: Don't tell him anything that I
23 told you.

24 THE WITNESS: -- God.

25 MS. NICHOLS: Definitely don't.

1 MR. CARRIGAN: Just answer if you have personal
2 knowledge.

3 THE WITNESS: It was new to me, the
4 confirmation that they weren't named. I kind of assumed
5 that they were since they were in here, but as it turns
6 out, it was kind of new to me that they weren't.

7 BY MR. LEDGER:

8 Q Other than anything that you might have heard
9 from counsel, Mr. Carrigan, did you speak with anybody
10 else that gave you any information as to why BP was not
11 named in the new CAO?

12 A No.

13 Q Do you have any information from any other
14 sources as to why BP is not named as a responsible party
15 in the new CAO?

16 A No.

17 Q You were asked some questions earlier about
18 sources of, I believe, discharges to Chollas Creek?

19 A Okay.

20 Q Do you have any understanding as to whether
21 historically NASSCO's been a discharger to
22 Chollas Creek?

23 MR. CARLIN: Objection; vague as to time.

24 THE WITNESS: I don't think so.

25 BY MR. LEDGER:

1 Q When you say you don't think so, do you mean
2 you don't have any information or you do not believe
3 that they were a discharger to Chollas Creek?

4 A I don't have any information. I recall
5 specifically to the south of them the Navy had a few
6 pipes that discharged into Chollas Creek, but as I
7 recall NASSCO doesn't.

8 Q Okay. If I can have you turn, again, to
9 Page 5.1.

10 A Okay.

11 Q Do you see the first paragraph there at the top
12 under Finding 5?

13 A Yes.

14 Q Beginning about midway through this paragraph,
15 there's a sentence that says "In July 1972."

16 Do you see that?

17 A Yes.

18 Q If you can read just to yourself from that
19 point on to the end of that paragraph.

20 A Okay. I've read it.

21 Q Okay. Do you recall whether the information
22 described in that section is -- that you just read was
23 information available to you when you drafted the part
24 of the previous DTR addressing MARCO?

25 MR. CARRIGAN: Objection; asked and answered to

1 the extent that the witness has already testified he'd
2 never heard of Star & Crescent until today.

3 You can answer.

4 THE WITNESS: I can say that the first sentence
5 looks familiar. In other words, "July '72 San Diego
6 Marine Construction Company sold its shipyard operations
7 to Campbell Industry and changed its corporate name
8 effective July 14, 1972." That's a -- I remember that.

9 BY MR. LEDGER:

10 Q Okay.

11 A Yeah.

12 Q And you don't think the rest of that section
13 was information that you had when you drafted the prior
14 DTR addressing MARCO; is that correct?

15 A That's right. I didn't have that.

16 Q Other than counsel, have you discussed
17 Chapter 4 of this DTR in front of you with anybody at
18 the Board?

19 A Yes. I discussed it with Craig Carlisle, my
20 supervisor at that time. And we discussed various
21 issues about these two companies that I knew of, the
22 Campbell and San Diego Marine Construction Company and
23 MARCO.

24 Q I'm sorry, I'm focused on Chapter 4 now.

25 MR. CARRIGAN: Back to 4.

1 THE WITNESS: I'm sorry. Forgive me.

2 Okay. So the question for that was?

3 BY MR. LEDGER:

4 Q Other than any discussions you had with
5 counsel, have you spoke -- excuse me -- with anybody at
6 the Board regarding this Chapter 4?

7 A No.

8 Q Now, other than discussions you've had with
9 counsel, have you discussed Chapter 5, the Star &
10 Crescent Boat Company section, with anybody at the
11 Board?

12 A Yes. That was with Craig Carlisle.

13 Q Okay. What was that discussion?

14 A We were strategizing how to track down the
15 ownership throughout the years as the ownership traded
16 hands and also how to track down the owner current --
17 owners current and past, how best to track them down to
18 make them aware of these proceedings.

19 MARCO, in particular, was difficult to find
20 anyone to even be able to send a notification that they
21 were under investigation.

22 And so that was the nature of our
23 conversations. Ultimately we did -- we were able to
24 track somebody down.

25 Q Who did you track down?

1 A Some owner -- former owner of MARCO. I don't
2 recall his name.

3 Q Peter Schmidt, does that ring a bell?

4 A It does. I'm not sure I can associate it
5 entirely with MARCO, but that does ring a bell.

6 Q Do you know who in particular tracked down the
7 former owner?

8 A It was me.

9 Q When about did that occur?

10 A Yeah, that was 2004, 2005.

11 Q Did you speak with him?

12 A I do remember a phone call. I don't recall
13 speaking with him directly, but I left a message, I
14 think. It's kind of hazy.

15 Q Okay. Can you recall whether you ever actually
16 spoke with him?

17 A Certainly no long conversations or -- I don't
18 think I spoke with him.

19 Q Okay. Is it fair to say back at that point in
20 time there seemed to be a lot of confusion based on lack
21 of information regarding the legal entities that were
22 involved at the site at that particular leasehold back
23 in that time period?

24 MS. NICHOLS: Vague and ambiguous --

25 MR. CARRIGAN: Vague.

1 MS. NICHOLS: -- as to time.

2 MR. LEDGER: Let me rephrase.

3 BY MR. LEDGER:

4 Q Did you have the impression that -- that you
5 were having a hard time coming to any kind of definitive
6 conclusion regarding the identity of the proper legal
7 entities that were involved at the BAE leasehold prior
8 to 1972?

9 A It was difficult to be able to track down all
10 of the previous owners -- all the previous owners, yeah,
11 it was difficult to track it down. Yeah.

12 Q And I think we covered this, but just to be
13 sure, am I correct that you don't know who drafted any
14 of the chapters addressing the City of San Diego in
15 either the current DTR or the prior versions of the DTR?

