

EXECUTIVE OFFICER SUMMARY REPORT
April 9, 2014

ITEM: 5

SUBJECT: Information Item: Status Report on the Shipyard Sediment Cleanup, San Diego Bay (Vicente Rodriguez)

PURPOSE: This item provides the Board with more detailed information directly from the Responsible Parties on progress towards and impediments to completing the cleanup at the Shipyard Sediment Site (Site), under Cleanup and Abatement Order (CAO) No. R9-2012-002.

RECOMMENDATION(S): None.

KEY ISSUES:

- 1) Project modifications and delays in the North Sediment Remediation Area resulted in no dredging during the first of three planned dredging seasons.
- 2) The Responsible Parties have failed to reach a settlement in the allocation lawsuit which has been ongoing since 2008.
- 3) The State is owed close to one million dollars in unpaid staff oversight costs for this cleanup.

DISCUSSION: The Site encompasses approximately 60 acres of tidelands property along the eastern shore of central San Diego Bay, and has been used for various industrial activities since at least the early 1900s (see Supporting Document No. 1 for a Site Map). In 2012, the CAO was issued for the remediation of accumulated waste pollutants in marine sediments at the Site. The final date to complete dredging is March 30, 2016. While NASSCO has reported that the dredging and placement of sand cover have been completed in the South Sediment Remediation Area, a number of concerns have emerged. The Executive Officer's Report for March 2014 (Supporting Document No. 2) raises these issues and is the basis for this item before the San Diego Water Board.

The first concern is whether the responsible parties can complete the required dredging and placement of sand cover in the North Sediment Remediation Area by the deadline of

March 30, 2016, in light of project modifications and delays. Under the terms of the CAO, up to 105,800 cubic yards of dredging is projected to occur within approximately 10.2 acres of the 16.6-acre offshore North Sediment Remediation Area. Project modifications resulted in no dredging activities during the 2013-14 dredging season, and only two dredging seasons remain until the March 30, 2016, deadline in the CAO to complete dredging activities. The US Fish and Wildlife Service requires that construction activities, such as dredging, occur outside the breeding season of the least tern shore bird; therefore, the dredging season starts in September and ends in March.

The second concern is failure of the responsible parties to reach a settlement in the lawsuit currently underway in federal court¹ dealing with allocation of liability and costs for the cleanup among the Responsible Parties. Latham and Watkins LLP (L&W), on behalf of NASSCO, reported that the City of San Diego still has not reached settlement in the ongoing federal lawsuit. L&W reports that the City is actively opposing the settlements reached by other parties, which could keep these parties from fulfilling their commitments to fund their shares of the cleanup costs. L&W also maintains that the City's actions threaten to derail the remediation before it is completed, particularly for the remaining work to be performed across the entire Site and may delay the cleanup project beyond the schedule set forth in the CAO.

The third concern is the increasing unpaid balance for San Diego Water Board staff oversight costs for this project which will soon eclipse one million dollars. These unpaid balances have been accruing since 2008. Supporting Document No. 3 contains a table listing the unpaid invoices and outstanding balances which today total \$966,068.

The Responsible Parties were asked by staff to send a representative to the Board Meeting to present a progress report on the Shipyard Sediment Cleanup and address these concerns.

LEGAL CONCERNS: None.

¹ City of San Diego v. National Steel & Shipbuilding Co., et al., United States District Court Case No. 09 - CV-02275-AJB (BGS)

**SUPPORTING
DOCUMENTS**

- 1.) Site Map
- 2.) March 2014 Executive Officer's Report - Item B-4,
Status Report – San Diego Shipyard Sediment Site
Remediation Project
- 3.) Cost Recovery Totals Table

PUBLIC NOTICE:

This item was noticed in the Meeting Notice and Agenda for the April 9, 2014 Board Meeting.