

State of California  
Regional Water Quality Control Board  
San Diego Region

SUPPLEMENTAL  
ADVISORY TEAM SUMMARY REPORT  
March 14, 2012

- ITEM: 9
- SUBJECT: Public Hearing: Consideration of Tentative Order No. R9-2012-0024 and Draft Technical Report, naming as Dischargers BAE Systems San Diego Ship Repair, Inc., Campbell Industries, City of San Diego, National Steel and Shipbuilding Company, San Diego Gas & Electric Company, San Diego Unified Port District, and United States Navy, for the San Diego Bay Shipyard Sediment Cleanup Project, San Diego County. The San Diego Water Board may adopt, modify or reject the Tentative Order or may continue the hearing or action on the Tentative Order to a later (April 11, 2012, or some other) date. The San Diego Water Board may deliberate on the evidence received during this hearing as provided in the notice of Closed Session, Item 12, below. *(Frank Melbourn)*
- PURPOSE: To provide the Board members with Advisory Team Responses to Public Comments (Supporting Document 8) and Errata for Tentative Cleanup and Abatement Order No. R9-2012-0024 and Draft Technical Report.
- RECOMMENDATION(S): The Hearing Panel recommends adoption of Tentative Cleanup and Abatement Order No. R9-2012-0024.
- DISCUSSION: The San Diego Water Board received written public comments from National Steel and Shipbuilding Company (NASSCO), BAE Systems San Diego Ship Repair (BAE), San Diego Gas & Electric Company (SDG&E) and the San Diego Water Board Cleanup Team (Supporting Document 8). The comments covered a limited number of topics, including: liability of Star & Crescent Boat Company, the Hearing Panel's inclusion of a statement about application of the narrative water quality objective for San Diego Bay, how polygon SW 29 may be addressed in the future, electronic reporting requirements and the reasonableness of oversight costs sought to be recovered from dischargers for the Shipyard Sediment Cleanup Project. A complete copy of

responses to the written comments is provided in Supporting Document 12. The Advisory Team concluded that most comments do not require any modification to the existing TCAO and DTR. Responses to comments that result in modification to the TCAO and the DTR are addressed by the Errata document included as Supporting Document 13. The Advisory Team's response to comments regarding the reasonableness of oversight costs and the tentative errata on this topic are discussed below.

Pursuant to Water Code section 13304, the San Diego Water Board and State Water Board may recover from dischargers the reasonable costs actually incurred by the Water Boards to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action. Oversight costs under Water Code section 13304 can include, but are not limited to, staff costs to develop and oversee implementation of cleanup and abatement orders or investigative orders. As drafted, Finding 41 of the Tentative Cleanup and Abatement Order (TCAO) sets forth categories of costs and associated dollar amounts, including staff costs for prior fiscal years, that the Cleanup Team identified as reasonable and recoverable pursuant to Water Code section 13304. Section H, Provision 1, of the TCAO directs that the dischargers reimburse the San Diego Water Board and State Water Board for appropriate recoverable costs identified in Finding 41.

Water Code section 13365 sets forth a framework for recovery of appropriate costs pursuant to the Board's cleanup and abatement authority under Water Code section 13304. It identifies certain processes that must be followed and requirements that must be met by the Regional and State Water Boards to recover costs from discharger and provides for a process for resolving disputes. In its February 24, 2012, written comments, NASSCO questions whether the record contains adequate documentation to support many of the staff costs identified by the Cleanup Team as recoverable in Finding 41. NASSCO also raises other challenges to some of these staff costs. BAE Systems requests that the Cleanup Team provide documentation for all costs sought to be recovered

The Advisory Team has reviewed the documentation in the record and concludes that documentation of the San Diego

Water Board staff costs included in the TCAO for some time periods is incomplete. Therefore, the Advisory Team has prepared modifications to the TCAO to delete the dollar amounts associated with unreimbursed staff costs and to make other related changes. To provide a process for resolving disputes about the reasonableness of past and future oversight costs, Finding 41 is also amended (1) to indicate that the Chair may designate an individual to resolve disputes about the reasonableness of staff oversight costs, including the supporting documentation for past and future oversight costs the Board seeks to recover from the dischargers, and (2) to explicitly recognize that the Assistant Executive Officer may amend the Cleanup and Abatement Order as necessary in the future to include any amounts derived through the dispute resolution process and determined by the San Diego Water Board or State Water Board to be owed by the discharger(s).

A further explanation of cost recovery rationale is provided in Supporting Document 12 and associated proposed Errata are included in Supporting Document 13.

#### SUPPORTING DOCUMENTS

12. Response to Written Comments on Revisions Received on February 24, 2012 (hard-copy)
13. Errata to Tentative Order No. R9-2012-0024 and Draft Technical Report (hard-copy)