16 A I don't know.

17 MR. LEDGER: I think that's all the questions
18 that I have. Thank you.

19 (Discussion held off the record.)

20

21 EXAMINATION

22 BY MS. NICHOLS:

23 Q Back on the record.

24 Mr. Tobler, my name is Sandi Nichols, and I'm
25 with Allen Matkins, and we're one of the attorneys for

1 the San Diego Unified Port District.

2 During my cross-examination I may refer to the
3 "Port District" or to "the Port," and in doing so I'm
4 referring to the San Diego Unified Port District.

5 Do you understand that?

6 A Yes.

7 Q First I want to follow up on a few of the
8 questions asked of you by other counsel before I start
9 fresh here. So just picking up on where Mr. Ledger left
10 off.

11 I'm not entirely clear yet on when you
12 started -- first started working on the DTR for the
13 Shipyard Sediment Site.

14 Can you clarify that for me, please?

15 A Probably late 2004 or early 2005.

16 Q And when did you stop working on the DTR for
17 the Shipyard Sediment Site?

18 A Probably around 2007.

19 Q Were you involved in preparing any of the
20 revisions to any of the Draft Technical Reports after
21 the first one was published?

22 A No.

23 Q With regard to the sections that you had
24 prepared in the first DTR -- so I assume that one was in
25 2005 then?

1 A Yes.

2 Q Do you know, as to any of the sections that you
3 prepared, who made the changes to those sections in
4 subsequent Draft Technical Reports?

5 A I don't know if any were made or who made them.

6 Q So, for example, Mr. Ledger had shown you to
7 Finding No. 4 -- I'm sorry, Finding No. 5 regarding
8 Star & Crescent. Portions of that were -- you were
9 familiar with from your work previously, correct?

10 A Yes.

11 Q And some of that now is new, but you don't know
12 who prepared those, right?

13 A Right.

14 Q With respect to any changes that may have been
15 made to, for example, Campbell shipyards, do you know
16 who made those changes?

17 A No, I don't.

18 Q With respect to the legal, if you will,
19 conclusions as to corporate successorship that appear in
20 the Draft Technical Report, was it ever your
21 responsibility to reach any of those sorts of
22 conclusions?

23 A It was my responsibility, I recall, to
24 investigate the corporate succession of the
25 Campbell Industries and MARCO.

1 Q Just those two entities?

2 A Just those two entities, yeah.

3 Q And after you had completed that research, you
4 concluded that MARCO was appropriately named as a
5 discharger in the Cleanup and Abatement -- that draft
6 Cleanup and Abatement Order, correct?

7 A I honestly can't recall if we named MARCO or
8 Campbell.

9 Q If --

10 A But I think MARCO was named, yeah.

11 Q Assuming they were both named --

12 A Yeah.

13 Q -- that would have been a conclusion that you
14 reached?

15 A We do most things by consensus. I wouldn't
16 reach a significant conclusion like that without
17 checking with my supervisor, and I'm sure I did.

18 Q So that would be Craig Carlisle and maybe
19 Dave Gibson as well?

20 A Right.

21 Q With respect to --

22 MR. CARRIGAN: I'm sorry, I think that
23 misstates testimony. Did you say Dave Gibson or
24 Dave Barker?

25 THE WITNESS: I thought I heard Barker.

1 BY MS. NICHOLS:

2 Q Okay. Well, if I understood your response to
3 one of Mr. Ledger's questions, you had said that you had
4 made decisions by consensus with your supervisor
5 Craig Carlisle and with Dave Gibson.

6 A I must have misspoke. Dave Barker.

7 Q So that should be Dave Barker?

8 A Yeah. I'm sorry.

9 Q And with respect to other conclusions regarding
10 the naming of or not naming of entities, was that by
11 consensus between you Mr. Carlisle and Mr. Barker back
12 in 2005?

13 A Yeah, we were the three that were involved in
14 that.

15 Q Is it correct, then, that you participated in
16 the decision not to name the Port District as a
17 discharger back in 2005?

18 A No. That decision was made from the top down.
19 I got instruction from my supervisor, Craig Carlisle,
20 but I don't know who gave him the instruction. I don't
21 know where that ultimate decision came from.

22 Q But you didn't prepare any of the information
23 in any of the Draft Technical Reports relating to the
24 Port District; is that correct?

25 A That's right.

1 Q Do you know who did?

2 A Sorry, I don't.

3 Q And is that answer true with respect to each of
4 the Draft Technical Reports from 2005 to the present?

5 A Yes.

6 Q During the course of your factual investigation
7 on the BAE site insofar as it related to Campbell
8 Industries and any other entities for which you
9 characterize them as Campbell Industries, or MARCO, did
10 you ever come across any information concerning a
11 distinction between San Diego Marine Construction
12 Company and San Diego Marine Construction Corporation?

13 A I recall both those names and being a little
14 confused wondering whether it was just a typo or
15 something that I needed to investigate further.

16 Q Did you ever speak with anyone about that
17 confusion?

18 A Yeah. I'm sure I talked to my supervisor about
19 it, Craig Carlisle.

20 Q And do you recall any information or direction
21 that Mr. Carlisle gave to you in that regard?

22 A I don't -- I don't recall even how that problem
23 resolved.

24 Q So you don't recall receiving any specific
25 information or direction from him in that respect?

1 A Not specifically. He probably told me to keep
2 digging.

3 Q And to the extent you kept digging, would any
4 information that you found have been reported in the
5 Draft Technical Report section that you prepared?

6 A Yes, if I had found something, it would be in
7 there.

8 Q Thank you.

9 Are you aware of any additional evidence that
10 has been developed by the Regional Board staff with
11 respect to the Shipyard Sediment Site between the time
12 the administrative record was first published to the
13 present?

