

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

Final Response to Comments Report

Tentative Order No. R9-2013-0093

**WASTE DISCHARGE REQUIREMENTS
FOR**

NATIONAL STEEL AND SHIPBUILDING COMPANY

BAE SYSTEMS SAN DIEGO SHIP REPAIR, INC.

SAN DIEGO UNIFIED PORT DISTRICT

UNITED STATES NAVY

SAN DIEGO BAY ENVIRONMENTAL RESTORATION FUND – NORTH

SAN DIEGO BAY ENVIRONMENTAL RESTORATION FUND – SOUTH

July 10, 2013

STATE OF CALIFORNIA

EDMUND G. BROWN, JR. Governor
MATT RODRIQUEZ, Agency Secretary, California Environmental Protection Agency



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by

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**FINAL RESPONSE TO COMMENTS RECEIVED REGARDING
 TENTATIVE ORDER NO. R9-2013-0093**
 July 10, 2013

Comment No.		
1	<p>COMMENT: The proposed Tentative Order should ensure the application of proper technology to reduce cost for shipyards and to protect environment. It also should address onboard treatment of polluted water from dredging. The in-situ water treatment/discharge will reduce “disturbances” of polluted sediments from unnecessary boat traffic; a common problem in bucket dredging operation. The attachment depicts a work strategy to reduce cost while protecting environment The Final EIR is deficient for its focus on one technology and can NOT be relied on as guideline for drafting the Tentative Order. Meanwhile, I recommend to a geophysical survey to locate sea floor obstructions (e.g. anchor chains, sunken boats, mooring lines, Navy lost ordinances, etc.) to avoid future expensive downtime and unnecessary risks.</p> <p>I have solicited several industrialists and companies nationwide to share their expertise in dredging polluted marine sediments. Numerous publications of US Army Corps of Engineers have identified these technologies and its proper applications to remove polluted sediments.</p> <p>RESPONSE: The San Diego Regional Water Quality Control Board (San Diego Water Board) is the lead agency under the California Environmental Quality Act (Pub. Res. Code § 21000, et seq. (CEQA)) with responsibility for conducting an environmental review of the Shipyard Sediment Remediation Project (Project). As the lead agency for the Project, on March 14, 2012, the San Diego Water Board certified a Final Program Environmental Impact Report (PEIR) pursuant to CEQA. Consistent with the CEQA Guidelines criteria for selection of project alternatives, the PEIR described a reasonable range of alternatives to the Project and evaluated the comparative merits of each of the alternatives. The PEIR need not have included an evaluation of vague alternatives such as that described in the comment letter where the effect of the proposed project alternative cannot be ascertained and implementation is remote and speculative. As described in Finding S in section II of the Revised Tentative Order, the San Diego Water Board can rely upon the CEQA Addendum addressing certain Project changes in conjunction with the existing Final PEIR to provide CEQA compliance in adopting the Tentative Order.</p>	<p>Commenter: Aladdin M. Masry</p>

	<p>The Tentative Order provides in section V.I. that the Discharger(s) shall comply with and implement all requirements of the Remedial Action Plan applicable to Project activities. The Remedial Action Plan was previously submitted to the San Diego Water Board in compliance with Directive B.1. of the Cleanup and Abatement Order No. R9-2012-0024 (CAO) for the remediation of marine sediments containing elevated chemical concentrations within the Shipyard Sediment Site. The RAP was approved by the San Diego Water Board on December 20, 2012 for implementation by the Dischargers.</p> <p>The San Diego Water Board concurs with the commenter that having a thorough understanding of the remedial footprint and surrounding site reduces the risk of unknown conditions being encountered during construction. Pursuant to the RAP (see page 8 of RAP Appendix A included as Supporting Document 6 of the San Diego Water Board agenda package for the Tentative Order) the Dischargers have conducted a series of investigations and surveys, including a Site Topographic Survey, a Bathymetric Survey and a Debris Survey, to better understand the surrounding site and characteristics of the dredge material. The Debris Survey was specifically conducted to identify submerged features that may be present within the remedial footprint that will require special handling and removal as well as quantify the amount of debris that can be expected during dredging. The debris survey covered the entire remedial footprint.</p>	
<p>2</p>	<p>COMMENT: Please change all references to "BAE" to "BAE Systems".</p> <p>RESPONSE: The requested change has been made in the Revised Tentative Order in response to the comment.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>

<p>3</p>	<p>COMMENT: Because there multiple dischargers, please change all references to “discharger” to “dischargers”.</p> <p>RESPONSE: The term Discharger(s) applies to references to a single as well as multiple entities. The term “Discharger” has been changed to “Discharger(s) in the Revised Tentative Order.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>
<p>4</p>	<p>COMMENT: Page 7, 2nd paragraph under Project Overview. Barge dewatering will also be part of the remediation process. Please add to the statement.</p> <p>RESPONSE: The dewatering and solidification of dredged material on-shore or on a barge was included in the “Project Description” at Page 1-1 in the Final Program Environmental Impact Report which was prepared to analyze the projects potential impact on the environment. This provides a basis to include barge dewatering in the “Project” description for the Tentative Order. Finding G has been revised in the Revised Tentative Order to provide for sediment dewatering on-shore or on a barge.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>
<p>5</p>	<p>COMMENT: Page 8, 1st paragraph, sentence starting with "In sediment areas..." Only clean sand and gravel will be placed. Please remove reference to "other armoring material". Paragraph H, The combined "under pier" area is 2.7 acres. The applicants request that the number be revised to 2.7 acres</p> <p>RESPONSE: Comment accepted. The term “other armoring material” is deleted from the Project description in Finding G in section II of the Revised Tentative Order. The reference in Finding II.G of the Tentative Order to 2.3 acres as the under-pier area subject to clean sand or gravel cover is retained. The comment requesting that the under pier area be revised to 2.7 acres was withdrawn by BAE Systems.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>

