

**California Regional Water Quality Control Board
San Diego Region**

**Agenda Item 9
Supporting Document 13**

PROPOSED ERRATA

**TENTATIVE CLEANUP AND ABATEMENT ORDER
NO. R9-2012-0024**

**NATIONAL STEEL AND SHIPBUILDING COMPANY
BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.
CITY OF SAN DIEGO
CAMPBELL INDUSTRIES
SAN DIEGO GAS AND ELECTRIC
UNITED STATES NAVY
SAN DIEGO UNIFIED PORT DISTRICT**

**SHIPYARD SEDIMENT SITE
SAN DIEGO BAY
SAN DIEGO, CALIFORNIA**

This document includes tentative errata, proposed by the Advisory Team as of March 8, 2012, to TCAO No. R9-2012-0024 and the Draft Technical Report as released on February 13, 2012.

Errata to Tentative Cleanup and Abatement Order No. R9-2012-0024

1. Finding 41, Pages 20 and 21

Finding 41 will be revised as follows:

Pursuant to Water Code section 13304, and consistent with other statutory and regulatory requirements, including but not limited to Water Code section 13365, the San Diego Water Board and the State Water Board are entitled to, and will seek reimbursement for, all reasonable costs actually incurred ~~to date~~ by the San Diego Water Board and the State Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this Order.

Unreimbursed, ~~recoverable~~ reasonable costs for contracts and fees actually incurred by the San Diego Water Board and the State Water Board for the development and issuance of this Cleanup and Abatement Order ~~fall into four categories as listed and described below are as follows:~~

- a. Contracts funded by the State Water Board Cleanup and Abatement Account or other San Diego Water Board contract funds for services in support of the development and issuance of this Cleanup and Abatement Order.
 - i. DM Information Services, Inc., produced the electronic administrative record. This work was paid for with Cleanup and Abatement Account funds and San Diego Water Board contract funds in the amount of \$109,908.
 - ii. The Department of Fish and Game provided technical consultation services on the fish histopathology and bile studies, and the wildlife risk assessments. This work was paid for with Cleanup and Abatement Account funds in the amount of \$43,287.
 - iii. The Office of Environmental Health Hazard Assessment provided technical consultation services on the human health risk assessments. This work was paid for with San Diego Water Board contract funds in the amount of \$12,009.
- ~~b. Unpaid invoices billed to NASSCO. NASSCO has not paid the entire amount billed to its cost recovery account. Based on the most current accounting available to the San Diego Water Board, the unpaid balance on the NASSCO cost recovery account is \$276,033.56 as of February 6, 2012.~~
- b. Filing fees for CEQA documents. Pursuant to Fish and Game Code Section 711.4, the San Diego Water Board must pay to the Department of Fish and Game a filing fee to defray the costs of managing and protecting California's vast fish and wildlife resources. The filing fee for the Environmental Impact Report is \$2,919 and the County Clerk Processing fee is 50.00 for a total of \$2,969.
- ~~d. Unreimbursed costs. Due to Site Cleanup Program budget constraints, the San~~

~~Diego Water Board was unable to bill all of the recoverable costs to the NASSCO and BAE Systems cost recovery accounts. The unreimbursed staff costs total \$444,206.56.~~

The amount of past and future recoverable staff costs will be determined through the process set forth in Water Code section 13365. The Chair may designate an individual qualified under Water Code section 13365, subdivision (c)(4) to resolve dischargers' disputes about the reasonableness of past and future oversight costs the San Diego Water Board seeks to recover from the dischargers to this Order. Under Water Code section 13365, the determination of the reasonableness of oversight costs can include, but is not limited to, evaluation of documentary support (including information not already in the record) for requested oversight costs. The Assistant Executive Officer is authorized to amend this Order as necessary to include any undisputed oversight cost amounts or amounts derived through the dispute resolution process identified in Water Code section 13365, subdivision (c)(4) and determined to be owed by the discharger(s).

2. Section H, Provision 1, pages 33 and 34

Section H, Provision 1 will be revised as follows:

1. **Cost Recovery.** The Dischargers shall reimburse the State of California for all reasonable costs actually incurred by the San Diego Water Board and State Water Board to investigate, oversee, and monitor cleanup and abatement actions required by this CAO, including the cost to prepare CEQA documents according to billing statements prepared from time to time by the State Water Board. If the Dischargers are enrolled in a reimbursement program managed by the State Water Board for the discharge addressed by this CAO, reimbursement shall be made pursuant to the procedures established in that program.

Within 60 days of the adoption of this CAO, the Dischargers shall reimburse the State of California in the amount of ~~\$168,173,444,206.56~~ for the unreimbursed costs actually incurred by the San Diego Water Board and State Water Board as described in Finding 41 of this Order.

Within 30 days of the adoption of this CAO, the Dischargers shall identify to the San Diego Water Board an entity or party, including contact information, authorized by the Dischargers to receive and pay future invoices issued by the State Water Board Cost Recovery Program for staff oversight costs incurred by the San Diego Water Board to investigate, oversee, and monitor cleanup and abatement actions required by this CAO.

