



Monday, September 19, 2005

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

Attn: Frank Melbourn
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

RE: Designated Party Request - Cleanup and Abatement Order No. R9-2005-0126 for Discharges of Waste to Marine Sediment in San Diego Bay

Dear Mr. Melbourn:

Industrial Environmental Association ("IEA") requests status as a designated party in the above-captioned matter, together with all rights accruing to parties under applicable law, including, but not limited to, the right to submit evidence and fully participate at all hearings relating to this matter.

IEA is an association of manufacturing and associated companies in the San Diego area. Our mission is to promote environmental responsibility through effective communication and interaction with our members, government, regulatory agencies, business and the community. We use proven technology, scientific methods and common sense to achieve a beneficial relationship between environmental protection, public health and economically sustainable growth. The IEA urges reliance on scientific, analytical data to evaluate the regulations necessary to protect the public and the environment. Such data must be melded with public policy, in public forums, to determine reasonable levels of environmental protection and to educate the public about real versus perceived community risks.

IEA takes exception to the approach the Regional Board has taken in the Draft Cleanup and Abatement Order ("Draft CAO"), which we believe is not justified by the science, and has the potential to substantially impact our organization and its members. Many of our members own, operate businesses on, perform services at, or otherwise have a vested interest in coastal lands near the San Diego region's bays, harbors, ports, and other areas where marine sediment exists. Several California cases regarding the notion of "standing" to challenge administrative actions support our position that, as an organization whose members own or operate on property affected by the action, we deserve designated party status. For example, in *Tustin Heights Assn. v. Bd. of Supervisors* (1959) 170 Cal.App.2d 619, 636-637, a neighborhood association was held to have standing to petition an administrative action where "petitioners [were] the owners of real property within the zoned area and as



such they are restricted in the use of their property by the zoning ordinance. Each of such property owners has an interest in the enforcement of the ordinance which is peculiar to him. If the ordinance is violated, he suffers special damage that is distinguishable from that suffered by the public at large.” See also, *Simons v. City of Los Angeles* (1979) 100 Cal. App. 3d 496, 501.

In addition to directly affecting our members who own property or operate facilities on property near the shipyard, the Draft CAO may result in direct and substantial environmental impacts on all of our members. The Regional Board’s proposal to require large-scale removal of San Diego Bay sediments will potentially expose us and the surrounding community to harmful pollutants during the removal of sediments. In particular, our members that do not own or operate business on property may still be adversely impacted since they perform services on a contractual basis on the San Diego Bay. The employees of these and other member companies would potentially be exposed to harmful diesel emissions and other pollutants associated with the Board’s currently proposed remedy.

The sheer magnitude of the cleanup the Board is contemplating may also result in adverse economic impacts to our members, assuming that the proposed approach is even feasible from a technological standpoint. These economic impacts are in addition to the direct economic impact on the named parties subject to the Draft CAO. Any disruption of economic activity that may result from extensive dredging or other remedial activities in the port would affect all of our members that own property, have operations, or perform contract services there. To the extent the remedial activities force businesses to suspend or discontinue operations, they directly place the jobs of our members at risk.

Our particular interests cannot and will not be adequately represented by the named parties to the Draft CAO. Though there is some overlap of interests between our organization and the named parties, the named parties’ interests are distinct from ours. The named parties will bear the responsibility, financial and otherwise, of implementing the conditions of an adopted CAO. Their efforts at the proceedings will necessarily focus on the direct impacts the Draft CAO has on them. During these proceedings, they cannot be expected to adequately promote the particularized concerns of our members with respect to economic activity, environmental impacts, and other potential concerns.¹ Because our concerns are unique and are not likely to be advocated by the named parties, we must be afforded designated party status.

IEA is also fundamentally opposed to the Regional Board’s methodology thus far. Seemingly without any scientific evidence of actual harm to human or marine populations, the Board has decided that the mere presence of certain chemicals in Bay sediments is enough to justify a large-scale sediment removal project. One of IEA’s primary missions is to advocate regulatory solutions that are founded upon good science, and that take into consideration verifiable effects on human health and the environment, if any. The approach the Regional Board appears to have taken flies in the face of IEA’s mission. Moreover, it is not clear to us what standard the Regional Board is relying on with respect to sediments.

¹ In this regard, we object to the Board’s requirement in the Notice of Pre-Hearing Conference that we describe the evidence to be presented at the proceedings. Until we see the Draft Technical Report and revised Draft CAO, it is impossible for us to know what evidence we will put forth during the proceedings. Notwithstanding this objection, we would anticipate putting forth evidence showing how our members would be impacted by the CAO, and challenging whether the evidence in the record justifies the terms of the Draft CAO.

If the Regional Board's approach in this Draft CAO becomes precedent, unsupported sediment cleanups could be imposed at other locations in the San Diego region where our members engage in economic activity, thereby affecting our members in future Regional Board actions. The cost to our members of complying with these types of actions would be exorbitant. Costs aside, these types of remedial solutions would be extraordinarily complicated from an engineering standpoint. Such measures would substantially affect our right and privilege to use and enjoy our property, without a corresponding benefit to human health or marine communities. They would likely also affect the rights and privileges of adjacent landowners and tenants, and could result in other, unnecessary adverse environmental impacts in the coastal zone (e.g., re-suspension of historical contaminants, diesel emissions from dredging machines and trucks that would be required to carry out the measures of the Draft CAO, direct physical impacts to the existing marine environment and human activity, etc.).

The Regional Board's proposed action also has ramifications throughout the state. If the Draft CAO becomes the model for other Regional Boards' approaches to marine sediments, both California's economy and its environment will be adversely impacted. Any uncertain benefit that could be achieved by large-scale sediment dredging and the other onerous conditions in the Draft CAO would clearly be outweighed by other environmental and economic consequences to the State. Because many of our members have operations at other coastal areas in California, we are doubly concerned with the proposed action. We must have a full opportunity to challenge this approach before it adversely affects our members' activities here and throughout the state.

For the foregoing reasons, we respectfully request Designated Party status for the matter referenced above. We appreciate in advance your consideration of this request.

Sincerely,



Patti Krebs
Executive Director

cc: Mr Michael Chee
Mr. Sandor Halvax
Mr. David Merk
Mr. Brian Gordon
Mr. Scott Tulloch
Mr. Vincent Gonzalez
Mr. H. Allen Fernstrom
Mr. Christopher J. McNevin
Mr. Roy Thun
Ms. Laura Hunter
Mr. David Barker