<p>6</p>	<p>COMMENT: Page 9, Paragraph I, last sentence, Please revise the sentence to read: A production rate of up to 1,200 cy per day is expected to be achieved. Paragraph J, Based on statements from Otay/Republic, in-situ sampling can be used. Therefore please revise the second sentence in that paragraph to: The sediment must be sampled and analyzed to classify the material for transport and disposal. The sediment may be sampled in situ prior to dredging or sampled once it is staged and stockpiled in the sediment management area.</p> <p>RESPONSE: Comment Accepted. Finding K in section II of the Revised Tentative Order has been revised to provide that sediment may be sampled in situ prior to dredging or sampled once it is staged and stockpiled in the sediment management area.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>
<p>7</p>	<p>COMMENT: Page 10, Paragraph K, Based on the information from Otay/Republic and to be consistent with Paragraph J above, please remove the words "and tested" in the first sentence and the words "upon removal and" from the third sentence. Also, change "Water" to "Waste" in the last sentence. Paragraph M, The dredge volume for the South Shipyard is 50,000 cubic yards; the dredge volume for the North Shipyard is 105,000 cubic yards. Please correct the volumes shown in this paragraph.</p> <p>RESPONSE: Comment accepted. The requested revisions regarding Finding K have been made and are contained in Finding L of the Revised Tentative Order.</p> <p>The request to revise the dredge volume amounts is addressed in Findings N., N.1 and N.2 of the Revised Tentative Order. Finding N. provides that a total of 143,400 cubic yards of contaminated sediment will be dredged from within the entire remedial footprint of the North and South Sediment Remediation Areas. Finding N.1 provides that an additional 15,000 cubic yards of what is expected to be clean sediment material will need to be dredged from the North Sediment Remediation Area to provide the depth necessary to moor the dredge barges close enough to shore for offloading. Finding N.2. provides that a total of approximately 52,600 cubic yards of contaminated sediment will be dredged from the South Remediation Area. The dredge volume estimate of 52,600 cubic yards was provided in the Report of Waste Discharge submitted for the South Remediation Area and is based on dredging to bay point formation at an estimated depth of 7 feet throughout the dredge area.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>

<p>8</p>	<p>COMMENT: Page 18, Paragraph. Eelgrass beds far removed from dredging activities will not be impacted. The shipyards request that only eelgrass beds within 100 ft of dredge activities be marked.</p> <p>RESPONSE: The Tentative Order will not be revised to make the requested change. Section V.K of the Revised Tentative Order provides that prior to construction, the boundaries of the eelgrass beds not directly impacted by dredging activities must be staked with ridged PVC markers or self-centering buoys visible at all tide heights to protect sea turtles foraging within the eelgrass beds. Pursuant to section VI.A. and Attachment B., Mitigation Measure 4.5.1 of the Tentative Order, the Discharger(s) must conduct a pre-construction eelgrass habitat mapping survey for the Shipyard Sediment Site within 120 days of the proposed start dates of each project phase in accordance with the Southern California Eelgrass Mitigation Policy (SCEMP) (National Marine Fisheries Service [NMFS], 1991 as amended) to document the amount of eelgrass that will likely be affected by dredging activity. The survey must document the location of any eelgrass beds likely to be impacted by dredging activities considering factors such as such as distance from project, depth, sediment type, distance from ocean connection, water quality, and currents.</p> <p>Pursuant to Mitigation Measure 4.5.2 of Attachment B. of the Tentative Order, the Project Marine Biologist is required to make the determination of where to properly place buoys marking the position of eelgrass beds within or near the Project Site (as determined from the survey referenced above) where sea turtles could potentially be foraging within and among eelgrass beds. This mitigation measure will help to ensure any indirect or inadvertent impacts to eelgrass beds or sea turtles within or near the Project site are avoided and/or minimized.</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>
<p>9</p>	<p>COMMENT: Page 30, Paragraph 2A. The CAO and RAP require the Dischargers to determine chemical concentrations of the COCs at 5 cm. Please correct the reference to 10 cm in this paragraph. For consistency with the RMP, the shipyards request that the paragraph be revised to read: If all SMU concentrations are less than 120 percent of the post-remedial dredge area concentration, SMU cleanup is complete and no further action is required, though a sand cover may be applied to provide a restorative layer for biological growth.</p> <p>RESPONSE: Comment accepted. The reference has been corrected to 5 cm in section</p>	<p>Commenter: San Diego Shipyard Sediment Site Group</p>

