

**STATE WATER RESOURCES CONTROL BOARD
WATER QUALITY ORDER NO. 2004-0017-DWQ**

**GENERAL ORDER REQUIRING OWNERS AND OPERATORS OF SPECIFIED VESSEL
TERMINALS LOCATED IN NEWPORT BAY AND HUNTINGTON HARBOUR TO INSTALL,
MAINTAIN, AND OPERATE PUMPOUT FACILITIES AND DUMP STATIONS WHERE
NECESSARY TO PROTECT WATER QUALITY
(GENERAL ORDER)**

The State Water Resources Control Board (State Board) finds that:

1. The Federal Clean Vessel Act prohibits the discharge of sewage into No Discharge Zone (NDZ) waters. An NDZ is an area of a water body or an entire water body into which the discharge of treated or untreated sewage from all vessels is prohibited to protect environmentally sensitive areas, including shellfish beds, coral reefs, and fish spawning areas, or drinking water sources. States can establish NDZs if they can demonstrate to United States Environmental Protection Agency (U.S. EPA) that safe and adequate vessel sewage pumpout facilities are available
2. Newport Bay and Huntington Harbour were designated NDZs by the U.S. EPA in 1976. At that time, there were an appropriate number of pumpout facilities in Newport Bay and Huntington Harbour. Since that time, there has been an increase in the number of vessels using both harbors.
3. In 1988, the Santa Ana Regional Water Quality Control Board (Santa Ana Regional Board) found that the vessel waste program in Newport Bay was inadequate and thus adopted Resolution No. 88-89 and Orders No. 88-83, 88-84, 88-85, 88-89, 88-91. Resolution No. 88-89 approved a vessel pumpout program for Newport Bay and the other orders required certain vessel terminals to install vessel pumpout facilities. These orders were neither waste discharge requirements nor enforcement actions, and no follow-up was done to determine compliance. These orders and the resolution are active and need to be rescinded concurrently with the State Board's adoption of this order.
4. Water contact recreation (REC1) is one of the designated beneficial uses for Huntington Harbour. Water contact recreation (REC1) and shellfish harvesting (SHEL) are designated beneficial uses for Newport Bay. The Water Quality Control Plan (Basin Plan) specifies numeric water quality objectives for fecal coliform bacteria in order to protect these designated beneficial uses of Huntington Harbour and Newport Bay. Discharges of sewage from vessels adversely affect these beneficial uses and may cause or contribute to violation of the fecal coliform objectives.
5. In 1994, Newport Bay was listed on the federal Clean Water Act Section 303(d) list of impaired water bodies due to bacterial contamination. In 1998, the Santa Ana Regional Board established the Newport Bay fecal coliform total maximum daily load (TMDL) to address bacterial contamination. The TMDL includes a zero waste load allocation for vessel waste discharges, in recognition of the NDZ status of the Bay. The TMDL requires the City of Newport Beach and the County of Orange to conduct additional studies to assess the effectiveness of the vessel pumpout program.
6. In 1994, Huntington Harbour was listed on the 303(d) list of impaired water bodies due to bacterial contamination. No bacteria TMDL has yet been established for Huntington Harbour. Once established, the TMDL is expected to include a zero waste load allocation for vessel waste discharges, in light of the NDZ status of Huntington Harbour.
7. California Harbors and Navigation Code Section 776 provides the authority to the State Board to require vessel terminal owners/operators to provide adequate vessel sewage retention device pumpout capability at locations that are convenient to the vessel users. Title 23, Chapters 20 and 20.1 of the California Code of Regulations implements the Harbors and Navigation Code requirements for vessel sewage waste.

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8. California Code of Regulations (Title 23, Chapters 20 and 20.1) contain regulations for the State Board and Regional Water Quality Control Boards (Regional Boards) to follow in requiring any person lawfully vested with the possession, management, or control of a vessel terminal to provide adequate vessel sewage retention device pumpout capability at locations which are convenient and accessible to vessel users. The regulations include standards establishing criteria for the design, construction, operation, and maintenance of pumpout facilities and specifies administrative procedures to be followed to provide a standard method of determining which vessel terminals shall be required to install and operate these facilities.
9. If the Regional Board determines there is a need for additional pumpout facilities, the Regional Board is to request that the State Board require specified vessel terminals to install and operate the vessel waste pumpout facility where necessary to protect water quality. The Regional Board is also required to provide a list of the existing vessel terminals in the area being considered for additional pumpout facilities, whether these vessel terminals are privately owned or publicly owned, whether they are for private or public use, and the locations of existing pumpout facilities.
10. If the Regional Board determines that there is no public vessel terminal within an area in which additional pumpout facilities are needed, the State Board is required to hold a public hearing to determine whether private vessel terminals should be designated to provide pumpout facilities.
11. In October 2002, the Orange County CoastKeeper (OCCK) conducted a survey of pumpout facilities in Huntington Harbour and Newport Bay and found significant deficiencies. Problems noted included inoperable pumpout facilities, poor housekeeping, and limited or no access to the existing pumpout facilities.
12. On March 19, 2003, Santa Ana Regional Board staff and OCCK surveyed several of the pumpout facilities surveyed in the OCCK study. Santa Ana Regional Board staff noted similar deficiencies. In addition, Santa Ana Regional Board staff determined that there are no dump stations in Newport Bay or Huntington Harbour. Dump stations are used by boaters who have an on-board port-a-potty to receive and retain sewage in lieu of an installed sewage retention device.
13. Based on the surveys and consideration of relevant federal and state guidelines, Santa Ana Regional Board staff prepared a "Pumpout Facilities Need Report" (Report). The Report lists the existing publicly and privately-owned vessel terminals in Newport Bay and Huntington Harbour; specifies whether these vessel terminals are for public and/or private use; and, identifies the locations of existing pumpout facilities. The Report describes the observed deficiencies in the vessel sewage disposal program in both waterbodies and specifies a recommended "Vessel Sewage Disposal Program".
14. Based on the findings of the Report, three (3) additional pumpout facilities and three (3) dump stations are necessary in Huntington Harbour; five (5) additional pumpout facilities and three (3) dump stations are necessary in Newport Bay. The locations of the needed pumpout facilities and dump stations are specified in the recommended "Vessel Sewage Disposal Program". Further, to ensure the success of the recommended program in Huntington Harbour and Newport Bay, the Santa Ana Regional Board has recommended that vessel terminal owners/operators and/or responsible agencies implement an operation, maintenance, and public education and outreach program. The installation and maintenance of these facilities are necessary to comply with NDZ provisions and to protect REC-1 and SHEL beneficial uses in Newport Bay and Huntington Harbour.
15. The Santa Ana Regional Board held public workshops on May 16, 2003 and August 22, 2003 to solicit comments regarding staff's recommendations for additional pumpout facilities, the need for dump stations, and the operation, maintenance, public education and outreach and monitoring program specified in the "Pumpout Facilities Need Report". Santa Ana Regional Board staff also had extensive discussions with interested agencies and parties, who provided comments leading to modification of the recommended "Vessel Sewage Disposal Program".

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16. On August 22, 2003, the Santa Ana Regional Board approved Resolution No. R8-2003-0074, approving the pumpout facility need delineated in the "Pumpout Facility Need Report" and requesting that the State Board adopt requirements implementing the recommended "Vessel Sewage Disposal Program" for Newport Bay and Huntington Harbour. These include requirements for the installation of additional vessel waste disposal facilities (pumpout facilities and dump stations) at specified vessel terminals and the implementation by responsible parties and agencies of specified operation, maintenance, public education and outreach, and monitoring programs.
17. On September 10, 2003, the Santa Ana Regional Board submitted a "Transmittal of Regional Board Recommended Vessel Sewage Disposal Program for Newport Bay and Huntington Harbour" to the State Board, requesting that the State Board require the implementation of the recommended "Vessel Sewage Disposal Program" in Newport Bay and Huntington Harbour.
18. Under the Harbors and Navigation and Code and applicable State Board regulations, the State Board is authorized to require vessel terminals to install facilities for the transfer and disposal of sewage from marine sanitation devices. The Harbors and Navigation Code defines marine sanitation device to mean "any equipment on board a vessel which is designed to receive, retain, treat, or discharge sewage and any process to treat the sewage". The State Board is also authorized to, and has, adopted standards governing the design, construction, operation and maintenance of vessel pumpout facilities.
19. It is appropriate to approve authorized provisions of the Santa Ana Regional Board's "Recommended Vessel Sewage Disposal Program" in order to protect water quality in Newport Bay and Huntington Harbour. These provisions include the requirements to install pumpout facilities and dump stations and to comply with existing mandates in the Harbors and Navigation Code and applicable State Board regulations.
20. The Santa Ana Regional Board developed a comprehensive Vessel Sewage Disposal Program that requires the installation of pumpout facilities and dump stations in compliance with existing mandates of the Harbors and Navigation Code and applicable State Board regulations. The Santa Ana Regional Board's program is consistent with the State Board's minimum standards for the design, construction, operation, and maintenance of pumpout facilities. The Santa Ana Regional Board's program also contains elements, such as, cost provisions, education and access, and live-aboard vessel provisions, that go beyond the State Board's minimum standards. The Santa Ana Regional Board may implement these provisions under their own authorities, as appropriate.
21. On November 3, 2004, the State Board held a public hearing to receive comments and testimony on the proposed adoption of a general order requiring specified vessel terminal owners/operators to install and operate vessel waste pumpout facilities and dump stations at the specified locations. The proposed order includes an implementation schedule. The State Board has considered the evidence in the record, including the hearing record, in reaching a decision on this proposed order. In particular, the State Board and the Santa Ana Regional Board have considered the number and types of vessels that use or are berthed at the vessel terminals and whether there are pumpout facilities at other locations that are convenient, accessible, and have sufficient capacity for vessels that use or are berthed at the vessel terminal.
22. The Regional Board's Recommended Program's targeted facilities were identified for installation of sewage disposal facilities based on a capacity for 50 or more marine vessels and other required factors contained in the Harbors and Navigation Code and State Board regulations. The actual occupancy of the marina, which varies with time, was not a factor.
23. It is neither the State Board's nor the Regional Board's intent to require privately owned and operated marine vessel terminal to provide services to the general public.

