

September 30, 2009

Mr. David King
Presiding Officer for Prehearing Proceedings
San Diego Regional Water Quality Control Board



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

Dear Mr. King:

On behalf of designated parties San Diego Coastkeeper and Environmental Health Coalition (environmental parties) please accept this response to your September 17, 2009 request for a proposed schedule for the release of a draft revised Cleanup and Abatement Order and hearing before the Regional Board.

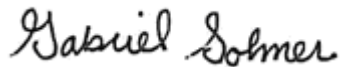
At the outset we urge you to carefully weigh all proposals with an eye to the long history of this site and the ongoing daily damage to the bay, a public trust resource. On a practical level, you must also consider the 15-month mediation process. The mediation dragged on beyond its useful life, excluding duly designated parties. Ultimately, the environmental parties are left in an informational vacuum as to what decisions have already been made. However, for over a year potentially responsible parties and the Cleanup Team had access to a forum for discussion of cleanup levels, footprints, remedial monitoring, and other issues of concern. As such, the hearing process must not retread over this same ground as an avenue to delay. Our proposal avoids punishing the public for a delay beyond its control while moving to a final hearing as expeditiously as possible.

Date	Action	Party
November 15	Revised draft Technical Report; revised draft CAO released to the public	Cleanup Team
November 15 – February 15	90 day public comment period	Designated Parties and interested persons
March 15	Final CAO and Technical Report released to the public with response to comments	Cleanup Team
March 15 – April 15	30 day public comment period	Designated Parties and interested persons
May 12 (or other regularly or specially scheduled May meeting date)	Regional Board Hearing on CAO <i>To be held in close proximity to the impacted area as contemplated by Environmental Justice Guidelines</i>	Regional Board Members

The schedule above does not contemplate potential California Environmental Quality Act milestones. To the extent CEQA concerns are implicated by the cleanup, any environmental documents must be prepared concurrently with the hearing process and cannot be allowed to hold up the date of an ultimate administrative hearing by this Board.

Our proposed schedule allows for public participation, effective use of staff resources and protection of the rights of potentially responsible parties; all while achieving a final hearing on the merits of the cleanup within the first half of next year. Perhaps the subject line of your last order provides the best explanation for the need to move swiftly toward resolution – the current tentative CAO dates from 2005. This Board has consistently failed to meet its own as well as outside imposed deadlines. In your action to set a schedule for a hearing on the CAO you must be resolute in avoiding this pattern of delay, moving swiftly to a protective, scientifically defensible cleanup that ends this chapter of contamination.

Sincerely,



Gabriel Solmer
Legal Director
San Diego Coastkeeper

cc: Catherine Hagan, John Robertus; San Diego Regional Water Quality Control Board