

PORT OF SAN DIEGO  
OFFICE OF THE PORT ATTORNEY

June 24, 2013

**BY EMAIL: Eric.Becker@waterboards.ca.gov  
Jody.Ebsen@waterboards.ca.gov**

San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123  
Attention: Eric Becker and Jody Ebsen

**Re: Comment – Tentative Order No. R9-2013-0093, Place ID: 794466:  
Tentative Waste Discharge Requirements for San Diego Bay Environmental  
Restoration Fund – North, the San Diego Bay Environmental Restoration  
Fund-South, San Diego Shipyard Sediment Remediation Project, San Diego  
Bay, San Diego, California**

Dear Mr. Becker and Ms. Ebsen:

The San Diego Unified Port District ("Port District") submits the following comments on Tentative Order No. R9-2013-0093, in which the San Diego Regional Water Quality Control Board ("Regional Board") proposes Tentative Waste Discharge Requirements ("WDRs") for the dredging and sand capping remediation project to be performed pursuant to Cleanup and Abatement Order No. R9-2012-0024 (the "CAO") in the area known as the "Shipyard Sediment Site."

In the Tentative WDRs, the Regional Board proposes to name as Dischargers the project applicants (the San Diego Bay Environmental Restoration Fund – North and the San Diego Bay Environmental Restoration Fund – South), which are two trusts created by BAE Systems San Diego Ship Repair, Inc. ("BAE Systems") and National Steel and Shipbuilding Company ("NASSCO"), respectively, BAE Systems and NASSCO, as the facility operators, the United States Navy and the Port District, as alleged owners of property on which the work is to be performed.<sup>1</sup>

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<sup>1</sup> These are the expressed reasons for naming these respective parties in the WDRs. (WDRs, II.F.) The Regional Board acknowledges that there are other parties who are named dischargers "accountable for ensuring that the Project attains the target cleanup levels... of the CAO," who are not proposed to be named as dischargers in the WDRs, including the City of San Diego ("City"), San Diego Gas & Electric Company ("SDG&E"), and Campbell Industries ("Campbell"). (*Id.*) The Port District therefore assumes that the Regional Board is not proposing to name the Port District in the WDRs based upon its being named as a discharger in the CAO. Of course, if this assumption is incorrect, and the

The Port District hereby formally objects to the Regional Board's proposed inclusion of the Port District as a "Discharger" in the WDRs on the following grounds:

1. The Port District is not the party proposing to make the discharges for which the WDRs are being issued, nor is it the operator of any of the facilities on which the discharges are proposed to be made; it is merely the non-operating landlord and public trustee of the subject tidelands under the San Diego Unified Port District Act (Harb. & Nav. Code, App. 1).

2. Consistent with the 1990 agreement between the State Water Board, the Regional Board, and the Port District, the Regional Board's long-standing business practice has been not to name the Port District as primarily liable in WDRs issued for work to be performed by or on behalf of its tenants and there is no reason to depart from that practice in connection with these WDRs.

3. In no event can the Port District be liable for any proposed activities or WDRs issued with respect to the "S Lane," which is owned by the United States Navy, and over which the Port District has no jurisdictional authority.

Each of these objections is discussed in more detail below.

## **II. THE PORT DISTRICT SHOULD NOT BE NAMED AS A DISCHARGER IN THE WDRs**

### **A. The Port District Is Not The Party Making Or Proposing To Make The Discharge For Which The WDRs Are Being Issued And Is Not The Operator Of the Facilities On Which The Discharges Will Occur**

The Porter-Cologne Water Quality Control Act (Water Code §§ 13000, *et seq.*) requires that "a *person discharging waste, or proposing to discharge waste*, within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the regional board a report of the discharge." (Water Code § 13260(a)(1) (emphasis added).) Section 13263(f) of the Water Code requires that the regional board must notify "*the person making or proposing the discharge...*of the discharge requirements to be met. After receipt of that notice, the person so notified shall provide adequate means to meet the requirements." (emphasis added). Similarly, the federal permitting regulations likewise require that "any person who discharges or

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Regional Board proposes to name the Port District on that basis, then the Port District asserts that it would be wrongly named for all of the reasons set forth in its pending petition to the State Water Board challenging the CAO, and further asserts that the Regional Board would likewise have to name the City, SDG&E, and Campbell in the WDRs too.

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proposes to discharge" pollutants must obtain a permit to do so under the Clean Water Act. (See 40 C.F.R. § 122.21(a).)

Here, the WDRs acknowledge that the Reports of Waste Discharge were submitted by de maximis, inc., a trustee acting on behalf of the so-called San Diego Bay Environmental Restoration Fund – North (with the authorization of Shaun Halvax, Manager Environmental Programs for the Facility Operator, BAE Systems), and the so-called San Diego Bay Environmental Restoration Fund – South (with the authorization of T. Michael Chee, the Environmental Manager of the Facility Operator, NASSCO) (WDRs, Section II.C.). Those are the entities that plan to carry out the described Project through contractors that they engage on the facilities owned, controlled and operated by BAE Systems and NASSCO, respectively. Accordingly, each of these entities is appropriately named in the WDRs.<sup>2</sup>

On the other hand, the Port District is not an applicant for these WDRs and is not proposing to perform the Project or cause any discharges at the subject sites. Nor is it an owner or operator of the shipyard facilities: to the contrary, it has absolutely no authority, ability, desire, or financial wherewithal to control their day-to-day operations, including their implementation of the proposed Project. Rather, the federally-secured shipyard facilities are solely operated by BAE Systems and NASSCO, respectively, under long-term ground leases from the Port District.

The Porter-Cologne Act does not require that non-operating landlords, and in particular, state-mandated trustees of public tidelands,<sup>3</sup> be named as dischargers in permits and WDRs sought by or on behalf of their tenants.<sup>4</sup> Indeed, it would be impracticable, if not impossible, for the Port District, which has no right to unrestricted daily access to the secured shipyards, to perform the myriad activities necessary to comply with the WDRs. Those requirements include the implementation of numerous on-site best management practices ("BMPs") and sampling and monitoring activities. (See, e.g., WDRs, Sections V (Construction BMPs relating to, among many other things, the specifications and requirements for silt curtain deployment; the specific manner in which sediment dredging by the clamshell buckets is to be conducted and the manner in which dredged sediments are to be placed on barges; the placement of clean sand cover; the

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<sup>2</sup> See also the "Instructions" issued by the State Water Resources Control Board for WDRs, which require that a facility owner be named in WDRs issued for work on its facility, attached hereto as Exhibit A.

<sup>3</sup> As recognized in the WDRs (Project Description, I.F., p. 7), the Port District holds title as the mere trustee of the tidelands for the State of California. (See also Port Act, §§ 5, 5.5, 14, 68, 87 (each noting the Port District holds such lands "in trust" subject to the terms of the Port Act).)

<sup>4</sup> The federal regulations implementing the Clean Water Act likewise make clear that "When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit. (40 C.F.R. § 122.21(b).)

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processing and management of dredged sediments, etc.), VII (Monitoring Requirements) and VIII (Reporting Requirements).)

Thus, the Port District is neither a person making or proposing to make the discharge, is not a facility owner or operator, and is not able to control the day-to-day activities and monitoring and sampling activities at the Project site. Consequently, the Port District is not within the scope of the parties required to apply for or be named in these WDRs under the Porter Cologne Act or the Clean Water Act and it should be removed as a proposed discharger in these WDRs.

**B. The Regional Board's Long-Standing Practice Has Been Not To Name The Port District As A Primarily Liable Discharger In WDRs Issued To Its Tenants And There Is No Reason To Depart From That Practice**

It has long been the policy of the State Water Resources Control Board that landowners "should not be held responsible for day-to-day compliance with waste discharge requirements" (see, e.g., *In the Matter of the Petition of San Diego Unified Port Dist. ("Port Petition")*, SWRCB Order No. WQ 90-3; *In re Petition of Southern California Edison Company*, SWRCB Order No. WQ 86-11) and that public agencies should be afforded the opportunity to obtain compliance from their tenants prior to any enforcement action against the agency. (See *Port Petition*, SWRCB Order No. WQ 90-3 at 12 ("[B]ecause the Port District is a public agency, it should...be afforded the opportunity to obtain compliance from the tenant prior to enforcement by the Regional Board against the Port District"); see also *In re Petition of U.S. Department of Agriculture, Forest Service*, SWRCB Order No. WQ 87-5 at 5 ("[t]he Forest Service deserves the opportunity to exercise its own authority before the Regional Board holds it responsible for any violations of the [permit] requirements."))<sup>5</sup>

In 1990, the State Water Board, this Regional Board and the Port District mutually agreed that these policies would expressly be applied to WDR/NPDES permits issued to Port District tenants. The agreement arose from the Port District's challenge to its being named by the Regional Board in amendments to WDR/NPDES permits issued to six of its boatyard and shipyard tenants.<sup>6</sup> (See July 2, 1990 letter from David B. Hopkins to Sheila K. Vassey and David T. Barker, attached hereto as Exhibit B.) The

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<sup>5</sup> The same policy has been applied to non-operating landlords more generally. (See *In re Petition of Wenwest*, SWRCB Order No. WQ 92-13 at 9; *In re Petition of Spitzer*, SWRCB Order No. WQ 89-8 at 6; *In re Petition of Prudential Insurance*, SWRCB Order No. WQ 87-6 at 5; *In re Petition of Schmidl*, SWRCB Order No. WQ 89-1 at 4.)

<sup>6</sup> In consideration of this agreement, the Port District agreed not to file a writ petition to challenge the State Water Board's conclusion, in SWRCB Order No. WQ 90-3, that the Port District could be named in WDR/NPDES permits issued to its tenants, but would only be "secondarily liable" for the tenant's monitoring program and day-to-day operations. (See *Port Petition*, Order No. WQ 90-3 at 16.)

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1990 agreement provided that the following language would be included in the tenant's permits:

The Regional Board will notify the Port District of any violation by [the tenant] of any permit conditions, for the purpose of obtaining the assistance of the Port District in attempting to obtain compliance by [the tenant]. The Port District is not primarily responsible for compliance with the permit requirements. The Regional Board will not take enforcement action against the Port District for violations by [the tenant] unless there is continued failure to comply by [the tenant] after the Port District has been given notice of the violations, and until after the Regional Board has issued against [the tenant] either a cleanup and abatement order, cease and desist order, or complaint for administrative civil liabilities.

(See Exhibit B, hereto.)

In recognition of this policy, it has been the Regional Board's long-standing business practice not to name the Port District as a primarily responsible party in WDR/NPDES permits issued to its tenants, including those issued to BAE Systems and NASSCO for their operations at the subject site. (See, e.g., SDRWQCB Order No. R9-2002-0161 (issued to Southwest Marine, Inc., which is now BAE Systems); SDRWQCB Order No. R9-2003-0005 (NASSCO).)<sup>7</sup>

In the most recent WDR/NPDES permits issued by the Regional Board to these shipyards, the Port District was not named as a discharger at all. (See SDRWQCB Order No. R9-2009-0080, as modified by Order No. R9-2010-0090 (BAE Systems); SDRWQCB Order No. R9-2009-0099 (NASSCO), the pertinent pages of which are attached hereto as Exhibit D and Exhibit E, respectively.)<sup>8</sup> Similarly, the Port District was not named as a Discharger in the permit recently issued to BAE Systems for its Pier 4 Replacement project and related dredging activities. (See Certification No. 11C-026 (Clean Water Act 401 Certification and acknowledgement of enrollment under

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<sup>7</sup> Consistent with the 1990 Agreement, those permits each included the Port District within the definition of "discharger," but also included language to make clear that the Port District was "not primarily responsible for day-to-day operations at [the tenant's facility] or for compliance with the requirements of this Order (including monitoring and reporting requirements)," and that the Regional Board would notify the Port District of any non-compliance by its lessee and permit it to obtain such compliance before any enforcement action would be taken against it. (See SDRWQCB Order No. R9-2002-0161 at 3, ¶ 13.c.; SDRWQCB Order No. R9-2003-0005 at 4, ¶ 14.c.) The pertinent pages of those two Orders are collectively attached hereto as Exhibit C.

<sup>8</sup> The Regional Board has complete copies of these very lengthy permits in its files, but the Port District can provide additional copies if requested.

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SWRCB Order No. 2003-017-DWG, the Statewide General Waste Discharge Requirements for Dredged or Fill Discharges, issued by the Regional Board to BAE Systems on December 28, 2012, as amended on May 31, 2013, attached hereto as Exhibit F (without attachments.)