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24. The California Department of Boating and Waterways administers the Clean Vessel Act Pumpout Grant Program to reimburse recipients for up to 75% of the installed cost of pumpout facilities and dump stations. The grant is available to the private and public sector when sewage disposal facilities are made available for public use.
25. Issuance of a State Board Order requiring the installation and operation of pumpout facilities at specified vessel terminals is exempt from the requirement of the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* as an action to protect the environment (Title 14, CCR Section 15308) and an action requiring the placement of minor structures accessory to existing commercial or institutional facilities (Title 14, CCR Section 15311).
26. Further, the State Board and the Santa Ana Regional Board have considered the factors specified in the California Code of Regulations [title 23, section 2834.1(c)] in determining which marine terminals should be required to provide pumpout facilities. A detailed explanation of these factors is contained in the [Fact Sheet](#) to this order, which is hereby incorporated into this order.

IT IS HEREBY ORDERED that owners and/or operators of specified vessel terminals shall comply with the following:

A. Pumpout Facilities and Dump Stations:

1. **Newport Bay** – The following owners of vessel terminals located in Newport Bay are required to install additional sewage disposal facilities, at locations that are convenient and accessible to the vessel users:
 - a. **Swales Yacht Anchorage** - 2888 Bayshore Drive –Installation of one pumpout facility.
 - b. **Bayshores Marina** - 301 Shipyard Way - Installation of one pumpout facility.
 - c. **Bahia Corinthian Yacht Club** - 1601 Bayside Drive – Installation of one pumpout facility.
 - d. **Lido Yacht Anchorage/Dry Storage (Bellport)** - 201 Shipyard Way – Installation of one pumpout facility and one dump station.
 - e. **Bayside Village (De Anza)** – 300 East Coast Highway – Installation of one dump station.
 - f. **Newport Dune Resort Marina** – 101 N. Bayside Drive – Installation of one dump station.
 - g. **Balboa Marina** – 201 East Pacific Coast Highway – Installation of one pumpout facility.
2. **Huntington Harbour** – The following owners of vessel terminals located in Huntington Harbour are required to install additional sewage disposal facilities, at locations that are convenient and accessible to the vessel users:
 - a. **Davenport Marina** – 4052 Davenport Drive, Huntington Beach - Installation of one pumpout facility.
 - b. **Coral Cay Marina** – 27405 Puerta Real, Mission Viejo – Installation of one pumpout facility.
 - c. **Tennis Club Estates** – 2888 Bayshore Drive, Huntington Beach – Installation of one pumpout facility.
 - d. **Sunset Aquatic Marina** - 2901 A Edinger Avenue, Huntington Beach – Installation of two dump stations.

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e. Lifeguard Dock – City of Huntington Beach – Installation of one dump station.

3. For facilities managed by a Homeowners' Association, where the association determines that it cannot justify the need based on a low number of boats with marine sanitation devices or the expense of installing a vessel waste pumpout facility, the Santa Ana Regional Board may authorize, subject to appropriate conditions, the Homeowners' Association to (1) employ a private pumpout service to pumpout the appropriate boats on a consistent and regular schedule in lieu of installing pumpout facilities or (2) contract with another marina located in Huntington Harbour, with an existing pumpout facility, to allow the Association's boat owners to use the marina's pumpout facility.
4. Where a vessel terminal owner/operator determines that a pumpout facility cannot be installed as required, the Santa Ana Regional Board may allow, subject to appropriate conditions, the owner/operator to contract with a private pumping service for all of its tenants' vessels as an alternative to installing the required pumpout facility.
5. With Santa Ana Regional Board approval and subject to appropriate conditions, landside restroom facilities may be used as an alternative to installation of a required dump station at vessel terminals with less than 50 vessels under 26 feet in length.
6. Vessel terminal owners and operators shall comply with State Board regulations that establish minimum standards for the design, construction, operation, and maintenance of vessel pumpout facilities. In addition, they must comply with any more stringent requirements that the Regional Board, within its authority and discretion, imposes to implement this general order.
7. By November 30, 2005, the Regional Board shall evaluate the approved Vessel Sewage Disposal Program to assess the need to expand the requirements to include all of the marinas located within the Santa Ana Region and present their findings and recommendations to the State Board.

B. Time Schedule:

Vessel terminal owners must comply with the following installation time schedule unless the Regional Board, for good cause, revises the time schedule:

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<u>Task</u>	<u>Compliance Date</u>
<ul style="list-style-type: none"> • Indicate commitment to install the additional pumpout facilities and/or dump stations via letter to the Executive Officer of the Santa Ana Regional Board 	30 days after State Board Order Issued
<ul style="list-style-type: none"> • Prepare and submit plans and specifications for pumpout facility/dump station installation to the Executive Officer of the Santa Ana Regional Board. If the Executive Officer does not approve of the pumpout facility and dump station location, or determines the plans and specifications are inadequate, the vessel terminal operator shall prepare new or supplemental plans and specifications in accordance with a schedule set by the Executive Officer of the Santa Ana Regional Board. 	90 days after commitment
<ul style="list-style-type: none"> • Submit plans and agreements for pumpout facility/dump station maintenance to the Executive Officer of the Santa Ana Regional Board. 	30 days after plans and specs approved
<ul style="list-style-type: none"> • Begin construction and installation of pumpout facility/dump station. 	30 days after maintenance plans submitted to Santa Ana Regional Board
<ul style="list-style-type: none"> • Complete construction and installation of pumpout facility/dump station. 	90 days after construction commencement
<ul style="list-style-type: none"> • Notify Executive Officer of the Santa Ana Regional Board. 	Within 30 days after construction completed.

IT IS FURTHER ORDERED that the Santa Ana Regional Board Resolution No. 88-89 and Orders Nos. 88-83, 88-84, 88-85, 88-89, and 88-91 are hereby rescinded.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted a meeting of the State Water Resources Control Board held on November 18, 2004.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton
Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.


Debbie Irvin
Clerk to the Board

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I. Background

Newport Bay and Huntington Harbour were designated No Discharge Zones (NDZ) by the U.S. Environmental Protection Agency (U.S.EPA) in 1976. A NDZ is an area of a water body or an entire water body into which the discharge of treated or untreated sewage from all vessels is prohibited to protect environmentally sensitive areas, including shellfish beds, coral reefs, and fish spawning areas, or drinking water sources. States can establish NDZs if they can demonstrate to U.S.EPA that safe and adequate pumpout facilities are available.

In 1988, the Santa Ana Regional Water Quality Control Board (Santa Ana Regional Board) found that the vessel waste program in Newport Bay was inadequate and thus adopted Resolution No. 88-89 and Orders No. 88-83, 88-84, 88-85, 88-89, 88-91. Resolution No. 88-89 approved a vessel pumpout program for Newport Bay and the other orders required certain vessel terminals to install vessel pumpout facilities. These orders were neither waste discharge requirements nor enforcement actions, and no follow-up was done to determine compliance. Currently, these orders and the resolution are active and will need to be rescinded if the State Water Resources Control Board (State Board) adopts an order requiring the installation of vessel pumpout facilities in Newport Bay.

In 1994, Newport Bay was listed on the federal Clean Water Act Section 303(d) list of impaired water bodies due to bacterial contamination. In 1998, the Santa Ana Regional Board established the Newport Bay fecal coliform total maximum daily load (TMDL) to address bacterial contamination. The TMDL includes a zero waste load allocation for vessel waste discharges, in recognition of the NDZ status to the Bay. The TMDL requires the City of Newport Beach and the County of Orange to conduct additional studies to assess the effectiveness of the vessel pumpout program.

In 1994, Huntington Harbour was listed on the 303(d) list of impaired water bodies due to bacterial contamination. No bacteria TMDL has yet been established for Huntington Harbour. Once established, the TMDL is expected to include a zero waste load allocation for vessel waste discharges, in light of the NDZ status of Huntington Harbour.

Water contact recreation (REC1) is one of the beneficial use designations specified for Huntington Harbour in the Santa Ana Regional Board's Water Quality Control Plan (Basin Plan). Water contact recreation and shellfish harvesting (SHEL) are among the beneficial use designations specified for Newport Bay in the Basin Plan. The Basin Plan specifies numeric water quality objectives for fecal coliform bacteria in order to protect these designated beneficial uses of Huntington Harbour and Newport Bay. Discharges of sewage from vessels adversely affect these beneficial uses and may cause or contribute to violation of the fecal coliform objectives.

