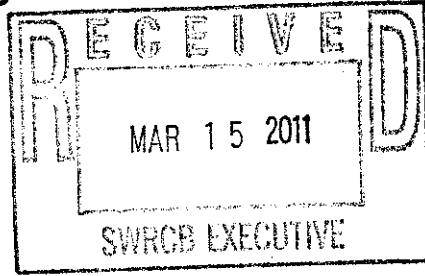


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March 15, 2011

VIA EMAIL

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th floor
Sacramento, California 95814

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Re: Comment Letter - Sediment Quality Objectives Amendment

Dear Ms. Townsend:

On behalf of our clients, General Dynamics ("GD") and National Steel and Shipbuilding Company ("NASSCO"), we submit this comment letter on the proposed amendments to the Water Quality Control Plan for Enclosed Bays and Estuaries of California, Part 1, Sediment Quality Objectives ("SQOs"). GD and NASSCO appreciate the opportunity to review the proposed amendments; however, both companies are concerned that the proposed amendments include several revisions which—although described alternately in the Board's documentation as "non-substantive[.]. . . minor changes"¹ and "corrections to omissions and typographical errors"² in the original document—in fact, constitute substantive revisions to the adopted SQOs.

The changes referred to above are associated primarily with two items: (1) the category score concentration ranges for the chemical score index (CSI) as presented in Table 6 and (2) the list of PCB congeners needed to characterize sediment contamination as included in Attachment A. For the reasons stated below, GD and NASSCO believe that the aforementioned proposed changes to the SQOs represent significant, substantive changes that require a technical rationale and justification. Accordingly, GD and NASSCO respectfully request that the Board postpone the public hearing on these revisions until supporting information can be provided, and extend the comment period at least thirty (30) days from the date such backup materials are provided in

¹ See State Water Resources Control Board, Notice of Public Hearing and Subsequent Board Meeting, at 2.

² See http://www.swrcb.ca.gov/water_issues/programs/bptcp/sediment.shtml.

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order to allow GD and NASSCO sufficient time to review and comment knowledgeably on the same.³

Revisions to the Chemical Score Index Ranges Presented in Table 6 of the SQOs

With regard to the CSI ranges presented in Table 6, it appears that some of the indicated changes may, in fact, represent corrections to previous typographical errors (e.g., revisions to the ranges for zinc and total high MW PAH).⁴ However, GD and NASSCO are concerned that the proposed amendments also include significant changes to the concentration ranges for DDDs, DDEs, and DDTs, without providing any explanation of the rationale behind the proposed changes or the effect of the proposed changes on the SQO process. For example, the proposed reference concentration range for DDEs increases from $\leq 0.50 \mu\text{g}/\text{kg}$ to $\leq 1.19 \mu\text{g}/\text{kg}$. At the high category score for DDEs, the range decreases from $> 154 \mu\text{g}/\text{kg}$ to $> 45.84 \mu\text{g}/\text{kg}$, a 70% reduction in the specified concentration range. Changes of similar magnitude are proposed for DDDs and DDTs. It is clear that these proposed changes are neither minor corrections nor are they simple corrections for typographical errors. In addition, the proposed weight factors (Table 6) for all three substances change from previous values, with the weight for DDTs increasing from 16 to 20, potentially producing a significant effect on the influence of DDTs on the resultant CSI score. Yet, these proposed changes are presented in the subject document as "minor," "non-substantive" "corrections to omissions and typographical errors," without any explanation of the rationale behind the proposed changes or the effect of the proposed changes on the SQO process.

Revisions to the List of Chemical Analytes Needed to Characterize Sediment Contamination Exposure and Effect Contained in Attachment A to the SQOs

Similarly, the proposed amendments also include substantive changes to the list of chemical analytes needed to characterize sediments, without any corresponding explanation as to why such changes are now proposed. Most notably, in the proposed amendments to Attachment A of the SQOs, there are substantive changes to the list of PCB congeners needed to characterize sediments. Three PCB congeners are proposed for deletion from the list (2,2',3,3',4,4',5-heptachlorobiphenyl, 2,2',3,3',4,4',5,5',6-nonachlorobiphenyl, and decachlorobiphenyl), while a single new PCB congener, 2,3,3',4',6-pentachlorobiphenyl, is proposed to be added. These proposed changes represent a significant change in the list of PCB congeners and the resultant total PCB concentration that will be considered in an SQO assessment. Further, these changes in congeners are also being proposed without any corresponding proposed changes to the total PCB

³ The requested relief is particularly warranted considering that we have attempted to contact the State Board on March 9 and 10, 2011 concerning the technical rationale and substantive bases for the proposed amendments, and have, to date, received no response.

⁴ That said, however, it should be noted that the proposed change to zinc renders the distinction between category 1 ("reference") and category 2 ("low") to be ambiguous to the extent that the revisions result in an overlap between category 1 (described as $\leq 113 \mu\text{g}/\text{kg}$) and category 2 (described as $> 112 \mu\text{g}/\text{kg}$).

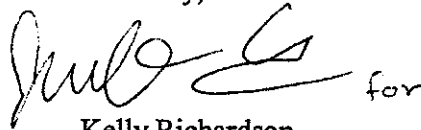
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category score concentration ranges presented in Table 6. As is the case for proposed amendments to the category score concentration ranges, the document presents no rationale for these significant changes to the PCB congener list. Moreover, a review of the SQO backup materials posted on the SCCWRP website⁵ reveals no corresponding changes in the PCB congener list for SQO assessments.

Conclusion

In sum, the aforementioned proposed amendments to the SQOs represent significant changes that require the Board to provide a technical rationale and justification. As indicated above, these proposed changes cannot be considered as non-substantive or minor changes because they represent significant modifications to the CSI concentration ranges and the PCB congeners that are used in SQO assessments. Accordingly, GD and NASSCO respectfully request that the Board (1) provide a rationale and technical basis for the proposed changes; (2) extend the comment period at least thirty (30) days from the date such material is provided so that interested parties will have sufficient time to review and comment on both the proposed changes and any associated technical backup that is provided; and (3) postpone the public hearing on the proposed amendments until after the supporting information is provided by staff, and interested parties have had a meaningful opportunity for review and comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly Richardson", followed by the word "for" in a smaller font.

Kelly Richardson
of LATHAM & WATKINS LLP

cc: Mark Russell, Esq., General Dynamics
Matthew S. Luxton, Esq., General Dynamics NASSCO

⁵ <ftp://ftp.sccwrp.org/pub/download/TOOLS/SQO/ChemicalList.pdf>