There is no reason for the Regional Board to depart from this long-standing practice in connection with the WDRs to be issued for the subject Project. This is particularly true given that the Port District itself has been asked by these same project applicants to issue each of them a Coastal Development Permit ("CDP") for this Project, which will likewise include the mitigation and other requirements for compliance with the Regional Board's Environmental Impact Report for the Project. The CDPs are independently enforceable by the Port District. Accordingly, the Port District should not be named as a discharger in the WDRs for the proposed Project.

**III. UNDER NO CIRCUMSTANCES CAN THE PORT DISTRICT BE HELD RESPONSIBLE FOR WORK AT THE "S LANE," WHICH IS OWNED BY THE U.S. NAVY AND LEASED BY NASSCO**

There is no legal basis upon which the Port District can be held responsible for any activities conducted on property outside its jurisdiction, which includes the "S Lane" area proposed by NASSCO and the South Restoration Fund for use as a sediment dewatering area for sediments dredged at the NASSCO (South) site.

The WDRs define the "Project Site" as including "[t]he sediment remediation areas, combined with...2) the 2.5 acre S-Lane Parcel sediment staging and offloading area for the South Project Site, located on the NASSCO leasehold on the north side of Chollas Creek." (WDRs, II.H.) The WDRs further acknowledge that the "southern Project sediment staging and stockpile area is located on property owned by the United States (sic) Navy and leased to NASSCO." (*Id.*, II.F.) The Port District has no involvement, as trustee or otherwise, with the "S Lane."

Nevertheless, the WDRs seek to make all alleged Dischargers liable for all work to be performed under the WDRs wherever located. (See, e.g., WDRs, II.J. (prescribing BMPs for the "sediment management areas"); II.R. (requiring the Discharger to comply with all of the mitigation measures in the Mitigation and Monitoring Reporting Program contained in Attachment B of the Order); IX ("The Discharger must comply with all conditions of this Order...").)

The WDRs as proposed would therefore unlawfully require the Port District to undertake work, and/or assume responsibility for work being undertaken by third parties, on property over which it has no right to exercise any jurisdictional authority pursuant to the Port Act (Harb. & Nav. Code, App. 1). Consequently, there is no legal basis upon which

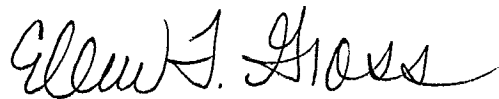
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the Regional Board could impose any liability on the Port District in connection with any work required by the WDRs at the "S Lane."

#### **IV. CONCLUSION**

Based upon the foregoing, the Port District respectfully requests that it should not be named as a discharger—much less a primarily liable discharger—in the WDRs for the proposed Project. Instead, the Regional Board can rely upon the Port District to assist it, as and if necessary, in obtaining its tenants' compliance with the WDRs and know that it will also independently enforce compliance by all Project applicants with the CDPs issued to them by the Port District for the Project.

Very truly yours,

A handwritten signature in cursive script that reads "Ellen F. Gross".

ELLEN F. GROSS  
Deputy Port Attorney

EFG/clb  
Attachments

# **Exhibit A**



## INTRODUCTION

This application package constitutes a Report of Waste Discharge (ROWD) pursuant to California Water Code Section 13260. Section 13260 states that persons discharging or proposing to discharge waste that could affect the quality of the waters of the State, other than into a community sewer system, shall file a ROWD containing information which may be required by the appropriate Regional Water Quality Control Board (RWQCB).

This package is to be used to start the application process for all waste discharge requirements (WDRs) and National Pollutant Discharge Elimination System (NPDES) permits\* issued by a RWQCB except:

- a) Those landfill facilities that must use a joint Solid Waste Facility Permit Application Form, California Integrated Waste Management Board Form E-1-77; and
- b) General WDRs or general NPDES permits that use a Notice of Intent to comply or specify the use of an alternative application form designed for that permit.

### **This application package contains:**

1. Application/General Information Form for WDRs and NPDES Permits [Form 200 (10/97)].
2. Application/General Information Instructions.

### **Instructions**

Instructions are provided to assist you with completion of the application. If you are unable to find the answers to your questions or need assistance with the completion of the application package, please contact your RWQCB representative. *The RWQCBs strongly recommend that you make initial telephone or personal contact with RWQCB regulatory staff to discuss a proposed new discharge before submitting your application.* The RWQCB representative will be able to answer procedural and annual fee related questions that you may have. (See map and telephone numbers inside of application cover.)

All dischargers regulated under WDRs and NPDES permits must pay an annual fee, except dairies, which pay a filing fee only. The RWQCB will notify you of your annual fee based on an evaluation of your proposed discharge. Please do NOT submit a check for your first annual fee or filing fee until requested to do so by a RWQCB representative. Dischargers applying for reissuance (renewal) of an existing NPDES permit or update of an existing WDR will be billed through the annual fee billing system and are therefore requested NOT to submit a check with their application. Checks should be made payable to the State Water Resources Control Board.

### **Additional Information Requirements**

A RWQCB representative will notify you within 30 days of receipt of the application form and any supplemental documents whether your application is complete. If your application is incomplete, the RWQCB representative will send you a detailed list of discharge specific information necessary to complete the application process. The completion date of your application is normally the date when all required information, including the correct fee, is received by the RWQCB.

**\* NPDES PERMITS:** If you are applying for a permit to discharge to surface water, you will need an NPDES permit which is issued under both State and Federal law and may be required to complete one or more of the following Federal NPDES permit application forms: Short Form A, Standard Form A, Forms 1, 2B, 2C, 2D, 2E, and 2F. These forms may be obtained at a RWQCB office or can be ordered from the National Center for Environmental Publications and Information at (513) 891-6561.



**APPLICATION/REPORT OF WASTE DISCHARGE  
GENERAL INFORMATION FORM FOR  
WASTE DISCHARGE REQUIREMENTS OR NPDES PERMIT**



**INSTRUCTIONS  
FOR COMPLETING THE APPLICATION/REPORT OF WASTE DISCHARGE  
GENERAL INFORMATION FORM FOR:  
WASTE DISCHARGE REQUIREMENTS/NPDES PERMIT**

If you have any questions on the completion of any part of the application, please contact your RWQCB representative. A map of RWQCB locations, addresses, and telephone numbers is located on the reverse side of the application cover.

**I. FACILITY INFORMATION**

You must provide the factual information listed below for ALL owners, operators, and locations and, where appropriate, for ALL general partners and lease holders.

**A. FACILITY:**

Legal name, physical address including the county, person to contact, and phone number at the facility.  
(NO P.O. Box numbers! If no address exists, use street and nearest cross street.)

**B. FACILITY OWNER:**

Legal owner, address, person to contact, and phone number. Also include the owner's Federal Tax Identification Number.

**OWNER TYPE:**

Check the appropriate Owner Type. The legal owner will be named in the WDRs/NPDES permit.

**C. FACILITY OPERATOR (The agency or business, not the person):**

If applicable, the name, address, person to contact, and telephone number for the facility operator. Check the appropriate Operator Type. If identical to B. above, enter "same as owner".

**D. OWNER OF THE LAND:**

Legal owner of the land(s) where the facility is located, address, person to contact, and phone number. Check the appropriate Owner Type. If identical to B. above, enter "same as owner".

**E. ADDRESS WHERE LEGAL NOTICE MAY BE SERVED:**

Address where legal notice may be served, person to contact, and phone number. If identical to B. above, enter "same as owner".

**F. BILLING ADDRESS**

Address where annual fee invoices should be sent, person to contact, and phone number. If identical to B. above, enter "same as owner".



**APPLICATION/REPORT OF WASTE DISCHARGE  
GENERAL INFORMATION FORM FOR  
WASTE DISCHARGE REQUIREMENTS OR NPDES PERMIT**

**II. TYPE OF DISCHARGE**

Check the appropriate box to describe whether the waste will be discharged to: A. Land, or B. Surface Water.

Check the appropriate box(es) which best describe the activities at your facility.

**Hazardous Waste - If you check the Hazardous Waste box, STOP and contact a representative of the RWQCB for further instructions.**

**Landfills - A separate form, APPLICATION FOR SOLID WASTE FACILITY PERMIT/WASTE DISCHARGE REQUIREMENTS, California Integrated Waste Management Board Form E-1-77, may be required. Contact a RWQCB representative to help determine the appropriate form for your discharge.**

**III. LOCATION OF THE FACILITY**

1. Enter the Assessor's Parcel Number(s) (APN), which is located on the property tax bill. The number can also be obtained from the County Assessor's Office. Indicate the APN for both the facility and the discharge point.
2. Enter the Latitude of the entrance to the proposed/existing facility and of the discharge point. Latitude and longitude information can be obtained from a U.S. Geological Survey quadrangle topographic map. Other maps may also contain this information.
3. Enter the Longitude of the entrance to the proposed/existing facility and of the discharge point.

**IV. REASON FOR FILING****NEW DISCHARGE OR FACILITY:**

A discharge or facility that is proposed but does not now exist, or that does not yet have WDRs or an NPDES permit.

**CHANGE IN DESIGN OR OPERATION:**

A material change in design or operation from existing discharge requirements. Final determination of whether the reported change is material will be made by the RWQCB.

**CHANGE IN QUANTITY/TYPE OF DISCHARGE:**

A material change in characteristics of the waste from existing discharge requirements. Final determination of whether the reported change would have a significant effect will be made by the RWQCB.

**CHANGE IN OWNERSHIP/OPERATOR:**

Change of legal owner of the facility. Complete Parts I, III, and IV only and contact the RWQCB to determine if additional information is required.

**WASTE DISCHARGE REQUIREMENTS UPDATE OR NPDES PERMIT REISSUANCE:**

WDRs must be updated periodically to reflect changing technology standards and conditions. A new application is required to reissue an NPDES permit which has expired.

**OTHER:**

If there is a reason other than the ones listed, please describe the reason on the space provided. (If more space is needed, attach a separate sheet.)



**APPLICATION/REPORT OF WASTE DISCHARGE  
GENERAL INFORMATION FORM FOR  
WASTE DISCHARGE REQUIREMENTS OR NPDES PERMIT**

**V. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

It should be emphasized that communication with the appropriate RWQCB staff is vital before starting the CEQA documentation, and is recommended before completing this application. There are Basin Plan issues which may complicate the CEQA effort, and RWQCB staff may be able to help in providing the needed information to complete the CEQA documentation.

Name the Lead Agency responsible for completion of CEQA requirements for the project, i.e., completion and certification of CEQA documentation.

Check YES or NO. Has a public agency determined that the proposed project is exempt from CEQA?

If the answer is YES, state the basis for the exemption and the name of the agency supplying the exemption on the space provided. (Remember that, if extra space is needed, use an extra sheet of paper, but be sure to indicate the attached sheet under Section VII. Other.)

Check YES or NO. Has the "Notice of Determination" been filed under CEQA? If YES, give the date the notice was filed and enclose a copy of the Notice of Determination and the Initial Study, Environmental Impact Report, or Negative Declaration. If NO, check the box of the expected type of CEQA document for this project, and include the expected date of completion using the timelines given under CEQA. The date of completion should be taken as the date that the Notice of Determination will be submitted. (If not known, write "Unknown")

**VI. OTHER REQUIRED INFORMATION**

To be approved, your application MUST include a COMPLETE characterization of the discharge. If the characterization is found to be incomplete, RWQCB staff will contact you and request that additional specific information be submitted.

This application MUST be accompanied by a site map. A USGS 7.5' Quadrangle map or a street map, if more appropriate, is sufficient for most applications.

**VII. OTHER**

If any of the answers on your application form need further explanation, attach a separate sheet. Please list any attachments with the titles and dates on the space provided.

**VIII. CERTIFICATION**

Certification by the owner of the facility or the operator of the facility, if the operator is different from the owner, is required. The appropriate person must sign the application form.

Acceptable signatures are:

1. for a corporation, a principal executive officer of at least the level of senior vice-president;
2. for a partnership or individual (sole proprietorship), a general partner or the proprietor;
3. for a governmental or public agency, either a principal executive officer or ranking elected/appointed official.

**DISCHARGE SPECIFIC INFORMATION**

In most cases, a request to supply additional discharge specific information will be sent to you by a representative of the RWQCB. If the RWQCB determines that additional discharge specific information is not needed to process your application, you will be so notified.



