

EXECUTIVE OFFICER SUMMARY REPORT  
July 10, 2013

- ITEM: 6
- SUBJECT: New Waste Discharge Requirements: Dredging of San Diego Bay for San Diego Shipyard Sediment Remediation Project (Tentative Order No. R9-2013-0093). (*Jody Ebsen*)
- PURPOSE: To consider adopting Tentative Order No. R9-2013-0093, *Waste Discharge Requirements for National Steel and Shipbuilding Company, BAE Systems San Diego Ship Repair Inc., San Diego Unified Port District, United States Navy, San Diego Bay Environmental Restoration Fund - North, San Diego Bay Environmental Restoration Fund-South, San Diego Shipyard Sediment Remediation Project, San Diego Bay, San Diego, California.*
- RECOMMENDATION: Adoption of revised Tentative Order No. R9-2013-0093 is recommended.
- KEY ISSUES:
1. Tentative Order No. R9-2013-0093 (Tentative Order) establishes waste discharge requirements and serves as a Clean Water Act section 401 Certification for discharges of dredge and fill material for the remediation of accumulated waste pollutants in marine sediments adjacent to two existing shipyard facilities in the San Diego Bay at an area known as the Shipyard Sediment Site (Site). The project to remediate the contaminated sediments is referred to as the San Diego Shipyard Sediment Remediation Project (Project). A primary goal of the Project is to attain target cleanup levels for various chemical constituents within a defined remedial footprint through a combination of dredging and sand covering of contaminated sediments at the Site, as defined by Cleanup and Abatement Order (CAO) No. R9-2012-0024.
  2. The San Diego Water Board's consideration and adoption of the Tentative Order is necessary at this time so that dredging and sand covering activities at the Shipyard Sediment Site may commence no later than September 15, 2013 as required by the CAO.

3. The San Diego Unified Port District (Port District) asserts that it should not be named as a "Discharger" in the Tentative Order.

**DISCUSSION:****Project Description**

The following four entities have submitted a report of waste discharge (ROWD) in application for waste discharge requirements pursuant to California Water Code section 13260, and Water Quality Certification pursuant to Clean Water Act section 401, to begin implementation of the San Diego Shipyard Sediment Remediation Project in compliance with the sediment remediation requirements of the CAO for the Shipyard Sediment Site: 1) BAE Systems (North Facility Owner) and BAE Systems San Diego Ship Repair, Inc. (North Facility Operator) (altogether referred as BAE Systems), 2) National Steel and Shipbuilding Company (NASSCO) (South Facility Owner and Operator), 3) San Diego Bay Environmental Restoration Fund-North and 4) the San Diego Bay Environmental Restoration Fund-South. The Shipyard Sediment Site is located south of the Coronado Bridge along the eastern shore of central San Diego Bay extending approximately from the Sampson Street Extension to the northwest and Chollas Creek to the southeast and from the shoreline out to the San Diego Bay main shipping channel to the west (**Supporting Document No. 1**).

The San Diego Shipyard Sediment Remediation Project consists of the dredging of contaminated sediment within a defined area at the Shipyard Sediment Site in San Diego Bay. Components of the Project include the dewatering, solidification and stockpiling of the dredged material; the potential treatment of decanted water (anticipated disposal to the sanitary sewer system); the transport of the removed dredge material to an appropriate landfill for disposal; and placement of clean sand cover on top of the contaminated sediment in areas of the Site where existing piers, pilings and other infrastructure constrain or prevent dredging. A clean sand cover may also be placed over the dredged surface when chemical exceedances in the newly exposed sediment surface are considered marginal or when hard "undredgable" material is encountered. Following contaminated sediment removal, the stability of existing marine structures, seawalls, and side slopes will be maintained, if needed, by placing a ridge or blanket of

protective rock material adjacent to the structure in question, thereby overcoming the destabilizing effect of sediment removal.

