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SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

2011 JUN 24 A 11: 33

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

IN RE TENTATIVE CLEANUP AND
ABATEMENT ORDER NO. R9-2011-
0001 (formerly No. R9-2010-0002)

**BAE SYSTEMS SAN DIEGO SHIP
REPAIR, INC.'S REPLY TO CITY OF SAN
DIEGO'S COMMENT 3.0 REGARDING
TCAO/DTR NO. R9-2011-0001**

Presiding Officer: Grant Destache

1 Pursuant to the Notice of Extended Comment Period and Revised Comment Format, dated
2 May 12, 2011, and the Third Amended Order of Proceedings, dated May 18, 2011, Designated
3 Party BAE Systems San Diego Ship Repair, Inc. ("BAE Systems") respectfully submits the
4 following Reply to the City of San Diego's ("City") Comment 3.0, submitted May 26, 2011,
5 concerning the Draft Technical Report ("DTR") for Tentative Cleanup and Abatement Order No.
6 R9-2011-0001 ("TCAO") for the San Diego Bay Shipyard Sediment Site, San Diego County
7 ("Shipyard Sediment Site" or "Site").

8 **I. INTRODUCTION**

9 The City "owns and operates an MS4 conveyance through which it discharges urban
10 runoff into waters of the United States with the San Diego Region." (DTR, § 4.3.1) Storm drain
11 SW4 is part of the City's MS4 system, conveying "urban runoff from source areas upgradient of
12 the Shipyard Sediment Site's property and discharge[s] directly...into San Diego Bay within
13 the...BAE Systems leasehold." (*Id.*) The pollutants the City's SW4 conduit pipe discharges
14 "include metals (arsenic, cadmium, chromium, copper, lead, mercury, nickel, silver, and zinc),
15 TSS, sediment (due to anthropogenic activities), petroleum products, and synthetic organics
16 (pesticides, herbicides, and PCBs)." (DTR, § 4.4.) The DTR sets forth substantial, reasonable
17 and credible evidence in support of its allegations and decision to name the City as a Discharger
18 on the basis of its MS4 discharges, including SW4. (DTR §§ 4.3 - 4.6.2, 4.7.2.)

19 Although the City does not seek any specific relief in its May 26, 2011 submission,
20 Comment 3.0 disputes the existence and reliability of the evidence in support of the DTR's
21 assertions with respect to SW4. Specifically, the City's comment 3.0 states:

22 There are no data indicating that SW4 has contributed significantly
23 to elevated levels of constituents of concern observed in shipyard
sediments.

24 Comment 3.0 proceeds to further assert that "there are no data showing that SW4 currently has
25 any PCBs in it or that it currently is contributing to pollution of sediments at the Shipyard site."
26 (emphasis added.)

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1 First, whether or not SW4 is "currently" contributing to the pollution is irrelevant under
2 Water Code section 13304. As correctly stated in the DTR:

3 Section 13304(a) provides in relevant part that the San Diego Water
4 Board may issue a cleanup and abatement order to any person "who
5 has discharged or discharges waste into the waters of this state in
6 violation of any waste discharge requirements ... or who has caused
7 or permitted, causes or permits, or threatens to cause or permit any
8 waste to be discharged or deposited where it is, or probably will be,
9 discharged into the waters of the state and creates, or threatens to
10 create, a condition of pollution or nuisance."

11 (DTR § 4.1.)

12 Second, the City's comments with respect to the alleged lack of data regarding SW4's
13 current and historic contributions to contamination at the site are incorrect. As summarized
14 below, substantial and reasonable evidence exists indicating SW4 is currently contributing to the
15 pollution of sediments at the Site, and historically has significantly contributed to the pollution of
16 sediments at the Site.

17 **II. REGIONAL BOARDS SHOULD REVIEW EVIDENCE WITH A VIEW** 18 **TOWARDS LIABILITY**

19 To be named as a discharger, all that is required is "sufficient evidence" of responsibility.
20 See The State Board Water Quality Enforcement Policy, No. 2002-0040, (Feb. 19, 2002). To this
21 end, "a regional water board shall "[u]se any relevant evidence, *whether direct or circumstantial*"
22 in order to establish the source of a discharge. State Water Board Resolution No. 92-49, at §
23 II(A) (emphasis added). The resolution provides a number of potential sources of evidence,
24 including site characteristics and location in relation to other potential sources of a discharge;
25 hydrologic and hydrogeologic information, such as differences in upgradient and downgradient
26 water quality; industry-wide operational practices that have led to discharges, such as conveyance
27 systems; and physical evidence, such as analytical data. (*Id.*)

28 In light of the Clean Water Act's declared objective and the broad discretion granted to
regional water boards by the Act and its implementing regulations, State Water Board decisions
suggest that a regional water board should look at evidence with a view toward finding liability.
According to the State Water Board, "[g]enerally speaking it is appropriate and responsible for a

