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2008 MAY 12 A 8:25

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May 9, 2008

VIA E-MAIL & U.S. MAIL

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

Re: **SDG&E's Objections to Phase III Cleanup Levels Stage**
Shipyard Sediment Site, San Diego Bay
Tentative Cleanup and Abatement Order No. R9-2005-0126

Dear Mr. McCann,

On behalf of San Diego Gas and Electric ("SDG&E"), we respectfully submit the following objections and comments with regard to the Second Amended Order of Proceedings ("SAOP") in the above-referenced matter.

Pursuant to the revised Phase III schedule set forth in the SAOP, the proceedings have been bifurcated into a "Cleanup Levels Stage" and then a "Liability Stage." Designated Parties have been directed to submit initial briefs and any technical reports addressing cleanup levels by June 20, 2008. Designated Parties are further directed to complete discovery and submit final briefs by July 30, 2008, at which point the Cleanup Levels Stage will be deemed "completed."¹

¹ SAOP, p. 7.

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The approach to Phase III, as currently proposed, is problematic in several respects. First, while SDG&E is not opposed to the Presiding Officer's decision to bifurcate Phase III, SDG&E objects to the proposed sequencing of Phase III. Each party's alleged liability under the Revised Tentative Cleanup Order No. R9-2005-0126 is a threshold issue that should first be resolved before addressing appropriate cleanup levels with designated "Dischargers." The current approach will unduly delay this determination, and prejudice SDG&E's right to obtain an expeditious resolution of its status in this proceeding. Accordingly, SDG&E requests that the Regional Board revise the sequencing of Phase III to allow timely completion of the Liability Stage before shifting focus to the Cleanup Levels Stage.

Additionally, as stated in the SAOP, the Cleanup and Advisory Teams are still engaged in efforts "to produce and distribute to the Designated Parties an acceptable method for searching the electronic record."² To date, the Regional Board has not provided a time estimate, let alone a deadline, for completion of this task. This, of course, greatly hinders the ability of Designated Parties to prepare for the Cleanup Levels Stage. In order to ensure that reasonable time is provided to review the evidentiary record, complete necessary discovery, and prepare briefing relevant to cleanup levels, the Cleanup Levels Stage schedule should not initiate until such time as the administrative record is deemed complete and fully searchable by the Presiding Officer.

Finally, we would appreciate clarification regarding the permissible scope of discovery during the Cleanup Level Stage. Under the SAOP, it is unclear whether the Regional Board intends Cleanup Level Stage discovery to mirror discovery procedures applicable to the Liability Stage.³ Given the significance of both liability and cleanup level issues, the Designated Parties should be afforded the opportunity to conduct the full extent of necessary discovery during both stages of Phase III.

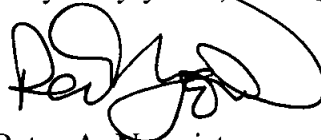
² *Id.*, p. 6.

³ For instance, during the Liability Stage, Designated Parties are instructed to submit a "proposed comprehensive discovery plan," which may include written discovery and depositions of Regional Board staff. (SEOP, p. 7.) Aside from reference to requests for subpoenas, there is no similar provision during the Cleanup Levels Stage, creating a potential inference that the Regional Board intends to more narrowly limit the scope of discovery.

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As always, your time and consideration of these matters is greatly appreciated. Should you have any questions, please feel free to contact Jill Tracy or me.

Very truly yours,



Peter A. Nyquist
WESTON, BENSHOOF,
ROCHFORD, RUBALCAVA & MacCUISH LLP

PAN/nh

cc: Advisory Team, c/o Michael P. McCann (12 copies)
Cleanup Team, c/o David Barker, Regional Water Quality Control Board
Presiding Officer, David King, Regional Water Quality Control Board
Jill Tracy, Esq., Sempra/SDG&E
See Attached E-Mail Service List

SDG&E
San Diego Bay Sediment Site Matter

Electronic Index Entry
 May 9, 2008

Date of Document	Type of Document	Title/Description of Document	Submitted By	Submitted To		Total # of Pages	Title of Attachments
05/09/08	Letter	Phase III Cleanup Levels Stage	SDG&E	Advisory Team (c/o Michael P. McCann) Barker, David Barnes, Christopher Cloward, Sharon Dragna, James FitzGerald, Leslie George, Catherine Gonzalez, Marco Hunter, Laura King, David Klimas, Denise Kolb, Ruth Ledger, Brian	Melbourn, Frank McFadden, Kris McNevin, Christopher Mulliken, David Nichols, Sandi Ortlieb, Fritz Reznik, Bruce Robertus, John Schmidt, Peter Schwartz, Lloyd Silverstein, David Solmer, Gabriel Spiess, Erik Tracy, Jill Wyels, Philip	10	<ul style="list-style-type: none"> • Electronic Index Entry • Certification • Service List

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Tentative Cleanup and Abatement Order Comment Information

Document Name	Tentative CAO No. R9-2005-0126
Document Date	05/09/08
Finding or Directive Number	N/A
Page, Paragraph, and Sentence Number	N/A
Concise Summary of Issue	Objections to Phase III Cleanup Levels Stage

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Certification
May 9, 2008

I, Peter A. Nyquist, certify that the May 9, 2008 electronic submittal is a true and accurate copy of the submitted signed original.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter A. Nyquist", with a long horizontal flourish extending to the right.

Peter A. Nyquist
Weston Benshoof Rochefort
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SDG&E
San Diego Bay Sediment Site Matter
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