



DEPARTMENT OF THE NAVY
COMMANDER NAVY REGION SOUTHWEST
937 NO. HARBOR DR.
SAN DIEGO, CALIFORNIA 92132-0058

IN REPLY REFER TO:
5090
Ser N45JWW.lis/0140
April 22, 2008

San Diego Regional Water Quality Control Board
Attn: Michael P. McCann, Supervising Engineer
9174 Sky Park Court, Suite 100
San Diego CA, 92123

Dear Mr. McCann:

SUBJECT: TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126
COMMENTS ON PROPOSED PHASE III SCHEDULE AND
ADMINISTRATIVE RECORD

Pursuant to Paragraph 3 of the First Amended Order of Proceedings, the U.S. Navy formally requests an extension of the proposed schedule for Phase III of the Order of Proceedings. The Administrative Record prepared by the RWQCB is larger than anticipated and will require additional time for review.

The specific reasons why the existing schedule and processes are insufficient are as follows:

Size of the Administrative Record

The record consists of approximately 375,000 pages of documents in 8,800 separate files, which is nearly three times larger than the parties anticipated as recently as 2007. The sheer number of documents requires an extension of the review period in order for the Designated Parties to conduct a meaningful review.

Organization of the Administrative Record

The files are not searchable across all documents, requiring the reviewing party to individually open each file. Further, the Record does not indicate what part of the Draft Tentative Cleanup and Abate Order and technical report the files pertain to.

Time Taken by the RWQCB to Prepare the Record

The Board took approximately three years to prepare its report and compile the Record. This is indicative of the size and complexity of the record, and it is unreasonable to expect the Designated Parties to perform a comprehensive review and offer comments on that record in only 90 days.

The Navy intends to take advantage of the requested additional time or revised process as follows:

Review the Administrative Record

The size and organization of the Administrative Record will require more time than currently allotted for the Navy to conduct

any meaningful review. For the reasons described above, a longer period devoted strictly to review of the voluminous Record is necessary. This is especially true in the Navy's case where hiring contract support to do the job is slowed down by federal contracting restrictions.

Conduct Written Discovery

The Navy should have the opportunity to conduct written discovery, including interrogatories or requests for production of documents and issuance of 3rd party subpoenas.

Conduct Depositions

If warranted by a comprehensive review of the Administrative Record and the results of written discovery, the Navy should have the time to conduct Depositions of parties with factual knowledge of the matters at issue.

Prepare Technical Submittals and Submit Phase IV Rebuttal Evidence

After any discovery is complete, the Navy would like time for its technical experts to prepare submittals and also submit rebuttal evidence.

Due process requires that the Board modify the current schedule to allow more time for review and also allow time for discovery and preparation of technical submittals. The Designated Parties would be severely prejudiced if the current schedule is not modified.

If you need further information regarding this submittal, please contact me at (619) 532-2273.

Sincerely,



BRIAN S. GORDON
Director, Compliance and
Technical Division
By direction

Cc: Advisory Team, c/o Michael P. McCann (12 copies)
David Barker, Regional Water Quality Control Board
Vice-Chair and Presiding Officer, David King, Regional Water
Quality Control Board
David Silverstein, NAVFAC
Nate Cushman, NAVFAC