



California Regional Water Quality Control Board

San Diego Region

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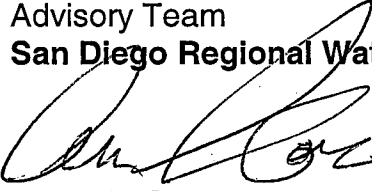
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Governor

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In reply refer to:
TMDL:03-0284.05:CCarlisle

TO: Barbara L. Evoy
Division Chief, Division of Financial Assistance
State Water Resources Control Board

FROM: 
John H. Robertus
Executive Officer
Advisory Team
San Diego Regional Water Quality Control Board


Arthur L. Coe
Assistant Executive Officer
Cleanup Team
San Diego Regional Water Quality Control

DATE: May 31, 2006

**SUBJECT: REQUEST FOR DISBURSEMENT OF FUNDS FROM THE STATE
WATER POLLUTION CLEANUP AND ABATEMENT ACCOUNT**

We are requesting jointly under Water Code section 13443 an allocation of \$62,000 from the State Cleanup and Abatement Account for use in support of a recommendation for issuance of a cleanup and abatement order pertaining to waste discharges to San Diego Bay at the Shipyard Sediment Site. As explained in further detail below, the requested Cleanup and Abatement account allocation is needed to augment other Regional Board funds being used to prepare an extensive indexed electronic administrative record of the technical information used to prepare the draft cleanup and abatement order and technical report.

In order to assure the Regional Board's proceedings in this matter are fair and impartial, the Regional Board staff participating in the cleanup and abatement order proceedings are separated into two groups: the Advisory Team and the Cleanup Team. The Regional Board Executive Officer, John Robertus, oversees the Advisory Team, and the Regional Board Assistant Executive Officer, Arthur Coe, oversees the Cleanup

California Environmental Protection Agency

Team. The Advisory Team has directed the Cleanup Team to index and make available to designated parties to the proceedings all directly relevant technical information related to the draft Cleanup and Abatement Order and Technical Report.

The administrative record containing this technical information is comprised of approximately 595 file volumes pertaining to the various designated parties named in the cleanup and abatement order and 145 technical reference reports. The volume of this material amounts to over 130 linear feet of paper files containing an estimated 150,000 pages. There are 11 designated parties participating in the proceedings and, given the volume of material, the only practical way to make the technical information available to the designated parties is to create an indexed electronic file. The Regional Board cannot continue its proceedings on this matter until the extensive volume of technical information referenced above is indexed and made available to the designated parties. The requested Cleanup and Abatement Account funds will be used along with other identified Regional Board funding sources to fund a contractor to prepare an indexed electronic administrative record for use in the proceedings. The following information addresses the Funding Criteria, as described in Chapter 4.4 of the Administrative Procedures Manual.

1. Agency name and address

The California Regional Water Quality Control Board, San Diego Region (Regional Board) is the agency requesting the funds. The Regional Board is located at 9174 Sky Park Court, Suite 100, San Diego CA, 92123.

2. The agency's authority to cleanup a waste

The Regional Board has the authority to require cleanup of waste under Water Code section 13304.

3. The waste discharged or potentially discharged

The Cleanup Team alleges that waste pollutants discharged from point and nonpoint sources include arsenic, cadmium, chromium, copper, lead, mercury, nickel, silver, zinc, polychlorinated biphenyls, tributyl tin, and polynuclear aromatic hydrocarbons. The alleged sources of the waste include two shipyards, a US Navy military installation, MS4 municipal storm water discharges, two above ground tank farms, and a former power plant facility.

4. The location of the discharge and the impact on groundwater or surface water

The Cleanup Team alleges that discharges of metals and other pollutant wastes to San Diego Bay marine sediment and waters have resulted in the accumulation of pollutants in bay bottom marine sediments. The Cleanup Team alleges the

contaminated sediments are located along the eastern shore of central San Diego Bay and encompass an area extending approximately from the Sampson Street Extension to the north and Chollas Creek to the south and from the National Steel and Shipbuilding Company Shipyard facility (NASSCO) and BAE Systems shipyard facilities shoreline out to the San Diego Bay main shipping channel on the west. This area is referred to by the term "Shipyard Sediment Site".

The Shipyard Sediment site is described on the 2002 Clean Water Act Section 303(d) List of Water Quality Limited Segments [303(d) List] under the name San Diego Shoreline, between Sampson and 28th Streets as being impaired due to the elevated levels of copper, mercury, zinc, polycyclic aromatic hydrocarbons, and polychlorinated biphenyls in the sediment.

The Cleanup Team alleges that discharges to the Shipyard Sediment Site have caused accumulations of waste pollutants in the marine sediments to levels that threaten: aquatic life, aquatic-dependent wildlife, human health, and San Diego Bay beneficial uses.