**APPLICATION/REPORT OF WASTE DISCHARGE  
GENERAL INFORMATION FORM FOR  
WASTE DISCHARGE REQUIREMENTS OR NPDES PERMIT**



**I. FACILITY INFORMATION**

**A. Facility:**

Name:			
Address:			
City:	County:	State:	Zip Code:
Contact Person:		Telephone Number:	

**B. Facility Owner:**

Name:		Operator Type (Check One)	
Address:		1. <input type="checkbox"/> Individual	2. <input type="checkbox"/> Corporation
City:	State:	3. <input type="checkbox"/> Governmental Agency	4. <input type="checkbox"/> Partnership Agency
Zip Code:	5. <input type="checkbox"/> Other: _____		
Contact Person:		Telephone Number:	Federal Tax ID:

**C. Facility Operator (The agency or business, not the person):**

Name:		Operator Type (Check One)	
Address:		1. <input type="checkbox"/> Individual	2. <input type="checkbox"/> Corporation
City:	State:	3. <input type="checkbox"/> Governmental Agency	4. <input type="checkbox"/> Partnership Agency
Zip Code:	5. <input type="checkbox"/> Other: _____		
Contact Person:		Telephone Number:	

**D. Owner of the Land:**

Name:		Owner Type (Check One)	
Address:		1. <input type="checkbox"/> Individual	2. <input type="checkbox"/> Corporation
City:	State:	3. <input type="checkbox"/> Governmental Agency	4. <input type="checkbox"/> Partnership Agency
Zip Code:	5. <input type="checkbox"/> Other: _____		
Contact Person:		Telephone Number:	

**E. Address Where Legal Notice May Be Served:**

Address:		
City:	State:	Zip Code:
Contact Person:		Telephone Number:

**F. Billing Address:**

Address:		
City:	State:	Zip Code:
Contact Person:		Telephone Number:



APPLICATION/REPORT OF WASTE DISCHARGE GENERAL INFORMATION FORM FOR WASTE DISCHARGE REQUIREMENTS OR NPDES PERMIT



II. TYPE OF DISCHARGE

Check Type of Discharge(s) Described in this Application (A or B):

- A. WASTE DISCHARGE TO LAND B. WASTE DISCHARGE TO SURFACE WATER

Check all that apply:

- Domestic/Municipal Wastewater Treatment and Disposal, Cooling Water, Mining, Waste Pile, Wastewater Reclamation, Other, please describe: Animal Waste Solids, Land Treatment Unit, Dredge Material Disposal, Surface Impoundment, Industrial Process Wastewater, Animal or Aquacultural Wastewater, Biosolids/Residual, Hazardous Waste (see instructions), Landfill (see instructions), Storm Water

III. LOCATION OF THE FACILITY

Describe the physical location of the facility.

1. Assessor's Parcel Number(s) Facility: Discharge Point: 2. Latitude Facility: Discharge Point: 3. Longitude Facility: Discharge Point:

IV. REASON FOR FILING

New Discharge or Facility, Changes in Ownership/Operator (see instructions), Change in Design or Operation, Waste Discharge Requirements Update or NPDES Permit Reissuance, Change in Quantity/Type of Discharge, Other:

V. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Name of Lead Agency: Has a public agency determined that the proposed project is exempt from CEQA? Basis for Exemption/Agency: Has a "Notice of Determination" been filed under CEQA? Expected CEQA Documents: EIR, Negative Declaration, Expected CEQA Completion Date:



APPLICATION/REPORT OF WASTE DISCHARGE GENERAL INFORMATION FORM FOR WASTE DISCHARGE REQUIREMENTS OR NPDES PERMIT



VI. OTHER REQUIRED INFORMATION

Please provide a COMPLETE characterization of your discharge. A complete characterization includes, but is not limited to, design and actual flows, a list of constituents and the discharge concentration of each constituent, a list of other appropriate waste discharge characteristics, a description and schematic drawing of all treatment processes, a description of any Best Management Practices (BMPs) used, and a description of disposal methods.

Also include a site map showing the location of the facility and, if you are submitting this application for an NPDES permit, identify the surface water to which you propose to discharge. Please try to limit your maps to a scale of 1:24,000 (7.5' USGS Quadrangle) or a street map, if more appropriate.

VII. OTHER

Attach additional sheets to explain any responses which need clarification. List attachments with titles and dates below:

Three horizontal lines for listing attachments.

You will be notified by a representative of the RWQCB within 30 days of receipt of your application. The notice will state if your application is complete or if there is additional information you must submit to complete your Application/Report of Waste Discharge, pursuant to Division 7, Section 13260 of the California Water Code.

VIII. CERTIFICATION

"I certify under penalty of law that this document, including all attachments and supplemental information, were prepared under my direction and supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

FOR OFFICE USE ONLY

Table with 4 columns: Date Form 200 Received, Letter to Discharger, Fee Amount Received, Check #

## **Exhibit B**



WILLIAM HILLYER  
OSCAR F. IRWIN  
WESTCOTT GRISWOLD  
NORMAN R. ALLENBY  
HENRY J. KLINKER  
BROWN B. SMITH  
JAMES G. EHLERS  
JAMES E. DRUMMOND  
PETER J. IPPOLITO  
GARY S. HARDKE  
HOWARD A. ALLEN  
ROBERT J. HANNA  
KENT W. HILDRETH  
JONATHAN B. DABBIERI  
HOWARD E. SUSMAN  
DAVID B. HOPKINS  
ROBERT L. ZAJAC  
CHARLES J. INGBER  
JOHN C. O'NEILL  
STEVEN M. HILL  
MICHAEL F. MILLERICK  
MURRAY T. S. LEWIS  
DONALD L. CUPIT  
MARK G. BUDWIG

HILLYER & IRWIN  
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550 WEST C STREET, 16TH FLOOR  
SAN DIEGO, CALIFORNIA 92101-3540

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July 2, 1990

CURTIS HILLYER (1972-1991)  
LESA CHRISTENSON  
MARK D. MARTIN  
DOROTHY J. ALMOUR  
CARY R. BOND  
STEVEN C. SAYLER  
DEB C. FEDERSDOTTER  
STEPHEN M. BRIGANDI  
DENNIS O. SEYMOUR, JR.  
NANCY J. SKOVHOLT  
TAD SETH PARZEN  
I. RANDOLPH S. SHINER  
JAMES M. CADY  
ROBERT J. LOFGREN  
RANDA M. TRAPP  
MARK S. PULLIN  
EVELYN R. WIGGINS  
SUSAN M. GORELICK  
TIMOTHY J. NASH  
LINDA K. HAMMACHER

R. DAVID MULCAHY  
DIRECTOR OF ADMINISTRATION

JUL - 6 1990

IN REPLY REFER TO  
OUR FILE #481.23

BY FACSIMILE: (916) 322-2765

BY HAND DELIVERY

Sheila K. Vassey, Esq.  
Senior Staff Counsel  
STATE WATER RESOURCES CONTROL BOARD  
Paul R. Bonderson Building  
901 "P" Street  
Sacramento, California 95801

Mr. David T. Barker  
CALIFORNIA REGIONAL WATER  
QUALITY CONTROL BOARD  
San Diego Region  
9771 Clairemont Boulevard  
San Diego, California 92124

Re: State Order WQ 90-3 (State Board File A-651)  
Suggested Language for Regional Board NPDES Permits

Dear Sheila and David:

This letter confirms my telephone conversation today (July 2) with Sheila Vassey concerning language to be included in the 6 NPDES Permits that are the subject of Order WQ 90-3. In that conversation we agreed to the following language. My understanding from Sheila was that she had discussed the language with David Barker and that he found it acceptable. The agreed language is as follows:

The Regional Board will notify the Port District of any violation by [the tenant] of any permit conditions, for the purpose of obtaining the assistance of the Port District in attempting to obtain compliance by [the tenant]. The Port District is not primarily responsible for compliance with the permit requirements. The Regional Board will not take enforcement action against the Port District for violations by [the tenant] unless there is a continued failure to comply by [the tenant] after the Port District has been given notice of the violations, and until after the Regional Board has issued against [the tenant] either a cleanup and

DB 7/6  
AC 7/6  
Return to  
DB

SAR039087

HILLYER & IRWIN

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Sheila K. Vassey, Esq.  
Mr. David T. Barker  
July 2, 1990  
Page 2

abatement order, cease and desist order, or  
complaint for administrative civil liabilities.

Based on this agreement, the Port District has agreed not to  
file any writ or other action challenging the State Board order in  
this matter, which would have been acquired to be filed today.

I am please that we have been able to conclude this matter.  
Very truly yours,

*David B. Hopkins*

David B. Hopkins  
HILLYER & IRWIN

DBH/ak  
c: Joseph D. Patello, Esq.  
Mr. Don L. Nay

SAR039088

## **Exhibit C**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**ORDER NO. R9-2002-0161  
NPDES PERMIT NO. CA0109151**

**WASTE DISCHARGE REQUIREMENTS  
FOR  
SOUTHWEST MARINE, INC.  
SAN DIEGO COUNTY**

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9. Storm water discharges associated with industrial activity at SWM provide a potentially significant pathway by which pollutants and wastes could be discharged to waters of the United States. Such discharges to San Diego Bay have been found to contain toxic pollutants, particularly copper and zinc. Although SWM operates a Storm Water Diversion System that has the capacity to contain and divert over one inch of storm water from the facility to the Metropolitan Sanitary Sewer System, the possibility exists for industrial storm water discharges to occur. The acute toxicity established in the General Shipyard Permit will remain in effect for all industrial storm water discharges.
10. The U.S. Navy is conducting a four year study under Order No. R9-2002-0002 of the toxicity in the industrial storm water discharges. The Regional Board encourages SWM to participate in this study.
11. Sediment monitoring, as specified in Monitoring and Reporting Program No. R9-2002-0161, will not be required until the sediment cleanup at SWM is successfully completed (see Fact Sheet, *Section E.7*). The first set of samples from the SWM sampling stations and reference stations, outlined in the MRP No. R9-2002-0161, are required to be taken during the time the last post cleanup sampling is conducted.
12. The San Diego Unified Port District (SDUPD) is the trustee of all sites currently known to the Regional Board where ship construction, modification, repair, and maintenance facilities are operated by commercial entities, such as SWM. SDUPD is ultimately responsible for the consequences (e.g. cleanup) of all discharges associated with ship construction, modification, repair, and maintenance activities at sites for which it is the trustee. SDUPD may also be responsible for the consequences (e.g. cleanup) of all discharges within and from such sites, including those discharges that are not subject to NPDES requirements, pursuant to 40 CFR 122.3. SDUPD may be responsible for the failure of its tenants to comply with this Order.
13. For purposes of this Order, the term "discharger" means:
  - a. A person who owns and/or operates SWM; or
  - b. A person (e.g. a commercial entity engaged in ship construction, modification, repair, and/or maintenance activities), who is a lessee of a site where ship construction, modification, repair, and/or maintenance activities are conducted; or
  - c. A person (e.g. the San Diego Unified Port District), who is a lessor of a site where ship construction, modification, repair, and/or maintenance activities are conducted. [Note: such lessors are not primarily responsible for day-to-day operations at SWM or for compliance with the requirements of this Order (including monitoring and reporting requirements). In order to obtain the assistance of such lessors in obtaining compliance of their lessees with this Order, the Regional Board will notify such lessors of any violations of this Order by their lessees. The Regional Board will not take enforcement action against such lessors for violations of this Order by their lessees unless there is a continued failure to comply by a lessee after the lessor has been given notice of the violations and an opportunity to obtain compliance of the lessee.]