14 A I'm not aware of anything specific, but the
15 administrative record was first published quite a few
16 years ago, and it's reasonable to assume that things
17 have been added or changed.

18 Q Do you know that for a fact?

19 A I don't know it for a fact, but I'm 99 percent
20 sure that some things changed in the last five years.

21 Q Do you know when the administrative record was
22 first published?

23 A I believe it was when we digitized it.

24 Q Do you recall when that was?

25 A Three years ago, four years ago. Something

1 like that.

2 Q And were you involved in that process?

3 A I was. Pretty much everyone was, yes.

4 Q What was your role?

5 A We all got stacks of documents that we had to
6 categorize so that when the documents were converted
7 into electronic format, that the document would be
8 easily recalled based on the categories that we filed it
9 under.

10 Q With respect to what went into the
11 administrative record, I believe you said you had
12 reviewed some 130 feet of documentation as part of your
13 fact development and investigation for preparation of
14 your portions of the DTR, correct?

15 A Right.

16 Q And again, referring now to the original DTR?

17 A Right.

18 Q Of that 130 feet of documentation, do you know
19 how much of it, or all of it, was put into the
20 administrative record?

21 A All of it as far as I know.

22 Q And do you have any knowledge as to whether
23 anyone other than yourself at any time to the present
24 has reviewed all 130 feet of those documents as you did
25 three times?

1 A No, I believe I'm the only lucky person.

2 Q Has anybody else even reviewed it once?

3 MR. CARRIGAN: Calls for speculation.

4 BY MS. NICHOLS:

5 Q To your knowledge. To your knowledge, has
6 anyone else reviewed the entire set of documentation
7 that you reviewed?

8 A Not to my knowledge.

9 I might add something, that the 130 feet is the
10 number of -- is the length of the documents that were
11 digitized, but it felt like 130 feet.

12 But I didn't review the City of San Diego's
13 information. At least I didn't review that, so it was
14 probably less than 130 feet. It felt like a lot more.

15 Q I won't hold you to the exact measurement.

16 A Thanks.

17 Q With respect to the City of San Diego's
18 information that you just referenced, are you referring
19 to the fact that you didn't review any documentation
20 concerning the -- what's been called the MS4 system?

21 A I didn't review anything about the City of
22 San Diego's involvement in this, and that most certainly
23 would include the MS4 system.

24 Q And with respect to the MS4 system, would that
25 same testimony hold with regard to the Port District?

1 MR. CARRIGAN: Asked and answered.

2 You can answer.

3 THE WITNESS: Yeah. Port District too. So
4 that shortens my 130 feet a little more, so...

5 Probably not even 100 feet at this point.

6 BY MS. NICHOLS:

7 Q With respect to the person that you either left
8 a message for or maybe spoke with when you were doing
9 your investigation on Campbell and MARCO, do you recall
10 ever speaking with anyone named Allen Fernstrum?

11 A I don't know if I spoke with him. But the name
12 is very familiar, and I can associate that directly with
13 this, yeah.

14 Q And do you recall ever receiving any
15 correspondence from Mr. Fernstrum in connection with
16 this matter?

17 A Yes.

18 Q What do you recall receiving?

19 A I have it right here in front of me, Page 6-3.

20 Q Of Exhibit -- Master Exhibit 1?

21 A Right.

22 MR. CARRIGAN: Two.

23 MS. NICHOLS: Exhibit 2. Sorry?

24 THE WITNESS: Two. Thank you.

25 MR. CARRIGAN: It's all right.

1 BY MS. NICHOLS:

2 Q I'm sorry, six dash --

3 A So --

4 Q What was it, six dash --

5 A 6-3.

6 Q -- three.

7 And you are referring there to the letter from
8 Mr. Fernstrum that is recounted on Page 6-3?

9 A That's right.

10 Q Other than receipt of that letter from
11 Mr. Fernstrum, did you have any other communications
12 with him concerning this site?

13 A No. I contacted him, I believe, with the
14 investigative order to provide anything and everything
15 he had on his involvement, MARCO's involvement. And he
16 responded, with what is in the DTR. And it was our
17 opinion that it was not responsive to the directive of
18 the Board.

19 Q And as it turns out, it wasn't accurate either,
20 was it?

21 A I don't know.

22 Q And to your knowledge, you haven't spoken with
23 anyone else who was representing either MARCO or
24 Campbell in connection with this site?

25 A That's it.

1 Q Do you recall ever speaking with anyone at the
2 Regional Board about San Diego Marine Construction
3 Company other than what you've already told us that you
4 discussed with Mr. Carlisle?

5 A I didn't discuss it with anyone else.

6 Q Okay. Is there anything else, other than what
7 you've already testified to today, that you discussed
8 with Mr. Carlisle concerning San Diego Marine
9 Construction Company?

10 A Is there anything else we discussed? Well,
11 under the course of a normal investigation, you discuss
12 pretty much every aspect of who you're investigating
13 with your supervisor to get direction and guidance.

14 So in that regard, pretty much anything's
15 possible in our discussions concerning an investigation.
16 So I don't know if -- do you have a more specific --

17 Q Yeah, to the extent your discussions with
18 Mr. Carlisle related to the factual basis upon which to
19 determine liability of San Diego Marine Construction
20 Company or any corporate successor to it, that then
21 would have been in the Draft Technical Report that you
22 prepared?

23 A Yes. Yes.

24 Q Okay. Going way back to the beginning of your
25 deposition, you had mentioned that from time to time you

1 have occasion to delete e-mails from your computer
2 system.

3 A Right.

4 Q I assume the same is true for other staff
5 members of the Regional Board; is that correct?

6 A Yes.

7 MR. CARRIGAN: Calls for speculation. Lacks
8 foundation.

9 BY MS. NICHOLS:

10 Q To your knowledge --

11 MR. CARRIGAN: Give me a second to interpose an
12 interjection. I know you guys are very conversational
13 but just -- go ahead.