1 Regional Board to name all parties for which there is reasonable evidence of responsibility, even
2 in cases of disputed responsibility.” See, e.g., *Exxon Company U.S.A. et al.*, Order No. 85-7, at
3 11 (SWRCB 1985) (noting further that “substantial evidence” means “credible and reasonable
4 evidence which indicates the named party has responsibility”); *Stinnes-Western Chemical Corp.*,
5 Order No. 86-16, at 12 (SWRCB 1986) (same

6 **III. SUBSTANTIAL AND REASONABLE EVIDENCE SUPPORTS THE DTR'S**
7 **ASSERTION THAT THE CITY'S SW4 OUTFALL HAS CONTRIBUTED TO**
8 **ELEVATED LEVELS OF POLLUTION AT THE BAE LEASEHOLD.**

9 **A. 2009 SW4 Sampling Data Detects PCBs, Copper, TBT and Mercury**

10 On December 7, 2009, water quality data from SW4 were collected from a manhole on the
11 BAE leasehold. (Calscience Environmental Laboratories, 2009). This sample was collected from
12 the first manhole inside the BAE Systems leasehold, prior to any possible input from the site.
13 Laboratory analyses included a congener-level analysis of PCBs. Multiple congeners were
14 detected, and the highest concentrations were of penta- and hexa-chlorinated biphenyls, similar to
15 the profile of Aroclor 1254. (*Id.*) Copper, mercury, and TBT were also measured and detected in
16 the urban stormwater conveyed by SW4. (*Id.*) These data indicate that as of 2009 there was an
17 ongoing source of PCBs, copper, mercury and TBT from urban runoff that discharged to the Site
18 at SW4. No data suggests that contaminants found in late 2009 have dissipated, nor have upland
19 source control measures been established, and therefore it is reasonable to conclude that MS4 and
20 outfall SW4 remain ongoing sources of these COCs to the Site.

21 **B. 2005 SW4 Sampling Data from City Investigation Detects PCBs and PAHs**

22 Further evidence of discharges from the City's storm drain SW4 into the Shipyard
23 sediment site is provided by the results of a sampling investigation conducted by the City itself.
24 As described in the DTR (section 4.7.2), on October 3, 2005, the City conducted an investigation
25 and observed evidence of an illegal discharge into the SW4 catch basin on the north side of
26 Sampson Street between Belt Street and Harbor Drive, approximately 10 feet east of the railroad
27 line that runs parallel with Belt Street. Specifically, the catch basin is located immediately to the
28 east of the BAE Systems' parking lot and the SDG&E Silver Gate Power Plant, which is adjacent
to the parking lot. During the City's investigation, three sediment samples were collected and

1 analyzed for PCBs and polycyclic aromatic hydrocarbons (PAHs). The first sample was collected
2 from inside and at the base of a six-inch lateral entering the catch basin from the east. The second
3 sample was collected from inside and at the base of the 12-inch lateral entering the catch basin
4 from the north. The third sample was collected from the 18-inch pipe exiting the catch basin. The
5 results of these three samples, presented in DTR Table 4-4, indicate the presence of PCBs and
6 PAHs entering and exiting the municipal storm drain system catch basin. The results of this
7 sampling show significant concentrations of Aroclor 1254 and 1260. (DTR Table 4-4.)

8 The City's Comment 3.0 does not dispute any of the foregoing facts or findings. Instead,
9 the City refers to alleged facts regarding SDG&E cleaning out the catch basin following the
10 investigation. Those alleged facts are irrelevant under Water Code section 13304 for the reasons
11 stated in Section I *infra*.

12 **C. 2001 SW4 Sampling Data Detects TBT, Copper and Mercury**

13 On November 29, 2001, water quality data from SW4 were collected from a manhole on
14 the BAE leasehold. (AMEC, 2001). This sample was collected from the first manhole inside the
15 BAE Systems leasehold, prior to any possible input from the site. TBT, copper, and mercury
16 were all measured and detected in the urban stormwater conveyed by SW4. (*Id.*) These data
17 indicate that as of late 2001 there was an ongoing source of TBT, copper, and mercury from
18 urban runoff that discharged to the Site at SW4. No data suggests that contaminants found in late
19 2001 have dissipated, nor have upland source control measures been established, and moreover
20 the 2009 SW4 data again detects these same COCs in addition to PCBs, and therefore it is
21 reasonable to conclude that MS4 and outfall SW4 remain ongoing sources of these COCs to the
22 Site.

