

**REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**EXECUTIVE OFFICER SUMMARY REPORT  
August 10, 2022**

**ITEM 5**

**SUBJECT**

Cleanup and Abatement Order Directing Lockheed Martin Corporation to Clean Up or Abate the Effects of Waste Discharged from the Former Tow Basin and Former Marine Terminal and Railway Facilities at 3380 North Harbor Drive and 1160 Harbor Island Drive to the East Basin of Harbor Island in San Diego Bay, San Diego, California (Tentative Order No. R9-2022-0007) (*Sasha Smirensky*)

**STAFF RECOMMENDATION**

Adoption of Tentative Cleanup and Abatement Order No. R9-2022-0007 is recommended.

**KEY ISSUE**

Tentative Order No. R9-2022-0007 (**Supporting Document No.1**), if adopted, would require Lockheed Martin Corporation (LMC) to submit work plans, reports, and associated documents, including plans for evaluating narrative sediment quality objectives (SQOs) required in the State Water Resources Control Board (State Water Board) Sediment Quality Provisions of the Water Quality Control Plan for Enclosed Bays and Estuaries of California (Enclosed Bays and Estuaries Plan). Various waste constituents originating at facilities located at 3380 North Harbor Drive and 1160 Harbor Island Drive have been discharged directly or transported to the East Basin of Harbor Island, where they cause or threaten to cause a condition of pollution and an increased health risk to human consumers of fish. The Tentative Order includes detailed directives to protect and restore the water quality, sediment quality, and beneficial uses of the East Basin of San Diego Bay.

**PRACTICAL VISION**

The Strategy for a Healthy San Diego Bay is an important component of Chapter 1: Strategize for Healthy Waters of the Practical Vision. Implementation of the Tentative Order will help support this strategy. The Tentative Order is also consistent with Chapter 2: Monitor and Assess of the Practical Vision because it requires monitoring, assessment, and remediation of contaminated sediment to protect and restore the health of San Diego Bay.

**DISCUSSION**

The purpose of this item is to provide the Board with information to assist in its consideration of the Tentative Order. The Tentative Order replaces San Diego Water Board Cleanup and Abatement Order No. R9-2017-0021<sup>1</sup> (2017 CAO), which the Board rescinded on May 14, 2021. The Tentative Order requires assessment of the SQOs consistent with the State Water Board's declaration that sediment cleanups not completed

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<sup>1</sup> Order No. R9-2017-0021; An Order Directing Lockheed Martin Corporation to Clean Up and Abate the Effects of Waste Discharged from The Former Tow Basin and Former Marine Terminal and Railway Facilities at 3380 North Harbor Drive And 1160 Harbor Island Drive to The East Basin of San Diego Bay, San Diego, California.

at the time of the SQO adoption must assess SQOs prior to the completion of the remedial action.

The site comprises the area of the East Basin of Harbor Island where discharges from landside properties identified as the former Tow Basin Facility and the LMC Former Marine Terminal and Railway Facility have contaminated marine sediment with primarily polychlorinated biphenyls (PCBs) and mercury. The San Diego Water Board identified General Dynamics Corporation, LMC, and the San Diego Unified Port District as the parties responsible for these discharges. Under the terms of a 2017 settlement agreement between the responsible parties, LMC agreed to be solely responsible for current and future remediation costs as well as the implementation of the remedial action plan. Consistent with these terms, should the San Diego Water Board adopt the Tentative Order it will be issued only to LMC.

The beneficial uses for San Diego Bay potentially impacted by discharges to the site are commercial and sport fishing, shellfish harvesting, estuarine habitat, marine habitat, wildlife habitat, rare threatened and endangered species, preservation of biological habitats of special significance, and spawning, reproduction, and/or early development. The accumulation of PCBs and mercury in San Diego Bay sediments threatens the target receptors of human health, wildlife, finfish, and the benthic community.

The State Water Board adopted Resolution No. 2018-0028, *Adoption of Amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries: Sediment Quality Provisions, and the Staff Report Including the Substitute Environmental Documentation*, on June 5, 2018, which approved amendments to the *Sediment Quality Plan – Sediment Quality Provisions (Provisions)*. Resolution No. 2018-0028 went into effect on March 19, 2019. The SQOs and the Provisions are based on scientific information, including chemical concentration data, bioassays, and established modeling procedures. The objectives, as implemented, are intended to provide adequate protection for the most sensitive aquatic organisms. The Provisions require that pollutant concentrations in enclosed bay and estuary sediments shall not be present in quantities that are toxic to benthic communities (benthic SQO), shall not be present at levels that may bioaccumulate in aquatic life and affect human health (human health SQO), and shall not be present at levels toxic to wildlife and resident fish (ecological SQO).