14 MS. NICHOLS: Fair enough.

15 BY MS. NICHOLS:

16 Q To your knowledge, have you ever received any
17 directive from anyone at the Regional Board or its
18 counsel for a litigation hold, what's a request that you
19 retain documents?

20 A Yes. From time to time we -- well, not
21 necessarily to retain, but to assemble all of the
22 documents that we have on a certain case. But I've
23 never been directed to hold all the documents that I
24 have for any reason.

25 Q Okay. So with respect to this particular

1 enforcement action, you've never been instructed not to
2 delete e-mails that relate to this site?

3 A I've never been instructed not to delete, no.

4 Q Do you know whether such a notice was issued to
5 anyone at the Regional Board?

6 A I've never seen any type of notice like that
7 come to me, and I wouldn't know if there was an all
8 staff that excluded me. I don't think that happens
9 either.

10 Q Have you personally been asked to do any
11 further factual investigation concerning the Shipyard
12 Sediment Site?

13 A No.

14 Q And you weren't asked to do any between
15 2007 and the present, correct?

16 MR. CARRIGAN: I believe that was asked and
17 answered.

18 THE WITNESS: Only with the exception of one
19 instance during mediation.

20 BY MS. NICHOLS:

21 Q Were you ever consulted with respect to any of
22 the changes to the DTR between 2007 and 2009?

23 MR. CARRIGAN: Also asked and answered.

24 THE WITNESS: No, I wasn't.

25

1 BY MS. NICHOLS:

2 Q And the same would be true between 2009 and
3 September 2010?

4 MR. CARRIGAN: Same objection.

5 THE WITNESS: Also true.

6 BY MS. NICHOLS:

7 Q During the course of your review of the 130 or
8 so --

9 A One hundred.

10 Q -- feet of documents, back in 2004, 2005, did
11 you have occasion to review any State Water Resources
12 Control Board decisions?

13 A No.

14 Q You previously testified in response to
15 questioning by one of the other counsel as to the
16 pollutants that are generally contained in urban runoff.

17 Do you recall that?

18 A Yes.

19 Q With respect to your testimony in that regard,
20 are you relying upon any studies or other information
21 for your opinions?

22 A Well, my almost ten years of collective
23 experience at the Regional Board has been built upon
24 practical experience, but also which includes many
25 studies and many reports. So, yes.

1 Q Have you had any special training in connection
2 with urban stormwater runoff?

3 MR. CARRIGAN: I would say vague and ambiguous
4 with respect to the term "special training." Despite --
5 in addition to what he's already testified to?

6 MS. NICHOLS: I'm not sure he's ever testified
7 in any special training on that particular topic.

8 MR. CARRIGAN: It's vague and ambiguous.

9 THE WITNESS: Aside from my degree in civil
10 engineering, which covers almost all the hydrologic
11 factors that could be very involved, I'm very
12 knowledgeable in those. Less so in the specifics of
13 water chemistry. So I would say no.

14 BY MS. NICHOLS:

15 Q You had previously testified regarding
16 Chollas Creek and the TMDL work that you did for the
17 metals TMDL, correct?

18 A Right.

19 Q And you had mentioned that you don't believe
20 that NASSCO had any operations that were discharging
21 into Chollas Creek itself, correct?

22 A I don't recall any specific discharges from
23 NASSCO into Chollas Creek.

24 Q And are you aware of whether NASSCO has any
25 operations at the mouth of Chollas Creek?

1 A I know that their facility is immediately
2 adjacent to the mouth of Chollas Creek.

3 Q Are you aware of the definition of the Shipyard
4 Sediment Site under the new DTR as excluding certain
5 portions of the NASSCO site that will now be considered
6 in the TMDL for the mouth of Chollas Creek?

7 A Only in the most general way.

8 Q And generally what are you aware of?

9 A What you said.

10 Q That's pretty general.

11 A Really, that's the extent of it. I know that
12 there has been a reduction in the cleanup efforts based
13 on hot spots, but I -- beyond that, I don't know
14 anything.

15 Q And do you know how that came about?

16 A I think that came through mediation, but, yeah.

17 Q And do you have any opinions as to the
18 propriety of the inclusion of those particular areas in
19 the mouth of Chollas Creek TMDL versus inclusion in the
20 Shipyard Sediment Site footprint?

21 A I don't have an opinion.

22 Q Are you aware of any additional evidence that
23 would support not naming BP in the Cleanup and Abatement
24 Order?

25 MR. CARRIGAN: Vague.

1 MS. NICHOLS: Let me rephrase the question.

2 BY MS. NICHOLS:

3 Q Are you aware of any additional evidence that
4 has been produced since BP originally was named in the
5 Tentative Cleanup and Abatement Order that would support
6 their not being included now?

7 MR. CARRIGAN: Assumes facts not in evidence.

8 THE WITNESS: I'm not aware of any new
9 evidence.

10 BY MS. NICHOLS:

11 Q So as you sit here today, it would be your
12 opinion that they should be included?

13 A Based on the evidence that I assembled and
14 that's in the DTR, at least that portion that I
15 assembled, I recall being in support of including BP.
16 That was my recommendation.

17 Q Have you participated in any meetings since you
18 first prepared the DTR where the issue came up as to
19 whether the Port District should or should not be named
20 in a Cleanup and Abatement Order?

21 MR. CARRIGAN: Asked and answered.

22 Go ahead.

23 THE WITNESS: No.

24 BY MS. NICHOLS:

25 Q Have you ever seen any e-mails or memoranda on

1 that issue?