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In October 2002, the Orange County CoastKeeper (OCCK) performed a survey of vessel waste pumpout facilities in Orange County (including those in Huntington Harbour, Newport Bay and Dana Point Harbor). The survey revealed major problems related to pumpout facilities, in particular those located in Newport Bay and Huntington Harbour. These include: limited number of pumpout facilities, inoperable pumpout facilities, limited access to existing pumpout facilities, poor housekeeping, improper use of the pumpout facilities, lack of public education on proper use of pumpout facilities and high bacteria levels in the water in the vicinity of the pumpout facilities.

On March 19, 2003, Santa Ana Regional Board staff, accompanied by the OCCK, surveyed several of the pumpout facilities listed in the OCCK report to determine their status. Santa Ana Regional Board staff noted similar deficiencies. In addition, Santa Ana Regional Board staff determined that there are no dump stations in Newport Bay or Huntington Harbour. Dump stations are used by boaters who have an on-board port-a-potty to receive and retain sewage in lieu of an installed sewage retention device.

II. Statutory and Regulatory Authorities:

California Harbors and Navigation Code (Chapter 6, Division 3) provides the statutory authority for the State Board, in coordination with Regional Water Quality Control Boards (Regional Boards) to develop and adopt standards for the location, construction, operation, and maintenance of vessel pumpout facilities and require installation of sewage disposal facilities at vessel terminals. Vessel terminals are defined in the Harbors and Navigation Code as any private or shore-side installation on any waters of the state that provides mooring, docking, berthing, and other facilities for the use of vessels. The Harbors and Navigation Code specifies "Every vessel terminal shall, as required by the Regional Board for the protection of the quality of the waters of this state be equipped with vessel pumpout facilities for the transfer and disposal of sewage from marine sanitation devices. In imposing this requirement, the Regional Board shall take into account the number and type of vessels that use or are berthed at the vessel terminal and whether there exists at other locations pumpout facilities that have a total capacity sufficient for, and are convenient and accessible to, vessels that use or are berthed at the vessel terminal." [Section 776.(a)]

The California Code of Regulations (Title 23, Chapters 20 and 20.1) contain regulations for the State Board and Regional Board to follow in requiring any person lawfully vested with the possession, management, or control of a vessel terminal to provide adequate vessel sewage retention device pumpout capability at locations which are convenient and accessible to vessel users. The regulations include standards establishing criteria for the design, construction, operation, and maintenance of pumpout facilities (Sections 2815 through 2829) and specifies administrative procedures to be followed to provide a standard method of determining which vessel terminals shall be required to install and operate these facilities (Sections 2833 through 2835).

Chapter 20.1, Article 2, requires Regional Boards to determine if there is a need for additional pumpout facilities. If there is found to be a need, the Regional Board is to request that the State Board require specified vessel terminals to install and operate pumpout facilities where necessary to protect water quality.

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If the Regional Board determines that there is no public vessel terminal within an area in which additional pumpout facilities are needed, the State Board is required to hold a hearing to determine whether private vessel terminals should be designated to provide pumpout facilities. After consideration of the Regional Board request and the record of any Regional Board hearing or State Board hearing, the State Board may issue an order requiring vessel terminals to install and operate vessel waste pumpout facilities. The order would include an implementation schedule. Copies of the order would be sent to the Regional Board, the vessel terminal owner, and to other vessel terminals within the area of activity.

III. Santa Ana Regional Board's Recommended Vessel Sewage Disposal Program for Newport Bay and Huntington Harbour

On August 22, 2003, the Santa Ana Regional Board approved Resolution No. R8-2003-0074 requesting the State Board to require implementation of the recommendations of the proposed "Vessel Sewage Disposal Program" for specific vessel terminal owners/operators, the cities of Huntington Beach and Newport Beach and the County of Orange to install, operate and/or maintain pumpout facilities and dump stations in Newport Bay and Huntington Harbour. The Santa Ana Regional Board found that adoption of Resolution No. R8-2003-0074 is exempt from the requirements of the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* as an action to protect the environment (Title 14, CCR Section 15308) and the placement of minor structures accessory to existing institutional facilities (Title 14, CCR Section 15311).

The Santa Ana Regional Board prepared a "Pumpout Facilities Need Report" that: (1) identifies existing publicly and privately owned vessel terminals in Newport Bay and Huntington Harbour; (2) specifies whether these vessel terminals are for public and/or private use; (3) identifies the locations of existing sewage disposal facilities; (4) describes the observed deficiencies in the vessel sewage disposal program in both waterbodies; and, (5) specifies a recommended Vessel Sewage Disposal Program. The Report also includes the OCCK's "Survey of Pumpout Facilities Report, October 2002".

Based on findings of the Report, three (3) additional pumpout facilities and three (3) dump stations are needed in Huntington Harbour; five (5) additional pumpout facilities and three (3) dump stations are needed in Newport Bay. The locations of the needed pumpout facilities and dump stations are specified in the recommended "Vessel Sewage Disposal Program" [see Section 2833.1(c) below]. Further, to ensure the success of the vessel sewage waste program in Huntington Harbour and Newport Bay, the Santa Ana Regional Board is recommending that vessel terminal owners/operators and/or responsible agencies implement an operation, maintenance, monitoring, and public education and outreach program.

Information submitted by the Santa Ana Regional Board is organized below in accordance with the General Provisions and Administrative Procedures contained in Chapter 20.1 - Designation of Vessel terminals to Provide Adequate Sewage Retention Device Pumpout Facilities (regulatory language is in bold).

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Article 1. Section 2831 – General Provisions

Pursuant to Chapter 6 (commencing with Section 775) of Division 3 of the Harbors and Navigation Code the State Board shall, as needed for the protection of water quality, require any person lawfully vested with the possession, management, or control of a vessel terminal to provide adequate vessel sewage retention device pumpout capability, at locations which are convenient and accessible to vessel users. It is the intent of these regulations to provide a standard method of determining which vessel terminals shall be required to install and operate pumpout facilities.

Article 2. Administrative Procedures

Section 2833 –Regional Board Request

Each Regional Board, upon determining a need for additional pumpout facilities within its region, shall request the State Board to require specified vessel terminals to install and operate pumpout facilities where necessary to protect water quality.

On September 10, 2003, the Executive Officer of the Santa Ana Regional Board submitted: (1) Resolution No. R8-2003-0074 – Requesting that the State Board “Require the Implementation of a Vessel Sewage Disposal Program in Newport Bay and Huntington Harbour”; and (2) “Pumpout Facilities Need Report”. The program requested by the Santa Ana Regional Board includes: (1) the installation of additional vessel waste disposal facilities (pumpout facilities and dump stations) at specified vessel terminals, (2) pumpout facility and dump station operation, monitoring, and maintenance requirements, and (3) implementation of boater educational programs. The transmittal includes:

1. Resolution No. R8-2003-0074 – Requesting that the State Board Require the Implementation of a Vessel Sewage Disposal Program in Newport Bay and Huntington Harbour, including the Installation of Pumpout Facilities and Dump Stations at Specified Vessel Terminals and Rescinding Orders No. 88-83, 88-84, 88-85, 88-89, 88-91.
2. Pumpout Facilities Need Report
3. Transcripts of the Santa Ana Regional Board’s deliberation on this matter at an August 22, 2003 public hearing.

Section 2833.1 – Contents of Santa Ana Regional Board’s Request for Pumpout Facilities

Requests for requiring vessel terminals to install and operate vessel waste pumpout facilities shall be forwarded to the State Board by the Regional Board. Each request shall be based upon the guidelines contained in Section 2834.1 and shall include the following as well as any other information requested by the State Board.

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(a) Designation of the area where additional facilities are needed:

Designated areas include Newport Bay and Huntington Harbour.

(b) Explanation of the need for additional pumpout facilities within the area including:

(1) An estimate of the number of vessels with sewage retention devices requiring pumpout facilities:

Newport Bay: 7,500 boats need pumpouts and 1,000 boats need dump stations.

Newport Bay has approximately 10,000 recreational vessels. The majority of these are berthed on moorings or residential piers. A survey conducted in 2000 showed that only about 2,000 of the 10,000 vessels would be docked at a vessel terminal; the rest of the vessels were berthed at residential docks.

The City of Newport Beach estimates that 75% of these 10,000 boats are larger than 16 feet and would require the use of a pumpout facility. Of the remaining 25% of the vessels, 15% are smaller than 16 feet and are considered day use vessels, without a need for a dump station. The remaining 10% are also smaller than 16 feet but would have a portable toilet, thus requiring a dump station. There are no dump stations in Newport Bay.

Huntington Harbour: 3,000 boats need pumpouts. In addition, three dump stations are recommended.

The City of Huntington Beach staff estimates that approximately 3,000 boats are moored in Huntington Harbour. It is estimated that a large percentage of the 3,000 boats are greater than 16 feet and would require the use of a pumpout facility. There are no dump stations in Huntington Harbour.

(2) The location of each vessel terminal:

Newport Bay – The Regional Board’s “Pumpout Facilities Need Report” (Table No. 1) identified the names and locations of twenty-nine (29) facilities located in Newport Bay, including marinas, vessel terminals, anchorages, and piers.

Huntington Harbour – The Regional Board’s “Pumpout Facilities Need Report” (Table No. 2) identified the names and locations of nine (9) facilities located in Huntington Harbour, including marinas, homeowner associations with private docks, and one lifeguard dock.

(3) The location and capacity of existing pumpout facilities:

Newport Bay – Currently, there are twenty-five (25) pumpout facilities in Newport Bay. Eleven (11) are located at privately owned facilities and are for private use only. Six (6) are located at privately owned facilities but are available for public use. There are two publicly owned vessel terminals in Newport Bay with a total of three (3) pumpouts.

