



California Regional Water Quality Control Board San Diego Region



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TO: **Designated Parties and Interested Persons**

FROM: **David King, Presiding Officer for Prehearing Proceedings
Tentative Cleanup and Abatement Order No. R9-2010-0002
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD**

DATE: **August 6, 2010**

SUBJECT: **ORDER DENYING MOTION OF THE NATIONAL STEEL AND
SHIPBUILDING COMPANY REQUESTING A DETERMINATION THAT
TENTATIVE CLEANUP AND ABATEMENT ORDER NO. R9-2010-0002
IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY
ACT**

On December 22, 2009, the Cleanup Team for the tentative Cleanup and Abatement Order (CAO) No. R9-2010-0002 released a California Environmental Quality Act (CEQA) Initial Study for the CAO, which stated that the CAO might have a potentially significant environmental impact. Since that time, the Cleanup Team has stated that an Environmental Impact Report is required under CEQA before finalizing the CAO, and that due to unusual circumstances a categorical exemption is not appropriate. The Cleanup Team has applied to the State Water Resources Control Board for the necessary funds to prepare the EIR.

On July 23, 2010, the National Steel and Shipbuilding Co. (NASSCO) submitted a Notice of Motion and Motion requesting the Regional Water Quality Control Board, San Diego Region, make a determination that the tentative CAO is exempt from CEQA. The Notice of Motion and Motion, together with the supporting declaration by Jeffrey Carlin and a Proposed Order, was distributed simultaneously to the Designated Parties to the proceeding via e-mail. On July 27, 2010, I issued the Order Requesting Responses to Motion of the National Steel and Shipbuilding Company Requesting a Determination that Tentative Cleanup and Abatement Order No. R9-2010-0002 is Exempt from the California Environmental Quality Act (Order Requesting Responses). The Order Requests Responses directed the Cleanup Team to comment on the applicability of a CEQA categorical exemption to the CAO and NASSCO was directed to submit additional memoranda on the authority of the Presiding Officer to make a determination that the CAO is exempt from CEQA. The Designated Parties were

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required to submit all responses by 5:00 p.m. on August 2, 2010. I received responses by the Cleanup Team and NASSCO, which were distributed to all Designated Parties, on August 2, 2010.

The Motion is hereby denied. As the Presiding Officer, I do not have the authority to make the determination that the CAO is exempt from CEQA. The Separation of Functions Memorandum signed by then-Executive Officer John Robertus on June 30, 2005, discusses the functions of the Presiding Officer and the Advisory Team. The Memorandum states that the Advisory Team will assist the Presiding Officer "...in matter such as evaluating requests for designated party status, enforcing deadlines and other limitations on written and electronic submissions and exhibits, and preparing and conducting the proceedings." (Separation of Functions Memorandum, p. 2.) The role of the Presiding Officer is to decide procedural matters. Determining whether CEQA applies to the CAO is not a procedural matter that is appropriate for me to decide.

NASSCO did not submit any legal authority that supports my authority to make such a determination. While the CEQA Guidelines allow the Regional Board to delegate the authority to make a CEQA determination to staff, I am not a staff member and so the Regional Board may not delegate the decision to me. I do not have the authority either as a Presiding Officer or as a Board member to make the determination of whether a categorical exemption is appropriate for this project.