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**ORDER NO. R9-2003-0005  
NPDES PERMIT NO. CA0109134**

**WASTE DISCHARGE REQUIREMENTS  
FOR**

**NATIONAL STEEL AND SHIPBUILDING COMPANY**

**SAN DIEGO COUNTY**

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- Attachment C: Basin Plan Water Quality Objectives Applicable to San Diego Bay
- Attachment D: Standard Provisions
- Attachment E: Definitions and Explanatory Notes

12. Sediment monitoring, as specified in Monitoring and Reporting Program No. R9-2003-0005, will not be required until the sediment cleanup at NASSCO is successfully completed (see Fact Sheet, *Section E.7*). The first set of samples from the NASSCO sampling stations and reference stations are required to be taken concurrently with the last post cleanup sampling.
13. The San Diego Unified Port District (SDUPD) is the trustee of all sites currently known to the Regional Board where ship construction, modification, repair, and maintenance facilities are operated by commercial entities, such as NASSCO. The SDUPD is ultimately responsible for the consequences (e.g. cleanup) of all discharges associated with ship construction, modification, repair, and maintenance activities at sites for which it is the trustee. The SDUPD may also be responsible for the consequences (e.g. cleanup) of all discharges within and from such sites, including those discharges that are not subject to NPDES requirements, pursuant to 40 CFR 122.3. The SDUPD may be responsible for the failure of its tenants to comply with this Order.
14. For purposes of this Order, the term “discharger” means:
  - a. A person who owns and/or operates NASSCO; or
  - b. A person (e.g. a commercial entity engaged in ship construction, modification, repair, and/or maintenance activities), who is a lessee of a site where ship construction, modification, repair, and/or maintenance activities are conducted; or
  - c. A person (e.g. the SDUPD), who is a lessor of a site where ship construction, modification, repair, and/or maintenance activities are conducted. [Note: such lessors are not primarily responsible for day-to-day operations at NASSCO or for compliance with the requirements of this Order (including monitoring and reporting requirements). In order to obtain the assistance of such lessors in obtaining compliance of their lessees with this Order, the Regional Board will notify such lessors of any violations of this Order by their lessees. The Regional Board will not take enforcement action against such lessors for violations of this Order by their lessees unless there is a continued failure to comply by a lessee after the lessor has been given notice of the violations and an opportunity to obtain compliance of the lessee.]
15. The *Comprehensive Water Quality Control Plan, San Diego Basin (9)* (Basin Plan) designates the following beneficial uses of San Diego Bay:
  - Industrial Supply,
  - Navigation,
  - Contact Water Recreation,
  - Non-Contact Water Recreation,
  - Commercial and Sport Fishing,

## **Exhibit D**





# California Regional Water Quality Control Board

## San Diego Region



Linda S. Adams  
Secretary for  
Environmental Protection

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

Arnold Schwarzenegger  
Governor

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**ORDER NO. R9-2009-0080**  
**As modified by Order No. R9-2010-0090**

**NPDES NO. CA0109151**

**WASTE DISCHARGE REQUIREMENTS**  
**BAE SYSTEMS SAN DIEGO SHIP REPAIR INC.**  
**DISCHARGE TO THE SAN DIEGO BAY**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 1. Discharger Information**

<b>Discharger</b>	<b>BAE Systems San Diego Ship Repair Inc.</b>
<b>Name of Facility</b>	<b>BAE Systems San Diego Ship Repair Inc.</b>
<b>Facility Address</b>	<b>2205 East Belt Street</b>
	<b>San Diego, CA 92113</b>
	<b>San Diego County</b>
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board have classified this discharge as a major discharge.	

The discharge by the Owner from the discharge points identified below is subject to waste discharge requirements as set forth in this Order:

**Table 2. Discharge Locations**

<b>Discharge Point</b>	<b>Effluent Description</b>	<b>Discharge Point Latitude</b>	<b>Discharge Point Longitude</b>	<b>Receiving Water</b>
BW-001 (POSD)	Ballast Water	32° 41' 25" N	117° 8' 41" W	San Diego Bay
FP-001 (Pier 3)	Fire protection water	32° 41' 25" N	117° 8' 41" W	San Diego Bay
FP-002 (Building 13)	Fire protection water	32° 41' 29" N	117° 8' 39" W	San Diego Bay
FP-003 (POSD)	Fire protection water	32° 41' 25" N	117° 8' 41" W	San Diego Bay
PW-001 (Pier 1)	Potable water leaks from hoses	32° 41' 38" N	117° 8' 46" W	San Diego Bay
PW-002 (Pier 3)	Potable water leaks from hoses	32° 41' 29" N	117° 8' 41" W	San Diego Bay

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
SC-001 (Pier 1)	Steam condensate leaks from hoses	32° 41' 28" N	117° 8' 46" W	San Diego Bay
SC-002 (Pier 3)	Steam condensate leaks from hoses	32° 41' 29" N	117° 8' 41" W	San Diego Bay
SW-001	Contact storm water	32° 41' 33" N	117° 8' 43" W	San Diego Bay
SW-002	Contact storm water	32° 41' 32" N	117° 8' 41" W	San Diego Bay
SW-003	Contact storm water	32° 41' 32" N	117° 8' 40" W	San Diego Bay
SW-004	Contact storm water	32° 41' 29" N	117° 8' 36" W	San Diego Bay
SW-005	Contact storm water	32° 41' 30" N	117° 8' 35" W	San Diego Bay
SW-006	Contact storm water	32° 41' 26" N	117° 8' 36" W	San Diego Bay

**Table 3. Administrative Information**

This Order was adopted by the Regional Water Quality Control Board on:	<b>June 10, 2009</b>
This Order shall become effective on:	<b>June 10, 2009</b>
This Order shall expire on:	<b>June 10, 2014</b>
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	<b>December 12, 2013</b>

I, David W. Gibson, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on June 10, 2009 and modified on July 14, 2010.

  
 David W. Gibson, Executive Officer

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**I. FACILITY INFORMATION**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 4. Facility Information**

<b>Discharger</b>	<b>BAE Systems San Diego Ship Repair Inc.</b>
<b>Name of Facility</b>	<b>BAE Systems San Diego Ship Repair Inc.</b>
<b>Facility Address</b>	<b>2205 East Belt Street</b>
	<b>San Diego, CA 92113</b>
	<b>San Diego County</b>
<b>Facility Contact, Title, and Phone</b>	<b>Sandor Halvax, Environmental Services, (619) 238-1000 ext. 2060</b>
<b>Mailing Address</b>	<b>P.O. Box 13308, San Diego, CA 92170-3308</b>
<b>Type of Facility</b>	<b>Shipbuilding and Repair (SIC Code # 3731)</b>
<b>Facility Design Flow</b>	<b>Not Applicable</b>

## II. FINDINGS

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Water Board), finds:

**A. Background.** BAE Systems San Diego Ship Repair Inc. (hereinafter Discharger) is currently discharging pursuant to Order No. R9-2002-0161 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0109151. The Discharger submitted a Report of Waste Discharge (ROWD), dated May 11, 2007, and applied for a NPDES permit renewal to discharge drydock ballast water, fire protection water, potable water leaks from hoses, steam condensate leaks from hoses, and water weight test bag effluent, from numerous discharge locations in BAE Systems San Diego Ship Repair Inc., hereinafter Facility. Contact storm water is generally not discharged to San Diego Bay, but may be treated on-site and then discharged to a municipal treatment plant for disposal. However, discharges of storm water may occur at the Facility to the San Diego Bay when the on-site holding capacity is exceeded or the storm water collection and treatment system is not operating properly.

For the purposes of this Order, references to the "discharger" or "permittee" in applicable federal and state laws, regulations, plans, or policy are held to be equivalent to references to the Discharger herein.

**B. Facility Description.** The Discharger operates a shipyard. Discharges from the Facility to the San Diego Bay include drydock ballast tank water, fire protection water, drips of potable water and steam condensate from hoses supplying these services to ships, and storm water. The supply water for the fire protection water, cooling water, dry dock ballast water, and weight test bags is pumped from the San Diego Bay. In the NPDES ROWD submitted to the Regional Water Board, dated May 11, 2007, the Discharger states that the non-contact cooling water discharges from building 13 (for the compressor air system) have been eliminated.

A description of each discharge is provided in section II.A of Attachment F (Fact Sheet) to this Order. Attachment B provides a map of the area around the Facility. Attachment C provides a flow schematic of the Facility.

**C. Legal Authorities.** This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by the U.S. Environmental Protection Agency (USEPA) and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). It shall serve as a NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the Water Code (commencing with section 13260).

**D. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information submitted as part of the application, through monitoring and reporting programs, and other available information. The Fact Sheet (Attachment F), which contains background information and rationale for Order

requirements, is hereby incorporated into this Order and constitutes part of the Findings for this Order. Attachments A through E and G are also incorporated into this Order.

- E. California Environmental Quality Act (CEQA).** Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177.
- F. Technology-based Effluent Limitations.** Section 301(b) of the CWA and implementing USEPA permit regulations at section 122.44, title 40 of the Code of Federal Regulations<sup>1</sup>, require that permits include conditions meeting applicable technology-based requirements at a minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. The discharge authorized by this Order must meet minimum federal technology-based requirements based on Best Professional Judgment (BPJ) in accordance with Part 125, section 125.3. A detailed discussion of the technology-based effluent limitations development is included in the Fact Sheet (Attachment F).
- G. Water Quality-based Effluent Limitations.** Section 301(b) of the CWA and section 122.44(d) require that permits include limitations more stringent than applicable federal technology-based requirements where necessary to achieve applicable water quality standards.

Section 122.44(d)(1)(i) mandates that permits include effluent limitations for all pollutants that are or may be discharged at levels that have the reasonable potential to cause or contribute to an exceedance of a water quality standard, including numeric and narrative objectives within a standard. Where reasonable potential has been established for a pollutant, but there is no numeric criterion or objective for the pollutant, water quality-based effluent limitations (WQBELs) must be established using: (1) USEPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or policy interpreting the state's narrative criterion, supplemented with other relevant information, as provided in section 122.44(d)(1)(vi).

- H. Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the San Diego Basin (hereinafter Basin Plan) on September 8, 1994, and last amended on April 25, 2007, that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Beneficial uses applicable to the San Diego Bay are as follows:

---

<sup>1</sup> All further statutory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

**Table 5. Basin Plan Beneficial Uses**

Discharge Point Nos.	Receiving Water Name	Beneficial Use(s)
BW-001; FP-001; FP-002; FP-003;PW-001; PW-002; SC-001; SC-002; SW-001 through SW-006	San Diego Bay	<u>Existing:</u> Industrial service supply (IND); navigation (NAV); contact water recreation (REC1); non-contact water recreation (REC2); commercial and sport fishing (COMM); preservation of biological habitats of special significance (BIOL); estuarine habitat (EST); wildlife habitat (WILD); preservation of rare, threatened or endangered species (RARE); marine habitat (MAR); migration of aquatic organisms (MIGR); shellfish harvesting (SHELL)

Requirements of this Order implement the Basin Plan.

Under section 303(d) of the 1972 Clean Water Act, states, territories and authorized tribes are required to develop lists of water quality limited segments. The waters on these lists do not meet water quality standards, even after point sources of pollution have installed the minimum required levels of pollution control technology. On November 30, 2006 USEPA gave final approval to California's 2006 section 303(d) List of Water Quality Limited Segments. The San Diego Bay, as a whole, is listed as impaired for polychlorinated biphenyls (PCBs). Additional portions of the San Diego Bay are listed as impaired for applicable parameters. Two portions of the San Diego Bay applicable to the Facility include, "San Diego Bay Shoreline, near Coronado Bridge", "San Diego Bay Shoreline, between Sampson and 28<sup>th</sup> Streets", and "San Diego Bay Shoreline, near Chollas Creek". These portions of the San Diego Bay are listed in the 303(d) list as impaired for: benthic community effects, copper, mercury, polycyclic aromatic hydrocarbons (PAHs), PCBs, sediment toxicity, and zinc.

No applicable TMDL has been adopted by the Regional Water Board and approved by USEPA. A TMDL for sediment toxicity is currently being developed for the "San Diego Bay Shoreline, near Chollas Creek".

The State Water Board adopted the *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California* (Thermal Plan) on May 18, 1972, and amended this plan on September 18, 1975. This plan contains temperature objectives for surface waters. Requirements of this Order implement the Thermal Plan.

- I. **National Toxics Rule (NTR) and California Toxics Rule (CTR).** USEPA adopted the NTR on December 22, 1992, and later amended it on May 4, 1995 and November 9, 1999. About 40 criteria in the NTR applied in California. On May 18, 2000, USEPA adopted the CTR. The CTR promulgated new toxics criteria for California and, in addition, incorporated the previously adopted NTR criteria that were applicable in the state. The CTR was amended on February 13, 2001. These rules contain water quality criteria for priority pollutants and are applicable to this discharge.