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Five (5) pumpouts are located at four public piers. Information on capacities of the facilities was not provided. Typically, pumpouts empty directly into sewer connections and therefore capacity is not a significant factor. Specifically:

Locations of pumpout facilities located at privately owned vessel terminals for private use only (Private/Private):

1. Icon Yacht Charters – 3400 Via Oporto – One slip and one pumpout
2. Larson’s Shipyard – 2703 W. Coast Highway – One slip and one pumpout
3. Nautical Museum – 151 E. Coast Highway – one slip and one pumpout
4. Adventures at Sea – 3101 W. Coast Highway – three slips and one pumpout
5. Pavillion – 111 and 111 ½ Marine Avenue – five slips and one pumpout
6. Hornblower Yacht Charter – 2431 W. Coast Highway – six slips and one pumpout
7. Orca Yacht Charters - 2901 W. Coast Highway – six slips and one pumpout
8. Fun Zone Boat Company – 600 Edgewater Place – 10 slips and one pumpout
9. Crow’s Nest Marina – 2801 W. Coast Highway – 20 slips and one pumpout
10. Lido Yacht Anchorage/Dry Storage – 201 Shipyard Way – 265 slips and one pumpout
11. Blue Water Grill – 630-670 Lido Park Drive (number of slips unknown) – one pumpout.

Locations of pumpout facilities located at privately owned vessel terminals available for public use (Private/Public):

1. American Legion - 215 15th Street - 50 slips and one pumpout
2. Harbor Marina - 3333 West Coast Highway - 50 slips and one pumpout.
3. Lido Village Marina - 3400 Via Oporto – 85 slips and one pumpout.
4. Balboa Yacht Basin - 829 Harbor Island Drive – 171 slips and one pumpout
5. Bayside Village (De Anza) - 300 East Coast Highway – 225 slips and one pumpout.
There is no public restroom.
6. Bayside Marina, 1353 Bayside Drive – 101 slips and one pumpout

Locations of pumpout facilities located at publicly owned vessel terminals (Public/Public):

1. Balboa Bay Club - 1221 West Coast Highway – 140 slips and one pumpout.
2. Newport Dunes Resort Marina and Launch - 101 North Bayside Drive – 232 slips and two pumpouts.

Docks with pumpout facilities available for public use:

1. 15th Street Public Pier – one pumpout
2. Fernando Street Public Pier – one pumpout
3. Harbor Patrol – 1901 Bayside Drive – 2 pumpouts
4. Washington Street Public Pier – one pumpout

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Santa Ana Regional Board staff surveyed 8 of the fourteen pumpout facilities available for public use in Newport Bay. Problems observed included: limited or no access to several of these pumpout facilities; lack of meters to determine usage; and hoses at all of the pumpout facilities were laying on the slips, which could result in backwash or spillage of sewage once the pump is turned off, and denotes improper housekeeping practices.

Huntington Harbour - There are eight (8) privately owned vessel terminals in Huntington Harbour and one public dock. Four of the privately owned vessel terminals are managed by Homeowner Associations for the exclusive use of homeowners to moor their boats. Five (5) of the vessel terminals have no vessel waste disposal facilities. Three (3) privately owned vessel terminals have pumpout facilities and make them available for public use. There is an additional pumpout facility for public use at a lifeguard dock. At the time of the Santa Ana Regional Board report, only one of the four available pumpout facilities was operational. There are no dump stations in Huntington Harbour.

Locations of pumpout facilities located at privately owned facilities for public use:

1. Peters Landing Marina - 16400 Pacific Coast Highway – 325 slips and one pumpout.
2. Huntington Harbour Marina - 4281 Warner – 190 slips and one pumpout.
3. Sunset Aquatic Marina - 2901 A Edinger Avenue – 262 slips and one pumpout.
4. Lifeguard Dock - no slips and one pumpout.

Problems identified included the use of duct tape to repair hoses, broken valves, lack of signs on how to operate the pumpout facilities, lack of signs indicating that Huntington Harbour is a designated NDZ, lack of operational instructions, lack of maps indicating the location of vessel waste pumpout facilities, lack of current phone number for a contact person in case the pumpout facility is inoperable, hoses at all the pumpout facilities were laying on the slips (threatening backwash or spillage of sewage containing water once the pump is turned off), and lack of meters on the pumpout facilities to determine usage.

(c) Recommendations as to which vessel terminal or terminals should install and operate pumpout facilities, the capacity of the facilities which should be installed, and reasons for such recommendations.

Newport Bay - Five additional pumpout facilities and three dump stations are needed. Facilities identified for additional disposal facilities include:

1. Swales Yacht Anchorage - 2888 Bayshore Drive – A privately owned facility for private use only with 57 slips and no pumpouts. Installation of one pumpout recommended.
2. Bayshores Marina - 301 Shipyard Way – a privately owned marina for private use only with 135 slips and no pumpouts. Installation of one pumpout recommended.
3. Bahia Corinthian Yacht Club - 1601 Bayside Drive – a privately owned facility for private use only with 75 slips and no pumpouts. Installation of one pumpout recommended.

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4. Lido Yacht Anchorage/Dry Storage (Bellport) - 201 Shipyard Way – a privately owned facility for private use only with 265 slips and no pumpouts. Installation of one pumpout and one dump station recommended.
5. Bayside Village (De Anza) – 300 East Coast Highway – a privately owned facility open to the public, with 225 slips and one pumpout. Installation of one dump station recommended.
6. Newport Dune Resort Marina – 101 N. Bayside Drive – a privately owned facility open to the public with 232 slips and two pumpouts. Installation of one dump station recommended.
7. Balboa Marina – 201 East Pacific Coast Highway – a privately owned facility with 132 slips and no pumpouts. Installation of one pumpout recommended.

Huntington Harbour - Three additional pumpout facilities and three dump stations are needed. Facilities identified for additional disposal facilities include:

1. Davenport Marina – 4052 Davenport Drive, Huntington Beach – a privately owned facility for private use only with 65 slips and no pumpouts. Installation of one pumpout recommended.
2. Coral Cay Marina – 27405 Puerta Real, Mission Viejo – a privately owned facility managed by a Homeowners Association. For private use only with 58 slips and no pumpouts. Installation of one pumpout recommended.
3. Tennis Club Estates - Huntington Beach – a privately owned facility managed by a Homeowners Association. For private use only with 63 slips and no pumpouts. Installation of one pumpout recommended.
4. Sunset Aquatic Marina - 2901 A Edinger Avenue, Huntington Beach – a privately owned facility open to the public with 262 slips and one pumpout. Installation of two dump stations recommended.
5. Lifeguard Dock – City of Huntington Beach – a public dock with no slips and one pumpout. The pumpout was not operable based on July, 2002 survey. Installation of one dump station recommended.

For those facilities that are managed by a Homeowners Association, if the association determines that they cannot justify the need based on a low number of boats with holding tanks or the expense of installing a vessel waste pumpout facility, it is recommended that they employ a private pumpout service to pumpout the appropriate boats on a consistent and regular schedule. For this alternative to be used, it is recommended that Homeowner Association agreements include this provision and that a copy of the agreement be provided to the Santa Ana Regional Board.

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Recommendations on capacity of needed facilities were not provided. Per telephone conversation with Kevin Atkinson, California Department of Boating and Waterways (DBW), capacity of pumpouts is not relevant if the pumpouts are hooked up to municipal sewer systems. DBW requires 12 gallons per minute as a minimum acceptable flowrate for DBW grant funded projects that are directly hooked-up to the municipal sewer.

Reasons for Recommendations:

Based on the findings in the OCCK pumpout facility survey and the most recent Santa Ana Regional Board staff survey, it is apparent that adequate housekeeping of pumpout facilities and education of facility users are major issues that need to be addressed in Newport Bay and Huntington Harbour. In addition, Santa Ana Regional Board staff believes that there is a need for additional pumpout facilities and for the installation and proper operation of dump stations.

Santa Ana Regional Board recommendations are based on site-specific considerations. In assessing the need for additional pumpout facilities and dump stations, the following factors were considered: (1) the number of vessels with sewage retention devices requiring pumpout or dump stations; (2) the location of vessel terminals in the affected area; (3) the location and capacity of existing pumpout facilities; and (4) receiving water characteristics such as beneficial uses and sensitivity. Also, DBW guidelines and federal guidelines were considered (See Section IV, page 19).

The fact that both Newport Bay and Huntington Harbour are designated NDZs (this designation is contingent, in part, on the demonstration that adequate pumpout facilities are available) speaks to the sensitivity of these waters and the significance of their beneficial uses. Neither Newport Bay nor Huntington Harbour meet the federal and State guidelines for a minimum number of pumpout facilities per numbers of vessels. Finally, as already noted, both water bodies are included on the Clean Water Act Section 303(d) list as the result of bacterial impairment of beneficial uses.