3. Section H, Provision 10, Page 37

Provision 10 will be revised as follows:

Electronic and Paper Media Reporting Requirements. The Dischargers shall submit both electronic and paper copies of all reports required under this CAO

including work plans, technical reports, and monitoring reports. Larger documents shall be divided into separate files at logical places in the report to keep file sizes under 150 megabytes. The Discharger shall continue to provide a paper transmittal letter, a paper copy of all figures larger than 8.5 inches by 14 inches (legal size), and an electronic copy (on CD or other appropriate media) of all reports to the San Diego Water Board. All paper correspondence and documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: Geotracker Site ID: **T10000003580 SL607392737 (NASSCO) or SL607392738 (BAE Systems)**. The Dischargers shall comply with the following reporting requirements for all reports and plans (and amendments thereto) required by this Order:

Errata to Draft Technical Report (DTR) for Tentative Cleanup and Abatement Order No. R9-2012-0024

1. DTR Section 41, pages 41-1 and 41-2

Section 41 of the DTR will be revised as follows:

Finding 41 of CAO No. R9-2012-0024 states:

Pursuant to Water Code section 13304, and consistent with other statutory and regulatory requirements, including but not limited to Water Code section 13365, the San Diego Water Board and the State Water Board are entitled to, and will seek reimbursement for, all reasonable costs actually incurred ~~to date~~ by the San Diego Water Board and the State Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this Order.

Unreimbursed, ~~recoverable~~ **reasonable** costs for contracts and fees actually incurred by the San Diego Water Board and the State Water Board for the development and issuance of this Cleanup and Abatement Order ~~fall into four categories as listed and described below are as follows:~~

- a. Contracts funded by the State Water Board Cleanup and Abatement Account or other San Diego Water Board contract funds for services in support of the development and issuance of this Cleanup and Abatement Order.
 - i. DM Information Services, Inc., produced the electronic administrative record. This work was paid for with Cleanup and Abatement Account funds and San Diego Water Board contract funds in the amount of \$109,908.
 - ii. The Department of Fish and Game provided technical consultation services on the fish histopathology and bile studies, and the wildlife risk assessments. This work was paid for with Cleanup and Abatement Account funds in the amount of \$43,287.
 - iii. The Office of Environmental Health Hazard Assessment provided technical

consultation services on the human health risk assessments. This work was paid for with San Diego Water Board contract funds in the amount of \$12,009.

~~b. Unpaid invoices billed to NASSCO. NASSCO has not paid the entire amount billed to its cost recovery account. Based on the most current accounting available to the San Diego Water Board, the unpaid balance on the NASSCO cost recovery account is \$276,033.56 as of February 6, 2012.~~

b. Filing fees for CEQA documents. Pursuant to Fish and Game Code Section 711.4, the San Diego Water Board must pay to the Department of Fish and Game a filing fee to defray the costs of managing and protecting California's vast fish and wildlife resources. The filing fee for the Environmental Impact Report is \$2,919 and the County Clerk Processing fee is 50.00 for a total of \$2,969.

~~d. Unreimbursed costs. Due to Site Cleanup Program budget constraints, the San Diego Water Board was unable to bill all of the recoverable costs to the NASSCO and BAE Systems cost recovery accounts. The unreimbursed staff costs total \$444,206.56.~~

The amount of past and future recoverable staff costs will be determined through the process set forth in Water Code section 13365. The Chair may designate an individual qualified under Water Code section 13365, subdivision (c)(4) to resolve dischargers' disputes about the reasonableness of past and future oversight costs the San Diego Water Board seeks to recover from the dischargers to this Order. Under Water Code section 13365, the determination of the reasonableness of oversight costs can include, but is not limited to, evaluation of documentary support (including information not already in the record) for requested oversight costs. The Assistant Executive Officer is authorized to amend this Order as necessary to include any undisputed oversight cost amounts or amounts derived through the dispute resolution process identified in Water Code section 13365, subdivision (c)(4) and determined to be owed by the discharger(s).

41.1. Cost Recovery

Pursuant to Water Code section 13304, and consistent with other statutory and regulatory requirements, including but not limited to Water Code section 13365,⁶⁷ the San Diego Water Board and the State Water Board are entitled to, and will seek reimbursement for all reasonable costs actually incurred ~~to date~~ by the San Diego Water Board and the State Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action required by this Order.

Finding 41 ~~identifies~~includes reasonable costs actually incurred by the San Diego Water Board for contract services (for production of the administrative record and technical consultation services provided by the Office of Environmental Health hazard Assessment and California Department of Fish and Game) ~~and San Diego Water Board staff services costs (dating from September 2006 to September 2011)~~, and California Department of Fish and Game filing fees for the Environmental Impact Report. Section 15045 of the CEQA Guidelines (Cal. Code Regs., tit. 14) provides additional support for

recovery of reasonable fees for preparation of environmental documents and “for procedures necessary to comply with CEQA on the project.”

The supporting documentation for cost recovery amounts, cited in Finding 41 of Cleanup and Abatement Order No. R9-2012-0024, are provided in the Appendix for Section 41. The Appendix also includes documentation submitted as of November 2, 2011, in support of staff oversight costs. The San Diego Water Board expects that evaluation of the reasonableness of past oversight costs will include evidence in the administrative record for this Order and any additional relevant documentary support.