


Santa Barbara, California 93101

May 15, 2012

By Email and United States Mail

Ms. Diane Kukol
Central Coast Regional Water
Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, Ca.
93401

t: (805) 542-4637
f: (805) 788-3546
e: dkukol@waterboards.ca.gov

Re: Comment and Opposition to Plan for No Further Action Concerning
the Santa Barbara Dry Dock Site and the Santa Barbara Harbor.

Ms. Kukol,

I would like to raise a number of issues with you regarding your Plan for No Further Action concerning the Santa Barbara Dry Dock Site and the Santa Barbara Harbor. Opposition is necessary and proper at this time due to the significant time elapsed since testing of the Site has been performed, post testing and on going environmental contamination by the operator(s) of the Dry Dock, through April of 2011 when the Dry Dock was sold by the bankruptcy trustee and privately removed, and serious misrepresentations by the City of Santa Barbara Waterfront Department concerning the status of the site, investigation and case, and the failure of the Regional Water Quality Control Board to be adequately involved in the matter and exercise its delegated jurisdiction over the Site, Operator(s), and the City of Santa Barbara.

It is interesting to note that as of November 2010 Waterfront Department Director John Bridley represented in writing, pursuant to an inquiry re continued dry dock operations: "Most recently, staff from the State Regional Water Control Board conducted a thorough review, testing and analysis of the site and found no high levels of contamination or that site remediation was required. The investigation and active case was

subsequently closed.” Unfortunately this express (mis)representation does not appear to be in accord with the facts of the matter or the case file, in that it is clear from your documents that over a four year period from 2002-2006, to wit: “Based on the information that the Regional Board staff has at this time, the dry dock is the location of known sediment contamination.” And further, it is clear that tributyltin, dibutyltin, copper and lead have all been found in toxic levels within the areas consistent with dry dock operations. Yet, the dry dock was inexplicably permitted to operate for another five years subsequent to environmental testing, and the case former Director Bridley refers to was not in fact closed (memorialization of Feb 24, 2011 telephone call City proposal to close investigation) at all as it is now the subject of your Plan for No Further Action and the City of Santa Barbara Waterfront Department’s request to close the case.

Irregularities are present as well as various inaccuracies within your materials that have been pointed out to you, inclusive of negation of proper notice to marina slip holders or stakeholders was, according to you, declined and omitted by the Waterfront Department’s not wishing to include notice of the Plan to slip holders in monthly billing envelopes, and certain factual matters have been mischaracterized within documents relevant to the Site.

Further, it would appear that the Water Board has been inactive and perhaps uninvolved for a number of years concerning the former site of the Santa Barbara Dry Dock, to wit “Since that time, limited Water Board resources have prevented staff from maintaining a consistent regulatory presence for the Site.” And, it appears that no data collection has occurred since the Site’s initial evaluation from 2002-2006. The City was expressly asked to terminate Dry Dock operations and require removal of the business and its operations from the Site, and then Waterfront Director Bridley flatly refused to do so and allowed continued operations of the Dry Dock for approximately five years post your data collection and evaluation of the Site. *Dry Dock operations continued in the same manner post California Regional Water Quality Control Board involvement as had occurred prior thereto and the manner of operations is what created and caused, combined with no oversight, or purposeful lack of enforcement at the City level, Site contamination in the first place. Hence, environmental contamination continued to occur at the Site until the Dry Dock was removed in mid-2011.*

In other words, while there was no consistent regulatory presence from the Water Board at the Site, the City inexplicably allowed continued operations of the Dry Dock resulting in harbor contamination that has not been

addressed, measured, studied or evaluated since 2006. It is improper to now propose to close, or close the case, based on old and not current data, especially so given the City of Santa Barbara Waterfront Department's misguided decision to allow continued operation and contamination of the Site in the Water Board's admitted absence, and the City's erroneous, at best, representations to the public stating that the case had been closed et al.