	VII.D.3.a of the Revised Tentative Order. Section VII.D. of the Tentative Order also has been revised as requested to include provisions for a sand cover to provide a restorative layer for biological growth and other modifications to better ensure consistency with the Remedial Action Plan which has been previously approved by the San Diego Water Board and is incorporated by reference into the Revised Tentative Order pursuant to Finding J. See Section VII.D. of the Revised Tentative Order.	
10	<p>COMMENT: Page 30, Paragraph 2B. If the subsurface concentrations within a SMU are confirmed to be greater than 120 percent of the post-remedial dredge area concentration, the following additional remedial actions will be evaluated: Additional dredging of the SMU, obtaining and analyzing additional samples from within the SMU or clean sand placement.</p> <p>RESPONSE: Comment Accepted. See Response to Comment 9.</p>	Commenter: San Diego Shipyard Sediment Site Group
11	<p>COMMENT: Page 30, Paragraph E for consistency with previous requirements, please change the first sentence to read: Prior to sediments leaving the sediment management areas the Dischargers shall perform analytical testing of stockpiled sediment (unless the analytical testing was conducted on sediment samples obtained in situ prior to dredging) as dictated by the landfill.</p> <p>RESPONSE: Comment accepted. Provision E in section VII of the Revised Tentative Order has been revised as suggested in the comment.</p>	Commenter: San Diego Shipyard Sediment Site Group
	The Waste Discharge Requirements Should Apply To All Responsible Parties	

12	<p>COMMENT: The Waste Discharge Requirements cannot legally list the San Diego Bay Environmental Restoration Funds as dischargers. The Waste Discharge Requirements list both the San Diego Bay Environmental Restoration Fund North and San Diego Bay Environmental Restoration Fund South as dischargers. Tentative Order No. R9-2013-0093 § II(F) at 7. These funds are not “persons” subject to regulation under the Clean Water Act or the Porter-Cologne Water Quality Control Act. See 33 U.S.C. § 1362(5); Cal. Water Code Div. 7 § 13050(c). Including these funds as dischargers creates the possibility of confusing who is actually responsible for doing the cleanup—which are the Responsible Parties under the Cleanup and Abatement Order. The Responsible Parties cannot be shielded from liability for having to clean up the Shipyard site in a way that protects water quality by creating “funds” that apply for the permit. Unless the funds’ trustee agrees to be listed as a discharger and accepts liability for the cleanup, the funds should not be listed as dischargers.</p> <p>RESPONSE: The San Diego Water Board named the San Diego Bay Environmental Restoration Fund North and San Diego Bay Environmental Restoration Fund South are dischargers where the entities submitted and are named in the Reports of Waste Discharge and the fund signatories will be the same entities which are named Dischargers in the Cleanup and Abatement Order. Water Code Section 13050(c) does not provide an exhaustive definition of the term “person.” As suggested by the term “includes”, Section 13050(c) is not intended to provide a complete list of what is a “person” under this division of the Water Code. “Person” is construed broadly under the Water Code to include corporations, general partnerships, limited partnerships, trusts, estates, and individuals or corporations “doing business as” an unincorporated business. Therefore, San Diego Bay Environmental Restoration Fund North and San Diego Bay Environmental Restoration Fund South are considered “persons” as construed under the Water Code.</p> <p>It is not the intent of the San Diego Water Board to shield the Dischargers named in the Cleanup and Abatement Order from the responsibility of sediment remediation at the Shipyard Site. The Tentative Order names the Dischargers with the ownership and control of the Shipyard Sediment Remediation Project, namely NASSCO, BAE Systems, and the Restoration Funds as primarily responsible. The San Diego Water Board has the discretion to name the Port District and the Navy as secondarily responsible. The San Diego Water Board may seek enforcement against all or any of these entities for violations of the Tentative Order. Additionally, all Dischargers named in the Cleanup and Abatement Order are accountable for compliance</p>	Commenter: San Diego Coastkeeper
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	<p>with the Cleanup and Abatement Order, and the San Diego Water Board may pursue enforcement against any or all of these entities as well.</p>	
<p>13</p>	<p>COMMENT: The Waste Discharge Requirements should list the City of San Diego, San Diego Gas & Electric, and San Diego Marine Construction Company, Campbell Industries as dischargers. The Waste Discharge Requirements recognize that the City of San Diego, San Diego Gas & Electric, and Campbell Industries are responsible parties under the Cleanup and Abatement Order. See Tentative Order § II(F) at 7. However, the Waste Discharge Requirements fail to include these responsible parties as dischargers. See Tentative Order at 1, 4. Listing all responsible parties as dischargers increases accountability and ensures that the cleanup proceeds in an efficient and effective manner.</p> <p>RESPONSE: The Porter-Cologne Water Quality Control Act requires all persons discharging waste to file a report of a waste discharge¹. BAE Systems, NASSCO and San Diego Bay Environmental Restoration Fund North and San Diego Bay Environmental Restoration Fund South filed Reports of Waste Discharges for the Shipyard Sediment Remediation Project to address sediment cleanup including the dredging of sediment, the dewatering and solidification of the dredged materials, and the transport and removal of material to an appropriate landfill for disposal. As the entities proposing to discharge waste attributable to the Project, BAE Systems, NASSCO and San Diego Bay Environmental Restoration Fund North and San Diego Bay Environmental Restoration Fund South are all persons named as Discharger(s) in the Tentative Order and responsible to comply with the waste discharge requirements of the Tentative Order. The Tentative Order does not name as permittees any entities that did not file a Report of Waste Discharge in application for waste discharge requirements for the Shipyard Sediment Remediation Project. The San Diego Regional Board recognizes the City of San Diego, San Diego Gas & Electric and Campbell Industries are all dischargers responsible for the cleanup</p>	<p>Commenter: San Diego Coastkeeper</p>

¹ Wat. Code, § 13260 (“(a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board: [¶] (1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state [emphasis added]).

