

State of California
Regional Water Quality Control Board
San Diego Region

REPLACEMENT
ADVISORY TEAM SUMMARY REPORT
September 8, 2010

ITEM: 12

SUBJECT: Tentative Cleanup and Abatement Order No. R9-2010-0002 (San Diego Bay Shipyard Sediment Cleanup), Resolution Denying Motion of National Steel and Shipbuilding Company Requesting Determination that Tentative Cleanup and Abatement Order No. R9-2010-0002 is Exempt from the California Environmental Quality Act (*Frank Melbourn*)

PURPOSE: To consider motion of National Steel and Shipbuilding Company (NASSCO) requesting determination that Tentative Cleanup and Abatement Order No. R9-2010-0002 is exempt from the California Environmental Quality Act.

PUBLIC NOTICE: Notice of this item was provided to the public on August 19, 2010, through the distribution of the San Diego Water Board agenda, and through e-mail notification to the Designated Parties on August 26, 2010.

DISCUSSION: On July 23, 2010, NASSCO submitted a Notice of Motion and Motion requesting the Regional Water Quality Control Board, San Diego Region (San Diego Water Board), make a determination that the tentative Cleanup and Abatement Order No. R9-2010-0002 (TCAO) is exempt from the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.) (Motion for CEQA Determination). On July 27, 2010, Presiding Officer for Prehearing Proceedings (Presiding Officer) King issued the Order Requesting Responses to the Motion for CEQA Determination (Order Requesting Responses). The Order Requesting Responses directed the San Diego Water Board Shipyard Sediment Cleanup Team (Cleanup Team) to comment on the applicability of CEQA to the TCAO and also directed NASSCO to submit additional memoranda on the authority of the Presiding Officer to make a determination that the TCAO is exempt from CEQA. The Designated Parties were required to submit all responses by 5:00 p.m. on August 2, 2010. Presiding Officer King received

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responses by the Cleanup Team, the San Diego Unified Port District (Port District), and NASSCO, which were distributed to all Designated Parties, on August 2, 2010. On August 6, 2010, Presiding Officer King denied NASSCO's motion on the basis that as Presiding Officer for Prehearing Proceedings, he lacked authority to make a determination that the TCAO is exempt from CEQA. On August 7, 2010, NASSCO submitted the Motion for Clarification that the Regional Water Quality Control Board Will Address its CEQA Motion. The Motion for CEQA Determination has been placed on the September agenda for San Diego Water Board consideration.

The Advisory Team recommends that the Regional Board adopt Tentative Resolution No. R9-2010-0115 Denying NASSCO's Motion Requesting Determination That Tentative Cleanup and Abatement Order No. R9-2010-0002 is Exempt from the California Environmental Quality Act.

LEGAL CONCERNS: None at this time.

SUPPORTING
DOCUMENTS:

1. Tentative Resolution No. R9-2010-0115
2. *Reserved for Future Use*
3. NASSCO's Motion Requesting Determination that Tentative Cleanup and Abatement Order No. R9-2010-0002 is Exempt from the California Environmental Quality Act.
4. Presiding Officer's Order Requesting Responses to NASSCO's Motion
5. Cleanup Team's Response
6. NASSCO's Supplemental Memorandum of Points and Authorities in Support of Motion
7. San Diego Unified Port District's Response
8. Presiding Officer's Order Denying NASSCO's Motion
9. NASSCO's Motion for Clarification that the Regional Water Quality Control Board will Address its CEQA Motion
10. NASSCO's Comments on this Agenda Item

RECOMMENDATION: Adopt Tentative Resolution No. R9-2010-0115