For the record and to be clear, the Dry Dock was not removed in 2010 as you have repeatedly and inaccurately stated in your writings, but rather was removed in May 2011. Additionally, the City of Santa Barbara did not remove or cause to be removed the Dry Dock from our harbor. The Dry Dock only ceased operations because the owner of the Dry Dock filed for bankruptcy and his Dry Dock was subsequently sold by the bankruptcy trustee to satisfy creditor's claims. The trustee's sale of the Dry Dock only (no other assets or liabilities associated therewith), allowed for its removal and caused the business associated therewith to come to a much-needed end. The City of Santa Barbara Waterfront Department expressly refused to terminate the leasehold, remove the Dry Dock, and file an insurance claim (an insurance claim against the Dry Dock's insurance carrier should have been pursued by the City of Santa Barbara) to get the site cleaned up.

When the Dry Dock was privately and graciously removed for the environmental good of the harbor, significant amounts of painting debris were found resting on the floor of the Dry Dock. Hence, every time the Dry Dock was lowered into the water to launch a boat, the paint debris accumulation (containing the same toxic chemicals found at the Site) from each bottom painting job on the floor of the Dry Dock was discharged into the harbor (and on the day the Dry Dock was removed complete with paint debris thereon, the City Waterfront Department demanded that redwood saw dust from the proposed cutting of the beams holding the Dry Dock halves together be caught and not be allowed into the water {while seeing the paint debris present on the Dry Dock} the absurdity of the demand did not go unnoticed]), and contamination through toxic substance(s) discharge was therefore allowed to migrate all throughout the harbor, some of which rests beneath the Site.

The Dry Dock performed one or two and sometimes more bottom painting jobs a week for decades and each time the Dry Dock was lowered into the water of the Harbor, paint debris was directly discharged into the water and hence is a point source of contamination. Please see the pictures taken on the day the Dry Dock was removed memorializing the conditions found

and the large pieces of antifouling bottom paint discharged. Also, please see the 2005 pictures with contaminants in the water with Harbor Patrol present (photographs are not attached to this email, but will be mailed under cover of this letter to the Board in care of you).

During the Dry Dock's operation the City and the Board required no Marine Sanitation Devise (toilet and or holding tank) aboard the Dry Dock or its appurtenant buildings and structures at the Site. The operator and his employees were liveaboards (the Operator held a liveaboard permit from the City of Santa Barbara) of the Dry Dock and they had no toilet (the operator also illegally rented out rooms within the structure and the City did nothing about it). Hence, holes in the flooring of the Dry Dock were used to urinate and defecate into the harbor waters on a daily basis. This information was gained in response to a direct question of the manager of Dry Dock operations, Captain Jack Spot, on the day the structure was removed. I asked in the presence of others: "Where do you guys go to the bathroom?" and the response was "Right there in those holes on the deck (pointing), and that's how its been for years and years." We were all surprised at the response and I stated "you're kidding me," to which the manager laughed and replied "when nature calls."

Additionally, the operator of the Dry Dock operated a clothes washing machine at the Site, there existed no sewer lines or facilities for the Dry Dock Site, and therefore the Dry Dock was plumbed to discharge its wastewater directly into the harbor waters.

Hence, while the Board was busy not overseeing the Site and being negligent in performing its duties, the Site contamination became worse due to continued operations, and with no presence of a marine sanitation devise (what sort of 'investigation' and 'enforcement' case misses the fact no MSD was present at the Site?) during the 'case enforcement,' and as well as paint, the Operator(s) were discharging human waste and wastewater directly into the Santa Barbara Harbor.

The City of Santa Barbara Waterfront Department apparently intends to put slips into the area wherein the Dry Dock and its operations formerly resided. The addition of slips to this particular area is improper at this time due to the contamination of the Site and if slips and pilings are installed, the contaminated debris residing on the harbor bottom will necessarily be disturbed and migrate and contaminate a larger area (although contamination of a larger area may have already occurred) of the Santa Barbara Harbor.

The City of Santa Barbara Waterfront Department at the direction of then Director John Bridley allowed and condoned these uses of the Site and did nothing to mitigate the problems associated therewith. Moreover, others within the Department (thus far unnamed) were aware of the problems associated with Dry Dock operations as they had official responsibilities concerning its operation and did nothing to remedy the problems associated therewith.