- J. State Implementation Policy.** On March 2, 2000, the State Water Board adopted the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy or SIP). The SIP became effective on April 28, 2000 with respect to the priority pollutant criteria promulgated for California by the USEPA through the NTR and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. The SIP became effective on May 18, 2000 with respect to the priority pollutant criteria promulgated by the USEPA through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005 that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives and provisions for chronic toxicity control. Requirements of this Order implement the SIP. The SIP is not applicable to the storm water discharges authorized by this Order.
- K. Compliance Schedules and Interim Requirements.** Section 2.1 of the SIP provides that, based on a Discharger's request and demonstration that it is infeasible for an existing Discharger to achieve immediate compliance with an effluent limitation derived from a CTR criterion, compliance schedules may be allowed in an NPDES permit. Unless an exception has been granted under section 5.3 of the SIP, a compliance schedule may not exceed 5 years from the date that the permit is issued or reissued, nor may it extend beyond 10 years from the effective date of the SIP (or May 18, 2010) to establish and comply with CTR criterion-based effluent limitations. Where a compliance schedule for a final effluent limitation exceeds 1 year, the Order must include interim numeric limitations for that constituent or parameter. Where allowed by the Basin Plan, compliance schedules and interim effluent limitations or discharge specifications may also be granted to allow time to implement a new or revised water quality objective. This Order does include compliance schedules and interim effluent limitations. A detailed discussion of the basis for the compliance schedule(s) and interim effluent limitation(s) and/or discharge specifications is included in the Fact Sheet.
- L. Alaska Rule.** On March 30, 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards (WQS) become effective for CWA purposes. (40 CFR § 131.21; 65 Fed. Reg. 24641 (April 27, 2000).) Under the revised regulation (also known as the Alaska rule), new and revised standards submitted to USEPA after May 30, 2000, must be approved by USEPA before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000 may be used for CWA purposes, whether or not approved by USEPA.
- M. Stringency of Requirements for Individual Pollutants.** This Order contains both technology-based and water quality-based effluent limitations for individual pollutants. The technology-based effluent limitations consist of restrictions on oil and grease, settleable solids, turbidity, and pH (upper limitation). Restrictions on oil and grease, settleable solids, turbidity, and pH (upper limitation) are discussed in section III.B of the Fact Sheet. This Order's technology-based pollutant restrictions implement the minimum, applicable federal technology-based requirements. In addition to numeric technology-based limitations, this Order requires the implementation of a Best

Management Practices (BMP) Plan. To carry out the purpose and intent of the CWA, the previous Order required the Discharger to develop and implement a BMP Plan, as authorized by CWA section 304(e) and section 402(p), for toxic pollutants and hazardous substances, and for the control of storm water discharges. The continued implementation and updating of this BMP Plan is carried over from the previous Order.

WQBELs have been scientifically derived to implement water quality objectives that protect beneficial uses. Both the beneficial uses and the water quality objectives have been approved pursuant to federal law and are the applicable federal water quality standards. To the extent that toxic pollutant WQBELs were derived from the CTR, the CTR is the applicable standard pursuant to section 131.38. The scientific procedures for calculating the individual WQBELs for priority pollutants are based on the CTR-SIP, which was approved by USEPA on May 18, 2000. All beneficial uses and water quality objectives contained in the Basin Plan were approved under State law and submitted to and approved by USEPA prior to May 30, 2000. Any water quality objectives and beneficial uses submitted to USEPA prior to May 30, 2000, but not approved by USEPA before that date, are nonetheless "applicable water quality standards for purposes of the CWA" pursuant to section 131.21(c)(1). Collectively, this Order's restrictions on individual pollutants are no more stringent than required to implement the requirements of the CWA.

**N. Antidegradation Policy.** Section 131.12 requires that the state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the state and federal antidegradation policies. As discussed in detail in the Fact Sheet the permitted discharge is consistent with the antidegradation provision of section 131.12 and State Water Board Resolution No. 68-16.

**O. Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at title 40, Code of Federal Regulations section 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed.

All effluent limitations in this Order are at least as stringent as the effluent limitations in the previous Order and meet State and federal anti-backsliding requirements.

**P. Endangered Species Act.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). This Order requires compliance with effluent limits, receiving water limits, and other requirements to protect the beneficial uses of waters of

the state. The Discharger is responsible for meeting all requirements of the applicable Endangered Species Act.

**Q. Monitoring and Reporting.** Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results. Water Code sections 13267 and 13383 authorizes the Regional Water Board to require technical and monitoring reports. The Monitoring and Reporting Program establishes monitoring and reporting requirements to implement federal and State requirements. This Monitoring and Reporting Program is provided in Attachment E.

Sediment monitoring requirements have been carried over from Order No. R9-2002-0161 to determine compliance with receiving water objectives and to determine the impacts of the operation on the surrounding sediment and biota. Storm water monitoring requirements have been carried over from Order No. R9-2002-0161 to determine the effectiveness of the best management practices (BMP) Plan and determine compliance with receiving water objectives. Operational monitoring requirements have been carried over from Order No. R9-2002-0161 to determine the effective of the BMP Plan and ensure that appropriate BMPs are properly implemented.

**R. Standard and Special Provisions.** Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in accordance with section 122.42, are provided in Attachment D. The Discharger must comply with all standard provisions and with those additional conditions that are applicable under section 122.42. The Regional Water Board has also included in this Order special provisions applicable to the Discharger. A rationale for the special provisions contained in this Order is provided in the attached Fact Sheet.

Section 13263.3 of the California Water Code states that pollution prevention should be the first step in the hierarchy for reducing pollution and managing wastes. Further, section 13263.3 (d)(1) states that a Regional Water Board may require a discharger to complete and implement a pollution prevention plan if that discharger significantly contributes, or has the potential to significantly contribute, to the creation of toxic hot spots. The results of a reasonable potential analysis detailed in section IV.C.3 of Attachment F to this Order (Fact Sheet) indicate the Discharger has potential to contribute to the creation of toxic hot spots for arsenic, copper, and lead in San Diego Bay. This Order requires the Discharger to develop and implement a pollution prevention plan for arsenic, copper, and lead to help reduce pollutants in the wastewaters to levels below water quality criteria and obtain consistent compliance with effluent limitations.

**S. Provisions and Requirements Implementing State Law.** The provisions/requirements in section VI.C.3.a of this Order are included to implement state law only. These provisions/requirements are not required or authorized under the federal CWA; consequently, violations of these provisions/requirements are not subject to the enforcement remedies that are available for NPDES violations.

- T. Notification of Interested Parties.** The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet of this Order.
- U. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet of this Order.

**THEREFORE, IT IS HEREBY ORDERED**, that this Order supercedes Order No. R9-2002-0161 except for enforcement purposes, and, in order to meet the provisions contained in division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal Clean Water Act (CWA) and regulations and guidelines adopted thereunder, the Discharger shall comply with the requirements in this Order.

### III. DISCHARGE PROHIBITIONS

- A. The Discharger shall comply with all requirements of the Basin Plan Waste Discharge Prohibitions which are hereby included in this Order by reference.
- B. The discharge of sewage, except as noted in the Basin Plan Waste Discharge Prohibitions, to San Diego Bay is prohibited.
- C. The discharge of industrial process water, other than miscellaneous low volume water, is prohibited.
- D. The discharge of the first flush of storm water runoff from high risk areas is prohibited, except if the pollutants in the discharge are reduced to the extent and demonstrated through testing that the discharge achieves compliance with the acute toxicity limitation specified in section IV.A.1 of this Order. The discharge of the remainder of the storm water must also achieve compliance with the acute toxicity limitations specified in section IV.A.1. of this Order but only needs to be demonstrated twice per year unless under accelerated testing.
- E. The discharges of municipal and industrial waste sludge and untreated sludge digester supernatant, centrate, or filtrate to San Diego Bay is prohibited.
- F. The discharge of rubbish, refuse, debris, materials of petroleum origin, waste zinc plates, abrasives, primer, paint, paint chips, solvents, and marine fouling organisms, and the deposition of such wastes at any place where they could eventually be discharged is prohibited. This prohibition does not apply to the discharge of marine fouling organisms removed from unpainted, uncoated surfaces by underwater operations and discharges that result from floating booms that were installed for "Force Protection" purposes. Rubbish and refuse include, but are not limited to, any cans, bottles, paper, plastic, vegetable matter, or dead animals deposited or caused to be deposited by man.
- G. The discharge of materials of petroleum origin in sufficient quantities to be visible is prohibited.
- H. The discharge or bypassing of untreated waste to San Diego Bay is prohibited. This prohibition does not apply to non-contact cooling water, miscellaneous low volume water, and fire protection water streams which comply with the requirements of this Order for elevated temperature waste discharges and which do not contain pollutants or waste other than heat.

## **Exhibit E**



# California Regional Water Quality Control Board

## San Diego Region



Linda S. Adams  
Secretary for  
Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
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**ORDER NO. R9-2009-0099**  
**NPDES NO. CA0109134**

**WASTE DISCHARGE REQUIREMENTS**  
**GENERAL DYNAMICS**  
**NATIONAL STEEL AND SHIPBUILDING COMPANY (NASSCO)**  
**DISCHARGE TO THE SAN DIEGO BAY**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 1. Discharger Information**

<b>Discharger</b>	General Dynamics National Steel and Shipbuilding Company (NASSCO)		
<b>Name of Facility</b>	General Dynamics NASSCO		
<b>Facility Address</b>	2798 East Harbor Drive		
	San Diego, CA 92113		
	San Diego County		
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board have classified this discharge as a major discharge.			

The discharge by the Owner from the discharge points identified below is subject to waste discharge requirements as set forth in this Order:

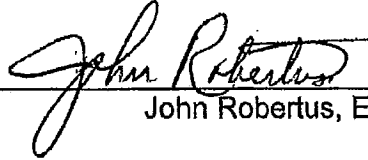
**Table 2. Discharge Locations**

Discharge Point	Effluent Description	Discharge Point Latitude	Discharge Point Longitude	Receiving Water
HR-1 (Graving Dock)	Hydrostatic Relief	32° 41' 36" N	117° 8' 26" W	San Diego Bay
HR-2 (Ways 3)	Hydrostatic Relief	32° 41' 38" N	117° 8' 28" W	San Diego Bay
HR-3 (Ways 4)	Hydrostatic Relief	32° 41' 40" N	117° 8' 30" W	San Diego Bay
M-1 (Floating Dry Dock)	De-ballast Water	32° 41' 37" N	117° 8' 35" W	San Diego Bay
M-2 (Graving Water)	Dewatering Flood Water	32° 41' 27" N	117° 8' 27" W	San Diego Bay
M-3 (Ways 3)	Dewatering	32° 41' 32" N	117° 8' 28" W	San Diego Bay
M-4 (Ways 4)	Dewatering	32° 41' 33" N	117° 8' 30" W	San Diego Bay
M-8 (Pipe and Tank Testing)	Hydrostatic Test Water	32° 41' 35" N	117° 8' 45" W	San Diego Bay

**Table 3. Administrative Information**

This Order was adopted by the Regional Water Quality Control Board on:	<b>August 12, 2009</b>
This Order shall become effective on:	<b>September 1, 2009</b>
This Order shall expire on:	<b>September 1, 2014</b>
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	<b>March 5, 2014</b>

I, John Robertus, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region, on August 12, 2009.



John Robertus, Executive Officer



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**I. FACILITY INFORMATION**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 4. Facility Information**

<b>Discharger</b>	<b>General Dynamics NASSCO</b>
<b>Name of Facility</b>	<b>General Dynamics NASSCO</b>
<b>Facility Address</b>	<b>2798 East Harbor Drive</b>
	<b>San Diego, CA 92113</b>
	<b>San Diego County</b>
<b>Facility Contact, Title, and Phone</b>	<b>T. Michael Chee, Manager, Environmental Engineering, (619) 544-7778</b>
<b>Mailing Address</b>	<b>SAME</b>
<b>Type of Facility</b>	<b>Shipbuilding and Repair (SIC Code # 3731)</b>
<b>Facility Design Flow</b>	<b>NA</b>

## II. FINDINGS

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Water Board), finds:

**A. Background.** General Dynamics National Steel and Shipbuilding Company (NASSCO) (hereinafter Discharger) is currently discharging pursuant to Order No. R9-2003-0005 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0109134. The Discharger submitted a Report of Waste Discharge, dated August 9, 2007, and applied for a NPDES permit renewal to discharge fire protection water, hydrostatic relief water, de-ballast water, and dewatering wastewater from numerous discharge locations in NASSCO, hereinafter Facility. Contact storm water is discharged to the San Diego Bay from the Facility only in the event that all storm water capacity at the Facility has been exhausted. The application was deemed complete on November 27, 2007. By letter dated July 2, 2009, the Discharger requested that the fire protection water discharge be removed from this Order.

For the purposes of this Order, references to the "discharger" or "permittee" in applicable federal and state laws, regulations, plans, or policy are held to be equivalent to references to the Discharger herein.

