

**APPENDIX A
COVER PAGE
SHIPYARD SEDIMENT SITE**

Designated Parties to the proceeding shall provide the following information on the cover page of their submittal:

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March 27, 2014

VIA U.S. MAIL AND EMAIL

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Re: San Diego Regional Water Quality Control Board Cleanup Cleanup and
Abatement Order R9-2012-0024

Response to Regional Board's Executive Officer's Report of March 19,
2014

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Dear Chairman Morales, Regional Board Members, and Mr. Gibson:

The City of San Diego ("City") herein responds to the Regional Board's Executive Officer's Report of March 19, 2014 ("Report"), as it pertains to the Shipyard Sediment Site, and to a letter sent by counsel for NASSCO to the Regional Board on February 12, 2014, which was attached to the Report.¹ Unfortunately, NASSCO's letter is one more instance in its history of sending the Regional Board one-sided factual descriptions coupled with groundless legal arguments in an attempt to compel the Regional Board to take unwarranted actions against the City.

Surprisingly, NASSCO seems to once again be taking the position that its and the other Dischargers' duty to cooperate with the Cleanup and Abatement Order ("CAO") is somehow predicated upon the City acceding to NASSCO's settlement demands in the federal litigation concerning cost allocation. NASSCO articulated this same position in its letter to the Regional Board back on September 24, 2013, when it threatened to derail the implementation of the CAO in the South unless the City agreed to the settlement demanded by NASSCO in the litigation.² Now, NASSCO strongly suggests that the remediation will not be completed on the schedule set forth in the Order unless the City withdraws its oppositions to motions for a determination that the settlements are in good faith ("motions"). The law could not be more clear: the Dischargers' obligation to comply with the CAO is completely independent of any developments in the federal litigation involving the same parties.

Although the federal litigation has no bearing whatsoever on each party's responsibilities with respect to the CAO, the Regional Board needs to understand that the City has good reasons to take the position about which NASSCO complains.³ Without going into unnecessary detail, the City opposed the motions for good faith because it believes the settlement agreements referenced in the motions are not in compliance with the requirements for a court order determining the settlements are in good faith. The District Court will be hearing the motions on April 24, 2014. If the City is wrong, NASSCO and the other moving parties will have their motions granted by the District Court and the moving parties will receive their requested orders. If the City is right that an order determining the settlement agreements are in good faith will unfairly prejudice the City's rights in the federal litigation, and the motions are denied, then NASSCO and the other settling parties will have no choice but to negotiate revisions to the respective settlement agreements that truly are in good faith and which avoid provisions that unfairly prejudice the City. Alternatively, NASSCO and the other settling parties could simply proceed forward with a settlement that does not include the requirement for an order of good

¹ It is important to note that the City was unaware of this letter until the City saw it attached to the Report. Although counsel for NASSCO maintains that the City was included on the distribution list, neither the City, nor outside counsel for the City, has a record of having received the letter via email or regular mail.

² "NASSCO (and the other South parties) cannot implement the cleanup without a commitment from the City to fund its share of the cleanup costs without strings (forgo further litigation)." (Letter from Kelly Richardson to the Board, dated September 24, 2013)

³ Consistent with the overall misleading characteristics of the NASSCO letter, it seems likely that any readers of the letter would inevitably conclude that the City is the only party in the federal litigation that has opposed the motions for good faith. In fact, Campbell Industries and the San Diego Unified Port District also opposed motions for good faith in the federal litigation.

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faith. In any event, whatever happens with the motions for good faith in the federal litigation is simply irrelevant to each Discharger's obligation to comply with the CAO.

The funding situation in the South exemplifies the principle that the status of the federal litigation should not impact any Discharger's willingness to comply with the CAO. Despite the fact there is no settlement in the South, and the motions for good faith remain opposed, the remediation in the South has been proceeding on schedule. Notably, NASSCO's letter to the Regional Board fails to mention that the City has been contributing substantial amounts of money as part of that effort (over \$3 million at last count). The City has paid these amounts even though it has no control of the project and has not been notified of developments until after they have occurred and communicated to the Regional Board. The City has received no documents from NASSCO except invoices from NASSCO's trust, which it has continued to pay.

In sum, it is highly inappropriate for NASSCO to attempt to convince the Regional Board to pressure the City to comply with a litigation strategy devised by an opposing party in federal litigation (NASSCO) that will unfairly prejudice the City's rights in the federal litigation, and to threaten non-compliance with the CAO unless NASSCO's demands are satisfied.

The City appreciates your consideration of this response.

Respectfully submitted,



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Counsel for the
CITY OF SAN DIEGO

cc: Counsel to Responsible Parties to Order No. R9-2012-0024 (Via Email)
Cris Carrigan