



# California Regional Water Quality Control Board San Diego Region



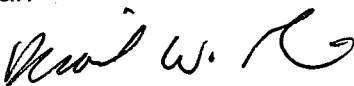
Matthew Rodriguez  
Secretary for  
Environmental Protection

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

Edmund G. Brown Jr.  
Governor

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**TO:** James Smith  
David Barker  
Julie Chan  
Catherine George Hagan  
Christian Carrigan  
Jessica Newman

**FROM:** David Gibson   
Executive Officer  
**SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD**

**DATE:** August 18, 2011

**SUBJECT:** SEPARATION OF FUNCTIONS FOR PROCEEDINGS ON CLEANUP AND ABATEMENT OF THE SAN DIEGO BAY SHIPYARD SEDIMENT SITE (TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2011-0001 (superseding TENTATIVE CLEANUP AND ABATEMENT ORDERS NO. R9-2005-0126 AND R9-2010-0002))

This memorandum updates and supersedes earlier memoranda defining the separation of functions for proceedings on cleanup and abatement of the Shipyard Sediment Site in San Diego Bay.

The San Diego Water Board is preparing to consider development and issuance of a cleanup and abatement order for discharges of metals and other pollutant wastes to San Diego Bay marine sediment and waters at the Shipyard Sediment Site. The purpose of this memorandum is to confirm and update the membership of two teams working on the Cleanup and Abatement Order proceeding and to reiterate the procedures that have been established to assure the San Diego Water Board's proceedings in this matter are fair and impartial. The teams and procedures will remain in place until after the San Diego Water Board issues a final Order in this matter.

The San Diego Water Board proceedings in this matter are subject to regulations in Title 23, California Code of Regulations (CCR) Division 3, Chapter 1.5, sections 648, et seq., chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code. The following list identifies participants who are currently designated as Parties in the San Diego Water Board proceedings on this matter:

*California Environmental Protection Agency*

1. San Diego Water Board Shipyard Sediment Site Cleanup Team (Cleanup Team) (as defined herein)
2. National Steel and Shipbuilding Company (NASSCO)
3. BAE Systems San Diego Ship Repair, Inc.(Formerly Southwest Marine, Inc.)
4. City of San Diego
5. Marine Construction and Design Company and Campbell Industries, Inc.
6. Chevron USA, A Subsidiary of ChevronTexaco
7. BP, the parent company and successor to Atlantic Richfield Co.
8. San Diego Gas and Electric, a Subsidiary of Sempra Energy Company
9. United States Department of the Navy
10. San Diego Coastkeeper
11. Environmental Health Coalition
12. San Diego Port Tenants Association
13. San Diego Unified Port District
14. Star & Crescent Boat Company

This current list of parties may be expanded during the course of the proceedings to include any other person whom the San Diego Water Board determines should be designated as a party to the proceedings.

To comply with the separation of functions and *ex parte* communication requirements of the Administrative Procedures Act, and the due process provisions of the United States and California constitutions,<sup>1</sup> it is necessary to separate the functions of staff members presenting evidence for consideration by the San Diego Water Board from those of staff members providing advice to the presiding hearing officer for prehearing proceedings (Grant Destache) and to other Board members. Assigning responsibility for advising the San Diego Water Board members to staff other than those who will present testimony to the San Diego Water Board members will help assure the fairness and impartiality of the San Diego Water Board's proceedings. Accordingly, the San Diego Water Board staff participating in the proceedings are separated into two groups.

One group, the Cleanup Team, serves in a "prosecutorial" function in these proceedings and assumes responsibility for presenting evidence to the San Diego Water Board on the issues that will be described in a public hearing notice. The other team, the Advisory Team, will assist the San Diego Water Board members in matters such as evaluating requests for designated party status, enforcing deadlines and other limitations on written and electronic submissions and exhibits, and preparing for and conducting the proceedings. The Advisory Team, in consultation with the presiding officer for prehearing proceedings as necessary, will prepare any necessary hearing notice and establish all hearing and pre-hearing procedures. The Advisory Team will also provide advice to San Diego Water Board members in their deliberations on the evidence presented in the proceedings.

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<sup>1</sup> See Government Code §§ 11430.10-11430.80, 11425.30.

Consistent with this separation of functions, members of the Cleanup Team will be treated like any other party before the San Diego Water Board throughout the proceedings, and should not have any contact with Board members or members of the Advisory Team on matters relating to the proceedings, except where those contacts are consistent with the limitations on *ex parte* contacts that apply to all other parties. For purposes of this memorandum, an "*ex parte* contact" is any written or verbal communication, pertaining to the Shipyard Sediment Site Cleanup project between a member of the Cleanup Team and a San Diego Water Board member or a staff member of the Advisory Team, unless the communication is copied to all other parties to the proceedings (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not "*ex parte* contacts" and are not restricted. Cleanup Team members' communications with designated parties and other interested persons are not restricted.