**B. Facility Description.** The Discharger operates a shipyard. NASSCO provides a full range of ship construction, conversion, and repair capabilities to the U.S. Navy and commercial customers. The NASSCO facility encompasses approximately 126 acres of tidelands property leased from the San Diego Unified Port District. The land portion of the lease covers approximately 79 acres. It includes approximately 37 acres of administrative offices, production shops, and warehouses, 9 acres of concrete platens used for steel fabrication, a floating drydock, graving dock, two shipbuilding ways, and 12 berths on piers and land to accommodate the berthing of ships. A sheet pile bulkhead and a wall along most of the waterfront separate the land and the adjacent receiving waters of San Diego Bay. The facility also includes the Annex Yard which is 0.86 acres and the Navy lease property which is 4.8 acres.

Wastewater is discharged from Discharge Point Nos. HR-1 through HR-3, M-1 through M-4, and M-8 (see table on cover page) to the San Diego Bay, a water of the United States.

The Discharger operates and maintains a Storm Water Diversion System (SWDS). The SWDS is designed to capture all storm water runoff from all industrial areas and eliminate the discharge of industrial storm water to the San Diego Bay. The Facility has a maximum storm water holding capacity of 33,858,000 gallons (enough to contain 3.5 inches of rain in a 24-hour period). Storm water captured within the Facility is discharged to the San Diego Metropolitan Sanitary Sewer System at a rate of 400 gallons per minute.

A description of each discharge is provided in section II.A of Attachment F (Fact Sheet) to this Order. Attachment B provides a map of the area around the Facility. Attachment C provides a flow schematic of the facility.

- C. Legal Authorities.** This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by the U.S. Environmental Protection Agency (USEPA) and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). It shall serve as a NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the Water Code (commencing with section 13260).
- D. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information submitted as part of the application, through monitoring and reporting programs, and other available information. The Fact Sheet (Attachment F), which contains background information and rationale for Order requirements, is hereby incorporated into this Order and constitutes part of the Findings for this Order. Attachments A through E and G are also incorporated into this Order.
- E. California Environmental Quality Act (CEQA).** Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177.
- F. Technology-based Effluent Limitations.** Section 301(b) of the CWA and implementing USEPA permit regulations at section 122.44, title 40 of the Code of Federal Regulations<sup>1</sup>, require that permits include conditions meeting applicable technology-based requirements at a minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. The discharge authorized by this Order must meet minimum federal technology-based requirements based on Best Professional Judgment (BPJ) in accordance with Part 125, section 125.3. A detailed discussion of the technology-based effluent limitations development is included in the Fact Sheet (Attachment F).
- G. Water Quality-based Effluent Limitations.** Section 301(b) of the CWA and section 122.44(d) require that permits include limitations more stringent than applicable federal technology-based requirements where necessary to achieve applicable water quality standards.

Section 122.44(d)(1)(i) mandates that permits include effluent limitations for all pollutants that are or may be discharged at levels that have the reasonable potential to cause or contribute to an exceedance of a water quality standard, including numeric and narrative objectives within a standard. Where reasonable potential has been established for a pollutant, but there is no numeric criterion or objective for the pollutant, water quality-based effluent limitations (WQBELs) must be established using: (1) USEPA criteria guidance under CWA section 304(a), supplemented where necessary by other relevant information; (2) an indicator parameter for the pollutant of concern; or (3) a calculated numeric water quality criterion, such as a proposed state criterion or policy interpreting the state's narrative criterion, supplemented with other relevant information, as provided in section 122.44(d)(1)(vi).

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<sup>1</sup> All further statutory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

**H. Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the San Diego Basin (hereinafter Basin Plan) on September 8, 1994, and last amended on April 25, 2007, that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Beneficial uses applicable to the San Diego Bay are as follows:

**Table 5. Basin Plan Beneficial Uses**

Discharge Point Nos.	Receiving Water Name	Beneficial Use(s)
HR-1 through HR-3  M-1 through M-4, and M-8	San Diego Bay	<u>Existing:</u> Industrial Service Supply (IND); navigation (NAV); contact water recreation (REC1); non-contact water recreation (REC2); commercial and sport fishing (COMM); preservation of biological habitats of special significance (BIOL); estuarine habitat (EST); wildlife habitat (WILD); preservation of rare, threatened or endangered species (RARE); marine habitat (MAR); migration of aquatic organisms (MIGR); shellfish harvesting (SHELL)

Requirements of this Order implement the Basin Plan.

Under section 303(d) of the 1972 Clean Water Act, states, territories and authorized tribes are required to develop lists of water quality limited segments. The waters on these lists do not meet water quality standards, even after point sources of pollution have installed the minimum required levels of pollution control technology. On November 30, 2006 USEPA gave final approval to California's 2006 section 303(d) List of Water Quality Limited Segments. The San Diego Bay, as a whole, is listed as impaired for polychlorinated biphenyls (PCBs). Additional portions of the San Diego Bay are listed as impaired for applicable parameters. Two portions of the San Diego Bay applicable to the Facility include, "San Diego Bay Shoreline, near Coronado Bridge", "San Diego Bay Shoreline, between Sampson and 28<sup>th</sup> Streets", and "San Diego Bay Shoreline, near Chollas Creek". These portions of the San Diego Bay are listed in the 303(d) list as impaired for: benthic community effects, copper, mercury, polycyclic aromatic hydrocarbons (PAHs), PCBs, sediment toxicity, and zinc.

No applicable TMDL has been adopted by the Regional Water Board and approved by USEPA. A TMDL for sediment toxicity is currently being developed for the "San Diego Bay Shoreline, near Chollas Creek".

The State Water Board adopted the *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California* (Thermal Plan) on May 18, 1972, and amended this plan on September 18, 1975. This plan contains temperature objectives for surface waters. Requirements of this Order implement the Thermal Plan.

**I. National Toxics Rule (NTR) and California Toxics Rule (CTR).** USEPA adopted the NTR on December 22, 1992, and later amended it on May 4, 1995 and November 9, 1999. About 40 criteria in the NTR applied in California. On May 18, 2000, USEPA

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- K. Intake Water Credits.** Section 1.4.4 of the SIP provides that the Regional Board may consider priority pollutants in intake water, through application of Intake Water Credits. By letters dated December 17, 2008 and July 8, 2009, NASSCO submitted a request for the application of Intake Water Credits for copper and nickel. Where the conditions are met, the Regional Board may establish effluent limitations allowing the facility to discharge a mass and concentration of the intake water pollutant that is no greater than the mass and concentration found in the facility's intake water. Intake water credits are applied in this Order for copper and nickel. A detailed discussion of the basis for the intake water credits is included in the Fact Sheet.
- L. Compliance Schedules and Interim Requirements.** Section 2.1 of the SIP provides that, based on a Discharger's request and demonstration that it is infeasible for an existing Discharger to achieve immediate compliance with an effluent limitation derived from a CTR criterion, compliance schedules may be allowed in an NPDES permit. Unless an exception has been granted under section 5.3 of the SIP, a compliance schedule may not exceed 5 years from the date that the permit is issued or reissued, nor may it extend beyond 10 years from the effective date of the SIP (or May 18, 2010) to establish and comply with CTR criterion-based effluent limitations. Where a compliance schedule for a final effluent limitation exceeds 1 year, the Order must include interim numeric limitations for that constituent or parameter. Where allowed by the Basin Plan, compliance schedules and interim effluent limitations or discharge specifications may also be granted to allow time to implement a new or revised water quality objective. This Order does include compliance schedules and interim effluent limitations. A detailed discussion of the basis for the compliance schedule(s) and interim effluent limitation(s) and/or discharge specifications is included in the Fact Sheet.
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USEPA after May 30, 2000, must be approved by USEPA before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000 may be used for CWA purposes, whether or not approved by USEPA.

**N. Stringency of Requirements for Individual Pollutants.** This Order contains both technology-based and water quality-based effluent limitations for individual pollutants. The technology-based effluent limitations consist of restrictions on oil and grease, settleable solids, turbidity, and pH (upper limitation). Restrictions on oil and grease, settleable solids, turbidity, and pH (upper limitation) are discussed in section III.B of the Fact Sheet. This Order's technology-based pollutant restrictions implement the minimum, applicable federal technology-based requirements. In addition to numeric technology-based limitations, this Order requires the implementation of a Best Management Practices (BMP) Plan. To carry out the purpose and intent of the CWA, the previous Order required the Discharger to develop and implement a BMP Plan, as authorized by CWA section 304(e) and section 402(p), for toxic pollutants and hazardous substances, and for the control of storm water discharges. The continued implementation and updating of this BMP Plan is carried over from the previous Order.

WQBELs have been scientifically derived to implement water quality objectives that protect beneficial uses. Both the beneficial uses and the water quality objectives have been approved pursuant to federal law and are the applicable federal water quality standards. To the extent that toxic pollutant WQBELs were derived from the CTR, the CTR is the applicable standard pursuant to section 131.38. The scientific procedures for calculating the individual WQBELs for priority pollutants are based on the CTR-SIP, which was approved by USEPA on May 18, 2000. All beneficial uses and water quality objectives contained in the Basin Plan were approved under State law and submitted to and approved by USEPA prior to May 30, 2000. Any water quality objectives and beneficial uses submitted to USEPA prior to May 30, 2000, but not approved by USEPA before that date, are nonetheless "applicable water quality standards for purposes of the CWA" pursuant to section 131.21(c)(1). Collectively, this Order's restrictions on individual pollutants are no more stringent than required to implement the requirements of the CWA.

**O. Antidegradation Policy.** Section 131.12 requires that the state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the state and federal antidegradation policies. As discussed in detail in the Fact Sheet the permitted discharge is consistent with the antidegradation provision of section 131.12 and State Water Board Resolution No. 68-16.

**P. Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at title 40, Code of Federal Regulations section 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with



some exceptions where limitations may be relaxed. As discussed in Section IV.D.4 of the Fact Sheet, the application of numeric chronic toxicity limitations is not appropriate for the flood water discharges (M-2, 3, and 4).

All effluent limitations in this Order are at least as stringent as the effluent limitations in the previous Order and meet State and federal anti-backsliding requirements.

- Q. Endangered Species Act.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). This Order requires compliance with effluent limits, receiving water limits, and other requirements to protect the beneficial uses of waters of the state. The Discharger is responsible for meeting all requirements of the applicable Endangered Species Act.
- R. Monitoring and Reporting.** Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results. Water Code sections 13267 and 13383 authorizes the Regional Water Board to require technical and monitoring reports. The Monitoring and Reporting Program establishes monitoring and reporting requirements to implement federal and State requirements. This Monitoring and Reporting Program is provided in Attachment E.
- S. Standard and Special Provisions.** Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in accordance with section 122.42, are provided in Attachment D. The Discharger must comply with all standard provisions and with those additional conditions that are applicable under section 122.42. The Regional Water Board has also included in this Order special provisions applicable to the Discharger. A rationale for the special provisions contained in this Order is provided in the attached Fact Sheet.
- Section 13263.3 of the California Water Code states that pollution prevention should be the first step in the hierarchy for reducing pollution and managing wastes. Further, section 13263.3 (d)(1) states that a Regional Water Board may require a discharger to complete and implement a pollution prevention plan if that discharger significantly contributes, or has the potential to significantly contribute, to the creation of toxic hot spots. The results of a reasonable potential analysis detailed in section IV.C.3 of Attachment F to this Order (Fact Sheet) indicate the Discharger has potential to contribute to the creation of toxic hot spots for cadmium, copper, nickel, and zinc in San Diego Bay. This Order requires the Discharger to develop and implement a pollution prevention plan for cadmium, copper, nickel, and zinc to help reduce pollutants in the wastewaters to levels below water quality criteria and obtain consistent compliance with effluent limitations.
- T. Provisions and Requirements Implementing State Law.** The provisions/requirements in section VI.C.3.b of this Order are included to implement State law only. These

provisions/requirements are not required or authorized under the federal CWA; consequently, violations of these provisions/requirements are not subject to the enforcement remedies that are available for NPDES violations.

**U. Notification of Interested Parties.** The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Details of notification are provided in the Fact Sheet of this Order.

**V. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet of this Order.

**THEREFORE, IT IS HEREBY ORDERED,** that this Order supercedes Order No. R9-2003-0005 except for enforcement purposes, and, in order to meet the provisions contained in division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal Clean Water Act (CWA) and regulations and guidelines adopted thereunder, the Discharger shall comply with the requirements in this Order.