2 A No.

3 MR. CARRIGAN: I will renew the objection --
4 just give me a chance.

5 THE WITNESS: Sorry.

6 MR. CARRIGAN: So it's already been covered
7 here.

8 THE WITNESS: Sure.

9 BY MS. NICHOLS:

10 Q Mr. Tobler, I have no further questions for you
11 at this time, but as I mentioned on the record
12 yesterday, the Port District reserves its rights to
13 continue this deposition or to renotece your deposition
14 after it has had an opportunity to fully review the
15 revised Draft Technical Report and the related
16 appendices and any updates to the administrative record
17 that are designed to support the latest Cleanup and
18 Abatement Order and Draft Technical Report.

19 A No problem.

20 Q Thank you very much.

21 A Pleasure.

22 MS. TRACY: You want to take a break or keep
23 going?

24 THE WITNESS: I'm good.

25 MR. CARRIGAN: Let's go.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(A discussion off the record was held.)

EXAMINATION

BY MS. TRACY:

Q Good afternoon, Mr. Tobler. My name is Jill Tracy. I represent SDG&E in this proceeding.

A Okay.

Q And I'm going to ask you a series of questions regarding Master Exhibit No. 2, Finding 9. If you could page to section -- Finding 9, Page 9-1?

A Okay.

Q Thank you.

And could you describe for me your -- whether or not you were involved in drafting or investigating the basis for Finding 9?

A Yes, I was.

Q Could you describe what you -- what kind of work you did in supporting Finding 9?

A Let me just look through it to see --

Q Of course.

A -- if it looks all familiar.

Having looked at it, I recall portions of it that I authored, but it looks like some portions of it were added subsequently.

Q Starting on Page 9-1 --

1 A Okay.

2 Q -- could you describe the portions that you
3 worked on, and if you could just go page by page, if
4 that's acceptable to you, and describe what portions you
5 actually worked on.

6 A Okay. On Page 9-1, I probably did the first
7 couple paragraphs -- couple paragraphs, nine point
8 nothing.

9 9.1, I probably did.

10 9.2, I'm sure I added that. Rather template
11 and reflective of all of the others.

12 9.3, I probably added.

13 9.4 I added.

14 I don't believe I added 9.5.

15 I probably added all of 9.6.

16 I added 9.7.

17 I didn't add 9.8.

18 I didn't add 9.9.

19 I didn't add 9.10.

20 And for all those which I didn't add, I don't
21 know who did.

22 Q Thank you.

23 MS. NICHOLS: He's getting good.

24 MS. TRACY: You guys trained him well, huh?

25 MR. TRACY: Our next deposition we will ask you

1 to ask the questions of our colleagues.

2 THE WITNESS: Thank you. I'm flattered.

3 BY MS. TRACY:

4 Q Okay. So let's go back to Page 9-1. You've
5 testified that you did prepare -- let's just call it
6 9.0 -- regarding the ownership and operation of the
7 Silvergate power plant.

8 What was the basis for your determination in --
9 or your findings in Section 9.0?

10 A All the files that we have at the Regional
11 Board, my review of them.

12 Q And are those files in the administrative
13 record?

14 A Yes. To my knowledge.

15 Q Are you familiar with the fact that SDG&E was
16 not initially named as a discharger in this proceeding?

17 A Yes. I think initially it was just Southwest
18 Marine and NASSCO, and then all the rest were added
19 after that. So I'm familiar to that, but I wasn't a
20 part of that.

21 Q When you say "part of that," do you mean the
22 naming of additional dischargers to this proceeding?

23 A Right. I -- by the time I got working on this,
24 SDG&E had been added, but I recall some history
25 conversations of how the whole thing developed, and I

1 recall being told that it started off with just NASSCO
2 and Southwest Marine.

3 Q Could you identify whose conversations you are
4 aware of that were involved or discussed the naming of
5 the dischargers in addition to Southwest Marine and
6 NASSCO?

7 A I think I got my historical information from
8 Craig Carlisle, the supervisor.

9 Q And did Mr. Carlisle ever discuss with you the
10 basis for naming SDG&E as an additional discharger to
11 this proceeding?

12 A I think he told me something like NASSCO and
13 Southwest Marine wanted more people on board, something
14 like that.

15 Q Do you recall, to the best of your
16 recollection, when that conversation took place with
17 Mr. Carlisle?

18 A Very early on. 2004, probably. Pretty much
19 right when I got into his unit. That's one of my first
20 assignments was to get on this.

21 Q Other than Mr. Carlisle, were there any other
22 employees at the Water -- at the Regional Board that you
23 recall discussing naming additional dischargers to this
24 proceeding?

25 A Yes. I remember Brennen Ott. He was -- told

1 me about his reasons why he thought BP should be
2 included, but I don't recall anything specifically about
3 SDG&E.

4 Q Anyone else at the Regional Board that you can
5 recall?

6 A No.

7 Q And in your conversations with Mr. Carlisle
8 regarding naming additional dischargers to this
9 proceeding, do you recall any specifics regarding
10 SDG&E's operations as to the -- why he would want SDG&E
11 added as an additional discharger?

12 A They were already included when I got there,
13 and so my focus was just to review the files and see
14 whatever I could find as far as violations.

15 SDG&E's operations, all I can think of with
16 respect to that is there was a good bit of discussion
17 about the ponds, and I guess that relates to operations
18 at SDG&E.

19 But -- but for me it was just to go through
20 every possible file that we have and find whatever
21 evidence I could. So...

22 Q You also went on a site tour; is that correct?

23 A Yeah. We couldn't actually get onto the site
24 itself. It was fenced off, but there was some
25 maintenance going on. We looked across the fence and,

1 you know, saw some of the tunnels on the open end near
2 the plant and also where it opened into the bay, but we
3 didn't actually get on the site.

4 Q And you took some photographs of those
5 observations; is that right?

6 A Pretty sure we did, yeah. That's fairly
7 standard.

8 Q Okay. I will ask you a little bit about that,
9 the site tour in a bit. I'm going to stick with Master
10 Exhibit 2 right now.