23 **D. Historical Discharges by the City through SW4 have Significantly**
24 **Contributed to Contamination at the Site.**

25 In 1974 the Southern California Coastal Water Research Project ("SCCWRP") published
26 the results of an EPA-funded study entitled "Marine Inputs from Polychlorinated Biphenyls and
27 Copper from Vessel Antifouling Paints." (Young et al., 1974.) The project surveyed the usage of
28 PCB-containing hull paint on recreational, commercial, and Navy vessels in San Diego Bay and

1 other southern California bays, and as collected data on PCB releases in municipal wastewater
2 and storm runoff. (*Id.*)

3 Contrasting the PCB mass release rates for different sources (Table 12 in Young et al.
4 1974) shows that municipal wastewater was a major source of Aroclor 1254 to San Diego Bay,
5 contributing more than 99.9 percent of total PCBs. Thus, as of 1974, municipal wastewater
6 carried by the City's MS4 system and discharged via SW4 was a major source of PCB
7 contamination at the BAE Leasehold. (*Id.*) The City identifies no study or data indicating that
8 the sources of PCBs to the San Diego Bay was by any means other than those identified by
9 Young, *et al.* Absent findings to the contrary, it is reasonable to conclude that the City was a
10 major contributor of PCBs to the San Diego Bay for decades.

11 E. **EPA Guidance Confirms that Waste Water Discharged by the City through**
12 **SW4 has Significantly Contributed to Contamination at the Site**

13 Relevant EPA guidance supports the DTR's findings with respect to waste in urban storm
14 water discharged through the City's SW4 outfall at the BAE Leasehold. In 1983 the EPA
15 published "Results of the Nationwide Urban Runoff Program." The Executive Summary states
16 that among the many objectives of the National Urban Runoff Program ("NURP") was to develop
17 analytical methodologies to examine "the quality characteristics of urban runoff, and similarities
18 or differences at different urban locations" and "the extent to which urban runoff is a significant
19 contributor to water quality problems across the nation." (EPA, Results of the Nationwide Urban
20 Runoff Program, Executive Summary at p. 1.) "The NURP studies have greatly increased our
21 knowledge of the characteristics of urban runoff, its effects upon designated uses, and of the
22 performance efficiencies of selected control measures." (*Id.* at p. 2.) The NURP Final Report
23 reached several relevant conclusions, including:

- 24
- 25 • "Heavy metals (especially copper, lead and zinc) are by far the most prevalent
26 priority pollutant constituents found in urban runoff. End-of-pipe concentrations
27 exceed EPA ambient water quality criteria and drinking water standards in many
28 instances. Some of the metals are present often enough and in high enough
concentrations to be potential threats to beneficial uses." (*Id.* at p. 5.)

- 1 • "Total suspended solids concentrations in urban runoff are fairly high in
2 comparison with treatment plant discharges. Urban runoff control is strongly
3 indicated where water quality problems associated with TSS, including build-up
4 of contaminated sediments, exist." "[T]he problem of contaminated sediment
5 build-up due to urban runoff...undeniable exists." (*Id.* at p. 6.)
- 6 • "A summary characterization of urban runoff has been developed and is believed
7 to be appropriate for use in estimating urban runoff pollutant discharges from
8 sites where monitoring data are scant or lacking, at least for planning level
9 purposes." (*Id.* at p. 7.)

10 With respect to this last conclusion regarding the development of a summary
11 characterization, the NURP Report states that "[a]lthough there tend to be exceptions to any
12 generalization, the suggested summary urban runoff characteristics given in Table 6-17 of the
13 report are recommended for planning level purposes as the best estimates, lacking local
14 information to the contrary." (*Id.* at p. 7.) "[I]n the absence of better information the data given
15 in Table 6-17 are recommended for planning level purposes as the best description of the
16 characteristics of urban runoff." (EPA, Results of the Nationwide Urban Runoff Program,
17 Volume I – Final Report, at p. 6-43.) Those characteristics of urban runoff include the presence
18 of significant levels of pollutants including total suspended solids, heavy metals, inorganics, and
19 pesticides. (*Id.*, at Tables 6-17 through 6-21.) The NURP data supports and confirms the DTR's
20 assertion that:

21 "The City of San Diego has caused or permitted the discharge of
22 urban storm water pollutants directly to San Diego Bay at the
23 Shipyard Sediment Site. The pollutants include metals (arsenic,
24 cadmium, chromium, copper, lead, mercury, nickel, silver, and
25 zinc), TSS, sediment (due to anthropogenic activities), petroleum
26 products, and synthetic organics (pesticides, herbicides, and PCBs)
27 through its SW4 (located on the BAE Systems leasehold) and SW9
28 (located on the NASSCO leasehold) MS4 conduit pipes."

(DTR, § 4.4.)

29 The NURP data also supports and confirms the DTR's assertion that "it is highly probable
30 that historical and current discharges from [SW4] outfall have discharged heavy metals and
31 organics to San Diego Bay at the Shipyard Sediment Site." (DTR § 4.7.2.)

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1 **IV. CONCLUSION**

2 Both historically and currently uncontrolled upland sources discharging via urban runoff
3 via SW4 have been and are major contributors of pollutants to the Shipyard Sediment Site. For
4 all of the foregoing reasons, the City's Comment 3.0 should be disregarded.

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Dated: June 23, 2011

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