### III. DISCHARGE PROHIBITIONS

- A. The Discharger shall comply with all requirements of the Basin Plan Waste Discharge Prohibitions which are hereby included in this Order by reference.
- B. The discharge of sewage, except as noted in the Basin Plan Waste Discharge Prohibitions, to San Diego Bay is prohibited.
- C. The discharge of industrial process water (other than cooling water) including hydroblast water, is prohibited.
- D. The discharge of the first flush of storm water runoff from high risk areas is prohibited, except if the pollutants in the discharge are reduced to the extent and demonstrated through testing that the discharge achieves compliance with the acute toxicity limitation specified in section IV.A.5 of this Order. The discharge of the remainder of the storm water must also achieve compliance with the acute toxicity limitations specified in section IV.A.5 of this Order but only needs to be demonstrated twice per year unless under accelerated testing.
- E. The discharges of municipal and industrial waste sludge and untreated sludge digester supernatant, centrate, or filtrate to San Diego Bay is prohibited.
- F. The discharge of rubbish, refuse, debris, materials of petroleum origin, waste zinc plates, abrasives, primer, paint, paint chips, solvents, and marine fouling organisms, and the deposition of such wastes at any place where they could eventually be discharged is prohibited. This prohibition does not apply to the discharge of marine fouling organisms removed from unpainted, uncoated surfaces by underwater operations and discharges that result from floating booms that were installed for "Force Protection" purposes.

## **Exhibit F**



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

---

California Regional Water Quality Control Board, San Diego Region

December 28, 2012

**Certified Mail - Return Receipt Requested**

Article Number: 7011 0470 0002 8961 6619

**In reply refer to / attn:**

764828:jebsen

Mr. Sandor Halvax  
BAE Systems San Diego Ship Repair Inc.  
2205 East Belt Street  
Foot of Sampson Street  
San Diego, CA 92113

**Subject: Action on Request for Clean Water Act Section 401 Water Quality  
Certification for Pier 4 Replacement Project, Certification No. 11C-026**

Mr. Halvax:

Enclosed find Clean Water Act Section 401 Water Quality Certification (Certification) for the Pier 4 Replacement Project 11C-026, with acknowledgment of enrollment under State Water Resources Control Board Order No. 2003-017-DWQ, *Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification (General WDRs)*. A summary description of the project can be found in the project information sheet and on location and site maps compiled by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), which are included as Attachments 1 through 8 of the Certification.

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that you have accepted and will comply with all the conditions of this Certification.

Failure to comply with all conditions of this Certification may subject you to enforcement actions by the San Diego Water Board, including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability, referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

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GARY STRAWN, ACTING CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

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In the subject line of any response, please include the reference number 764828:jebsen. For questions or comments, please contact Ms. Jody Ebsen by phone at 858-636-3146, or by email at [jebsen@waterboards.ca.gov](mailto:jebsen@waterboards.ca.gov).

Respectfully,



DAVID W. GIBSON  
Executive Officer  
San Diego Regional Water Quality Control Board

DWG:dtb:esb:jme

Enclosure: Clean Water Act Section 401 Water Quality Certification No. 11C-026 Pier 4 Replacement Project, with 8 attachments.

cc: Refer to Attachment 2 of Certification for Distribution List.

Tech Staff Info & Use	
Party (GT/CIWQS) ID	40631
File No:	11C-026
WDID	9000002252
Reg. Measure ID	378272
Place ID	764828



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**California Regional Water Quality Control Board, San Diego Region**

**Action on Request for  
Clean Water Act Section 401 Water Quality Certification  
and Waste Discharge Requirements  
for Discharge of Dredged and/or Fill Materials**

**PROJECT: BAE Systems San Diego Ship Repair  
Pier 4 Replacement Project  
Certification Number (11C-026)  
WDID: 9 000002252**

CIWQS  
Reg. Meas. ID: 378272  
Place ID: 764828  
Party ID: 40631

**APPLICANT: BAE Systems San Diego Ship Repair, Inc.  
2205 East Belt Street  
Foot of Sampson Street  
San Diego, CA 92113**

**ACTION:**

<input type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input checked="" type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Waiver of Waste Discharge Requirements
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017 DWQ	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004 DWQ

**PROJECT DESCRIPTION**

The Pier 4 Replacement Project (Project) proposes to demolish the existing obsolete Pier 4 and Pier 5 structures, remove five drydock mooring dolphins, construct three new bulkhead sections, relocate shoreline infrastructure, conduct underwater dredging, and construct a new replacement pier and a mooring dolphin. The Project site is located in San Diego Bay at the BAE Systems San Diego Ship Repair, Inc. (Applicant) facility at 2205 East Belt Street in the City of San Diego. Demolition will occur at Piers 4 and 5 and the adjacent shore side structures. Prior to and during Pier 4 construction, it will be necessary to dredge the bay floor around the vicinity of the new pier out to the main baychannel. The post-dredge condition will be -35 feet mean lower low water (MLLW), with between 0 and 1 foot over-depth. Thus, the post-dredge condition is expected to be between -35 feet and -36 feet MLLW. The existing condition ranges from -29 feet to -33 feet MLLW for the majority of the dredge footprint, however, the area adjacent to the shoreline is shallower with depths ranging from 0 to 20 feet located in a narrow band immediately adjacent to the bulkhead shoreline. As indicated in Table 1 below the Project will result in the dredging of

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approximately 41,908 cubic yards (cy) of bay sediment in three phases. Phase A will include the dredging of 29,523 cy of bay sediment of which 27,500 cy (subphase A1, A2a (lower) and A3) has been approved for ocean disposal, and 2,023 cy (subphase A2 and A2a (upper)) will be classified for disposal at an appropriate upland landfill disposal facility. Phase B will include the dredging of 8,135 cy of bay sediment, all of which will be classified for disposal at an appropriate upland landfill disposal facility. Phase C will include the dredging of 4,250 cy of bay sediment that will be classified for disposal at an appropriate upland landfill disposal facility.

**Table 1. BAE Systems Pier 4 Replacement Project Approximate Dredge Volumes and Disposal Locations**

Dredge Area Phase	Dredge Area Subphase	Dredge Depth (feet MLLW)	Disposal Location	Dredge Volume (cy)
A	A1	existing bottom to -36	Ocean Disposal	26,862
	A2a (lower)	-32 to -36	Ocean Disposal	368
	A3	existing bottom to -36	Ocean Disposal	270
<b>Estimated Total Ocean Disposal Volume</b>				<b>27,500</b>
A	A2	existing bottom to -36	Upland Disposal	1,839
	A2a (upper)	existing bottom to -31	Upland Disposal	184
<b>Phase A2 Total</b>				<b>2,023</b>
B	B1	existing bottom to -36	Upland Disposal	5,949
	B2	existing bottom to -36	Upland Disposal	2,006
	B3	existing bottom to -36	Upland Disposal	180
<b>Phase B Total</b>				<b>8,135</b>
C	C1	existing bottom to -36	Upland Disposal	1,250
	C2	existing bottom to -36	Upland Disposal	3,000
<b>Phase C Total</b>				<b>4,250</b>
<b>Estimated Total Upland Disposal Volume</b>				<b>14,408</b>
<b>Project Total Dredged Material Volume</b>				<b>41,908</b>

\*includes a 1-foot over-dredge allowance

Subphase B2 and all of Phase C comprise approximately 15% of the dredging area and are within the boundary of the Shipyard Sediment Site remediation footprint identified in Cleanup and Abatement Order (CAO) R9- 2012-0024. This Water Quality Certification No. 11C-026 (Certification) regulates dredging that is necessary to facilitate deep draft ships in the areas adjacent to the new Pier 4 and is not a Certification for the cleanup of the Shipyard Sediment Site remediation footprint. However, this Certification requires that Project dredge activities within the CAO remediation footprint be conducted in accordance

with all of the applicable requirements in CAO No. R9-2012-0024 and the mitigation measures identified in the certified Final Environmental Impact Report for the Shipyard Sediment Site.

Excess water from dredged sediments suitable for ocean disposal will be decanted on the barge and discharged back into San Diego Bay within the confines of the silt curtains. There will be no discharge of decant water from the barge for any dredged sediment from the proposed CAO remediation footprint or other areas where upland disposal of dredged material is proposed. The dredged sediment from these areas will, as necessary, be dewatered, rotated, and thickened with a cement based reagent (pozzolanics) to facilitate drying and to bind the sediments. All runoff water from these areas will be collected and stored in on-shore covered tanks. The on-shore dredged sediment dewatering area will be designed as a no-discharge facility to prevent decanted or excess water from flowing back into San Diego Bay and to prevent infiltration into underlying groundwater. The design will also incorporate features to prevent storm water run-on or run-off from adjacent areas from entering the dewatering area. To support dredged sediment dewatering, the Applicant will utilize an existing industrial wastewater permit (Permit No. 11-0217) issued by the City of San Diego to discharge the recovered water into the City's sewage system in accordance with all permit requirements. If the water does not meet permit requirements, the water will be removed by a licensed waste hauler for treatment and disposal at an authorized off-site location.

Dredged sediments approved for ocean disposal by the U.S Army Corps of Engineers (USACE) and the U.S. Environmental Protection Agency (USEPA) will be loaded into barges and transported to the Ocean Dredged Material Disposal Site (ODMDS) LA-5. LA-5 is a USEPA designated offshore open-water disposal site located on the ridged slope of the continental shelf at a depth of approximately 600 feet, 5.4 nautical miles from Point Loma, off the San Diego Coast. LA-5 is located approximately 13 miles from the Project site. Barges will be equipped with electronic tracking devices to document that dredged sediment releases occur within the LA-5 disposal site boundaries, as specified in the USACE Clean Water Act Section 404 dredging permit.

Dredged sediments not approved for ocean disposal will be classified for disposal at an appropriate upland landfill disposal facility pursuant to Title 23, Chapter 15, and Title 27, Chapter 3 of the California Code of Regulations. Dewatered dredged sediments classified as nonhazardous are currently planned for transportation via truck for disposal at the Otay Sanitary Landfill at 1700 Maxwell Road in Chula Vista, California which is located approximately 19 miles from the Project site. Dredged sediments classified as hazardous are currently planned for transportation and disposal at the Buttonwillow Hazardous Waste Landfill at 2500 West Lokem Road in Buttonwillow, California which is located approximately 245 miles from the Project site.

Biological resources on the Project site, particularly sedentary or sessile species, will be adversely affected during Project construction as a result of removal of existing structures; dredging, and construction of new structures. Long-term impacts will result from changes in the structural composition of the habitat (net increase in piles, net reduction of bay fill)



and the increase in bay surface area coverage (structures covering the surface of the water). Based on current Project design, the Applicant is required to mitigate for approximately 7,969 square feet of increased bay surface area coverage resulting from construction of the new Pier 4.

The Applicant intends to start on-site work on the Project in January, 2013 and complete Project construction in July, 2014.

This Certification incorporates the following Attachments:

1. Project Information
2. Distribution List
3. Location Map
4. Project Site Map
5. Conceptual Design
6. Project Site – Before and After
7. Phased Dredge Areas
8. Monitoring Station Location Scheme for Dredge Areas Designated for Upland Disposal



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

May 31, 2013

Certified Mail - Return Receipt Requested  
Article Number: 7011 0470 0002 8961 8484

In reply refer to / attn:  
764828: jebsen

Sandor Halvax  
BAE Systems San Diego Ship Repair Inc.  
2205 East Belt Street  
Foot of Sampson Street  
San Diego, CA 92113

**Subject: Amendment 1 to Clean Water Act Section 401 Water Quality Certification  
for Pier 4 Replacement Project, 11C-026**

Mr. Halvax:

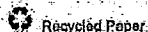
You will find enclosed Amendment No. 1 to Clean Water Act Section 401 Water Quality Certification No. 11C-026 (Certification Amendment) for the Pier 4 Replacement Project (Project). The Certification Amendment shows changes in redline /strikeout format to indicate added and removed language. Water Quality Certification No. 11C-026 has also been enclosed for your reference.

On December 28, 2012, the original Certification was issued to BAE Systems San Diego Ship Repair Inc. (BAE Systems) for the Project. On April 1, 2013 BAE Systems requested an amendment to the Certification to address two items. One is a change to the estimated volume of sediments to be dredged and the second is to change a mitigation measure used to ensure the clamshell bucket is completely closed when it contains sediments.

Any petition for reconsideration of this amended Certification must be filed with the State Water Resources Control Board (State Water Board) within 30 days of certification action (23 CCR § 3867). If a petition is not filed with the State Water Board within 30 days, BAE Systems San Diego Ship Repair Inc. will have accepted the changes to Certification No. 11C-026 and must comply with all the Certification conditions. Failure to comply with all conditions of this Certification may result in enforcement actions against BAE Systems.