11 A Okay.

12 Q So in Section 9.3 entitled "Historical
13 Activities," you prepared this section all by yourself?

14 A Let me review it real quick, please.

15 Frankly, it really doesn't look that familiar
16 to me. I -- after reading it again, I'm not sure I did
17 write this portion.

18 Q If it weren't you, do you know who at the
19 Regional Board would have drafted this section?

20 A Sorry, I don't.

21 Q Would it be someone under Craig Carlisle's
22 direction?

23 A That would be most probable.

24 Q And who was in Craig Carlisle's group in
25 addition to yourself in 2004?

1 A Cynthia Gorham-Test. Lisa Honma. Alan Monji.

2 Q Anyone else?

3 A No, that's it.

4 Now, Craig stopped being supervisor for TMDLs
5 probably in 2007 or 2008, it seems. So some of these
6 additions may be beyond his tenure also.

7 Q Okay. Thank you.

8 On Page 9-3, the first full paragraph that
9 begins with "Historical photographs" on the -- the
10 second sentence, I'd like you to read that sentence.

11 A 9-3?

12 Q First full sentence or paragraph starting with
13 "Historical photographs."

14 A Okay.

15 Q And the second sentence.

16 A Okay. I've read it.

17 Q Do you have any basis to believe that water
18 from the SDG&E ponds was discharged to the bay?

19 MR. CARRIGAN: Objection. I believe he
20 testified he didn't author this section.

21 THE WITNESS: And --

22 MS. NICHOLS: Calls for speculation.

23 THE WITNESS: -- I can't answer that -- I -- I
24 can't answer that.

25 BY MS. TRACY:

1 Q Mr. Tobler, I would like to direct your
2 attention to Page 9-11, Section 9.8 entitled
3 "Unauthorized Discharge of Toxic Pollutants to Land."

4 You've testified that you believe that you did
5 not draft this section -- I'm sorry. You're good?
6 Okay.

7 I believe you've testified that you did not
8 draft this section. Do you know who did in your group?

9 A I'm sorry, I don't.

10 Q Same question as to Section 9.9, "Unauthorized
11 Discharge of Toxic Pollutants into the MS4."

12 A I remember this issue actually. And it's
13 possible that I authored a portion of this and then
14 other portions were added to it.

15 I remember that it was the City of San Diego
16 that had some inspection report that they wanted us to
17 include in our investigation, and we agreed that it was
18 significant, but I don't recall these tables. They may
19 have come in later or were added by someone later.

20 Q When you mentioned the City inspection report,
21 you'll see at the end of Page 9-13, the last sentence
22 notes the City of San Diego issued a Notice of
23 Violation.

24 Is that what you're referring to?

25 A Yes.

1 Q Are you aware of the fact that the City
2 communicated with BAE regarding this NOV?

3 A Well, only insofar as they gave us a copy of
4 the Notice of Violation. And typically that implies
5 communication.

6 MR. CARRIGAN: May have misunderstood the
7 question. I think Miss Tracy was asking if -- Ms. Tracy
8 was asking whether you were aware that the City
9 communicated with BAE.

10 THE WITNESS: Oh, BAE.

11 MR. LEDGER: And I will object as assumes facts
12 not in evidence.

13 MR. DART: Join. Calls for speculation.

14 THE WITNESS: Oh, I was.

15 MR. DART: Lacks foundation.

16 MR. CARRIGAN: Go ahead. Give your answer.

17 THE WITNESS: Okay. To clarify, I thought you
18 were asking about SDG&E. And, no, I was not aware that
19 the City had any conversation with BAE about this Notice
20 of Violation.

21 BY MS. TRACY:

22 Q Are you aware of the fact that -- are you aware
23 that there are written communications between the City
24 and BAE directing -- requesting that the City issue the
25 NOV to SDG&E rather than BAE?

1 MR. DART: Same objections.

2 THE WITNESS: I wasn't aware of that.

3 MR. LEDGER: Same objection.

4 BY MS. TRACY:

5 Q How did you become aware of the City of
6 San Diego issuing an NOV to SDG&E?

7 A They -- the City of San Diego made us aware of
8 it. I don't think I was the first one to receive the
9 information, but the City of San Diego gave it to us.

10 Q Do you remember who at the City of San Diego
11 gave you the NOV?

12 A No.

13 Q When you say "us," could you --

14 A Regional Board.

15 Q I'm sorry.

16 A Yeah.

17 Q Who at the Regional Board would be us in
18 receipt of the NOV from the City of San Diego?

19 A Probably Craig Carlisle.

20 Q And at the time that you were notified by the
21 City of San Diego of the NOV to SDG&E, do you recall
22 anyone from the City telling you about communications
23 with BAE regarding the NOV?

24 A Nothing like that.

25 Q Are you aware of any activities or

1 investigation conducted by the Regional Board as to the
2 source of contaminants found relating to the NOV?

3 A Could I hear that one more time.

4 Q Let me rephrase.

5 Did the Regional Board do any independent
6 investigation on the issuance by the City of the NOV to
7 SDG&E?

8 A No.

9 Q Did the Regional Board do any investigation to
10 validate the determination that SDG&E was the source of
11 contamination that was the subject of the City of
12 San Diego NOV?

13 A No. I believe we just took the inspection
14 report and/or NOV at face value.

15 Q Are you familiar with the configuration of CB-1
16 that's at issue in the NOV?

17 A No.

18 Q Do you know whether or not there is a pathway
19 from the SDG&E facility to CB-1 that was the subject of
20 the NOV?

21 A I don't recall.

22 Q Other than yourself, can you identify any other
23 Regional Board employees that would have been involved
24 in drafting Section 9.9?

