

SAN DIEGO WATER BOARD RESPONSES TO COMMENTS

COMMENT

Entities Identified by the WDR

The Tentative Order identifies Teledyne Ryan Aeronautical Company and Teledyne Industries, Inc., two entities which no longer exist. It is more appropriate to reference only TDY Holdings, LLC, TDY Industries, Inc., and TDY Industries, LLC.

RESPONSE

Because Teledyne Ryan Aeronautical Company and Teledyne Industries, Inc. no longer exist, the San Diego Water Board agrees to remove these entities from the Tentative Order.

The title block will be amended as follows:

**~~WASTE DISCHARGE REQUIREMENTS FOR TELEDYNE RYAN AERONAUTICAL
COMPANY, TELEDYNE INDUSTRIES, INC., TDY HOLDINGS, LLC, TDY
INDUSTRIES, INC., AND TDY INDUSTRIES, LLC POST-CLOSURE
MAINTENANCE AND MONITORING OF THE CONVAIR LAGOON
SAND CAP, SAN DIEGO BAY~~**

Finding 2 will be amended as follows:

2. The Ryan Aeronautical Company conducted aerospace manufacturing operations at 2701 North Harbor Drive in San Diego (Facility) from its inception in the early 1940s until approximately 1969. In approximately January 1969, Teledyne, Inc. bought the outstanding stock of the Ryan Aeronautical Company. In approximately February 1969, the Ryan Aeronautical Company was merged into Teledyne United Corporation and Teledyne United Corporation changed its name to Ryan Aeronautical Company. In approximately December 1969, Ryan Aeronautical Company merged into Teledyne, Inc. and Teledyne, Inc. transferred the assets of Ryan Aeronautical Company to Teledyne Industries, Inc., a wholly owned subsidiary of Teledyne, Inc. TDY Industries, Inc. operated as Teledyne Ryan Aeronautical until 1999. In 1999, Teledyne, Inc. was dissolved. ~~TDY Holdings, LLC became the successor to certain liabilities of Teledyne, Inc. and Teledyne Industries, Inc. changed its name to TDY Industries, Inc. TDY Industries, Inc. converted to TDY Industries, LLC. Teledyne Ryan Aeronautical Company, Teledyne Industries, Inc., TDY Holdings, LLC, TDY Industries, Inc., and TDY Industries, LLC are jointly referred to as Dischargers in this Order. Certain of Teledyne, Inc.'s assets and liabilities were transferred to TDY Holdings, LLC and Teledyne, Inc. was terminated and dissolved. TDY Holdings, LLC became the successor to certain liabilities of Teledyne, Inc., including those associated with Teledyne Ryan Aeronautical's liability for Convair Lagoon. Teledyne Ryan Aeronautical a/k/a Teledyne Ryan Aeronautical Company was a division of Teledyne Industries, Inc., which changed its name to TDY Industries, Inc. TDY Industries, Inc. remained a subsidiary of TDY Holdings, LLC. Subsequently, TDY Industries, Inc. converted under California law to TDY~~

Industries, LLC. TDY Holdings, LLC and TDY Industries, LLC are jointly referred to as Dischargers in this Order.

COMMENT

Eelgrass Monitoring Requirements

The sand cap has now been monitored for 17 years following its installation in 1998. In 2003, TDY submitted the Convair Lagoon Eelgrass Mitigation Transplant Five-Year Post-Transplant Survey (MBC-AES, 2003). This report documents that all mitigation conditions for post-capping re-establishment of eelgrass on the Convair Lagoon Cap have been achieved and that no further mitigation is required. WDR 98-21, which established the initial eelgrass mitigation requirement states the following:

Eelgrass shall be planted and maintained in accordance with the procedures and schedule contained in the Eelgrass Mitigation Plan, which is expected to be finalized by June 1, 1998, as administered by the U.S. Army Corps of Engineers. A copy of this final plan shall be submitted to the Regional Board by September 1, 1998.

