

State of California  
Regional Water Quality Control Board  
San Diego Region

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: Consideration of adoption of Tentative Cleanup and Abatement Order No. R9-2012-0024, following certification of Environmental Impact Report (see Agenda Item 8).

RECOMMENDATION(S): The Hearing Panel recommends adoption of Tentative Cleanup and Abatement Order No. R9-2012-0024.

DISCUSSION: On November 9, 14, 15 and 16, 2011, a hearing panel consisting of Grant Destache, Eric Anderson and Gary Strawn (Hearing Panel or Panel) conducted an evidentiary hearing on Tentative Cleanup and Abatement Order (TCAO) No. R9-2011-0001 and its supporting Draft Technical Report (DTR). The Panel heard from all of the Designated Parties to the proceeding and from the public. On November 16, 2011, January 27, 2012 and February 8, 2012, the Panel deliberated on the evidence received during the hearing. As a result of its deliberations, the Hearing Panel made revisions to the TCAO and corresponding sections of the DTR. The Panel's recommendation, renumbered TCAO No. R9-2012-0024 (Supporting Document 5), includes these revisions.

TCAO No. R9-2012-0024 and its supporting DTR (Supporting Document 6) (collectively Proposed Order), along with this Advisory Team Summary Report and the Advisory Team Responses to Written Comments on the Panel's changes (to be provided in second mailing), constitute the Hearing Panel's recommendation to the San Diego Water Board.

A hearing panel must report its proposed decision and order to the full Board, which then takes action based upon the record. The Advisory Team has provided the full Board with all of the supporting documents identified below, including hearing transcripts, and with a redline/strikeout version of the documents showing the Hearing Panel's revisions.

The Board is not required to take additional evidence or allow additional comments when it considers a hearing panel's recommendation, unless the hearing panel proposes significant modifications to the earlier orders. As set forth in the February 13, 2012, Notice of Public Hearing (Supporting Document 3), the Board allowed limited written comments on the Hearing Panel's revisions (Supporting Document 8).

Below is a summary of the Hearing Panel's changes to the Proposed Order:

**Tentative Cleanup and Abatement Order Findings**

(1) Finding 5. Star & Crescent Boat Company. Star & Crescent Boat Company (Star & Crescent) was removed as a discharger because of the factual and legal uncertainties involved in determining whether Star & Crescent is the corporate successor to, and therefore responsible for the liabilities of, San Diego Marine Construction Company. The revisions indicate that the Board expects the pending federal court litigation underway to address discharger liability and allocation will also address the corporate successor status of Star & Crescent. If the federal court determines that Star & Crescent is the corporate successor to San Diego Marine Construction Company, the TCAO directs the San Diego Water Board Cleanup Team to reevaluate whether to add Star & Crescent as a discharger at that time. The corresponding DTR section has also been revised.

(2) Finding 41. Cost Recovery. This Finding was revised to update and identify the specific costs incurred by the San Diego Water Board to date and which the Board seeks to

recover from the dischargers. Consistent with these revisions, supporting language and documentation was added in DTR Section 41 and in a new Appendix to Finding 41 (see below).

#### **Tentative Cleanup and Abatement Order Directives**

(3) Directive F: Reports and Workplans. Directive F was modified to ensure that the public has an opportunity to review all reports and workplans required by the TCAO prior to San Diego Water Board approval. If there is controversy, the full Board will consider approval of reports or workplans at a public meeting.

(4) Directive G: No Further Action. Directive G was revised to recognize that portions of SW29 that are not dredged pursuant to this cleanup may be addressed by a future separate regulatory action (see (7), below).

#### **Tentative Cleanup and Abatement Order Provisions**

(5) Provision H.1 0: Electronic Reporting and Paper Media Reporting Requirements. This Provision was revised to apply electronic reporting requirements for submission of reports or data required by the Board pursuant to applicable electronic reporting regulations.

#### **Draft Technical Report**

(6) Section 12: Clean Water Act Section 303(d) List. Section 12 was revised to include a statement clarifying that the San Diego Water Board anticipates that the sediment cleanup project will provide the basis for delisting the shipyard site remedial footprint from the Clean Water Act section 303(d) list for the San Diego Region.