(d) The name, owner, and address of each vessel terminal recommended pursuant to (c) above:

Newport Bay:

1. Swales Yacht Anchorage, 2888 Bayshore Drive, Newport Beach, 92663
Owner: Ron E. Presta and Steven Farewell
Mailing Address: P.O. Box 7099, Newport Beach, CA 92658

2. Bayshores Marina, 301 Shipyard Way, Newport Beach, 92663
Prior Owner: Irvine Company
Prior Owner Address: 550 Newport Center Drive, Newport Beach, 92660
Current Owner: California Recreation Company, Jay Mills, General Manager
Mailing Address: 1137 Bayside Drive, Newport Beach, CA 92625

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3. Bahia Corinthian Yacht Club, 1601 Bayside Drive, Newport Beach, 92625
Owner: Bahia Corinthian Yacht Club, Brian Carlson, General Manager
Mailing Address: same as above
4. Lido Yacht Anchorage/Dry Storage, 201 Shipyard Way, STE 1, Newport Beach, 92663
Owner: Lido Peninsula Co., LLC – Managed by Bellport Group, Patti Connors
Mailing Address: P.O. Box 1549, Newport Beach, CA 92658-1549
5. Bayside Village (De Anza), 300 East Coast Hwy, Newport Beach, 92660
Prior Owner: Bellport Group, 101 Shipyard Way, Newport Beach, CA. 92663
Current Owner: California Recreational Company, Jay Mills, General Manager
Mailing Address: 1137 Bayside Drive, Newport Beach, CA 92625
6. Newport Dune Resort Marina & Launch, 101 N. Bayside Dr., Newport Beach, 92660
Owner: Joseph Vallejo, Managed by Wade Kirley
Mailing Address: 2501 Ocean Blvd., Corona Del Mar, CA 92625
7. Balboa Marina, 201 East Pacific Coast Highway, Newport Beach, 92660
Prior Owner: Bellport Group, 101 Shipyard Way, Newport Beach, CA. 92663
Current Owner: California Recreational Company, Jay Mills, General Manager
Mailing Address: 1137 Bayside Drive, Newport Beach, CA 92625

Huntington Harbour:

1. Davenport Marina, 4052 Davenport Drive, Huntington Beach, 92649
Owner: Davenport Marina
Mailing Address: Same as above
2. Coral Cay Marina, 27405 Puerta Real, Suite 300, Mission Viejo, 92691
Homeowner Association President – Mary Ellen Moschetti
Mailing Address: 3612 Courtside Circle, Huntington Beach, CA 92649
3. Tennis Club Estates, 2888 Bayshore Drive, Huntington Beach, 92625
Homeowner Association President – Joe Rosen
16441 Wimbledon Lane, Huntington Beach, CA 92649
4. Sunset Aquatic Marina, 2901 A Edinger Avenue, Huntington Beach, 92649
Owner: County of Orange – Contact Person, Mary Anne Skorpanic
Mailing Address: P.O. Box 4048, Santa Ana, CA 92702
5. Lifeguard Dock, City of Huntington Beach
Owner: City of Huntington Beach – Contact Person, Geraldine Lucas and Larry Neshi
Mailing Address: P.O. Box 190, Huntington Beach, CA 92648

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(e) An appropriate installation time schedule pursuant to Section 2835:

Santa Ana Regional Board staff requested the State Board to require that the pumpout facilities and dump stations be installed and in operation within 6 months of the adoption of the State Board order.

(f) Copies of any comments received as a result of the Notice of Pumpout Facility Need

The Santa Ana Regional Board held public workshops on May 16, 2003 and a Public Hearing on August 22, 2003 to solicit comments regarding staff's recommendations contained in the Pumpout Facility Need Report.

The Santa Ana Regional Board prepared a Notice of Public Hearing for the Adoption of Resolution No. R8-2003-0074. The basis for the request was the Pump-out Facility Need Report. Comments included:

1. August 5, 2003: Mr. Garry Brown, OCCK – Letter strongly endorses and supports the adoption of Resolution No. R8-2003-0074.
2. August 15, 2003: Mr. Richard A. Tinnelly, Law Offices of Richard A. Tinnelly – Letter requests that the Coral Cay Marina be removed from consideration as a potential site for a new pumpout or dump station because it is operated and maintained solely for the benefit of member homeowners.
3. August 20, 2003: Mary Ellen Moschetti, President, Coral Cay Community Association - Letter requesting that Coral Cay Marina not be considered for installation of a pumpout.
4. September 8, 2003: Mr. Randy T. Fuhrman, Vice President, Huntington Harbour Property Owners Association (HHPOA) – Letter provides concerns with inadequate data used for Huntington Harbour. Mr. Fuhrman claims that there are large marinas in Huntington Harbour that are not included in the report. Both the Santa Ana Regional Board and OCCK prepared responses to Mr. Fuhrmans letter.

Additional Comments:

City of Huntington Beach, City of Newport Beach, and OCCK provided comments to the Santa Ana Regional Board on a Draft *Pump-out Facilities Need Report* prior to the May 16, 2003 workshop. In addition, public comments were brought up at an August 14, 2003 meeting with vessel terminal owners/operators. These comments are summarized below, together with Santa Ana Regional Board staff responses.

Issues/Comments Identified in the Public Hearing Transcript:

1. General Comment: Vessel Terminal owners or operators believe that requiring additional pumpout facilities may not result in better water quality. They would like to keep the current pumpout facilities without requiring additional ones. It was agreed that proper operation and maintenance are important and are open to a program that only stresses that.

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- Response: Santa Ana Regional Board staff's position is that the NDZ designation of these harbors is contingent upon there being an adequate number of pumpout facilities. Based on federal and state guidelines and survey results, there are an inadequate number of pumpout facilities in these harbors and the current pumpout facilities are inadequately maintained and operated.
- 2. Coral Cay Marina: Additional pumpout facilities would result in requiring someone to give up their slip and that would result in loss of revenue. This primarily applies to Homeowner Associations with slips deeded to individual homeowners.

Response: The Sewage Waste Disposal Program would allow for the use of a pumpout service in the case where a pumpout facility cannot be installed.

- 3. Tennis Club Estates: Santa Ana Regional Board did not do a complete survey. They just selected areas with contact people. Larger areas such as the SeaGate Community, which is many times larger, has never been contacted. Facilities with existing pumpouts available to the public should be required to add additional facilities instead of asking private facilities to do it. No one has ever figured out how the usage of existing pumpout facilities. Its kind of reckless to just recommend that we spend more money for something that may not be used. If this goes to the state level, I assure you a couple of hundred people from the Harbour are going to be represented, because we are trying to stop the issue here.

Response: The sewage disposal program includes provisions for Homeowner Associations to contract with a vessel pumpout service in lieu of installing a pumpout facility. Santa Ana Regional Board staff tried to identify locations around both harbors that appear to warrant the installation of these facilities. Santa Ana Regional Board staff and OCCK made every effort to canvas these harbors and understand the physical layout and location to the best of their ability. If someone wants to bring forward new information, the new information will be shared with the State Board to take into account in their deliberations. The Santa Ana Regional Board will revise their recommendations to the State Board based on any new information.

The OCCK, in a letter dated December 11, 2003, confirmed the identification of marinas in Huntington Harbour. There are approximately six (6) additional residential developments with wet slips in Huntington Harbour. These wet slips are individually owned by homeowners and in most cases, the slips are located in front of the owner's home/condominium. These slips are not configured like a marina nor do they meet the definition of a Parking Lot Harbor or a Transient Harbor. The slips are uniformly constructed and are configured side by side in a single row going out from the seawall. It is OCCK's opinion since these slips are individually owned by homeowners for their exclusive use, these slips do not meet the definition of a marina of "10 or more slips" nor are there any common areas or docks in which to locate vessel waste facilities.

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Section 2833.2 - Notice of Pumpout Facility Need

Prior to requesting the State Board to require a vessel terminal to install and operate pumpout facilities the Regional Board shall prepare a Notice of Pumpout Facility Need and shall forward a copy of the notice to known interested agencies and persons, including each vessel terminal owner in the proposed area of pumpout facility need. The Regional Board shall publish the notice at least once in a newspaper of general circulation in the proposed area of pumpout facility need. Proof of publication of the notice shall be submitted to the State Board. The notice shall provide a 30-day comment period in which interested persons may comment upon the notice. The notice shall contain:

- (a) A designation of the area considered by the Regional Board.**
- (b) The reason pumpout facilities are believed to be necessary for the protection of water quality in that area.**
- (c) The names, location, and addresses (if available) of vessel terminals which may be required to install or operate pumpout facilities.**

The Santa Ana Regional Board distributed a “Notice of Public Hearing” for the “Adoption of Resolution No. R8-2003-0074 Requesting the State Water Resources Control Board to Require Specified Vessel Terminals in Huntington Harbour and Newport Bay to Install and Properly Maintain Pumpout Facilities and Dump Stations.” The public hearing was held on August 22, 2003.

The Santa Ana Regional Board published a “Notice of Public Hearing – Adoption of Resolution No. R8-2003-0074 on the following dates.

Newport Beach–Costa Mesa Daily Pilot – July 21, 2003.
Huntington Beach Independent – July 24, 2003.

The Notice of Public Hearing and the newspaper public notices included the following required information:

- 1. Designation of the area considered:** “The California Regional Water Quality Control Board, Santa Ana Region will conduct a public hearing to consider adoption of a resolution requesting the State Board to require specified vessel terminals to install and properly maintain pumpout facilities and dump stations in Huntington Harbour and Newport Bay.”
- 2. Reason pumpout facilities are believed to be necessary for the protection of water quality in that area:** “The basis for the request is a Pump-out Facility Need Report (Report) prepared by Santa Ana Regional Board staff. The Report provides an assessment of the current program addressing vessel sewage waste in Newport Bay and Huntington Harbour. The Report finds that the current programs addressing vessel sewage waste discharges from vessels with installed toilets are inadequate and proposes that additional pumpout facilities and dump stations be installed in both Huntington Harbour and Newport Bay.”