25 A I don't know who they were. Sorry.

1 Q I'd like to direct your attention to
2 Section 9.9 on Page 9-16.

3 A Okay.

4 Q You testified that you did not prepare this
5 section. Could you take a moment to review
6 Section 9.10.

7 A Sure.

8 Q Thank you.

9 A Okay. I've got done a brief review.

10 Q Thank you.

11 Now that you've had a chance to review
12 Section 9.9, do you recall whether or not you had any
13 involvement in preparing this section?

14 A I didn't.

15 Q Okay. Do you know who did at the Regional
16 Board?

17 A My best guess, I believe craig Carlisle may
18 have been the one who authored it.

19 Q I'm sorry, but is that a guess or is that your
20 estimate that Mr. Carlisle would have been involved in
21 authoring this section?

22 A An estimate is more powerful than a guess,
23 right?

24 Q I'm entitled to your best estimate --

25 A Okay.

1 Q -- sir.

2 MR. CARRIGAN: But you don't have to guess.

3 THE WITNESS: It's my best estimate that it was
4 Craig.

5 BY MS. TRACY:

6 Q Okay. Thank you.

7 A I'm not sure, but I think it was Craig.

8 Q Do you know if you reviewed historical aerial
9 photographs in part of your investigation for the basis
10 for naming SDG&E as a additional discharger to this
11 proceeding?

12 A I recall seeing aerial photographs of SDG&E,
13 and I recall making out the ponds on them.

14 Q Do you recall what time frame those aerial
15 photographs depicted?

16 A I don't. Sorry.

17 Q Would the mid-1950s sound accurate to you?

18 A I don't even remember if they were black and
19 white or color. So I just -- they certainly weren't,
20 you know, very current. They were historical.

21 Q Do you recall the source of those aerial
22 photographs?

23 A No.

24 Q Did you review any historical real estate
25 records showing who was the lessees or sublessees to

1 that property?

2 A No.

3 Q Okay. Are you aware of any other operators of
4 the property where the wastewater ponds were located
5 other than SDG&E?

6 A No.

7 Q Okay. Are you aware of any investigation into
8 other potential sources of contaminants in CB-1 other
9 than SDG&E?

10 A I'm not aware of those, any investigations, no.

11 Q Did you have any conversations with
12 representatives of the City regarding the City NOV to
13 SDG&E?

14 A No.

15 Q Do you know of anybody at the Regional Board
16 that had conversations with City representatives
17 regarding the NOV?

18 A Probably Craig.

19 Q Are you specifically aware of any conversations
20 between City representatives and members of the Regional
21 Board regarding the NOV?

22 A Not specifically, no.

23 Q Okay. Thank you.

24 And the same question with respect to
25 conversations with representatives of BAE?

1 A Not aware of any of them.

2 Q You conducted a Facility Inspection Report in
3 2004 of several facilities related to this proceeding;
4 is that correct?

5 A Maybe.

6 Q Do you recall doing a facility tour in
7 2004 related to some of the facilities?

8 A I remember the tour.

9 Q Okay. And I'd like to mark as No. 305 this
10 document entitled "Facility Inspection Report." And it
11 is SAR156644.

12 MS. NICHOLS: Do you have copies?

13 MS. TRACY: Yes, I do.

14 MS. NICHOLS: Great.

15 (Tobler Exhibit 305 was marked.)

16 BY MS. TRACY:

17 Q Could you take a moment to review this report.

18 A Okay.

19 Q Have you had a chance --

20 A Okay. I've reviewed it, yeah.

21 Q Thank you.

22 And is this your handwriting on Pages 1, 2, 3,
23 and 4 of the report -- actually throughout the entire
24 report, where there are handwritten notations, is that
25 your handwriting?

1 A It's my handwriting on the first two pages.
2 It's not my handwriting on the third page or the fifth
3 page where it says "add names," but starting with the
4 maps --

5 Q Uh-huh.

6 A -- that is my handwriting. Including all the
7 pictures that I -- I took all of the pictures.

8 Q And are the handwriting on the top of the
9 photos, is that yours as well, where it has like 1-3,
10 1-1?

11 A Yes, right.

12 Q Okay.

13 A Also, although I'm the only one who signed the
14 inspection report form on Page 2, the write-up itself,
15 which are Pages 3, 4 and 5, were not done by me. I
16 believe they were done by Brennen Ott.

17 MS. NICHOLS: I'm sorry, what is the last name?

18 THE WITNESS: Ott, O-T-T. He's no longer on
19 the Board. He went into private practice. I think he's
20 up in Bakersfield.

21 But he handed over his assignment to me,
22 because he was leaving. And he was also a part of this
23 tour. And he was to write up notes and I was to take
24 pictures, and I compiled the report.

25 So as far as the notes are concerned, I didn't

1 review them when I assembled them. They're not my
2 notes.

3 BY MS. TRACY:

4 Q And then the notes beginning on SAR156646, the
5 handwritten notes, are those Brendan Ott's? If you
6 know.

7 A I don't know.

8 Q When did Brandon Ott leave the Regional Board?

9 A Shortly after I had started in the TMDLs.

10 Probably in 2004, late 2004.

11 Q Who besides Brendan Ott at the Regional Board
12 accompanied you as part of this site tour?

13 A Let me just say Brennen.

14 Q Brennen. Sorry.

15 A Brennen Ott. B-R-E-N-N-E-N, I think. Craig
16 Carlisle was there. Alan Monji may have been there.

17 That's all I can recall.

18 Q Okay. On Page SAR156648 at the end it says
19 "Tour Participants."

20 A Right.

21 Q And I'd like to go through to the extent that
22 you can recall any of the participants by name for each
23 of the entities named below.