	<p>and abatement of the Shipyard Remediation Site and that accountability for cleanup may be sought through enforcement of the CAO. Additionally, the San Diego Water Board reserves its discretionary authority to name any of these entities as permittees in the Tentative Order.</p> <p>The Tentative Order has been revised to remove the San Diego Unified District and the U.S. Navy as primarily responsible “Dischargers” for the reasons described in the response to Comment 39. The San Diego Water Board may exercise its discretion during these proceedings to name the San Diego Unified Port District and the U.S. Navy as “Dischargers” which are secondarily liable for permit obligations under the Tentative Order.</p>	
	<p>Receiving Water Limitations Must Include Numeric Limitations To Clearly Define Compliance</p>	
<p>14</p>	<p>COMMENT: The Waste Discharge Requirements should specify what “natural” pH, turbidity, and dissolved oxygen concentration are in San Diego Bay at the Shipyards site. The Waste Discharge Requirements require compliance within the range of “natural” pH, turbidity, and dissolved oxygen concentration within the remedial footprint. See Tentative Order at 15. But narrative standards such as “natural” water quality are difficult to interpret consistently and nearly impossible to enforce, which is not useful to the regulators, the regulated, or the community. The Waste Discharge Requirements should define what “natural” pH, turbidity, and dissolved oxygen conditions are in San Diego Bay at the Shipyards site and include those in the permit. By including numeric limitations, the Waste Discharge Requirements gain specificity, allowing the dischargers to confirm they are complying with the requirements and the Regional Board to bring enforcement action if they are not.</p> <p>RESPONSE: The Tentative Order requires the Dischargers to demonstrate that dredging activities do not result in violations of receiving water limitations through implementation of a remediation monitoring program specified in section VII of the Tentative Order and Appendix C of the RAP. The monitoring program requires establishment of a “background” or “reference” station that is located 1,000 feet from the dredging activity in the direction of the head of the bay and beyond the influence of construction activities. Four compliance stations are designated for placement 500 feet from the construction area. An additional two early warning stations are located 250 feet from the construction area. The water quality measurements at these stations are used to discriminate between water quality exceedances attributable to dredging activities</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>from those related to ambient conditions in the bay at the time of sampling... The selection of a background value for dissolved oxygen and turbidity would not be appropriate because it would not allow for sample value comparisons to distinguish between construction related water quality conditions and ambient water quality conditions if an exceedance occurred.</p>	
<p>15</p>	<p>COMMENT: The Waste Discharge Requirements should establish protocol for monitoring applicable water quality objectives established in the Regional Board's Basin Plan and all contaminants of concern listed in the Cleanup and Abatement Order. The Waste Discharge Requirements prohibit the dischargers from exceeding applicable water quality objectives from the Basin Plan. Tentative Order § IV(I) at 15. The only way to ensure that the dischargers do not exceed Basin Plan water quality objectives is to require dischargers to monitor those parameters that may be exceeded during dredging. Because dredging may mobilize the primary and secondary contaminants of concern listed in the Cleanup and Abatement Order – copper, mercury, HPAHs, PCBs, tributyltin, arsenic, cadmium, lead, and zinc – the Waste Discharge Requirements must include monitoring requirements to ensure that these contaminants are not mobilized into the water column during dredging.¹</p> <p>¹ Donald MacDonald argued for this approach in his March 11, 2011 expert report: “[Analysis of primary and secondary contaminants of concern] must be compared to numeric water quality standards established in the Basin Plan to determine whether Dischargers are complying with applicable water quality standards during remediation.” Expert Report of Donald MacDonald prepared March 11, 2011 (MacDonald Report) § E.2.1 at 22.</p> <p>RESPONSE: The comment proposes requiring real-time monitoring of the primary and secondary pollutants of concern to prevent the “masking” of pollutants. While such a monitoring scenario would be ideal, it is unrealistic and unreasonable due to analysis times. Further, it is unnecessary as turbidity serves as a proxy for the detection of sediment contaminants of concern. Contaminated sediments in depositional environments are primarily fine-grained (such as at the Shipyard Sediment Site), and contaminants associated with the sediments tend to remain tightly bound to particles, making the control of sediment resuspension important in controlling contaminant release (U.S. Army Corps of Engineers, 2008). Furthermore, sediment remediation case studies that utilized periodic contaminant of concern monitoring (mainly PCBs and PAHs) have shown that if turbidity during dredging is controlled, then the sediment-related contamination is also controlled (U.S. EPA, 2004). Thus, real-time dissolved oxygen and</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>turbidity monitoring are appropriate for monitoring the effects of dredging under the Tentative Order.</p> <p>U.S. Army Corps of Engineers (U.S. ACE). 2008. The Four Rs of Environmental Dredging: Resuspension, Release, Residual, and Risk. U.S. Army Corps of Engineers. Engineer Research and Development Center, Vicksburg, MS. ERDC/EL TR-08-4, February, 2008. Available on the web at http://www.epa.gov/superfund/health/conmedia/sediment/pdfs/summaryreport.pdf</p> <p>U.S. EPA. 2004. Engineering Performance Standards Hudson River PCBs Superfund Site: Volume 5: Appendix – Case Studies of Environmental Dredging Projects. U.S. Environmental Protection Agency, Region 2, New York, NY. April 2004</p>	
	<p>The Waste Discharge Requirements Should Clearly List Required Construction Best Management Practices to Ensure Compliance</p>	