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3. **The names, location, and addresses (if available) of vessel terminals which may be required to install or operate pumpout facilities.** Although the public notice did not specifically identify targeted vessel terminals, information specified that the Santa Ana Regional Board is “requesting the State Water Resources Control Board to require specified vessel terminals in Huntington Harbour and Newport Bay to install and properly maintain pumpout facilities and dump stations.” Readers were provided information on where to obtain a copy of the “Proposed Pump-out Facility Need Report” and staff reports. Copies of the report were available upon request to Santa Ana Regional Board staff or from the Santa Ana Regional Board website.

Section 2833.3 – Hearings by Regional Boards.

Upon the request of the State Board, any interested person, or upon its own motion, the Regional Board may hold a public hearing prior to requesting the State Board to require a vessel terminal to install pumpout facilities. The Regional Board shall transmit any comments received together with their request to the State Board.

The Santa Ana Regional Board held a public workshop on May 16, 2003 and a public hearing on August 22, 2003 to solicit comments regarding staff’s recommendations specified in the Pumpout Facilities Need Report, including: (1) installation of additional pumpout facilities; (2) the need for dump stations; (3) an operation and maintenance program; (4) public education and outreach; and, (5) a monitoring program. Santa Ana Regional Board staff also had extensive discussions with interested agencies and parties, who provided comments leading to modification of the recommended Vessel Sewage Disposal Program. Specifically:

On May 16, 2003, the Santa Ana Regional Board conducted a public workshop to review staff’s recommendations for a vessel sewage disposal program for Newport Bay and Huntington Harbour. The May 16, 2003 staff report provided information describing the federal and state regulations and guidelines pertaining to vessel sewage waste and the adequacy of the current vessel sewage disposal program in Newport Bay and Huntington Harbour. The report also outlined preliminary recommendations for a Vessel Sewage Disposal Program for these waterbodies. Staff recommended that the Santa Ana Regional Board request the State Board to require certain vessel terminal operators to install pumpout facilities and dump stations. In addition, staff recommended that the Santa Ana Regional Board request that the State Board action include requirements for operation, maintenance and public education activities related to vessel sewage disposal systems.

Section 2833.4 – Hearings by State Board

Upon the request of any interested person, or upon its own motion, the State Board may hold a public hearing regarding a proposed requirement that a vessel terminal install pumpout facilities.

The State Board held a public hearing on November 3, 2004. A public hearing was required because the recommendations include installation of pumpout facilities and dump stations at privately owned vessel terminals (See Section 2834 (1) (b) below).

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Section 2834. – Further Procedures

The State Board may require vessel terminals to install and operate vessel waste pumpout facilities after consideration of the request of the Regional Board, the record of any Regional Board or State Board hearing and the following guidelines. Copies of the order requiring installation and operation of pumpout facilities shall be sent to the Regional Board, the vessel terminal owner, and to other vessel terminals within the area of activity.

Section 2834.1 – Guidelines for Vessel Terminal Selection.

- (a) Upon a determination that an area needs additional pumpout facilities, such need should be met by public vessel terminals, if possible.**

Newport Bay: There are two publicly owned vessel terminals in Newport Bay: Balboa Bay Club and Newport Dune Resort Marina. The public marinas have existing pumpout facilities. Installation of five additional pumpout facilities is recommended. The five recommended pumpouts are to be located at privately owned facilities that are not available to the public. In addition, installation of three dump stations is recommended. All are to be located at privately owned facilities, two of which are open to the public.

Huntington Harbour: Installation of three pumpouts and three dump stations is recommended. The three recommended pumpouts are to be located at privately owned facilities that are not available to the public. The three recommended dump stations are to be located at publicly owned facilities.

- (b) Upon a determination by any Regional Board that there is no public vessel terminal within an area in which additional pumpout facilities are needed for protection of water quality, the State Board shall hold a hearing to determine whether private vessel terminals should be designated to provide sewage retention device pumpout facilities.**

In both Newport Bay and Huntington Harbour, private vessel terminals have been designated to provide pumpout facilities to provide services to their boating tenants. It is not the State Board's intention to require the privately owned vessel terminal to provide public access.

- (c) In addition, the State Board and Regional Boards shall, as a minimum, consider at least the following factors in determining which vessel terminals should be required to provide pumpout facilities:**

- (1) Availability of private vessel terminals with pumpout facilities not available to the general public.**

Newport Bay: There are twenty-five existing pumpout facilities in Newport Bay. Eleven are located at private vessel terminals that are restricted to private use only. Six are located at private vessel terminals that are available for public use. Three are located at two publicly owned vessel terminals. Five are located at public piers and a harbor patrol dock.

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Huntington Harbour: There are four existing pumpout facilities in Huntington Harbour. All are available for public use. Three are located at privately owned vessel terminals. An additional pumpout facility is located at a public lifeguard dock.

It is important to note that significant deficiencies were found at many of the existing pumpout facilities in both Huntington Harbour and Newport Bay during October 2002 and March 2003 surveys conducted by the OCCK and Santa Ana Regional Board staff.

- (2) **Priority consideration should be given to vessel terminals with fuel docking capability.**

There are no vessel terminal fueling docks located in Huntington Harbour or Newport Bay.

- (3) **The number of vessels with sewage retention devices berthed at each vessel terminal in the area.**

Newport Bay has approximately 10,000 recreational vessels. The majority of these are berthed on moorings and residential piers. A survey conducted in 2000 showed that only about 2,000 of the 10,000 vessels would be docked at a vessel terminal; the rest of the vessels are berthed at residential docks. The City of Newport Beach estimates that 75% of these 10,000 boats are larger than 16 feet and would require the use of a pumpout facility. Of the remaining 25% of the vessels, 15% are smaller than 16 feet and are considered day use vessels, without a need for a dump station. The remaining 10% are also smaller than 16 feet but would have a portable toilet, thus requiring a dump station.

The City of Huntington Harbour staff estimates that approximately 3,000 boats are moored in Huntington Harbour. It is estimated that a large percentage of the 3,000 boats are greater than 16 feet and would require the use of a pumpout facility.

- (4) **The depth of water required for the vessels that will be using the pumpout facility.**

According to Garry Brown (OCCK), sailboats require the most depth because they have a large keel. According to Kevin Atkinson (DBW), vessel terminals are already sited and the operator can tell us the amount of water depth that the average boats would require. Additional pumpout facilities are being required at existing marine vessel terminals that are located in depths of water required to accommodate their tenant's boats. Accordingly, information on the depth of water required may not be necessary to obtain.

- (5) **The expense of installing a pumpout facility and access to a means of disposing of or treating the sewage.**

The cost to install a new vessel pumpout facility varies depending on the proximity of the vessel terminal to sewer lines, the cost to hook up to the sewer line and associated permit fees. DBW estimates on average a cost range of \$20,000 to \$40,000 to install a new pumpout facility. Replacement of existing facilities also varies depending on the type of equipment needing replacement. The cost of replacing and/or updating an existing pumpout facility

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ranges between \$3,000 and \$10,000. The cost of purchasing and installing a dump station is estimated to be between \$2,000 and \$10,000.

The Clean Vessel Act provides federal funds in the form of grants for the installation of pumpout facilities and dump stations. In California, these grants are administered by DBW and are available through the year 2007. Grant funds are available to both the public and private sector. The grant will reimburse recipients for up to 75% of the installed cost of pumpout facilities and dump stations. If Clean Vessel Act grants are used, a private facility would not be able to restrict public access.

Section 2835 – Installation Time

Santa Ana Regional Board staff requested the State Board to require that the pumpout facilities/dump stations be installed and in operation within six (6) months of the adoption of the State Board order. Santa Ana Regional Board staff recommended the following time schedule (subject to adjustment based on the State Board’s adoption of the relevant order.

<u><i>Task</i></u>	<u><i>Compliance Date</i></u>
<ul style="list-style-type: none"> • Indicate commitment to install the additional pumpout facilities and/or dump stations via letter to the Executive Officer of the Santa Ana Regional Board 	1/5/04
<ul style="list-style-type: none"> • Prepare and submit plans and specifications for pumpout facility/dump station installation to the Executive Officer of the Santa Ana Regional Board. If the Executive Officer does not approve of the pumpout facility and dump station location, or determines the plans and specifications are inadequate, the vessel terminal operator shall prepare new or supplemental plans and specifications in accordance with a schedule set by the Executive Officer of the Santa Ana Regional Board. 	2/5/04
<ul style="list-style-type: none"> • Submit plans and agreements for pumpout facility/dump station maintenance to the Executive Officer of the Santa Ana Regional Board. 	3/5/04
<ul style="list-style-type: none"> • Begin construction and installation of pumpout facility/dump station. 	6/5/04
<ul style="list-style-type: none"> • Complete construction and installation of pumpout facility/dump station. 	7/6/04
<ul style="list-style-type: none"> • Full compliance with State Board order; notify Executive Officer of the Santa Ana Regional Board. 	8/6/04

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IV. State and Federal Recommended Guidelines

Federal guidelines recommend, as a general rule: (1) at least one pumpout facility and dump station should be provided for every 300 to 600 boats over 16 feet length overall; and (2) marinas with 50 slips or more that are capable of mooring 26 feet + boats have access to at least one pumpout facility, and marinas with 50 slips or more that are capable of mooring 16-26 feet boats have access to at least one dump station. [Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines – Section 3. What Constitutes Adequate and Reasonably Available Pumpout Stations and Dump Stations in Boating Areas. Federal Register/Vol. 59, No. 47/Thursday, March 10, 1994/Notices]

DBW has developed pumpout and dump station guidelines that recommend a statewide target of one pumpout facility and one dump station for every 300 boats with Type III marine sanitation devices (MSDs), i.e., devices that retain sewage for shore-based disposal or discharge beyond the three mile offshore limit.