Implementation of the SQOs and Provisions as required by the Tentative Order will provide a more thorough framework with which the San Diego Water Board can ensure compliance with the Enclosed Bays and Estuaries Plan. The Tentative Order clarifies the requirements of the 2017 CAO by including the updated Provisions and directives regarding SQOs that went into effect in 2019. The Provisions implemented in 2019 do not exempt ongoing sediment cleanups from complying with the SQOs. In 2017, LMC submitted a feasibility study and post-remedial monitoring plan to the San Diego Water Board in an attempt to comply with the 2017 CAO. LMC and San Diego Board staff engaged in formal communications from October 2017 to November 2019 discussing the adequacy of the submittals and compliance with requirements of the 2017 CAO. In 2019, the Board requested LMC submit a revised post-remedial monitoring plan that complies with the updated SQOs and Provisions, but LMC failed to do so. As a result of the impasse caused by disagreements over interpretation of the 2017 CAO requirements regarding the 2019 SQOs and Provisions, the Board rescinded the 2017 CAO.

Adhering to the updated SQOs and Provisions will allow LMC and the San Diego Water Board to cooperatively develop cleanup and monitoring strategies that will result in a healthier San Diego Bay. The Provisions outline the implementation of ambient sediment quality assessments that determine if SQOs are being met. The benthic SQO requires multiple lines of evidence to verify the effectiveness of corrective actions. The human health SQO is based on a health risk assessment that is protective of human consumers of locally caught sportfish. The ecological SQO requires an ecological assessment of wildlife and resident finfish to thoroughly demonstrate contaminant impacts. Applying the updated Provisions will help protect the waters and sediments of San Diego Bay by using better monitoring and assessment practices to protect human health and address exposure to contaminants in seafood.

### **LEGAL CONCERNS**

At the time of adoption of the 2017 CAO, LMC, the Port of San Diego, and General Dynamics were engaged in private mediation to allocate cleanup costs. The San Diego Water Board does not apportion liability. As a result of the mediation and resolution of the civil suit among the three parties, LMC consented to be the work party for the anticipated 2017 CAO. This was reported to the San Diego Water Board prior to the issuance of the 2017 CAO and, thus, LMC was named as the responsible party in the 2017 CAO. Both the 2017 CAO and the Tentative Order under consideration today include factual findings subjecting all three parties to liability under the California Water Code (see Findings 3 and 4). When the administrative draft was released to the responsible parties for comment, LMC objected to it being named the work party. It is the San Diego Water Board's understanding that the three parties are again in mediation to allocate additional costs related to implementing SQOs, but the outcome of that mediation has not been reported to the San Diego Water Board, and the Board has declined to allow a private discussion related to cost allocation to dictate remedial orders.

Given LMC's (and its consultants') level of engagement on this site for the past five years and the public court documents provided to the San Diego Water Board, the Tentative Order under consideration today names only LMC as the implementing party. This does not represent any finding that the Port of San Diego and General Dynamics could not be named as a responsible party at a future date. It is also not intended to influence the cost allocation in any way. Instead, it reflects the intent that the remaining work be completed expediently by LMC and the costs be shared as the parties see fit, rather than naming all parties and delaying any remedial work as the parties attempt to work cooperatively.

If all parties identified as potentially responsible – LMC, the Port of San Diego, and General Dynamics – appear at the hearing and confirm that the remedial work required by the Tentative Order will be conducted by all three parties, the CAO findings can be modified. In the alternative, the responsible parties may represent to the San Diego Water Board a payment resolution different than the one reflected in previous mediation and court documents, and if such documents are provided, the CAO can be modified accordingly.

### **PUBLIC NOTICE**

The agenda notice for today's meeting was posted on the San Diego Water Board's website and sent to subscribers to the email list for Board meetings. This satisfies the Bagley-Keene Open Meeting Act requirements to publish the meeting notice and agenda.

Notice for comments was provided in the Notice of Public Hearing and Written Comment Period, which was posted on the San Diego Water Board website on July 1, 2022. Comments were accepted through July 15, 2022.

**SUPPORTING DOCUMENTS**

1. Tentative Cleanup and Abatement Order No. R9-2022-0007
2. Site Map
3. Notice of Public Hearing and Written Comment Period
4. Request for Comments Regarding Tentative Cleanup and Abatement Order
5. Comments Received during Written Comment Period