16	<p>COMMENT: The Waste Discharge Requirements should list Construction Best Management Practices in an appendix. Dischargers must comply with several sets of Best Management Practices. Compiling all of the requirements into one appendix, or at least listing the documents that contain requirements, will aid consultants and contractors in implementing each of the Best Management Practices.</p> <p>RESPONSE: A list of BMPs that will be employed by the contractor, including operational controls and silt curtain deployment is presented in the permittees' Report of Waste Discharge along with section 5.1.2.3 of the Quality Assurance Project Plan (QAPP; Appendix B to the RAP), which is incorporated by reference as set forth in section I of the Tentative Order.</p> <p>Reporting Requirements VIII.D and VII.E have been added to the Revised Tentative Order to require that the Discharger(s) provide the San Diego Water Board with a copy of the final plans and reports required pursuant to the Remedial Action Plan and the Mitigation Monitoring and Reporting Program in advance of the initiation of dredging operations.</p>	<p>Commenter: San Diego Coastkeeper</p>
17	<p>COMMENT: Best Management Practices related to silt curtains should specify how dischargers can meet water quality objectives. The Waste Discharge Requirements should not allow silt curtains to be extended only 20 feet into the water column. The</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>Waste Discharge Requirements should not allow silt curtains to be extended only 20 feet into the water column. See Tentative Order § V(I)(6) at 17. This is inconsistent with Mitigation Measure 4.2.3 as detailed in the Mitigation Monitoring and Reporting Program. See Tentative Order Exhibit B at 6.</p> <p>RESPONSE: The requirement in section V.J.6 of the Tentative Order to extend the silt curtains 20 feet into the water column is consistent with Mitigation Measure 4.2.3 and will be retained in the Revised Tentative Order. Under the terms and conditions of the Revised Tentative Order in section V.J, double floating silt curtains are required during dredging activities to help control turbidity via loss of suspended solids beyond the immediate dredging area. As part of the technical specifications, the Discharger(s) are required to maintain the silt curtains around all in-water dredging activities to reduce the potential for water quality impacts and the escape of significant suspended solids beyond the remedial footprint. The floating silt curtain is intended to supplement the other operational controls described in the Tentative Order to control and contain migration of contaminated suspended sediments at the water surface and at depth. This in turn will help protect surrounding areas in San Diego Bay from accumulation of resuspended solids originating from the dredging activities.</p> <p>The requirements of section V.J of the Tentative Order and the associated Mitigation Measure 4.2.3 in Attachment B of the Tentative Order provide for the horizontal deployment of floating silt curtains “fully around the dredging area at all times,” such that “a continuous length of floating silt curtain . . . fully encircle[s] the dredging equipment and the scow barge being loaded with sediment”. These provisions of the Tentative Order do not require the vertical extension of the silt curtains to the bay bottom. The Tentative Order requires at section V.J, in conformance with Mitigation Measure 4.2.3, that where feasible and applicable, the floating silt curtains must be anchored and deployed from the surface of the water to just above the substrate. This requirement provides the Discharger(s) with the necessary flexibility to consider site conditions in determining the depth of silt curtain deployment, where tidal and/or wind and wave action may subject the curtains to very high loads with consequent strain on the curtain materials and the mooring system. This requirement also provides the Discharger(s) with the necessary flexibility in situations with tidal and/or wind and wave action, to provide for a gap between the weighted bottom of the silt curtain and the bay bottom. An appropriate gap is necessary to prevent movement of the silt curtain over the bay bottom due to tidal reverses or wind and wave action</p>	
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	on the flotation system which may fan and stir sediments already settled out.	
18	<p>COMMENT: The Waste Discharge Requirements should use the term “construction area” consistently. The Waste Discharge Requirements refer to the “construction area,” “active dredge area,” and “area of construction and dredging” interchangeably. See Tentative Order § VII(B)(4) at 29; see also Tentative Order § V(I) at 17. So that the Waste Discharge Requirements are consistent with the Remedial Action Plan, “construction area” should replace “active dredge area” and “area of construction and dredging.” Remedial Action Plan at 7.</p> <p>RESPONSE: Comment accepted. The Tentative Order has been revised and uses the term Project “construction area” as defined in the Remediation Monitoring Plan (Appendix C of the RAP).</p>	Commenter: San Diego Coastkeeper
19	<p>COMMENT: Best Management Practices related to clean sand covers should specify what dischargers must do to meet water quality objectives. The Waste Discharge Requirements should include a decision matrix for determining how thick clean sand and gravel covers must be or list the appropriate thickness. Mitigation Measure 4.2.7 states that clean sand covers shall be “thick enough” to meet certain goals related to water quality and the health of aquatic organisms. Tentative Order Exhibit B at 8. But because narrative standards such as “thick enough” only provide vague guidance, the Waste Discharge Requirements should include a decision matrix that dischargers can use to determine how thick clean sand and gravel covers must be. Or, if the appropriate thickness has been determined in the course of similar projects, such as the Campbell’s Shipyard Sediment Remediation Project, that quantity should be listed in Mitigation Measure 4.2.7.</p> <p>RESPONSE: The Tentative Order provides sufficient detail to ensure that sand covers are constructed to the proper thickness to address the performance criteria described in Mitigation Measure 4.2.7 contained in Attachment B of the Tentative Order. The Tentative Order provides in section V.S. that all clean sand cover operations and placement within the remedial footprint must be conducted in accordance with the applicable requirements of Cleanup and Abatement Order R9-2012-0024, the Remedial Action Plan and the Mitigation Monitoring and Reporting Program contained in Attachment B of this the Tentative Order. The RAP provides in Appendix A; Design Criteria Report in section 4.3 that a nominal (minimum) 1-foot layer of sand and gravel</p>	Commenter: San Diego Coastkeeper