Neither set of guidelines has been adopted as regulations. Therefore, they are to be regarded as recommendations, rather than enforceable requirements.

The Santa Ana Regional Board considered the above guidelines when developing their recommendations for additional pumpout and dump stations in Huntington Harbour and Newport Beach. Based on Santa Ana Regional Board recommendations, there would be one pumpout facility for every 500 boats (regardless of size) and one pumpout facility at all vessel terminals with 50 slips or more. All vessel terminals with a capacity of 50 or more vessels under 26 feet in length would have one dump station. These recommendations are within the guidelines recommended by the U.S. EPA.

V. Regional Board's Recommended Vessel Sewage Disposal Program

The Santa Ana Regional Board's recommended vessel sewage disposal program is outlined below in A. through I. The recommended program is broader than pumpout and dump station installation. It also covers plumbing standards, recommended charges, education and access, operation and maintenance, live-aboard vessels and other topics.

A. Pumpout Facilities:

1. Each vessel terminal with 50 or more vessels shall have a pumpout facility for public use in an accessible location, such as at an end tie.
2. For every 500 vessels in each harbor, there shall be at least one pumpout facility for public use, regardless of size of the vessels. This pumpout facility shall be easily accessible, such as at an end tie.
3. All pumpout facilities shall be equipped with a meter for the purpose of measuring use of the pumpout facility.

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4. Where the owner/operator of a vessel terminal with 50 or more vessels determines that a pumpout facility cannot be installed, it shall contract with a private pumping service for all of its tenants' vessels. The pumpout service shall provide for a minimum of one pumpout per month. The vessel terminal owner/operator shall keep the contract current and shall make the contract available for inspection by the Cities of Newport Beach or Huntington Beach, as appropriate, or the Santa Ana Regional Board.
5. To ensure compliance with Sections A (1) and (2) above, a minimum of 5 pumpout facilities in Newport Bay and 3 pumpout facilities in Huntington Harbour shall be installed. These pumpout facilities shall be installed per the implementation schedule in Section I below.

B. Dump Stations:

1. All vessel terminals with a capacity of 50 or more vessels less than 26 feet in length shall have a dump station.
2. Dump stations should be located in conjunction with pumpout facilities whenever possible.
3. Landside restroom facilities may be used as dump stations at vessel terminals with less than 50 vessels under 26 feet in length.

At other facilities such as boat launching ramps that cater to small craft (less than 26 feet) a minimum of one dump station should be provided.

C. Plumbing Standards:

1. Each pumpout facility and dump station shall be constructed and plumbed such that pipe breakage, fitting failure, and related damage is minimized or eliminated.
2. Each pumpout facility and dump station shall be designed and constructed in such a manner that there shall be no leakage or spillage of sewage.
3. Pumps provided at the pumpout facility for the transfer of waste from vessels to the pumpout facility and from the pumpout facility to the disposal system shall:
 - (a) Be of self-priming and non-clogging design.
 - (b) Be of sufficient size and capacity to complete the transfer operation in a reasonable amount of time when operating against the maximum anticipated head.
 - (c) Be designed and installed to prevent leakage or spillage.
 - (d) Be designed and installed to meet all safety requirements.
 - (e) Be constructed of corrosion-resistant material.
4. All piping/hosing used in the design and construction of a pumpout system shall:
 - (a) Be designed to withstand any pumping pressure or vacuum encountered without leakage.
 - (b) Be constructed of material capable of withstanding solar radiation and chemical action of freshwater, salt water, chemical additives, and sewage without excessive deterioration.

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- (c) All fittings shall be of corrosion-resistant material and shall be so constructed and installed as to ensure a water-tight seal. All pumpout systems shall be designed and constructed to have a minimum capability of pumping out vessel marine sanitation devices having 1 ½-inch fittings. The system shall be designed and constructed to prevent leakage when transferring or when the system is disconnected. This would normally require a minimum of four (4) valves. One of each side of the pump, plus one at the storage tank, and one at the vessel holding tank connection.
- 5. The pumpout facility shall be designed and constructed such that a water supply is available at appropriate locations for flushing and cleaning of vessel holding tanks and storage tanks. The water supply shall be protected against back-siphoning of waste into the water system by a backflow prevention device.
- 6. Santa Ana Regional Board staff will convene an adhoc committee consisting of the appropriate staff from the County of Orange, the City of Huntington Beach and the City of Newport Beach to develop and implement appropriate construction standards for pumpout facilities and dump stations within the Region that would be consistent with the sections listed above.

D. Cost Provisions:

While the State encourages the free use of pumpout facilities and dump stations, a maximum fee of \$5 may be charged consistent with DBW requirements.

E. Education and Access:

- 1. All public pumpout facilities and dump stations shall be located preferably at an end tie so that they will be visible and easily accessible by vessel operators.
- 2. Each pumpout facility and dump station shall have signage readily visible to traveling vessels and use instructions in English and Spanish and in colorized graphics as to how to operate the facility, how to minimize leakage, and how to report an inoperable facility.
- 3. Each vessel terminal operator shall provide a 24-hour telephone number for pumpout facility and dump station users to report facility failures.
- 4. Each pumpout facility and dump station location shall be marked to prevent parking of vessels other than for use of the pumpout facility and dump station.
- 5. The Cities of Huntington Harbour and Newport Beach shall notify the owners of slips in front of residences that each harbor is a NDZ and that it is illegal to discharge the contents of their MSDs into the NDZ waters of the State (Newport Bay and Huntington Harbour). Along with the notification, each City shall provide a map identifying the location of the pumpout facilities and dump stations.

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6. Vessel terminal owners/operators shall notify the owners/operators of vessels occupying their terminals that Newport Bay and Huntington Harbour are NDZs and that it is illegal to discharge the contents of their MSDs into the NDZ waters of the State (Newport Bay and Huntington Harbour). The vessel terminal owners/operators shall provide owners/operators of vessels occupying their terminals a map identifying the location of the pumpout facilities and dump stations.

F. Operation and Maintenance:

1. Vessel terminal owners/operators shall prepare a set of operation and maintenance instructions to be used in the operation and maintenance of the pumpout facility/dump station. The operation and maintenance instructions shall be available for inspection at the pumpout facility/dump station and if found to be deficient by Santa Ana Regional Board staff, the vessel terminal owner/operator shall correct the instruction within thirty (30) days.
2. The operation instructions shall have a detailed explanation of valve positions when the system is transferring sewage and when the pumpout facility/dump station is not being used.
3. The operation and maintenance instructions shall include methods that will be used to isolate portions of the pumpout facility/dump station system for maintenance and repair.
4. All pumpout facility/dump stations shall be operated and maintained in such a manner that there shall be no leakage or spillage of sewage.
5. The vessel terminal owner/operator shall inspect their pumpout facilities and dump stations at least three times per week during October 1 through May 31 and five times per week during June 1 through September 30th. The purpose of such inspections is to ensure the pumpout facilities/dump stations are working properly and there are no leaks of sewage into the receiving waters.
6. Vessel terminal owners/operators must keep in stock readily replaceable spare parts such as hoses. When a pumpout facility or dump station is inoperable, its owner shall initiate appropriate repairs within 24 hours of noticing the inoperability. Where the inoperability is found to be due to the failure of a readily available part, such as a hose, the repair must be done within 24 hours. Where necessary, the vessel terminal owner/operator shall secure a licensed plumbing contractor who would assess the reason that the pumpout facility/dump station is not working properly, identify the steps required to bring that pumpout facility/dump station back into working order, and identify a reasonable time frame to complete the necessary repairs. The vessel owner/operator must initiate the repairs promptly, and to take all reasonable steps to assure that the repairs are completed within the time frame identified by the contractor. The vessel terminal owner/operator shall post a sign on the pumpout facility/dump station indicating that it is not working, with a map of other locations of pumpout facilities/dump stations.
7. Vessel terminal owners/operators must maintain, and provide for inspection at any time, maintenance and monitoring logs at the site of each pumpout facility/dump station.

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8. In addition, the Cities of Newport Beach and Huntington Harbour shall inspect each pumpout facility and dump station to ensure that the pumpout facilities and dump stations are operational and that vessel terminal operators keep the necessary maintenance logs. These inspections shall be performed at least monthly. The County of Orange shall be responsible to implement these inspection requirements for those vessel terminals leased by the County to private parties and for those pumpout facilities/dump stations directly under the control of the County.

