



California Regional Water Quality Control Board San Diego Region



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

August 31, 2006

In reply refer to:
EXEC:03-0284.05:MMcCann

Mr. David L. Mulliken
Latham & Watkins LLP
600 West Broadway, Suite 1800
San Diego, California 92101-3375
City, State, Zip

Dear Mr. Mulliken::

SUBJECT: TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126

This is to acknowledge receipt and review of your letter dated August 25, 2006 to the Regional Board Advisory Team regarding the documents in support of the Tentative Cleanup and Abate Order (Tentative CAO) and the separation of powers between the Advisory Team and Cleanup Team.

The indexing and digitizing of documents in support of the Tentative CAO is entirely appropriate and clearly necessary. While the volume of documents is considerable, the estimated cost of having this done for the benefit of all parties and the public is not excessive. The estimated cost of \$92,000 to provide the record in a digitized format hardly seems excessive or unreasonable given that it is less than 0.1 percent of what has been claimed will be the cost of complying with the Tentative CAO.

Your objection regarding reimbursement for costs is noted, but it is premature to raise this objection at this time because none of the alleged dischargers have been billed for the costs. When and if it is decided to bill the alleged parties, we will follow the 13365 procedure to resolve such disputes.

And, your objection regarding the large size of the record identified by the Cleanup Team to support the Tentative CAO is also premature. Once the entire digitized record is lodged with the Advisory Team, the parties will have the right to object to portions of it being included as the record.

Since the cleanup team may well propose changes to the Tentative CAO dependent upon the substance of their technical report, any objections regarding the substance of the Tentative CAO are again premature,

California Environmental Protection Agency

In response to your comment questioning the integrity of the "separation of powers" process that the Regional Board staff is following, I want to assure you that the Regional Board staff has faithfully adhered to and will continue to adhere to its separation of functions between the advisory team and the cleanup team. As the Regional Board Executive Officer, I have the overall responsibility for the work of the entire staff. From time to time I have requested the status of the technical report. The work to have the record properly digitized is an issue outside the scope of the separation of functions. A joint request for funds from the State Water Resources Control Board to pay for the digitization of documents was necessary and, in my view, does not violate the principles behind the separation of functions.

Lastly, your request to reconsider the need for a Technical CAO is misplaced and better directed to the Cleanup Team since they are the entity with the responsibility of proposing it to the Regional Board. Clearly, it would be inappropriate for the Advisory Team or the Regional Board to make that determination before receiving the evidence.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,


JOHN H. ROBERTUS
Executive Officer

cc: Shipyard Sediment Distribution List

Shipyard Sediment Distribution List

Name	Organization	Address
James Dragna	ARCO/BP (Bingham McCutchen, LLP)	355 S Grand Ave, Suite 4400 Los Angeles, CA 90071-3106
Sandor Halvax	Bae Systems	P.O. Box 13308 San Diego, CA 92170-3308
Christopher McNevin	Chevron (Pillsbury Winthrop Shaw Pittman, LLC)	725 S Figueroa St, Suite 2800 Los Angeles, CA 90017-5406
Timothy Miller	City of San Diego	1200 Third Ave, Suite 1100 San Diego, CA 92101-4100
H. Allen Fernstrom	MARCO	2300 W Commodore Way Seattle, WA 98199
David Mulliken	NASSCO (Latham & Watkins LLP)	600 W Broadway, Suite 1800 San Diego, CA 92101-3375
James Mathison	Port (Daley & Heft)	462 Stevens Ave, Suite 201, Solana Beach, CA 92075
Marco Gonzalez	San Diego BayKeeper EHC	Coast Law Group LLP 169 Saxony Rd, Suite 201 Encinitas, CA 92024
Tom Fetter	San Diego Port Tenants Association	2550 Fifth Ave, Suite 629 San Diego, CA 92103
Vincent Gonzales	SDG&E Sempra Energy	555 W Fifth St, Suite 1400 Los Angeles, CA 90013-1011
John Richards	State Water Resources Control Board Office of Chief Counsel	1001 I Street, Sacramento, CA 95814
David Silverstein	US Navy	Dept of the Navy, Office of the General Counsel, Counsel for Southwest Div, Naval Facilities Engineering Command 1220 Pacific Highway, RM 250 San Diego, CA 92132-5189