	<p>material is assumed to be required to be placed under piers and overwater structures within the remedial footprint to meet the project objectives. This equates to approximately 42,200 cy of material being placed in- water. Further evaluations have been conducted during the design process to formulate the exact material types and thickness that will be required to meet the criteria required by Mitigation Measure 4.2.7 contained in Attachment B of the Tentative Order. The proposed engineering design will result in an overall placement amount of 6 tons of sand per each 100 square feet within the 2.3 acre under-pier area, which recognizes both the need to meet CAO cleanup goals as well as the irregular nature of the bottom surface. The stipulated material placement amount will amount to an average thickness of 12 inches of clean sand. As required by Mitigation Measure 4.2.7, the final engineering plans for the sand covers will be subject to the review and approval by the San Diego Water Board.</p> <p>The effectiveness of clean sand cover placed over dredged areas will be determined by ensuring that the thickness of the cover and its horizontal extents are consistent with CAO requirements and Construction Plans and Technical Specifications. To ensure that proper coverage and thickness of clean sand cover is achieved, the contractor will be required to perform daily progress surveys of areas where clean sand material was placed to allow daily verification of thickness and extent of sand cover. The contractor will also be required to provide daily reports of the extent and quantity (in tons) of sand placed in under pier areas on that day and the cumulative tonnage of sand placed on the Project to that date. Because it is likely that progress surveys will be difficult to conduct in underpier areas, evaluation of clean sand cover in these locations will be based a comparison of the quantity of sand placed to the overall area covered; the overall tonnage per square foot of area should be consistent with the target sand layer thickness. Additional details are provided in Appendix B of the RAP, section 5.4.2.2 on Pages 26 and 27.</p>	
<p>20</p>	<p>COMMENT: The Waste Discharge Requirements should clarify that Borrow Source Characterization Reports must be reviewed and approved by the Regional Water Quality Control Board. The Waste Discharge Requirements require dischargers to submit a Borrow Source Characterization Report prior to any on-site placement of import materials. See Tentative Order § V(S)(4) at 20. The Waste Discharge Requirements should specify that the Regional Board must review and approve Borrow Source Characterization Reports before these materials can be used in order to avoid contractors using problematic borrow materials.</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>RESPONSE: Comment Accepted. Tentative Order V.S.4 has been revised to state that the Borrow Source Characterization report shall be subject to the review and verification by the San Diego Water Board. See Revised Tentative Order at section V.S.4.</p>	
<p>21</p>	<p>COMMENT: Best Management Practices related to sediment dewatering and staging areas should specify requirements to reduce air quality impacts that the dredging has on surrounding communities.</p> <p>RESPONSE: Comment accepted in part. The Best Management Practices related to sediment dewatering and staging areas specific to reducing air quality impacts are contained in the Mitigation Monitoring and Reporting Program in Attachment B of the Tentative Order. Mitigation Measures 4.6.1 through 4.6.7 are necessary for adherence to San Diego Air Pollution Control District (APCD) rules and regulations. Mitigation Measure 4.6.1, for instance, requires that operations minimize the obstruction of through traffic lanes adjacent to the site. Additionally, vehicle speed will be limited (Mitigation Measure 4.6.3) and the material excavated from dredging operations will be sufficiently watered to prevent airborne dust from being visible beyond the property line and in compliance with APCD's Rule 55 (Mitigation Measure 4.6.5). Implementation of Mitigation Measures 4.6.8 through 4.6.14 would reduce the net increase of criteria pollutants for which the project region is nonattainment under applicable federal or state ambient air quality standards. Section V.T of the Tentative Order generally covers the requirement of the Discharger(s) to comply with the Remedial Action Plan and the Mitigation Monitoring and Reporting Program and therefore, it is not necessary to specifically list the particular Mitigation Measures in this section of the Tentative Order.</p>	<p>Commenter: San Diego Coastkeeper</p>
<p>22</p>	<p>COMMENT: The Waste Discharge Requirements should require that dischargers secure the permit necessary to discharge wastewater into the community sewer system before beginning dredge operations. The Waste Discharge Requirements note that dischargers will send wastewater generated during sediment dewatering into the City of San Diego's sewer system to be treated at the Point Loma Wastewater Treatment Plant and discharged through the existing ocean outfall. See Tentative Order § 2(G) at 8. Federal law requires that dischargers obtain a Significant Industrial User Discharge Permit from the City of San Diego's Public Utilities</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>Department prior to discharging wastewater into the sewer system. See 40 C.F.R. §§ 405-71. The Waste Discharge Requirements should require dischargers to obtain this permit prior to beginning dredge operations.</p> <p>RESPONSE: Comment accepted. Tentative Order section V.T.7 has been has been revised to require that prior to initiating dredging operations the Discharger(s) shall apply for and obtain an Industrial User Discharge Permit from the City of San Diego for the discharge of wastewater into the City’s sanitary sewer system. Tentative Order section V.T.7 has also been has been revised to require that the Discharger(s) submit a copy of the permit to the San Diego Water Board, so that the San Diego Water Board can verify that the permit has been obtained. See Revised Tentative Order at section V.T.7.</p>	
