

Craig Conisla

BRIAN LEDGER
BLEDGER@GORDONREES.COM

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

GORDON & REES LLP

2008 APR 23 P 1:15

ATTORNEYS AT LAW
101 W. BROADWAY, SUITE 2000
SAN DIEGO, CA 92101
PHONE: (619) 696-6700
FAX: (619) 696-7124
WWW.GORDONREES.COM

April 22, 2008

San Diego Regional Water Quality Control Board
Attn: Michael P. McCann, Supervising Engineer
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: **Shipyard Sediment Site 2005 Tentative Cleanup & Abatement Order**
No. R9-2005-0126

Dear Mr. McCann:

On behalf of the City San Diego ("the City"), we have received the Advisory Team's Notice of Third Pre-Hearing Conference for April 25, 2008. The City provides the following comments for consideration at the pre-hearing conference.

The City does not believe that all of the tasks contemplated in Phase II have been completed, which is required, both legally and logically, before Phase III can begin.¹ Specifically, it was the City's expectation that when releasing the Indexed Electronic Record, the Cleanup Team would provide references to identify the particular documents supporting each of the findings in the Technical Record. In that fashion, the Designated Parties could then evaluate those particular documents and provide coherent, efficient comments in response to each finding. Instead, the Cleanup Team simply released 375,000 documents providing absolutely no indication as to which documents the Cleanup Team believes support each finding. Thus, the Designated Parties are left to speculate as to the identity of the documents that support each finding.

The City asserts that the absence of any reference to specific evidence supporting each finding will cause the entire process delineated in the Phases following Phase II to be much more inefficient and onerous than is necessary. Each Designated Party will now be forced to comb through 375,000 pages of documents to attempt to determine for itself which of these 375,000 documents the Cleanup Team found supportive of each finding. Inevitably, the Designated Parties will not be completely accurate in this endeavor. Consequently, it can be expected that

¹ Some of the reasons the City believes the Phase II tasks have not been all completed are described in the City's letter of April 16, 2008, that describes in some detail the City's comments regarding the Indexed Electronic Record's lack of organization and indexing, etc., which in the City's view will greatly complicate and lengthen in the review process. For the sake of brevity, it the City will not repeat those comments in his letter.

4/23/2008

Michael P. McCann

April 22, 2008

Page 2

Designated Parties will submit the comments called for in Phases III and IV without an accurate picture of the Board's view of the supporting evidence for each finding. The City believes the Board did not contemplate such an incoherent approach to the Designated Parties' commenting process. Accordingly, for the reasons outlined above and in our letter of April 16, 2008, the City believes the tasks required in Phase II have not been completed and the Advisory Team should order the Cleanup Team to complete the requirements under Phase II before ordering the commencement of Phase III.

If the Advisory Team chooses, for any reason, to proceed with the commencement of Phase III, the City asserts an extension of the schedule provided for in the January 30, 2006 First Amended Order of Proceedings ("FAOP") is urgently needed. As to the difficulties posed by the sheer volume of documents to be reviewed (375,000), the City refers the Advisory Team to the City's letter of April 16, 2008. The City asserts there are several additional compelling reasons to extend the schedule.

First, as described above, if the Clean up Team is not ordered to provide the Designated Parties with the specific evidentiary support for each finding in the Technical Report, then the Designated Parties will be required to undertake this immense task themselves. To do so will take a significant amount of time.

Second, the FAOP contains a Section 5 which requires Designated Parties "identify any additional potential responsible parties (within) 30 days of the distribution of the Cleanup Team's Technical Report, in order to provide an opportunity for any additional potential responsible parties to participate in this proceeding." The City submits that this deadline is untenable given the size and condition of the record. The City further submits that there are surely additional responsible parties who should share the "opportunity" to participate in this proceeding. However, it will be virtually impossible to identify them all by May 5, 2008 because the record is so large and not linked to sections of the Technical Report.

Third, the FAOP contains a Section 6 which requires the Designated Parties to prepare a comprehensive list of contested issues of fact and law within the schedule set for Phase III. That schedule allows 90 days from the commencement of Phase III. Given that the parties are unable to immediately read and analyze the extensive record that is disjoined from the Technical Report, it is inconceivable that they could identify all contested issues within this time. The scope of contested issues can only be identified after parties have had an adequate opportunity to comprehend the record and confer.

Given all of the immense difficulties and, in fact, impossibilities imposed by the current schedule, the City urgently requests that the Designated Parties be provided 180 days to review and digest the Technical Record, and an additional 180 days to conduct all necessary discovery described in Phase III of the FAOP. In addition, the City requests that the deadline for the Designated Parties to identify any additional potential responsible parties should be extended to the end of the period allowed for review and analysis of the record. (180 days from date of modifying order.) Lastly, the City requests that the deadline to prepare a comprehensive list of contested issues of fact and law be extended to 90 days after the extended period allowed for review and analysis of the record.

8002/37/4
4/23/2008

Michael P. McCann

April 22, 2008

Page 3

The City appreciates the opportunity to provide these comments regarding the Phase III schedule and process and looks forward to discussing its proposal at the pre-hearing conference.

Sincerely,

GORDON & REES LLP



Brian Ledger

BML/KNR

cc: Advisory Team, c/o Michael P. McCann (12 copies)
David Barker, Regional Water Quality Control Board
Vice-Chair and Presiding Officer, David King, Regional Water Quality Control Board
See Attached E-Mail Service List

CERTIFICATION

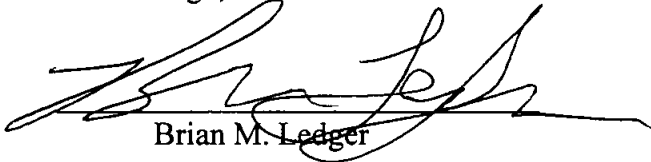
I am an attorney, duly licensed to practice law before all Courts in the State of California, and am a partner of the law firm of Gordon & Rees, LLP counsel for the City of San Diego in regards to the San Diego Bay Sediment Cleanup.

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

The April 22, 2008 electronic submittal provided by my office to all parties on the e-mail list for The San Diego Bay Sediment Cleanup is a true and accurate copy of the signed original submitted to the Regional Water Quality Control Board.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22th day of April 2008 at San Diego, California.



Brian M. Ledger

Date of Document	Type of Document	Title/Description of Document	Submitted By	Submitted To	Total Number of Pages	Title of Attachments
4/22/08	Letter	Comments for Third Pre-Hearing Conference	The City of San Diego	Michael P. McCann	Three (3)	None