(7) DTR Section 33: Proposed Remedial Footprint and Preliminary Remedial Design. This section of the DTR was revised to clarify that polygon SW29 is considered part of the shipyard site for purposes of the TCAO, but only a portion of SW29 is included in the dredge area. The San Diego Water Board may address the un-dredged portion of SW29 in a separate regulatory proceeding based upon available information, even if compliance with the sediment cleanup levels is achieved in the overall remedial footprint, as indicated in Directive G of the TCAO. This point is also addressed in a revised footnote located in DTR Section 33.

### **Brief Overview of Proposed Order**

As recommended by the Hearing Panel, the Proposed Order would name seven entities as dischargers with legal responsibility for remediating sediments at the San Diego Bay Shipyard Site. As a foundation for establishing responsibility under Water Code section 13304, the Proposed Order finds that discharges of metals and other pollutant wastes to San Diego Bay have resulted in the accumulation of pollutant wastes in bay bottom marine sediment, which creates conditions that adversely impact aquatic life, aquatic-dependent wildlife and human health beneficial uses established in the San Diego Water Board's Basin Plan.

In accordance with applicable legal authorities, including Water Code section 13304 and State Water Resources Control Board Resolution No. 92-49 (*Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304*), the Proposed Order recognizes reference background conditions and establishes alternative cleanup levels which, upon achievement, are believed to be protective of beneficial uses in the Shipyard Sediment Site. The Proposed Order requires monitoring during any dredging conducted within the remedial footprint and requires post-remedial monitoring to confirm that remaining pollutant concentrations in the sediments will not unreasonably affect San Diego Bay beneficial uses. Under the Proposed Order, post-remediation monitoring will be initiated two years after remedy implementation has been completed and will continue for a period of up to 10 years after remediation.

The Panel's revisions to the TCAO and DTR documents were provided to Designated Parties and the public in underline/strikeout format on February 13, 2012, and are on the San Diego Water Board's web page (Supporting Document 7). A clean copy of TCAO R9-2012-0024 and the Draft Technical Report are provided as Supporting Documents 5 and 6.<sup>1</sup>

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<sup>1</sup> Certain of the San Diego Water Board Cleanup Team's November 2, 2011, revisions to the DTR, considered by the Panel in the November hearing, were inadvertently omitted from the redline/strikethrough version of the DTR in support of TCAO No. R9-2012-0024 made available on February 13, 2012. These November 2, 2011, revisions appear at pages 18-5, 32-40, and 34-3 of the DTR, and are incorporated in Supporting Document 6. The Hearing Panel made no modifications to these November revisions.

LEGAL CONCERNS: None.

SUPPORTING  
DOCUMENTS

1. Location Map of the Shipyards site (hard copy)
2. Plot plan for Shipyard facilities – NASSCO and BAE (hard copy)
3. February 13, 2012, Notice of Public Hearing (hard copy)
4. September 19, 2011, Notice of Public Hearing (hard copy)
5. TCAO No. R9-2012-0024 (February 13, 2012) (hard copy)
6. Draft Technical Report (DTR) (February 13, 2012)
  - a. Volume I (Finding Numbers 1 through 11) (hard copy)
  - b. Volume II (Finding Numbers 12 through 31) (hard copy)
  - c. Volume III (Finding Numbers 32 through 39) (hard copy)
  - d. Appendices through Finding 39 (on CD)
  - e. Appendix No. 41 (Added by Panel) (hard copy)
7. Redline/Strikethrough of TCAO No. R9-2012-0024 and DTR Showing Substantive Changes to TCAO No. R9-2011-0001 and its supporting DTR (February 13, 2012) (on CD)
8. Written Comments on Revisions Received February 24, 2012 (hard copy)
9. Transcripts of November 9, 14, 15 and 16, 2011 hearing (on CD)
10. Designated Party PowerPoint Presentations Made During Hearing (on CD)
11. Initial and Supplemental Agenda Packages for November 2011 Hearing (on CD)

PUBLIC NOTICE:

The Advisory Team distributed a Notice of Public Hearing, including hearing procedures, for the November Panel Hearing on September 19, 2011 (Supporting Document 4). On February 13, 2012, the Advisory Team distributed a Notice of Public Hearing for the March 14, 2012, hearing in this matter (Supporting Document 3).