The primary goal of the Project is to improve water quality conditions in San Diego Bay consistent with the provisions of the CAO (**Supporting Document No. 2**). A main Project objective is to attain the target cleanup levels for copper, mercury, high molecular weight polycyclic hydrocarbons (HPAHs), total polychlorinated biphenyls (PCBs) and tributyltin (TBT) defined in Directive 2.a of the CAO (see Page 22 of the CAO - Supporting Document 2), within the remedial dredging area footprint. The Project dredging remediation areas, also referred to as the Shipyard Sediment Site remedial footprint (Remedial Footprint) in the CAO, comprise approximately 15.2 acres of bay bottom sediment that are subject to dredging and 2.3 acres that are subject to clean sand cover, primarily under the piers.

#### **Project Changes and Compliance with the California Environmental Quality Act**

As the lead agency for the Project, on March 14, 2012, the San Diego Water Board certified a Final Program Environmental Impact Report (PEIR) pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq. (CEQA). Since the adoption of the Final PEIR new information triggering Project changes has been brought forward by NASSCO and BAE Systems, two of the parties named as Dischargers in the CAO for the Project. A brief description of the Project changes is described below.

**S-Lane Parcel Staging Area.** At the time the Final PEIR was prepared, circumstances regarding lease agreements and land availability were difficult to predict and assumptions were made in identifying five potential upland staging areas or Sediment Management Areas (SMA) for the dewatering, solidification and stockpiling of dredged sediments. It was known that the final approval of the SMAs to be used in the Project would require the preparation and adoption of the Tentative Order. The appropriateness of the chosen SMAs for sediment dewatering activities required contemplating a variety of factors due to the land use intensity of the dredged sediment dewatering, solidification and stockpiling activities. In its ROWD application, NASSCO proposed the

S-Lane parcel, a Sediment Management Area that was not identified in the Final PEIR, for the dredging activities in the South Sediment Remediation Area, a 46-acre offshore site defined further in the Tentative Order.

**Dredge Volume Increase.** The Final PEIR proposes a total dredge volume of approximately 143,400 cubic yards (cy) for the Remedial Footprint area. At the time that the Final PEIR was prepared, the assumptions made for the volume of dredged sediments were based on dredging at an estimated depth of 5 to 7 feet throughout the dredge area. Since the certification of the Final PEIR, additional engineering work indicates that the removal of an additional 15,000 cy of sediment is required in the North Sediment Remediation Area (an approximately 16.6-acre offshore site) as defined in the Tentative Order to support barge unloading close enough to shore due to an existing shallow mudline elevation. The removal of an additional 15,000 cy of sediment is within the Remedial Footprint. This additional dredging will require approximately 36 additional work days (13 days for dredging activities and 23 days for hauling activities) and will modify the dredge schedule for the North Sediment Remediation Area, which is scheduled to start in mid-September 2013 with sand cover placement and final monitoring being complete by March 2016. No additional volume of dredged material for the South Sediment Remediation Area is required. The dredging for the South Sediment Remediation Area is scheduled to start in mid-September 2013 and to be complete by April 2014.

**CEQA Analysis of Project Changes.** The San Diego Water Board has prepared an Addendum that addresses potential environmental impacts of the changes to the Project described above and completes the necessary environmental analysis as required pursuant to the provisions of CEQA and the CEQA guidelines (**Supporting Document No. 3**). Pursuant to provisions of CEQA and the CEQA Guidelines, the San Diego Water Board is the lead agency charged with the responsibility of deciding whether the Project changes call for the preparation of a subsequent EIR (see CEQA Guidelines § 15162) or whether an addendum is appropriate. As part of its decision-making process on the Tentative Order, the San Diego Water Board is required to review and consider the potentially significant adverse environmental effects that could result from construction and implementation of the Project

changes that were not already identified, analyzed and mitigated, where feasible, in the Final PEIR. The Final PEIR found air quality effects to have significant and unavoidable impacts while the following effects of Project development can be mitigated to less than a significant impact: transportation and circulation, water quality, hazards and hazardous material, noise, biological resources, and climate change.