Indeed, Director Bridley seemed to want to have the Dry Dock operate in the harbor at any cost and would not enforce even the most fundamental of city ordinances, rules, regulations or state or federal laws applicable to the matter. The Dry Dock and its operator, under the auspices of Director Bridley, were allowed carte blanche to do as they wished, pollute and discharge daily, and have no responsibility and accountability whatsoever for their conduct and operations.

In light of the Water Board's admission that "...limited Water Board resources have prevented staff from maintaining a consistent regulatory presence for the Site," and given the Waterfront Department's policy on the Dry Dock, the State (due to its negligence), the City of Santa Barbara and the Waterfront Department, not the slip holders or businesses in the marina, should bear the costs associated with the clean up of the site.

Further, you mentioned you would be replying in writing to my email of April 9, 2012 and you have failed to do so as to date I have received nothing from you with the exception of a revised Public Notice of Plan for No Further Action (likely pursuant to my mention of lack of proper notice to the slip holders in the marina and the inaccuracies in your original document [although you did manage a tc to the Waterfront Department to discuss the issues I raised with you]).

This is a case where the City of Santa Barbara, as property owner, should be named as a responsibility party for *knowingly* allowing the discharge(s) and contamination to occur. Clearly City of Santa Barbara Waterfront Department Director Bridley's letter of November 10, 2010 wherein he stated, in regard to your Board's investigation and case: "The investigation and active case was subsequently closed," cannot be read consistently with your case file, nor does it appear to be an honest characterization of the Dry Dock Site contamination or case status.

Harbor users daily spend time in the area of the Site of the Dry Dock and I have witnessed people kayaking and paddle boarding at the Site in the water and some with children. The City clearly had a mess in the Harbor

with Site contamination as recognized between 2002-2006, and evidence exists the City knew much earlier, and subsequent thereto, the Operator was allowed to engage in the same conduct as led up to the contamination of the Site in the first place, and for another 5 years the same conduct causing contamination has been allowed and condoned, unchecked, unregulated and therefore it is improper to close the case, and allow the Waterfront Department to not be held accountable for its actions, because it is very likely the levels of toxins have only increased at the Site during the past 5 years.

It appears given the Boards lack of involvement and failure to follow through on appropriate and timely inspections and enforcement actions regarding this Site, that the Plan for No Further Action is not well taken, and is an unacceptable proposed conclusion to what appears to be negligent enforcement at the Board level and amounts to and concerns egregious negligence or conduct involving intentional, willful or knowing disregard of the law by the City of Santa Barbara and the operator of the Site

In conclusion, I respectfully request the Board to not close the aforementioned case, and now start a thorough and proper investigation of the Board's initial actions and subsequent inaction, and of the Site and the City of Santa Barbara Water Department's gross mishandling of the matter, not all inclusive.

Because the Board failed to maintain really any sort of regulatory presence at the Site for the past five years, and allowed the continued operations of the point source discharge, failed to do as it promised, and has taken a position with regard to the Site that is not in the best interests of the public and the Harbor, and because of the conduct of the City of Santa Barbara in the matter, I am forwarding this correspondence along with all applicable documents to the U.S. Environmental Protection Agency for their review, to ensure proper scrutiny of the Site, entities involved and the actions of those concerned, and in order to make sure our Harbor has an opportunity to be properly evaluated, tested and most importantly, cleaned up.

If you have any questions please do not hesitate to contact me.

Sincerely,

///

CC

Ken Greenberg
U.S. Environmental Protection Agency
Manager of Clean Water Act
Compliance Office
WTR-7
75 Hawthorne Street
San Francisco, California
94105

Jim Grove
U.S. Environmental Protection Agency
WTR-7
75 Hawthorne Street
San Francisco, California
94105

James Armstrong
City Administrator
City of Santa Barbara
735 Anacapa Street
Santa Barbara, California
93101