<p>23</p>	<p>COMMENT: The Waste Discharge Requirements should stipulate that dredged sediment stockpiled on shore must be covered at all times unless it is actively being worked on. The Waste Discharge Requirements properly require that dredged sediment stockpiled on shore be covered with plastic sheeting designed to contain fugitive dust. See Tentative Order § V(T)(4) at 21. Contractors, however, may feel that cover is not necessary while a pile is being added to, which could be virtually any time if sediment is being dredged 24 hours per day and 6 to 7 days per week. See Tentative Order § II(I) at 9. To reduce the risks to the air quality in communities surrounding the staging areas, the Waste Discharge Requirements should mandate that piles be covered at all times except for the specific area being worked on.</p> <p>RESPONSE: Comment accepted in part. The San Diego Water Board acknowledges the concerns regarding the risks to the air quality in the nearby communities from fugitive dust from the stockpiles. The Discharger(s) is required under Mitigation Measure 4.6.5, contained in Attachment B of the Tentative Order, to water the excavated material and sufficiently grade the stockpiled material when necessary so that airborne dust is not visible beyond the property line. Additionally, Mitigation Measure 4.3.6 provides that dust control during sediment staging will be addressed in the dust control and monitoring plan and Mitigation Measure 4.6.6 requires that all earthmoving activities cease during period of high winds (i.e., greater than 25 mph averaged over 1 hour). When material is transported off site, the material will either be sufficiently wet or securely covered to prevent excessive amounts of dust. The specifications to meet the requirements of these Mitigation Measures will be provided in the construction documents after</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>a contractor is retained and then provided by the Discharger(s) to the San Diego Water Board for review.</p> <p>Coastkeeper's request to have the stockpiles covered at all times unless actively being worked on is not incorporated into the Revised Tentative Order because the goal of containing fugitive dust can be met using alternative methods as outlined in the Mitigation Measures. Further, requiring the Discharger(s) to cover the stockpiles at all times could inhibit the drying of the sediment. Consistent with this line of reasoning, section V.T.4 of the Tentative Order is therefore modified to delete "[d]redged sediments stockpiled on-shore must be covered by a suitable heavy gauge plastic sheet (not less than 10 mills thick) to adequately prevent rainwater infiltration, control fugitive dust and other nuisances." Instead, section V.T.4 of the Revised Tentative Order now reads, "[a]lternative control methods to prevent fugitive dust and other nuisances, including covering the stockpiles, may be utilized in addition to the required Mitigation Measures as long as the proposed alternatives are protective of water quality and human health."</p>	
<p>24</p>	<p>COMMENT: Best Management Practices related to the transportation and disposal of dewatered sediment should specify requirements to reduce dredging impacts on communities adjacent to the staging areas. The Traffic Control Plan should protect those who live near the staging areas from continuous truck traffic. Dischargers anticipate dredging 6 to 7 days per week. See Tentative Order § II(I) at 9. If trucks are allowed to run 6 to 7 days per week, residents of the neighborhoods surrounding the staging areas will be constantly subjected to the noise and air pollution created by trucks transporting.</p> <p>RESPONSE: Comment noted. The Best Management Practices related to the transportation and disposal of dewatered sediment are contained in the Mitigation Monitoring and Reporting Program in Attachment B of the Tentative Order. In general, truck traffic will be limited to the frequency allowed for by the Mitigation Measures. Mitigation Measure 4.4.1 prohibits the treatment and haul activity in the City of San Diego between the hours of 7:00 p.m. of any day and 7:00 a.m. of the following day, or on legal holidays as specified in section 21.04 of the San Diego Municipal Code. Mitigation Measure 4.6.1 requires that haul activities be timed to not interfere with peak-hour traffic and minimize obstruction of through traffic lanes adjacent to the site. So while the Discharger(s) anticipates dredging 6 to 7 days per week, the pace of dredging will ultimately be confined by the restrictions in the Mitigation Measures. Section II, Finding I of</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>the Tentative Order will be revised to reflect the following revision (emphasis added indicates addition to the existing sentence), “[d]uring the annual dredging episodes it is anticipated that dredging will be conducted 24 hours per day and 6 to 7 days per week with the exception of downtime for equipment maintenance and movement of equipment between dredging footprints and for shipyard traffic <u>and to the extent permitted by the mitigation measures required to reduce the potential environmental impacts</u>” (see Mitigation Monitoring, and Reporting Program in Exhibit B of the Tentative Order).</p> <p>Additionally, Section V.U of the Tentative Order will be revised to include Section V.U.2, “The Discharger(s) shall meet performance standards associated with transportation and disposal per the Project’s Construction Plans and Technical Specifications, 401 Water Quality Certification, and other permits for this worked. The specific design criteria and performance standards will be specified in the Construction Plans submitted to the San Diego Water Board prior to dredging .”</p>	
<p>25</p>	<p>COMMENT: The Waste Discharge Requirements should require that the Traffic Control Plan be completed as soon as possible and made available for public comment. The Traffic Control Plan will determine which routes trucks will travel through the neighborhoods surrounding the staging areas. See Mitigation Measure 4.3.8, Tentative Order Exhibit B at 18-19. Because it is their community that will be impacted, the residents of these neighborhoods, along with the rest of the public, should have an opportunity to comment on the Traffic Control Plan and have their concerns addressed.</p> <p>RESPONSE: The Tentative Order provides in part in section V.U. that the transport and disposal of dredged material shall be done in accordance with the applicable requirements of the Mitigation Monitoring and Reporting Program contained in Attachment B of this Order. Mitigation Measure 4.1.1 provides that truck traffic from the sediment staging areas will use the haul routes evaluated in the PEIR. Community residents had the opportunity to comment on those haul routes in the course of the San Diego Water Board’s development of the PEIR.</p> <p>The development of a Traffic Control Plan including planned haul truck routes is required under Mitigation Measure 4.3.8. The Traffic Control Plan is subject to the approval by the City of San Diego and/or the National City Traffic Engineer. The San Diego Water Board encourages the Discharger(s) to coordinate with the City of San Diego and/or the National City Traffic Engineer and release a draft of the Traffic Control Plan as soon as possible for public comment and</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>review, but no later than the public meeting to be held in compliance with the Community Relations Plan in described in Appendix E of the Remedial Action Plan.</p>	