Consistent with the Eelgrass Mitigation Plan, the eelgrass was planted and monitored for 5 years, meeting the full coverage and eelgrass density requirements for re-establishment of eelgrass in both the 4th and 5th years of monitoring. Based on these results, the eelgrass mitigation and maintenance obligations for the installation of the Convair Lagoon Cap were determined to be fulfilled as acknowledged in Section 6 of the Tentative Order.

The Tentative Order inappropriately extends indefinitely the requirement to maintain eelgrass on the surface of the Convair Lagoon cap over and above the original 5-year maintenance requirement as established in the Eelgrass Mitigation Plan. The MRP Contingency Monitoring Plan Section F.5 states:

*5. Notify the San Diego Water Board by telephone, by voice mail, or by email **within 24 hours** of the eelgrass survey if the eelgrass is found to be unhealthy or the density has declined. Mitigation and/or restoration of the eelgrass may be required. As eelgrass restoration work does not pertain directly to cap integrity, it will be required under a separate Order.*

During the 5 year mitigation monitoring period, a control bed of eelgrass was also monitored to evaluate the impact of external environmental factors on eelgrass extent. Within a span of 2 years, the control bed varied from 100% to less than 45% of its original coverage. This variation was believed to be attributable to impacts related el-Niño conditions and the control bed later recovered to 120% of the original coverage in year 4 of the study. However, this variability indicates how eelgrass beds in the natural environment are interconnected parts of the greater ecosystem and respond to changes in ocean temperature, water depth, and other environmental factors from year to year.

Variability in eelgrass density and health is expected over time and occurs in both native and re-planted eelgrass beds. The requirements to continue to survey the eelgrass

density beyond the end of the mitigation monitoring period, to report a variability in eelgrass density to the RWQCB within 24 hours of observation, and the for potential further mitigation requirements due to natural fluctuations in eelgrass health are outside the bounds of the original mitigation scope and should be removed from the Tentative Order. This comment affects Tentative Order Section B.1 and MRP Sections 2, 3c, B.6, B.7, and F.5.

RESPONSE

1. The San Diego Water Board disagrees that the *“Tentative Order inappropriately extends indefinitely the requirement to maintain eelgrass on the surface of the Convair Lagoon cap over and above the original 5-year maintenance requirement as established in the Eelgrass Mitigation Plan.”* The San Diego Water Board added the long-term inspection and reporting requirements to the Tentative Order to be consistent with:

- Clean Water Act Section 401 Water Quality Certifications (401 certifications) issued by the San Diego Water Board, and
- Monitoring and Reporting Program (MRP) No. R9-2004-0295 for the Campbell Shipyard Bay Sediment Cap, Closure and Post Closure Maintenance.

Therefore, Tentative Order Section B.1 and MRP Sections 2, 3c, B.6, and B.7 pertaining to the eelgrass in Convair Lagoon will remain.

The eelgrass transplanted on the surface of the Convair Lagoon cap is a compensatory mitigation site due to the lost eelgrass from construction of the cap. In general, 401 certifications issued by the San Diego Water Board require Applicants to manage, protect, and maintain compensatory mitigations sites in perpetuity. Applicants are also required to repair damages to compensatory mitigation sites resulting from catastrophic natural events (e.g., earthquake, flooding, and tsunami). The table below shows the most recent 401 certifications containing these requirements.

DATE OF ACTION	CERTIFICATION NUMBER	DESCRIPTION
10/23/15	R9-2013-0111	Certification issued for the Camino del Rio Extension Project to Orange County Public Works on 10/23/15
10/19/15	R9-2014-0064	Certification issued for the Hanson El Monte Pond Flood Control, Restoration, and Recharge Project to Lakeside's River Park Conservancy on 10/19/2015
9/18/15	R9-2014-0115	Certification issued for the Old Otay Mesa Road Improvements Project to the City of San Diego on 09/18/2015
9/8/15	R9-2014-0040	Certification issued for the Belle Terre Residential Development Project to Regent French Valley, LLC on 09/08/2015
8/20/15	12C-081	Certification issued the Wet Weather Intermittent Stream Discharge Project to the City of San Diego on 08/20/2015

Pursuant to Order No. R9-2004-0295, the Port of San Diego created an eelgrass habitat area on the Campbell Shipyard sediment cap. MRP Directives D.2.(f) and D.2.(g) require the Port of San Diego to conduct visual inspections to monitor eelgrass recolonization after cap construction, take photographs, and provide a narrative description of the inspection results. Visual inspections are required beyond the twentieth year (at five-year intervals) unless the San Diego Water Board determines that a reduced monitoring program is appropriate or that monitoring is no longer necessary. The table below shows the visual inspection schedule.