5. The threat to water quality and public health posed by the discharge

The Cleanup Team alleges that bay bottom sediment contamination at the Shipyard Sediment site poses a threat to water quality and aquatic life, aquatic-dependent wildlife, and human health. Contaminants in sediment can cause adverse effects either through direct toxicity to benthic organisms or through bioaccumulation and food chain transfer to human and wildlife consumers of fish and shellfish. The human health threat is from the potential for contaminants to bioaccumulate and biomagnify (i.e., through movement along the food chain to aquatic organisms including fish and shellfish that may be consumed by humans). In addition, natural and human disturbances of the sediment can release pollutants to the overlying water, where pelagic (open-water) organisms can be exposed.

6. The agency's available resources to conduct the enforcement action and to prepare the indexed electronic administrative record for such action

The total cost for the contractor to prepare the electronic administrative record is estimated to be \$92,000. The Cleanup Team has initiated the work using \$30,000 of unspent FY 2005-06 contract funds. The Regional Board, however, does not have any additional contract funds to cover the \$62,000 needed to fund the remaining work needed to prepare the electronic indexed administrative record.

7. Efforts made to secure alternative funding

As indicated in Item 6 above, the Cleanup Team utilized all available FY 2005-06 funds to initiate the work. In addition, the Designated Parties were asked to

voluntarily share in these costs at a pre-hearing conference; the designated parties, however, declined to share in the costs.

8. Impact on the community or surrounding area if the project is not approved for funding from the CAA

As indicated in Item 5 above, the Cleanup Team alleges that delays in testimony and deliberations on the Cleanup and Abatement Order impact the community by delaying the cleanup intended to reduce the pollutant levels in the fish and shellfish consumed by the public.

9. The entity or individual responsible for the discharge of the waste

There are a number of potential dischargers associated with the Shipyard Sediment Site pollution identified in the Tentative Cleanup and Abatement Order: NASSCO; BAE Systems (formerly Southwest Marine Inc.); City of San Diego; Marine Construction and Design Company and Campbell Industries, Inc.; San Diego Gas and Electric, a subsidiary of Sempra Energy Company; United States Navy; Chevron; and Arco.

10. Opportunity to recover the cost of cleanup

The Cleanup Team intends to seek reimbursement for the total costs of record preparation (not just the advance from Cleanup and Abatement Account) from dischargers ultimately determined by the Regional Board to be accountable for the Shipyard Sediment Site pollution. The Cleanup Team will seek reimbursement under Water Code section 13304 inasmuch as the costs of extraordinary administrative process are actual costs reasonably incurred by the Regional Board to achieve cleanup or abatement of pollutant discharges to the Shipyard Sediment Site.

11. Efforts the agency will make to recover the costs from the responsible party

The Cleanup Team intends to recommend that the Regional Board include a directive in the cleanup and abatement order to require reimbursement from dischargers named in the order. The Cleanup Team intends to recommend that the Regional Board undertake appropriate enforcement actions as necessary to enforce the directive and secure reimbursement.

12. The steps the agency will take in conducting the proposed enforcement action (attach a work plan that provides enough detail to explain the project's course, including costs for each phase)

Attached is the First Amended Order of Proceedings that provides details on the project's course. The funds in this request will be used to conduct the activities described in Item 3, Phase II regarding indexing and making available all technical information. Also attached is the Preliminary Proposal from D-M Information Systems, Inc. which provides detailed costs for each activity.

13. Evidence the local Regional Water Quality Control Board has issued a Cleanup and Abatement Order regarding the site

The Regional Board is considering development and issuance of a cleanup and abatement order. On April 29, 2005 the current enforcement action was initiated by the issuance of Tentative Cleanup and Abatement Order No. R9-2005-0126.

14. Regional Water Quality Control Board participation in this request (attach a copy of the Regional Board's resolution of support)

The Regional Board authorized Board Chairman John Minan to preside over the pre-hearing conferences regarding the Order of Proceedings for this project. As the Presiding Officer, Chairman Minan directed the Cleanup Team to identify, index, and make available to all Designated Parties all directly relevant technical information related to the Tentative Cleanup and Abatement Order and Technical Report. Chairman Minan also directed the Cleanup Team to investigate the feasibility of converting the technical information into a digitized, electronic format to facilitate the Designated Parties' review. For more details, see Section 3, Phase II in the First Amended Order of Proceedings, which is attached in lieu of a Regional Board resolution of support.

If you have any questions regarding this request please contact Mr. David Barker of our staff at (858) 467-2989.

JHR:dib:cic

Attachments: (1) First Amended Order of Proceedings dated January 30, 2006
(2) D-M Information Systems, Inc. Preliminary Proposal dated May 10, 2006.