G. Live-Aboard Vessels (Houseboats):

1. Vessel terminals with live-aboard vessels shall require all live-aboard vessels that are incapable of moving under their own power to have all overboard discharge piping permanently sealed, unless such discharge piping is plumbed directly to appropriate on-shore waste disposal facilities.
2. Vessel terminal owners/operators shall inspect all live-aboard vessels monthly to ensure that all overboard discharge piping has been sealed. A log of these inspections shall be kept at the vessel terminal and made available to the staff of the Santa Ana Regional Board or to staff from the Cities of Newport Bay and Huntington Harbour.
3. Vessel terminal owners/operators with live-aboard vessels capable of moving under their own power shall notify the occupants of such vessels that it is illegal to discharge the contents of their holding tanks into the NDZ waters of the State (Newport Bay and Huntington Harbour) and require them to use a pumpout facility or to subscribe to a pumpout service.
4. The Cities of Newport Beach and Huntington Harbour will be responsible for quarterly inspections of those Live-aboard vessels that are tied to off-shore moorings to ensure that these vessels do not discharge the contents of their holding tanks into the NDZ waters of Newport Bay or Huntington Harbour.
5. The cities of Newport Beach and Huntington Beach will be responsible for quarterly inspections of any 'over the water' public restroom or marine head facilities that are attached to the bulkhead or pier line to ensure that these are working, are easily accessible to the public and conduct repairs and general maintenance of the plumbing system to ensure these facilities do not become a source of pollutants into Newport Bay or Huntington Harbour.
6. Vessel terminal owners/operators and the Cities of Newport Beach and Huntington Beach will be responsible for updating lease agreements with houseboat owners/occupants to ensure that there is adequate authorization for the vessel terminal owner/operator or city staff to board the houseboat and conduct inspections that would ensure that all overboard discharge piping has been sealed.

H. Periodic Review of Effectiveness:

1. The Santa Ana Regional Board shall oversee compliance with the State Board order by the vessel terminal operators and the cities of Huntington Harbour and Newport Beach. Oversight by the Santa Ana Regional Board shall include at a minimum annual inspections, regular collection of samples and review of bacterial data collected from the receiving waters in the

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vicinity of the pumpout facilities.

2. The Santa Ana Regional Board shall also review the effectiveness of the vessel waste pumpout program at a minimum of every 2 years to determine if revisions of the pumpout facility standards are necessary to achieve protection of water quality.

I. Time Schedule:

Santa Ana Regional Board staff requested the State Board to require that the pumpout facilities/dump stations be installed and in operation within six (6) months of the adoption of the State Board order.

VI. State Board Staff's Recommended Vessel Sewage Disposal Program

The Regional Board's "Recommended Vessel Sewage Disposal Program" covers not only the installation and operation of pumpout facilities and dump stations but also other topics such as: Cost Provisions, Education and Access, Operation and Maintenance, Live-Aboards, and Periodic Review of Effectiveness. The State Board is authorized under Harbors and Navigation Code section 775 et seq. and implementing regulations to designate vessel terminals that must install pumpout facilities and to establish an appropriate time schedule for installation of the required facilities. The Santa Ana Regional Board may implement the additional Program provisions that go beyond this General Order under the Regional Board's own authority when the General Order is remanded to the Regional Board for implementation.

State Board staff, therefore, recommends that the State Board approve the following provisions of the Santa Ana Regional Board's "Recommended Vessel Sewage Disposal Program". These include the requirements to install pumpouts and dump stations and to comply with existing mandates in the Harbors and Navigation Code, and applicable State Board regulations. Staff recommends that the State Board remand the remaining provisions of the Santa Ana Regional Board's recommended program back to the Santa Ana Regional Board for implementation.

A. Pumpout Facilities and Dump Stations:

Newport Bay – Owners of vessel terminals located in Newport Bay required to install additional sewage disposal facilities, at locations that are convenient and accessible to the vessel users, include:

1. **Swales Yacht Anchorage** - 2888 Bayshore Drive –Installation of one pumpout facility.
2. **Bayshores Marina** - 301 Shipyard Way - Installation of one pumpout facility.
3. **Bahia Corinthian Yacht Club** - 1601 Bayside Drive – Installation of one pumpout facility.
4. **Lido Yacht Anchorage/Dry Storage (Bellport)** - 201 Shipyard Way – Installation of one pumpout facility and one dump station.
5. **Bayside Village (De Anza)** – 300 East Coast Highway – Installation of one dump station.

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6. **Newport Dune Resort Marina** – 101 N. Bayside Drive – Installation of one dump station.
7. **Balboa Marina** – 201 East Pacific Coast Highway – Installation of one pumpout facility.

Huntington Harbour – Owners of vessel terminals located in Huntington Harbour required to install additional sewage disposal facilities, at locations that are convenient and accessible to the vessel users, include:

1. **Davenport Marina** – 4052 Davenport Drive, Huntington Beach - Installation of one pumpout facility.
2. **Coral Cay Marina** – 27405 Puerta Real, Mission Viejo – Installation of one pumpout facility.
3. **Tennis Club Estates** – 2888 Bayshore Drive, Huntington Beach – Installation of one pumpout facility.
4. **Sunset Aquatic Marina** - 2901 A Edinger Avenue, Huntington Beach – Installation of two dump stations.
5. **Lifeguard Dock** – City of Huntington Beach – Installation of one dump station.

For facilities managed by a Homeowners' Association, where the association determines that it cannot justify the need based on a low number of boats with marine sanitation devices or the expense of installing a vessel waste pumpout facility, the Santa Ana Regional Board may authorize, subject to appropriate conditions, the Homeowners' Association to (1) employ a private pumpout service to pumpout the appropriate boats on a consistent and regular schedule in lieu of installing pumpout facilities or (2) contract with another marina located in Huntington Harbour, with an existing pumpout facility, to allow the Association's boat owners to use the marinas pumpout facility.

Where a vessel terminal owner/operator determines that a pumpout facility cannot be installed as required, the Santa Ana Regional Board may allow, subject to appropriate conditions, the owner/operator to contract with a private pumping service for all of its tenants' vessels as an alternative to installing the required pumpout facility.

With Santa Ana Regional Board approval and subject to appropriate conditions, landside restroom facilities may be used as an alternative to installation of a required dump station at vessel terminals with less than 50 vessels under 26 feet in length.

- B.** Vessel terminal owners and operators must comply with State Board regulations governing the design and construction and operation and maintenance of vessel pumpout facilities. In addition, they must comply with any more stringent requirements that the Regional Board, within its authority and discretion, imposes to implement this general order.
- C.** By November 30, 2005, the Regional Board shall evaluate the approved Vessel Sewage Disposal Program to assess the need to expand the requirements to include all of the marinas located within the Santa Ana Region and present their findings and recommendations to the State Board.

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D. Time Schedule:

Vessel terminal owners must comply with the following installation time schedule unless the Regional Board, for good cause, revises the time schedule:

<u><i>Task</i></u>	<u><i>Compliance Date</i></u>
<ul style="list-style-type: none"> • Indicate commitment to install the additional pumpout facilities and/or dump stations via letter to the Executive Officer of the Santa Ana Regional Board 	30 days after State Board Order Issued
<ul style="list-style-type: none"> • Prepare and submit plans and specifications for pumpout facility/dump station installation to the Executive Officer of the Santa Ana Regional Board. If the Executive Officer does not approve of the pumpout facility and dump station location, or determines the plans and specifications are inadequate, the vessel terminal operator shall prepare new or supplemental plans and specifications in accordance with a schedule set by the Executive Officer of the Santa Ana Regional Board. 	90 days after commitment
<ul style="list-style-type: none"> • Submit plans and agreements for pumpout facility/dump station maintenance to the Executive Officer of the Santa Ana Regional Board. 	30 days after plans and specs approved
<ul style="list-style-type: none"> • Begin construction and installation of pumpout facility/dump station. 	30 days after maintenance plans submitted to Santa Ana Regional Board
<ul style="list-style-type: none"> • Complete construction and installation of pumpout facility/dump station. 	90 days after construction began
<ul style="list-style-type: none"> • Full compliance with State Board order; notify Executive Officer of the Santa Ana Regional Board. 	30 days after construction completed.

Definitions:

- (a) “Discharge” means spilling, leaking, pumping, pouring, emitting, emptying, or dumping.
- (b) “Dump Station” means an upland waste reception facility specifically designed to receive waste from portable toilets carried on vessels or from floating restrooms in the water that are not connected to the land and are used solely by boaters. This does not include upland restroom facilities. (Federal Register Vol. 59 No. 47 pp. 11296)

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- (c) “Houseboat” means a watercraft or industrial or commercial structure on or in the waters of the state, floating or nonfloating, which is designed or fitted out as a place of habitation and is not principally used for transportation. “Houseboat” includes platforms, and waterborne hotels and restaurants.
- (d) “Live-Aboard” means the same as “houseboat”.
- (e) “Marine sanitation device” means any equipment on board a vessel which is designed to receive, retain, treat, or discharge sewage and any process to treat the sewage.
- (f) “No-discharge zone” means a body of water designated as a no-discharge area under subsection (f) of section 312 of the Federal Water Pollution Control Act [33 U.S.C. Sec. 1322 (f)].
- (g) “Pumpout facility” means any facility or other means used to transfer sewage from a vessel sewage retention device aboard a vessel to storage and/or disposal facilities.
- (h) “Secured” means, for a marine sanitation device not approved for use in a no-discharge area, mechanically controlling valves or facilities in an identifiable manner to prevent any overboard discharge of sewage.
- (i) “Sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.
- (j) “Sewage retention device” means any equipment on board a vessel which is designed to receive and retain sewage.
- (k) “Vessel” means every watercraft or other contrivance used or capable of being used as a means of transportation on the waters of the state, excepting foreign and domestic vessels engaged in interstate or foreign commerce upon the waters of the state.
- (l) “Vessel terminal” means any private or public shoreside installation on any waters of this state which provides mooring, docking, berthing, and other facilities for the use of vessels.
- (m) “Waters on this state” shall mean all waters of the state except waters beyond three nautical miles off any shore of the state.