The Tentative Order proposes to implement the Project changes pertaining to the increase in dredge volume and the use of a different Sediment Management Area. A comparison of the Project changes and the impacts, analysis and mitigation as evaluated in the Final PEIR is provided in the CEQA Addendum. The Addendum addresses the environmental effects associated with the Project changes provided for in the Tentative Order. The conclusions of the analysis in the Addendum document are not substantially different from those determined in the Final PEIR. No change to the Final PEIR conclusions would be warranted by the minor alterations to the Project provided for in the Tentative Order and no subsequent CEQA action is required. The San Diego Water Board has determined that the Project changes do not trigger the requirement of preparing a subsequent EIR. Accordingly, the San Diego Water Board may rely on the Addendum in conjunction with the existing Final PEIR to provide CEQA compliance in adopting the Tentative Order. (See CEQA Guidelines § 15168(c)(2))

#### **Overview of the Tentative Order**

The Tentative Order (**Supporting Document No. 4**) would establish Waste Discharge Requirements, pursuant to California Water Code section 13260 et seq., for the implementation of the Project. The Tentative Order will also serve as a Water Quality Certification for the Project pursuant to Clean Water Act section 401. The Tentative Order requires the Dischargers to comply with all applicable requirements of the CAO (see for example Directives A.2 and B.2 beginning on Page 22 of the CAO – Supporting Document 2). The Tentative Order requires the Dischargers to comply with and implement the mitigation measures described in the Final PEIR Mitigation Monitoring and Reporting Program contained in Attachment B of the Order to reduce water quality impacts to less than significant. The Tentative Order requires implementation of

activities set forth in the previously approved Remedial Action Plan (RAP) (**Supporting Document No. 5**) pertaining to the Project. The RAP describes the process by which cleanup of the Shipyard Sediment Site will be managed, designed, planned, implemented, and monitored in accordance with the CAO. The Tentative Order also requires compliance with receiving water limitations set forth in section IV of the Order through implementation of mitigation measures (see Attachment B of the Tentative Order), best management practices (see section V of the Tentative Order), compensatory mitigation (see section VI of the Tentative Order and receiving water monitoring activities (see section VII of the Tentative Order).

### **Comments on Tentative Order**

The Tentative Order was noticed and released for public review on May 24, 2013. A total of four timely submitted comment letters were received by the end of the comment period on June 24, 2013 (**Supporting Documents Nos. 6, 7, 8, and 9**). The timely submitted comment letters included several substantive comments on issues of importance to the San Diego Coastkeeper and the San Diego Unified Port District as well as a number of other comments requesting clarification and various modifications to the Tentative Order.

**San Diego Unified Port District.** By letter dated June 24, 2013 the Port District submitted comments objecting to their proposed inclusion as a "Discharger" in the Tentative Order (Supporting Document 9). The Port District bases its chief argument on the grounds that it is not the party proposing to make the discharges described in the Tentative Order and that it is a non-operating landlord and public trustee of the subject tidelands under the San Diego Unified Port District Act.

Various State Water Resources Control Board (State Water Board) Orders and policy memoranda clearly establish that the San Diego Water Board has the discretion to name the Port District as a "Discharger" in the Tentative Order even though it will not be involved in or controlling the day to day operations of the Project, subject to certain considerations. In Order No. WQ 90-3 the State Water Board held that the Port District may properly be named as a "Discharger" in waste discharge requirements (WDRs) under the California Water Code with the provision that 1) the WDRs should not

hold the Port District responsible for the day to day operation of the regulated facilities or for monitoring requirements and 2) the WDRs must provide the Port District with the opportunity to attain tenant compliance prior to San Diego Water Board enforcement action against the Port District. The inclusion of the Port District as a “Discharger” in the Tentative Order, under these circumstances, is discretionary. This being said, it is not the customary practice of the San Diego Water Board to name the Port District as primarily responsible in WDRs or NPDES permits issued to its tenants. Moreover the Port District, in its comment letter, offered its assistance in maintaining the Project applicants’ compliance with the Tentative Order as well as its independent assistance in enforcing the Coastal Development Permits as necessary. Based on these considerations the Tentative Order will be revised to remove the Port District as a Discharger. The San Diego Water Board may exercise its discretion during these proceedings to name the Port District as a Discharger which is secondarily liable for permit obligations under the Tentative Order.

In applying similar reasoning, the Tentative Order will be revised to also exclude the U.S. Navy as a Discharger. The Tentative Order also includes the U.S. Navy as a “Discharger” based on its ownership of the S-Lane parcel where sediment dewatering and stockpiling operations are scheduled to occur. As with the Port District, the U.S. Navy is a “non-operating” landowner and will not be engaged with the day to day operations of the Project at the S-Lane parcel. The inclusion of the U.S. Navy as a “Discharger” in the Tentative Order, under these circumstances is not mandatory. Based on these considerations the Tentative Order will be revised to remove the U.S. Navy as a Discharger. The San Diego Water Board may exercise its discretion during these proceedings to name the U.S. Navy as a Discharger which is secondarily liable for permit obligations under the Tentative Order.

