

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

**IN THE MATTER OF
SAN DIEGO BAY SHIPYARD SEDIMENT CLEANUP
TENTATIVE CLEANUP AND ABATEMENT ORDER
NO. R9-2010-0002**

**TENTATIVE RESOLUTION NO. R9-2010-0115
DENYING NATIONAL STEEL AND SHIPBUILDING COMPANY'S
MOTION REQUESTING DETERMINATION
THAT TENTATIVE CLEANUP AND ABATEMENT ORDER
NO. R9-2010-0002 IS EXEMPT FROM
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, the California Regional Water Quality Control Board San Diego Region (hereinafter, San Diego Water Board) finds that:

1. The San Diego Water Board Shipyard Sediment Cleanup Team (Cleanup Team) has performed an initial study under the California Environmental Quality Act (CEQA) and concluded that an Environmental Impact Report (EIR) should be prepared for the December 22, 2009, Tentative Cleanup and Abatement Order No. R9-2010-0002 (TCAO). At the San Diego Water Board's direction provided at its July 14, 2010, meeting, the Cleanup Team is proceeding to obtain funding from the State Water Resources Control Board's (State Water Board) Cleanup and Abatement Account to contract with a qualified consultant to prepare an EIR.
2. On July 23, 2010, the National Steel and Shipbuilding Company (hereinafter, NASSCO) submitted a motion requesting that the San Diego Water Board determine that the TCAO is exempt from CEQA such that no EIR would be required if the San Diego Water Board were to approve the TCAO. The Cleanup Team and the Unified Port of San Diego (Port District) opposed the motion, arguing that CEQA applies to the TCAO and requires preparation of an EIR for certification by the San Diego Water Board.
3. On August 6, 2010, Chairman King, the Presiding Officer for Prehearing Proceedings, concluded he lacked the authority to make the requested determination and on that basis denied NASSCO's Motion; he subsequently determined that the San Diego Water Board should consider NASSCO's Motion.

4. The San Diego Water Board has considered the Designated Parties' submittals and comments of the Designated Parties and the public at a public meeting and concurs with the Cleanup Team and the Port District that because the project (the TCAO) presents unusual circumstances and there is a reasonable possibility of a significant effect on the environment due to the unusual circumstances, the TCAO is not exempt from CEQA and that an EIR analyzing the potential environmental effects of the TCAO should be prepared.

THEREFORE, BE IT RESOLVED THAT:

1. NASSCO's Motion requesting a Determination that the TCAO is exempt from CEQA is denied; the San Diego Water Board will make a final CEQA determination when it approves a final Cleanup and Abatement Order for this matter.
2. The Cleanup Team's proposed approach of preparing an EIR is appropriate and the Cleanup Team is directed to continue to seek necessary funds from the State Water Board's Cleanup and Abatement Account for the preparation of an EIR. When funds have been obtained, the Cleanup Team is directed to proceed with preparation of the EIR for consideration by the San Diego Water Board with the final Cleanup and Abatement Order.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the San Diego Water Board during its meeting on September 8, 2010.

Tentative

DAVID W. GIBSON
Executive Officer