



California Regional Water Quality Control Board

San Diego Region



Alan C. Lloyd, Ph.D.
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TO: David Barker
Mike McCann
Art Coe

In reply refer to:
TMDL:03-0066.05:JRobertus
TMDL:03-0137.05:JRobertus

FROM: John Robertus
Executive Officer
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

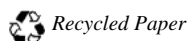
DATE: June 30, 2005

SUBJECT: SEPARATION OF FUNCTIONS FOR PROCEEDINGS ON CLEANUP AND ABATEMENT OF MARINE SEDIMENT IN SAN DIEGO BAY WITHIN AND ADJACENT TO SOUTHWEST MARINE, INC. AND NATIONAL STEEL AND SHIPBUILDING COMPANY LEASEHOLDS GENERALLY BETWEEN SAMPSON STREET EXTENSION AND MOUTH OF CHOLLAS CREEK.

The Regional Board is preparing to consider requiring cleanup and abatement for discharges of pollutant wastes to marine sediment and waters of San Diego Bay at the subject site. The purpose of this memorandum is to confirm membership of two teams working on this issue and to establish procedures to assure the Regional Board's proceedings in this matter are fair and impartial. The teams and procedures will remain in place until after the Regional Board issues a final Order in this matter.

The Regional Board proceedings in this matter are subject to regulations in Title 23, California Code of Regulations (CCR) Division 3, Chapter 1.5, sections 648, et seq., chapter 4.5 of the Administrative Procedure Act (commencing with section 11400 of the Government Code), sections 801-805 of the Evidence Code, and section 11513 of the Government Code. The Regional Board as well as National Steel and Shipbuilding Company (NASSCO); Southwest Marine, Inc.; City of San Diego; Marine Construction and Design Company and Campbell Industries, Inc.; Chevron, A Subsidiary of Chevron Texaco; BP; San Diego Gas and Electric, a Subsidiary of Sempra Energy Company; and the United States Navy are currently designated parties to the proceedings. Other interested persons will likely seek status as designated parties and the current list of parties will be expanded to include any other person whom the Regional Board determines should be designated as a party to the proceedings.

California Environmental Protection Agency



Because the Regional Board proceedings involve an intensely controversial enforcement action, it is necessary at this time to separate the functions of staff members presenting evidence for consideration by the Regional Board from those of staff members providing advice to the presiding hearing officer (in this case the Regional Board Chair) and other Regional Board members. Assigning responsibility for advising the Regional Board Members to staff other than those who will present testimony to the Regional Board Members will help assure the fairness and impartiality of the Regional Board's proceedings. Accordingly, the Regional Board staff participating in the proceedings will be separated into two groups.

One group, the Shipyard Sediment Site Cleanup Team (Cleanup Team), will serve in a "prosecutorial" function in the proceedings and assume responsibility for presenting evidence to the Regional Board on the issues that will be described in a public hearing notice. The other team, the Shipyard Sediment Site Advisory Team (Advisory Team), will assist the Regional Board Chair in matters such as evaluating requests for designated party status, enforcing deadlines and other limitations on written and electronic submissions and exhibits, and preparing for and conducting the proceedings. The Advisory Team will also provide advice to the Regional Board Chair and other Regional Board members in their deliberations on the evidence presented in the proceedings.

Consistent with this separation of functions, members of the Cleanup Team will be treated like any other party before the Regional Board throughout the proceedings, and should not have any contact with Regional Board members or members of the Advisory Team on matters relating to the proceedings, except where those contacts are consistent with the limitations on *ex parte* contacts that apply to all other parties. For purposes of this memorandum, an "*ex parte* contact" is any written or verbal communication, pertaining to the Shipyard Sediment Site cleanup project, between a member of the Cleanup Team and a Regional Board Member or a staff member of the Advisory Team, unless the communication is copied to all other parties to the proceedings (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not "*ex parte* contacts" and are not restricted.

I am designating the following staff members as the Cleanup Team:

Craig Carlisle, Senior Engineering Geologist
Tom Alo, Water Resource Control Engineer
Alan Monji, Environmental Scientist
Peter Peuron, Environmental Scientist
Ben Tobler, Water Resource Control Engineer

David Barker, Supervising Water Resource Control Engineer, will supervise the Cleanup Team. Art Coe, Assistant Executive Officer, will in turn supervise David Barker in this matter. For this matter only, I will not be supervising Art Coe, David Barker, or the Cleanup Team. The State

Water Resources Control Board, Office of Chief Counsel is assigning John Richards, Senior Staff Counsel to provide legal support to the Cleanup Team.

I, as Executive Officer, and Mike McCann, Supervising Water Resource Control Engineer, will serve as members of the Advisory Team. The Office of Chief Counsel is assigning Phil Wyels, Assistant Chief Counsel to provide legal support to the Advisory Team. Phil Wyels will not be supervising John Richards for this matter.

It is anticipated that as the Cleanup Team prepares its testimony, and as the Advisory Team reviews the written submittals from parties and interested persons, either or both teams may conclude that additional staff are needed. Should that occur, they should contact me, or Mr. Craig Wilson, Chief Counsel, as appropriate, to request assignment of additional staff as necessary. Staff assigned to the Advisory Team should not include any individuals who have served as members of the Cleanup Team or who actively participate in formulating the terms and conditions of a tentative cleanup and abatement order or a supporting Technical Report in this matter.

Any staff assigned to or who assists either team, during the proceedings or evaluating the hearing record, should be specifically assigned to that team. This includes any managers or supervisors who, by actively directing or assisting either team on matters such as deciding what theories to argue, go beyond routine procedural matters or assignment of staff. Once assigned to either team, an individual shall not participate in matters concerning the Shipyard Sediment Site cleanup project that are assigned to the other team. For example, a staff member assigned to the Cleanup Team cannot participate in closed meetings with any Regional Board Member or Advisory Team Member to discuss issues associated with the Shipyard Sediment Site cleanup.

Please make sure any staff that may be assigned to either team or may be involved in discussions of the proceedings on the Shipyard Sediment Site cleanup issue are aware of and follow these procedures.

cc: John Minan, Regional Board Chair
Craig Wilson, Chief Counsel, State Water Resources Control Board
John Richards, Senior Staff Counsel, State Water Resources Control Board
Phillip Wyels, Assistant Chief Counsel
Craig Carlisle, Senior Engineering Geologist, Regional Board