



# California Regional Water Quality Control Board

## San Diego Region



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**TO:** John Robertus, Executive Officer  
Shipyard Sediment Site Advisory Team

**FROM:** David Barker, Supervising Water Resources Control Engineer  
Shipyard Sediment Site Cleanup Team  
**SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD**

**DATE:** March 19, 2008

**SUBJECT: SHIPYARD SEDIMENT SITE TENTATIVE CLEANUP AND  
ABATEMENT ORDER NO. R9-2005-0126; REQUEST FOR DIRECTION TO  
INITIATE PHASE III**

This memorandum provides an update on the indexed electronic record and seeks clarification of the ambiguous distribution procedures described in the January 30, 2006 First Amended Order of Proceedings (First Amended Order). For background information, see previous status reports as well as other project information posted on the San Diego Water Board website at

<http://www.waterboards.ca.gov/sandiego/programs/shipyards/Shipyard%20Sediment%20Cleanup/intro%20r9-2005-0126.html>.

We understand that preparation of the electronic record is proceeding according to the schedule. We are communicating regularly with the Board's contractor, D-M Information Systems Inc. (D-M), to check on the status of the preparation of the electronic record. D-M does not foresee any delays and anticipates that the indexed electronic record and the final hard drive product will be available by Friday, April 4, 2008.

In preparation for next steps, we consulted the First Amended Order. It provides as follows:

Phase II: The Cleanup Team shall distribute to all designated Parties a Technical Report that supports the proposed issuance of the Tentative CAO. In addition, the Cleanup Team shall identify, index, and make available to all Designated Parties all directly relevant technical information related to the Tentative CAO and Technical Report. The Cleanup Team is directed to investigate the feasibility of converting the technical information into a digitized, electronic format to facilitate the Designated Parties' review, and report back to the Advisory Team on its proposed course of action.

*California Environmental Protection Agency*

Phase III: The Designated Parties, excluding the Cleanup Team, shall have **90** days after the release and distribution of the Technical Report to conduct any necessary discovery and submit evidence and comments on the Technical Report. All such evidence and comments shall be appropriately distributed to all Designated Parties. Interested Persons are required to submit comments within 90 days. Also upon the start of the same 90 days of Phase III, the Designated Parties shall have 30 days to submit to the Advisory Team a nonbinding summary of the areas of disagreement regarding the Tentative CAO.

We are presently in Phase II. We have previously distributed preliminary version copies of the tentative cleanup and abatement order (CAO) and the draft Technical Report. The electronic record is in preparation and scheduled to be completed on April 4th. The distribution of the finalized versions of the tentative CAO, the draft Technical Report, and the electronic indexed record are the last tasks remaining in Phase II. The initiation of Phase III evidently will start a 90-day time period for Designated Parties other than the Cleanup Team to conduct discovery and submit evidence and comments. Before taking action that would appear to start the 90-day period running, the Cleanup Team wishes to ensure it is following the appropriate procedure.

One matter in need of clarification is the procedure for distributing the electronic record. While D-M has promised to complete it by April 4th, the Cleanup Team feels, in light of the multiple problems experienced during preparation, that the electronic record should be quickly reviewed for errors and usability issues before it is released. This process should take only a day or two.

Another issue is how the Advisory Team wishes to begin Phase III. The Cleanup Team can simply release the electronic record, the final tentative CAO, and draft Technical Report and let the Advisory Team notify parties when the 90-day discovery and comment period has begun. Alternatively, the Advisory Team could specify more precisely how this next phase will proceed.

We request that the Advisory Team consult with Presiding Officer David King and specify that the following (or something similar) be done:

1. We will direct D-M to submit two hard drives to the Regional Board office and one hard drive to the Presiding Officer's office by Friday, April 4 for review. The Cleanup Team will take two working days to review the hard drive product for completeness and usability. Barring any unforeseen deficiencies in the final product, I will instruct D-M to immediately distribute the remaining hard drives to currently designated parties and the Port of San Diego to be received on the same day.

The following is a complete list of parties to each of whom we will transmit one hard drive containing the electronic record:

- a. BAE Systems San Diego Ship Repair, Inc. (formerly Southwest Marine Inc.)
- b. National Steel and Shipbuilding Company (NASSCO)
- c. San Diego Gas & Electric Company, a subsidiary of Sempra Energy Co.
- d. Chevron USA, a subsidiary of ChevronTexaco
- e. BP, the parent company and successor to Atlantic Richfield Co, (ARCO)
- f. U.S. Navy
- g. City of San Diego
- h. Marine Construction and Design Company / Campbell Industries, Inc.
- i. San Diego Coastkeeper (formerly known as San Diego Baykeeper)
- j. Environmental Health Coalition
- k. San Diego Port Tenants Association
- l. Port of San Diego
- m. San Diego Water Board Cleanup Team
- n. San Diego Water Board Advisory Team
- o. David King, Presiding Hearing Officer

(Assuming this list is satisfactory, we need mailing addresses for all of the foregoing parties (besides the Cleanup Team and Advisory Team). I request that the Advisory Team provide me with the mailing address and contact person for each entity by noon Monday, March 24, 2008, so that I may provide the information to D-M to use for shipping the hard drives.)

One additional hard drive copy of the indexed electronic record will be configured to be available for public access in the San Diego Water Board office.

2. The Cleanup Team will post the finalized version of the tentative CAO and draft technical report on the San Diego Water Board website to coincide with the release of the electronic record.

We anticipate that the Advisory Team will be announcing the initiation of Phase III in a public notice or some similar public directive to start the 90-day time period for Designated Parties, other than the Cleanup Team, to conduct discovery and submit evidence. We will advise you when Items 1 and 2 above are complete so that you can proceed with issuance of the public notice or public directive.

The First Amended Order also provides on Page 6, Item 4, Paragraph 4, that the Cleanup Team provide, within two weeks after release of the Technical Report, a specific format for written comments to be used by all Designated Parties throughout the proceedings. We will provide you with a specific written comments format within the next couple of days for possible inclusion in your public notice or public directive announcing the initiation of Phase III.

We wish to conclude Phase II of the proceedings as expeditiously as possible. Accordingly, please advise me of any concerns with the proposed method and schedule of distribution as soon as possible.

cc Shipyards Sediment Distribution List