Year	2005	2006	2007	2008	2009	2010	2011	2012	2015	2020	2025
Years following cap construction	0	1	2	3	4	5	6	7	10	15	20
Visual Inspection	X	X	X	X	X	X	X	X	X	X	X

- The San Diego Water Board recognizes that environmental factors such as ocean temperature, water depth, and El Nino conditions may cause natural fluctuations in eelgrass density and health. Therefore, we agree that it is unnecessary for the Dischargers to contact the San Diego Water Board within 24 hours if the survey determines that the eelgrass is unhealthy or the density has declined compared to the control eelgrass bed. The Dischargers, however, will be required to report all eelgrass survey results in the monitoring reports that are submitted annually for the years when monitoring occurs (MRP Section E.3) and, if determined by the San Diego Water Board, propose a path forward to address variability in eelgrass density.

MRP Section F.5 will be deleted in its entirety:

- ~~Notify the San Diego Water Board by telephone, by voice mail, or by email **within 24 hours** of the eelgrass survey if the eelgrass is found to be unhealthy or~~

~~the density has declined. Mitigation and/or restoration of the eelgrass may be required. As eelgrass restoration work does not pertain directly to cap integrity, it will be required under a separate Order.~~

COMMENT

PCB Notification Requirements

MRP Contingency Plan Section 2 requires notification of the San Diego Water Board within 24 hours if the surface of the sand cap is found to contain PCBs from a source not associated with a breach in the sand cap, such as waste discharges from storm drains. Reference PCB concentrations in surficial sediment across San Diego Bay as a whole are currently estimated to be in the range of 84 parts per billion. Given the extremely sensitive sampling methodology required in the Tentative Order, with a standard reporting limit of 0.2 parts per billion, PCBs are expected to be detected at some level in all surficial sediment samples collected.

The notification of the RWQCB within 24 hours of any detection of PCBs on the surface of the cap is overly burdensome and does not result in greater protection of the beneficial uses of the area. It is recommended that this reporting requirement be removed, or modified to add a triggering concentration which may warrant closer review, such as: "Notify the San Diego Water Board by telephone, by voice mail, or by email within 24 hours if the surface of the sand cap is found to contain PCBs in **excess of 1 mg/kg** from a source(s) not associated with a breach in the sand cap such as waste discharges from storm drains".

RESPONSE

The San Diego Water Board agrees to modify MRP Section F.2 by adding a polychlorinated biphenyl (PCB) trigger concentration. A PCB concentration of 84 micrograms per kilogram (ug/kg) is an appropriate trigger concentration because it is consistent with TDY's sediment remediation site located near Convair Lagoon.¹ This PCB concentration represents a reasonable sediment concentration for protection of benthic community, above which the San Diego Water Board would have concerns.

MRP Section F.2 will be amended as follows:

Notify the San Diego Water Board by telephone, by voice mail, or by email **within 24 hours** if any samples collected on the surface of the sand cap is found to contain PCBs in excess of 84 micrograms per kilogram (ug/kg) from a source(s) not associated with a breach in the sand cap such as waste discharges from storm drains. If needed, the San Diego Water Board, under a separate Order, will require additional investigations and/or

¹ Cleanup and Abatement Order No. R9-2015-0018. An Order directing TDY Industries, LLC, TDY Holdings, LLC, and Teledyne Ryan Aeronautical Company to cleanup and abate the effects of waste discharged from the former facility at 2701 North Harbor Drive to the Laurel Hawthorn Embayment of San Diego Bay, San Diego, CA.

December 16, 2015

Item No. 8

Supporting Document No. 7

remedial actions by the person(s) responsible for the discharge of wastes not associated with a breach in the sand cap.