TOMÁS MORALES, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

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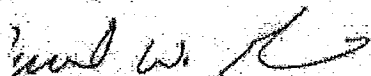
Mr. Halvax  
Pier 4 Replacement Project  
401 Water Quality Certification 11C-026  
Amendment 1

- 2 -

May 31, 2013

In the subject line of any response, please include the reference number 74828: jebesen.  
For questions or comments, please contact Ms. Jody Ebsen by phone at 858-636-3146,  
or by email at [jebesen@waterboards.ca.gov](mailto:jebesen@waterboards.ca.gov).

Respectfully,



DAVID W. GIBSON  
Executive Officer  
San Diego Regional Water Quality Control Board

DWG:js:dtb:esb:jme

Enclosures: Amendment No. 1 to Clean Water Act Section 401 Water Quality Certification  
No. 11C-026,

Clean Water Act Section 401 Water Quality Certification No. 11C-026 Pier 4  
Replacement Project, with 8 attachments.

cc: Refer to Attachment 2 of Certification for Distribution List.

Tech Staff Info & Use	
Party (GT/CIWQS) ID	40631
File No.	11C-026
WDID	9000002252
Reg. Measure ID	378272
Place ID	764828



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GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## California Regional Water Quality Control Board, San Diego Region

### Amendment No. 1 to Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials

**PROJECT:** BAE Systems San Diego Ship Repair Pier 4  
Replacement Project Certification Number (11C-026)

**APPLICANT:** BAE Systems San Diego Ship Repair, Inc.  
2205 East Belt Street  
Foot of Sampson Street  
San Diego, CA 92113

WDID: 9000002252  
Reg. Meas. ID: 378272  
Place ID: 764828  
Party ID: 40631

The following changes have been made to Clean Water Act Section 401 Water Quality Certification No. 11C-026, BAE Systems San Diego Ship Repair Pier 4 Project. Changes below are shown in redline/strikeout format to indicate added and removed language.

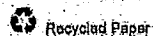
#### 1. Pages 1-3, PROJECT DESCRIPTION has been modified as follows:

The Pier 4 Replacement Project (Project) proposes to demolish the existing obsolete Pier 4 and Pier 5 structures, remove five drydock mooring dolphins, construct three new bulkhead sections, relocate shoreline infrastructure, conduct underwater dredging, and construct a new replacement pier and a mooring dolphin. The Project site is located in San Diego Bay at the BAE Systems San Diego Ship Repair, Inc. (Applicant) facility at 2205 East Belt Street in the City of San Diego. Demolition will occur at Piers 4 and 5 and the adjacent shore side structures. Prior to and during Pier 4 construction, it will be necessary to dredge the bay floor around the vicinity of the new pier out to the main baychannel. The post-dredge condition will be -35 feet mean lower low water (MLLW), with between 0 and 1 foot over-depth. Thus, the post-dredge condition is expected to be between -35 feet and -36 feet MLLW. The existing condition ranges from -29 feet to -33 feet MLLW for the majority of the dredge footprint; however, the area adjacent to the shoreline is shallower with depths ranging from 0 to 20 feet located in a narrow band immediately adjacent to the bulkhead shoreline.

By letter dated April 1, 2013, the Applicant requested an amendment to the Certification to address two separate items, one is a change to the estimated volume to be dredged and the second is to change the method used for ensuring that the

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clamshell bucket is completely closed prior to it being withdrawn from bay waters or from the barge when loaded with sediments.

The estimated volumes of dredged materials within the Project foot print have increased based on the most recent (2013) bathymetric survey. The changes to the dredging estimates are summarized in Table 1.

**Table 1. BAE Systems Pier 4 Replacement Project Approximate Dredge Volumes and Disposal Locations.**

Dredge Area Phase	Dredge Area Subphase	Dredge Depth (feet MLLW)	Disposal Location	Dredge Volume (cy)*	Dredge Volume (cy)*
A	A1	existing bottom to -36	Ocean Disposal	26,862	27,905
	A2a (lower)	-32 to -36	Ocean Disposal	368	367
	A3	existing bottom to -36	Ocean Disposal	270	278
<b>Estimated Total Ocean Disposal Volume</b>				<b>27,500</b>	<b>28,550</b>
A	A2	existing bottom to -36	Upland Disposal	1,839	2,234
	A2a (upper)	existing bottom to -31	Upland Disposal	184	223
<b>Phase A2 Total Upland Disposal Volume</b>				<b>2,023</b>	<b>2,457</b>
B	B1	existing bottom to -36	Upland Disposal	5,949	6,928
	B2	existing bottom to -36	Upland Disposal	2,006	4,633
	B3	existing bottom to -36	Upland Disposal	189	210
<b>Phase B Total Upland Disposal Volume</b>				<b>8,135</b>	<b>11,771</b>
C	C1	existing bottom to -36	Upland Disposal	1,250	1,772
	C2	existing bottom to -36	Upland Disposal	3,009	3,107
<b>Phase C Total Upland Disposal Volume</b>				<b>4,259</b>	<b>4,879</b>
<b>Estimated Total Upland Disposal Volume</b>				<b>14,408</b>	<b>19,107</b>
<b>Project Total Dredged Material Volume</b>				<b>41,908</b>	<b>47,657</b>

\*Includes a 1-foot over-dredge allowance

As indicated in Table 1, the Project will result in the dredging of approximately 47,657 41,908 cubic yards (cy) of bay sediment in three phases. Phase A will include the dredging of 31,007 29,523 cy of bay sediment of which 28,550 27,500 cy (subphase A1, A2a (lower) and A3) has been approved for ocean disposal, and 2,457 2,023 cy (subphase A2 and A2a (upper)) will be classified for disposal at an

appropriate upland landfill disposal facility. Phase B will include the dredging of ~~11,771~~ 8,135 cy of bay sediment, all of which will be classified for disposal at an appropriate upland landfill disposal facility. Phase C will include the dredging of ~~4,879~~ 4,250 cy of bay sediment that will be classified for disposal at an appropriate upland landfill disposal facility.

Subphase B2 and all of Phase C comprise approximately 20.45% of the dredging area and are within the boundary of the Shipyard Sediment Site remediation footprint identified in Cleanup and Abatement Order (CAO) R9-2012-0024. This Water Quality Certification No. 11C-026 (Certification) regulates dredging that is necessary to facilitate deep draft ships in the areas adjacent to the new Pier 4 and is not a Certification for the cleanup of the Shipyard Sediment Site remediation footprint. However, this Certification requires that Project dredge activities within the CAO remediation footprint be conducted in accordance with all of the applicable requirements in CAO No. R9-2012-0024 and the mitigation measures identified in the certified Final Environmental Impact Report for the Shipyard Sediment Site and this Certification.

The Certification Construction Best Management Practices Provision III.N.1 requires that the clamshell bucket must be entirely closed during dredging activities when it contains sediment. The Applicant will use a visual method for ensuring that the clamshell bucket is entirely closed, rather than using an instrumental method identified as Clam Vision in the certified Final Environmental Impact Report for the Shipyard Sediment Site. The visual method is a proven method that will provide equal or better performance than the Clam Vision as a mitigation measure.

**2. Page 11, CONSTRUCTION BEST MANAGEMENT PRACTICES PROVISION III.K has been modified as follows:**

K. All dredging and construction activities under this Certification in contaminated sediment areas within the Shipyard Sediment Site remedial footprint shall be conducted in accordance with the applicable requirements of Cleanup and Abatement Order R9-2012-0024 and with the mitigation measures identified in the certified Final Environmental Impact Report for the Shipyard Sediment Site, the certified Final Environmental Impact Report for the BAE Systems Pier 4 Replacement, and this Certification.

**3. Page 11, CONSTRUCTION BEST MANAGEMENT PRACTICES PROVISION III.L has been modified as follows:**

L. All dredging and construction activities under this Certification in areas designated for upland disposal outside the Shipyard Sediment Site remedial footprint shall be conducted in accordance with the mitigation measures identified in the certified Final Environmental Impact Report for the BAE Systems Pier 4 Replacement, and this Certification.

**4. Page 11, CONSTRUCTION BEST MANAGEMENT PRACTICES PROVISION III.M has been modified as follows:**

M. The maximum volume removed from areas designated for upland disposal include up to 19,600 cy of sediments, this includes up to 9,600 cy of sediments removed from areas within the CAO R9-2012-0024 remediation footprint. The volume of sediment removed from areas dredged within the CAO R9-2012-0024 remediation footprint must not exceed 6,256 cy of sediment.

**5. Page 11, CONSTRUCTION BEST MANAGEMENT PRACTICES PROVISION III.N.1 has been modified as follows:**

N. Dredging of sediments designated for upland disposal must be conducted in accordance with, but not limited to, the following best management practices:

1. The dredging of contaminated sediment must be conducted using an environmental cable arm clamshell bucket. The clamshell bucket must be entirely closed during dredging activities when withdrawn from bay waters and moved to the barge and when withdrawn from the barge and moved to the truck. Marks painted on the clamshell bucket's holding cable and the closing cable, made above the water line, will be used to visually verify when the bucket is fully closed. These marks will be placed so that they are visible to the dredging operator at all times. In addition, the clamshell bucket must be completely empty of sediment prior to being moved back to the barge to minimize sediment being spilled over the dock.

**6. Page 13, CONSTRUCTION BEST MANAGEMENT PRACTICES PROVISION III.Q has been modified as follows:**

Q. The volume of non-contaminated sediment removed from areas dredged outside the CAO R9-2012-0024 remediation footprint in areas designated for ocean disposal must not exceed 28,600 27,500 cy of sediment.

**7. Page 24, CEQA FINDINGS has been modified as follows:**

C. Based on an analysis dated May 28, 2013, prepared by LSA Associates on behalf of the Applicant the San Diego Water Board has concluded that the proposed project changes are within the scope of the final Environmental Impact Report for the Project dated August 1, 2012, and that the final EIR adequately addresses the project changes and implementation of the changes will not cause environmental effects that were not analyzed in the final EIR or require any new mitigation measures for the purposes of CEQA. Accordingly, the San Diego Water Board is relying on the final EIR for the Project to provide CEQA.

compliance for issuance of this Certification amendment, and no further CEQA document or review is required at this time.

**8. Pages 27-28, ATTACHMENT 1, PROJECT DESCRIPTION has been modified as follows:**

The Pier 4 Replacement Project (Project) proposes to demolish the existing obsolete Pier 4 and Pier 5 structures, remove five drydock mooring dolphins, construct three new bulkhead sections, relocate shoreline infrastructure, conduct underwater dredging, and construct a new replacement pier and a mooring dolphin. The Project site is located in San Diego Bay at the BAE Systems San Diego Ship Repair, Inc. (Applicant) facility at 2205 East Belt Street in the City of San Diego. Demolition will occur at Piers 4 and 5 and the adjacent shore side structures. Prior to and during Pier 4 construction, it will be necessary to dredge the bay floor around the vicinity of the new pier out to the main baychannel. The post-dredge condition will be -35 feet mean lower low water (MLLW), with between 0 and 1 foot over-depth. Thus, the post-dredge condition is expected to be between -35 feet and -36 feet MLLW. The existing condition ranges from -29 feet to -33 feet MLLW for the majority of the dredge footprint, however, the area adjacent to the shoreline is shallower with depths ranging from 0 to 20 feet located in a narrow band immediately adjacent to the bulkhead shoreline.

By letter dated April 1, 2013, the Applicant requested an amendment to the Certification to address two separate items, one is a change to the estimated volume to be dredged and the second is to change the method used for ensuring that the clamshell bucket is completely closed prior to it being withdrawn from bay waters or from the barge when loaded with sediments.

The estimated volumes of dredged materials within the Project foot print have increased based on the most recent (2013) bathymetric survey. The changes to the dredging estimates are summarized in Table 1.

**Table 2. BAE Systems Pier 4 Replacement Project Approximate Dredge Volumes and Disposal Locations.**

Dredge Area Phase	Dredge Area Subphase	Dredge Depth (feet MLLW)	Disposal Location	Dredge Volume (cy)*	Dredge Volume (cy)*
A	A1	existing bottom to -36	Ocean Disposal	26,862	27,905
	A2a (lower)	-32 to -36	Ocean Disposal	368	387
	A3	existing bottom to -36	Ocean Disposal	270	278