



# California Regional Water Quality Control Board

## San Diego Region



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Environmental Protection

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**TO:** Distribution List (Designated Parties and Interested Persons)

**FROM:** David King, Presiding Officer for Prehearing Proceedings  
Tentative Cleanup and Abatement Order No. R9-2005-0126  
**SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD**

**DATE:** October 8, 2009

**SUBJECT:** ORDER ESTABLISHING SCHEDULE FOR RELEASE OF REVISED  
TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126  
AND COMMENT PERIOD

The proceedings to consider Tentative Cleanup and Abatement Order No. R9-2005-0126 were referred to mediation by Order dated June 9, 2008. Several intervening extensions of the mediation and continued stays of the schedule of proceedings established by the Second Amended Order of Proceedings have been granted, with the last extension ordered on July 23, 2009. On September 17, 2009, I issued an order requiring the designated parties to submit a proposed schedule outlining the timing of the release of a draft revised Cleanup and Abatement Order and associated technical report for public comment and a proposed schedule for hearing before the San Diego Water Board. On September 30, the designated parties other than San Diego Coastkeeper and Environmental Health Coalition (environmental groups) submitted a proposed schedule. The environmental groups submitted a separate proposed schedule. I have reviewed both proposed schedules and given this matter great consideration.

The designated parties' proposed schedule targets mid- to late December for release of a draft revised Cleanup and Abatement Order. Even with the targeted date some two to three months away, their proposed schedule is explicitly contingent on the parties to the mediation "reaching an agreement on an appropriate allocation of costs" by November 18, 2009. It is apparent from the July 8, 2009, memorandum from David Barker of the San Diego Water Board's Shipyard Sediment Cleanup Team to John Robertus that the parties have been negotiating allocation issues since at least early July 2009. Under the designated parties' proposal, the Board cannot be assured that a draft order will be released even as late as the end of the year.

The San Diego Bay sediment cleanup matter is of great importance to the designated parties, interested persons, the San Diego Water Board and the public. While an

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allocation of responsibility agreed to among designated parties would be welcomed, it is not appropriate for the San Diego Water Board to involve itself in deciding issues of allocation of responsibility among the parties. (See, e.g., State Water Board Order WQ 89-12 (*San Diego Unified Port District*.) For these reasons, I decline to adopt a proposed schedule that depends upon an agreement of allocation of responsibility among the parties prior to release of a revised draft Cleanup and Abatement Order for public consideration. The Shipyard Sediment Cleanup Team is directed to release for public comment a draft revised Cleanup and Abatement Order and associated Technical Report on or before **October 30, 2009**. Comments on the Order and Technical Report will be due on or before **January 28, 2010**. If the draft revised Cleanup and Abatement Order proposes San Diego Water Board approval of remedial or other activities requiring evaluation under the California Environmental Quality Act (CEQA), the Shipyard Sediment Cleanup Team is also directed to begin the CEQA scoping process on **October 30, 2009** when the revised Order is released. I decline to establish a second public comment period at this time, but may do so in the future. The draft revised Cleanup and Abatement Order will be scheduled for hearing before the San Diego Water Board at a later time. All provisions of the Second Amended Order of Proceedings that conflict with this Order are hereby stricken.

DAK