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January 21, 2010  
BY HAND

RWQCB rec'd 1/21/10  
@ 9:00 am

San Diego Regional Water Quality Control Board  
9174 Sky Park Court  
San Diego, CA 92123

**Re: Scoping Meeting – Tentative CAO for NASSCO/BAE Systems Shipyard Sediment Site**

To whom it may concern:

On behalf of our client BAE Systems San Diego Ship Repair, Inc., we submit the following comments with respect to the California Environmental Quality Act (CEQA) scoping meeting being held on January 21, 2010.

Under CEQA, the purpose for holding a scoping meeting is to solicit comments from the public and other responsible public agencies on the scope and content of the environmental information to be addressed in the planned environmental impact report (EIR) for a specific project. Pub. Res. Code §§ 21080.4, 21083.9, 21104. The holding of a scoping meeting now, with respect to the Tentative Cleanup and Abatement Order (Tentative CAO), is inappropriate and pre-mature for several reasons. Therefore, BAE respectfully requests that the scoping meeting be continued and not be rescheduled unless and until it is determined that such a meeting is appropriate.

First, as clearly articulated in the Tentative CAO, there has been no decision yet as to whether the Tentative CAO is even subject to CEQA. As noted, many (if not all) prior CAOs such as this have been considered exempt from CEQA under three separate categorical exemptions. 14 Cal. Code of Regs. (CEQA Guidelines) §§ 15307, 15308, 15321. If the Tentative CAO is exempt from CEQA, there would be no preparation of an EIR and hence no scoping meeting would be necessary or appropriate.

Second, in order to consider the "scope" and content of a proposed EIR, there must be a clear and definite description of the project to be analyzed in the EIR. As noted in the Tentative CAO, the proposed Remedial Action Plan (RAP) is not even required to be submitted to the Regional Board until 90 days *after* adoption of the CAO. How can a project that is not now and will not be fully articulated until after the CAO is approved be described with sufficient clarity and detail to be "scoped" for purposes of an EIR?

Finally, the very purpose of preparing an EIR is to analyze a proposed project and provide the lead agency with information concerning that project's potential environmental impacts *before* the lead agency makes a decision whether or not to approve the project. Because the proposed manner of complying with the COA will not be known until the RAP is submitted, and because that is not intended to occur until after the CAO is approved, it is not possible at this point to begin preparation of an EIR that could be considered by the Board before it decides whether to approve the Tentative CAO.

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Any comments provided today on the appropriate scope of an EIR for the Tentative CAO will be premature. Holding a scoping meeting before it has even been determined whether or not CEQA applies could also lead to public confusion. Therefore, the Board should continue this CEQA "scoping" meeting for the Tentative CAO until such time as it determines what, if any, CEQA review is required and appropriate.

Very truly yours,

**DLA Piper LLP (US)**

A handwritten signature in cursive script that reads 'Amy G. Nefouse'.

Amy G. Nefouse  
Partner

Admitted to practice in California

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