

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**In re: Tentative Cleanup and
Abatement Order No. R9-2011-0001
(Shipyard Sediment Cleanup)**

Acting Chair Destache

**SAN DIEGO COASTKEEPER'S AND ENVIRONMENTAL HEALTH COALITION'S
RESPONSE TO SAN DIEGO UNIFIED PORT DISTRICT'S
MOTION TO EXTEND DISCOVERY DEADLINES**

San Diego Coastkeeper and Environmental Health Coalition ("EHC") provide the following response to San Diego Unified Port District's Motion to Re-open and Extend Discovery Deadlines. As a general matter, San Diego Coastkeeper and EHC recognize that the revised Cleanup and Abatement Order (CAO) and Draft Technical Report (DTR) released September 15, 2010 have raised new issues upon which the parties wish to conduct discovery and therefore support a limited additional discovery period to address new issues. However, San Diego Coastkeeper and EHC oppose the lengthy schedule the Port has proposed because it will prejudice Coastkeeper and EHC.

San Diego Coastkeeper and EHC have submitted two "meet and confer" responses to the Port's proposed motion. In the first meet and confer, Coastkeeper and EHC proposed an alternative extended schedule. Seeing no need to delay expert designations and counter-designations, Coastkeeper and EHC proposed **December 1, 2010** and **December 14, 2010** as the expert designation and counter-designation deadlines. That deadline gives the Port more than two months from the release of the revised CAO and DTR to identify new expert witnesses. Coastkeeper and EHC proposed that Cleanup Team depositions could be taken in January, with expert reports due **January 28, 2011**.

In response to the Port's second attempt to meet and confer, Coastkeeper and EHC again protested the length of the extended discovery process, particularly in light of the most recent Executive Officer's report. The Port now proposes to extend Cleanup Team depositions and the expert report deadline until March 31, 2011. This would result in a significant overlap with the anticipated comment period for the draft EIR. According to the latest estimated schedule included in the most recent Executive Officer's report, the Draft EIR is slated to be released March 3, 2011.

The Port's assertion that "no party will be prejudiced" by its proposed extension because "the proposed discovery schedule will end long before the EIR is ready" is misleading and incorrect. See Port's Motion at 15-16. ***Extending the discovery period through March 2011 will prejudice resource-limited parties like San Diego Coastkeeper and Environmental Health Coalition, who will be forced to split time between attending multi-day depositions of key Cleanup Team members, finalizing expert reports, and reviewing and commenting on the Draft EIR.*** Because the depositions and expert reports will be "for all purposes," not merely limited to the information in the revised CAO and DTR, the Port's request to have these overlap with the Draft EIR comment period cannot be taken lightly or seen to only impact the Port's rights. If the Port's schedule is adopted, Coastkeeper's and EHC's resources will likely be stretched past the limit, depriving Coastkeeper and EHC of a full opportunity to thoroughly review and comment on the Draft EIR. This prejudice can be avoided by assuring that the discovery period is closed prior to the start of the comment period for the Draft EIR.

San Diego Coastkeeper and EHC assert that the Port would not be prejudiced by an extended discovery deadline that ended prior to March 1, 2011. The Port's proposed timeline is arguably excessive because it actually seeks more time for discovery on new issues than was initially slated for all discovery in then-Presidenting Officer King's February 18, 2010 discovery plan. That plan allowed 168 days from the first day for parties to propound written discovery requests on cleanup levels and liability (March 8, 2010) to the last day to take discovery on

cleanup and liability issues (August 23, 2010). The Port is asking for 197 days from receiving the revised CAO and DTR (September 15, 2010) to the close of discovery on new issues (March 31, 2011)—an additional month more than was originally deemed necessary for the entire discovery process. Therefore, setting an extended discovery deadline that concludes by March 1, 2011 will not prejudice the Port's rights.

On another point not explicitly mentioned in the Port's motion, several Coastkeeper and EHC witnesses have already been deposed. Coastkeeper and EHC would be prejudiced if the extended discovery deadline would permit those witnesses to be re-deposed and therefore request assurances that attempts to re-depose witnesses as a result of the extended discovery period would be denied.

Conclusion

San Diego Coastkeeper and EHC welcome the opportunity to be heard on these issues in person or on a conference call where all designated parties are present so that a reasonable decision that protects all parties' rights may be reached.

Respectfully Submitted on October 20, 2010 by:



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