**San Diego Coastkeeper.** By letter dated June 24, 2013 the San Diego Coastkeeper (Coastkeeper) submitted comments on the Tentative Order on various issues. Coastkeeper asserts that the Tentative Order should apply to all parties named as “Dischargers” in the CAO. Coastkeeper also requests increased clarity and specificity in the requirements of the Tentative Order on various

issues such as monitoring protocols, the placement and thickness of sand covers, the covering of sediment stockpiles, and the sharing of information with the surrounding community. These concerns are still under consideration.

### **San Diego Water Board Analysis of Comments Received**

San Diego Water Board staff are in the process of reviewing the various technical and legal issues raised in the comment letters on the Tentative Order. A preliminary Response to Comments document is provided which provides staff responses to some of the comments received. (**Supporting Document 10**). An updated Response to Comments document addressing additional comments will be provided to San Diego Water Board members in a supplemental Executive Officer Summary Report and posted on the Board website for review by interested persons. San Diego Water Board staff will respond to any remaining comments not previously addressed during the staff presentation at today's meeting.

### **Revisions to the Tentative Order**

San Diego Water Board staff is proposing revisions to the Tentative Order for the San Diego Water Board's consideration. These revisions are shown in redline/strikeout text in the Revised Tentative Order(**Supporting Document No. 11**) and include:

1. The revision of Finding F and other sections of the Tentative Order to not include the San Diego Unified Port District or the U.S. Navy as a "Discharger" in the Tentative Order. The San Diego Water Board may exercise its discretion during these proceedings to name the Port District and the U.S. Navy as Dischargers which are secondarily liable for permit obligations under the Tentative Order;
2. The revision of Finding K to allow sediment to be sampled in situ prior to dredging in the Sediment Remediation Areas;
3. The revision of Finding K to specifically waive the application of California Code of Regulations (CCR) Title 27, Division 2 regulations to the Project pursuant to the provisions of State Water Board Resolution No. 92-

*49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304;*

4. The revision of Finding N.1 to provide for an additional 15,000 cubic yards to be dredged adjacent to the North Sediment Management Area to support barge unloading close enough to shore;
5. The revision of Finding N.2 to provide for 52,600 cubic yards to be dredged from the South Sediment Remediation Area based on dredging to bay point formation at an estimated depth of 7 feet throughout the dredge area;
6. The revision of Finding S to include the conclusions of the CEQA Addendum for the Project changes pertaining to the increase in dredge volume and the identification of a different Sediment Management Area;
7. The addition of a requirement in section V.T.8 requiring the Dischargers to consult with the California Department of Toxic Substances Control (DTSC) and implement any additional controls required by DTSC to manage dredged material characterized as hazardous waste; and
8. Various corrections of typographical errors, additional text to provide clarity and incorporation of suggested text by stakeholders.

The Revised Tentative Order may be updated with additional revisions which will be provided to San Diego Water Board members in a supplemental Executive Officer Summary Report and posted on the Board website for review by interested persons.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Shipyard Sediment Site Location Map
2. Cleanup and Abatement Order No. R9-2012-0024
3. CEQA Addendum Document
4. Tentative Order No. R9-2013-0093
5. Remedial Action Plan
6. Al Masry Comment Letter dated June 7, 2013
7. San Diego Shipyard Sediment Site Group Comment Letter dated June 20, 2013

8. San Diego Coastkeeper Comment Letter dated June 24, 2013
9. San Diego Unified Port District Comment Letter dated June 24, 2013
10. San Diego Water Board Response to Comments document
11. Revised Tentative Order No. R9-2013-0093 with Changes in Redline/Strikeout

**PUBLIC NOTICE:**

Notification of this action was sent to the known interested parties via e-mail on May 24 2013. Tentative Order No. R9-2013-0093 was noticed and posted on the San Diego Water Board website on May 24, 2013.