24 A Good luck.

25 Q Do you recall anyone from SDG&E?

1 A No.

2 Q Do you recall anyone from South- -- go ahead.

3 I'm sorry.

4 A In other words, no, I don't recall an SDG&E
5 representative on the tour. What triggers that memory
6 is that we couldn't even get into the site, so we looked
7 at it from the chain-link fences on the street.

8 Q Was that because it wasn't an operating
9 facility at that time?

10 MS. NICHOLS: Objection; calls for a legal
11 conclusion.

12 THE WITNESS: It wasn't an operating facility,
13 but I don't know if that's the reason why we couldn't
14 get in. There was some maintenance being performed at
15 the time.

16 BY MS. TRACY:

17 Q Were you present for both days of the tour?

18 A Yes.

19 Q And on Page 1 it notes time 9:00 to 3:00 slash
20 9:00 to 1:00. Are those the time periods for
21 September 23rd, 2004 and September 24th, 2004?

22 A Yes.

23 Q Okay. And were you -- you were there the
24 entire time for both days?

25 A Yes.

1 Q And on this same page if you go to the section
2 noted "Inspection Findings."

3 A Okay.

4 Q And it notes, "Were violations noted during
5 this inspection"?

6 A Okay.

7 Q Do you recall what violations where it notes,
8 yes, it was noting?

9 A I don't recall offhand, but it's probably
10 within the notes.

11 Q Mr. Tobler, you've testified that you were
12 present during both days of the facility tour, but you
13 did not prepare the notes that are a part of this
14 record.

15 Could you review the typewritten notes and let
16 me know if there's anything that you believe to be
17 inaccurate in those notes.

18 A Sure.

19 Okay. I've reviewed it, and to answer your
20 question, nothing to me stands out as false, but there
21 is a lot of information in these notes that I can't
22 necessarily conclusively say, without reviewing it
23 further with backup information and maps and what, that
24 it's all true.

25 But I have no reason to believe that it's not

1 true. Is that clear? I can't say for sure, but I'm
2 pretty sure, based on, you know, our protocol for
3 investigations, that what's written down is what was
4 observed.

5 Q Okay. Thank you.

6 On the first page of the typewritten notes
7 under SWM --

8 A Okay.

9 Q -- there's a notation that "Shaun Halvax has
10 video footage of discharge from SW4 with report."

11 Do you know whether or not the Regional Board
12 ever received that video footage?

13 A I don't know.

14 Q On the last page of the typewritten notes
15 SAR156648 under "Storm drains" --

16 A Okay.

17 Q -- the second sentence says, "Get video footage
18 and report from Shaun Halvax on discharge from SW4 drain
19 (Chevron activity)."

20 Do you recall whether or not this statement
21 regarding the video footage from and report from Shaun
22 Halvax is the same that is noted on the prior page under
23 SWM?

24 A I don't know if it's the same.

25 Q In that same section under "Storm Drains" in

1 the next paragraph, it discusses a catch basin located
2 on the north side of Chevron between ARCO and Chevron,
3 and the notes discuss that there is a smaller pipe
4 inside the catch basin of unknown origin.

5 Do you have any recollection of this catch
6 basin that they're -- that these notes are discussing?

7 A I believe I do have a picture in my mind of
8 that catch basin, yeah.

9 Q Do you know whether or not any additional
10 investigation was conducted to determine the source of
11 that pipe?

12 A Not to my knowledge.

13 MS. TRACY: I have no further questions.

14 THE WITNESS: Okay.

15 MS. TRACY: Thank you.

16 MR. LEDGER: Can we take a break just for a
17 minute?

18 MR. CARRIGAN: Take five.

19 (A recess was taken.)
20

21 EXAMINATION

22 BY MS. WITKOWSKI:

23 Q Good afternoon, Mr. Tobler. My name is
24 Jill Witkowski. I'm an attorney for San Diego
25 Coastkeeper and Environmental Health Coalition. I know

1 that today's been a long day so I will try to keep my
2 questions short.

3 My questions that I have for you today relate
4 to TMDLs and your expertise in it, and I will be asking
5 you some general questions about TMDLs and maybe asking
6 you some hypotheticals.

7 Is it fair to characterize a TMDL as a
8 pollution budget set in the amount of pollution that a
9 water body can handle and then the budget is divvied up
10 between point sources and non-point sources of
11 pollution?

12 A That's fair.

13 Q So this budget or pollution reduction are then
14 assigned to existing or future discharges?

15 A Correct.

16 Q And so would it be fair to say that a TMDL is
17 forward-looking or prospective?

18 A Yes.

19 Q So how would a TMDL address past discharges
20 that continue to contribute to impairment of a water
21 body?

22 MR. CARRIGAN: Calls for expert opinion.
23 Beyond the scope of this witness' knowledge.

24 MR. LEDGER: Vague and ambiguous.

25 MR. CARRIGAN: Incomplete hypothetical.

1 You can answer.

2 THE WITNESS: Generally speaking, if you have a
3 historic discharge that's still in place and is going to
4 continue to contribute to the impairment, whatever that
5 may be, then a historic discharge does have a
6 contribution because of its continued forward discharge
7 into the future.

8 BY MS. WITKOWSKI:

9 Q So how would that be addressed in a TMDL?

10 MR. LEDGER: Vague and ambiguous.

11 MR. CARRIGAN: Vague.

12 THE WITNESS: One way would be to remove that
13 historic discharge.

14 BY MS. WITKOWSKI:

15 Q How would removing a historic discharge look in
16 a TMDL?

17 MR. CARRIGAN: Vague.

18 MR. LEDGER: Same objection.

19 THE WITNESS: If you could determine what the
20 current contribution and future contribution would be
21 from that historic discharge, you could budget that in
22 and the amount budgeted would be allocated to the
23 historic discharge and would lessen the burden of the
24 other dischargers in that their amounts that they need
25 to reduce would be lessened.