



California Regional Water Quality Control Board

San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA



Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

TO: Distribution List (Designated Parties and Interested Persons)

FROM: David King, Presiding Officer for Prehearing Proceedings
Tentative Cleanup and Abatement Order No. R9-2005-0126
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: October 15, 2009

SUBJECT: ORDER EXTENDING DATES FOR RELEASE OF REVISED TENTATIVE
CLEANUP AND ABATEMENT ORDER NO. R9-2005-0126 AND
COMMENT PERIOD AND ESTABLISHING DISCOVERY PERIOD

By Order dated October 8, 2009, I directed the San Diego Regional Water Quality Control Board (San Diego Water Board) Shipyard Sediment Cleanup Team to release for public comment a draft revised Cleanup and Abatement Order and associated Technical Report on or before October 30, 2009, commencing a 90 day public comment period. In response to the attached October 12, 2009, letter from mediator Tim Gallagher, I am extending the schedule by approximately two weeks. The Shipyard Sediment Cleanup Team is directed to release a draft revised Cleanup and Abatement Order and associated revised technical report on or before **November 16, 2009**. Comments on the Order and Technical Report will be due on or before **February 16, 2010**. As stated in my October 8, 2009, order, if the draft revised Cleanup and Abatement Order proposes San Diego Water Board approval of remedial or other activities requiring evaluation under the California Environmental Quality Act (CEQA), the Shipyard Sediment Cleanup Team is also directed to begin the CEQA scoping process on **November 16, 2009**, when the revised Order and technical report are released. Hearing date(s) for San Diego Water Board consideration of the revised Order and technical report will be established in a future ruling.

The parties may conduct discovery, including depositions, on the revised draft Cleanup and Abatement Order and associated revised technical report beginning with the release of those documents on **November 16, 2009**. All discovery must be completed on or before **January 19, 2009**.

DAK

California Environmental Protection Agency



GALLAGHER & GALLAGHER,
A PROFESSIONAL CORPORATION
1925 Century Park East, Suite 950
Los Angeles, California 90067

October 12, 2009

VIA ELECTRONIC MAIL

Mr. David King
Presiding Officer for Prehearing Proceedings
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353
dking@waterboards.ca.gov

Re: Tentative Cleanup and Abatement Order No. R9-2005-0126

Dear David:

I am writing in regards to your recently issued Order Establishing Schedule for Release of Revised Tentative Cleanup and Abatement Order No. R9-2005-0126 and Comment Period, which directs the Shipyard Sediment Cleanup Team to release a draft revised Cleanup and Abatement Order ("CAO") and supporting Technical Report by October 30, 2009.

As you are aware, the designated parties, except for EHC and Coastkeeper, have made substantial progress since mediation began in June 2008. Specifically, as a direct result of the mediation process, the designated parties have assessed potential impacts to beneficial uses of San Diego Bay in the area of the shipyard leaseholds, established cleanup levels, agreed upon a cleanup methodology for the site, agreed upon a post-remedial monitoring plan, and agreed upon post-remedial monitoring triggers for possible future action. All of these agreements involved negotiation and resolution of complex technical and legal issues. In addition, the designated parties continue to make significant progress working towards an agreement on allocation, which is a pre-condition to accepting any negotiated CAO. However, it is impossible for the parties to finalize allocation by October 30. The parties have been fully engaged in allocation discussions commencing this September. Additionally, the Cleanup Team will not be able to draft a CAO and technical report by October 30. Even if the Cleanup Team is able to meet this aggressive deadline, the PRPs likely would initiate extensive discovery and file due process motions to allow sufficient time to address a yet-unseen order and technical report, which would undoubtedly prolong the process well beyond the December release date proposed by the parties.

As you know, the designated parties have spent significant time and effort mediating this matter, and I am pushing the parties to reach an appropriate allocation agreement as soon as possible.

Mr. David King
October 12, 2009
Page Two

Given the success of the mediation thus far, and the parties' substantial progress towards resolving this matter, I strongly urge you to reconsider its timing. I recognize the great importance of the San Diego Bay sediment cleanup matter to the designated parties, interested persons, the San Diego Water Board, and the public; however, initiating the adjudication process prematurely carries a great risk of derailing the substantial progress the parties have achieved to date, and would be counterproductive to the goal of resolving this matter expeditiously. Please don't hesitate to telephone me to discuss these sensitive issues at your convenience.

Very truly yours,

GALLAGHER & GALLAGHER,
A Professional Corporation



Timothy V.P. Gallagher