Communications regarding the Shipyard Sediment Site and Tentative CAO No. R9-2011-0001 are similarly restricted between Advisory Team members and representatives of any designated party (including the Cleanup Team) regarding the Shipyard Sediment Site cleanup, until after the San Diego Water Board issues a final order in this matter. Advisory team members shall not receive draft staff reports or orders related to the Shipyard Sediment Site cleanup unless the drafts are also provided to other designated parties in this matter.

The following list of San Diego Water Board staff are assigned to the Cleanup Team:

David Gibson, Executive Officer  
David Barker, Supervising Water Resources Control Engineer  
Julie Chan, Supervising Engineering Geologist  
Craig Carlisle, Senior Engineering Geologist  
Eric Becker, Senior Water Resources Control Engineer  
Tom Alo, Water Resources Control Engineer  
Benjamin Tobler, Water Resource Control Engineer  
Alan Monji, Environmental Scientist  
Lisa Honma, Environmental Scientist  
Cynthia Gorham, Senior Environmental Scientist  
Chad Loflen, Environmental Scientist  
Vicente Rodriguez, Water Resources Control Engineer

David Barker will supervise the Cleanup Team, with supervisory oversight by David Gibson. For this matter only, James Smith, Assistant Executive Officer will not be supervising David Barker, Julie Chan or the rest of the Cleanup Team. The State Water Resources Control Board, Office of Enforcement, has assigned Christian Carrigan to provide legal support to the Cleanup Team. Christian Carrigan is

supervised by Reed Sato, Director of the State Water Resources Control Board, Office of Enforcement.

James Smith, Assistant Executive Officer, and Frank Melbourn, Water Resources Control Engineer serve as members of the Advisory Team. In addition, I am informed by James Smith that the following additional staff have been added to the Advisory Team: (1) Deborah Jayne, Senior Environmental Scientist;<sup>2</sup> (2) John Odermatt, Senior Engineering Geologist; (3) Chehreh Komeylyan, Water Resources Control Engineer; and (4) Amanda Oliveira, Student Intern. The Office of Chief Counsel has assigned Catherine George Hagan and Jessica Newman, staff counsels, to provide legal support to the Advisory Team. Lori Okun, Assistant Chief Counsel, is supervising Catherine George Hagan and Jessica Newman for this matter. For this matter, David Gibson, Executive Officer, will not be supervising James Smith, Deborah Jayne, John Odermatt, Frank Melbourn, Chehreh Komeylyan or Amanda Oliveira.

Should either or both teams conclude that additional staff are needed, they should contact me, Reed Sato, Office of Enforcement or Lori Okun, Office of Chief Counsel, as appropriate, to request assignment of additional staff as necessary. Staff assigned to the Advisory Team will not include any individuals who have served as members of the Cleanup Team or who have actively participated in formulating the terms and conditions of a tentative cleanup and abatement order or a supporting Technical Report in this matter.

Any staff assigned to or who assists either team, during the proceedings or evaluating the hearing record, should be specifically assigned to that team. This includes any managers or supervisors who, by actively directing or assisting either team on matters such as deciding what theories to argue, go beyond routine procedural matters or assignment of staff. Once assigned to either team, an individual shall not participate in matters concerning the Shipyard Sediment Site cleanup that are assigned to the other team. For example, a staff member assigned to the Cleanup Team cannot participate in closed meetings with any San Diego Water Board Member or Advisory Team Member to discuss issues associated with the Shipyard Sediment Site cleanup.

Please make sure any staff that may be assigned to either team or may be involved in discussions of the proceedings on the Shipyard Sediment Site cleanup issue are aware of and follow these procedures.

cc: **Via E-mail Only:**

Lori Okun, Assistant Chief Counsel, Office of Chief Counsel, State Water Board  
Reed Sato, Director of Office of Enforcement, State Water Board

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By e-mail dated August 4, 2011, the Advisory Team notified Designated Parties and Interested Persons that Ms. Jayne, Ms. Komeylyan, Mr. Odermatt and Ms. Oliveira to the Advisory Team. The San Diego Water Board received no timely written objections to any of these individuals serving on the Advisory Team.

ccs: continued

Craig Carlisle, Senior Engineering Geologist, San Diego Water Board  
Deborah Jayne, Senior Environmental Scientist, San Diego Water Board  
John Odermatt, Senior Engineering Geologist, San Diego Water Board  
Tom Alo, Water Resources Control Engineer, San Diego Water Board  
Benjamin Tobler, Water Resources Control Engineer, San Diego Water Board  
Vicente Rodriguez, Water Resources Control Engineer, San Diego Water Board  
Lisa Honma, Environmental Scientist, San Diego Water Board  
Cynthia Gorham, Senior Environmental Scientist, San Diego Water Board  
Alan Monji, Environmental Scientist, San Diego Water Board  
Chad Loflen, Environmental Scientist, San Diego Water Board  
Frank Melbourn, Water Resources Control Engineer, San Diego Water Board  
Chehreh Komeylyan, Water Resources Control Engineer, San Diego Water Board  
Amanda Oliveira, Student Intern, San Diego Water Board  
Designated Parties Distribution List