<p>26</p>	<p>COMMENT: Best Management Practices detailing response actions to monitoring results should specify the protocol required to achieve water quality objectives. The Waste Discharge Requirements should require that additional Best Management Practices be implemented if a visual observation or water sample indicates an exceedance of a receiving water limitation along the early warning arc. Early warning stations were designed to quickly inform Project Team members of potential impacts to water quality so that dredging or Best Management Practices can be adjusted before an exceedance occurs at a compliance station. See Tentative Order § VII(B)(2)(b) at 26. Therefore, the Waste Discharge Requirements should require that additional Best Management Practices be implemented if visual observation or water quality monitoring indicate an exceedance of a receiving water limitation along the early warning arc.</p> <p>RESPONSE: Comment accepted. The Discharger’s compliance with the provisions of the RAP Remediation Monitoring Program is required under section VII.B. of the Tentative Order. The RAP provides at Appendix C, Page 6 that the objective of the early warning stations is to become quickly aware of potential water quality impacts at the construction work area and to be able to adjust dredging operations or BMPs before an exceedance occurs at the compliance station.</p> <p>A new requirement has been added to the Revised Tentative Order at section V.V. which provides that in the event that visual observations or water quality monitoring indicate an exceedance of an applicable Receiving Water Limitation at an early warning station, the Discharger(s) shall promptly take all necessary steps to prevent an exceedance at the compliance station(s) including but not limited to adjustments of dredging operations or BMPs.</p>	<p>Commenter: San Diego Coastkeeper</p>
<p>27</p>	<p>COMMENT: The Waste Discharge Requirements should allow the Biological Monitor to determine operational modifications in the event of a confirmed exceedance of a receiving water limitation. The Waste Discharge Requirements are silent as to who has the authority to determine operational modifications in the event of a confirmed exceedance of a</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>receiving water limitation. Because the Biological Monitor is the Project Team member best able to understand the consequences of an exceedance, and because the Biological Monitor can halt or redirect dredging activities under other circumstances, the Biological Monitor should be able to determine operational modifications in the event of a confirmed exceedance of a receiving water limitation. See Mitigation Measure 4.5.11, Tentative Order Exhibit B at 24-25.</p> <p>RESPONSE: The Tentative Order will not be changed. The scope of the “Project Marine Biologist” or the “biological monitor” is described in the Mitigation and Monitoring Measures contained in Attachment B of the Tentative Order and is limited to various activities related to the protection of eelgrass beds, sea turtles and marine mammals, and the California Least Tern. The RAP provides that the Project Team representatives are charged with coordinating with the contractor to ensure appropriate construction BMPs are implemented and to strategize ways to add BMPs or enhance the effectiveness of existing BMPs as necessary to mitigate unacceptable water quality effects (<i>see Remediation Monitoring Plan, Appendix C of the Remedial Action Plan</i>).</p>	
<p>28</p>	<p>COMMENT: The Waste Discharge Requirements should require that dredging stop if there are two consecutive exceedances of a receiving water limitation. The Waste Discharge Requirements do not define the point at which dredging will stop if Construction Best Management Practices fail to mitigate an exceedance of a receiving water limitation. To ensure that exceedances do not result in unmitigatable impacts to water quality, the Waste Discharge Requirements should require that dredging stop if two consecutive exceedances of a receiving water limitation are confirmed.</p> <p>RESPONSE: The Tentative Order will not be changed. The Revised Tentative Order provides at section V.W for an appropriate level of escalating responses to an exceedance of an applicable receiving water limitation that gives the Discharger(s) the necessary flexibility to consider the type, scope and scale of the exceedance in determining the proper course of action.</p>	<p>Commenter: San Diego Coastkeeper</p>
	<p>Stringent Monitoring Protocol Is Essentials To Protecting Water Quality And Public Health</p>	

29	<p>COMMENT: Monitoring requirements for receiving water should be strengthened to ensure that water quality objectives are met. The Waste Discharge Requirements should clearly define when the dischargers should take water quality measurements. Language in the Waste Discharge Requirements regarding when, relative to the start of dredging operations each day, water quality measurements will be taken is currently inconsistent. See Tentative Order § VII(B)(3)(a) at 26-27. So that procedure is clear to Project Team members, and to ensure that water quality objectives are achieved, the Waste Discharge Requirements should specify that manual samples will be collected once a day after dredging has been underway for an hour and automated samples will be collected continuously throughout dredging operations.</p> <p>RESPONSE: Comment accepted. This section of the Tentative Order has been revised to reflect clarification regarding the frequency of water quality monitoring requirements. Below is the edited text that will replace B.3.a in the Revised Tentative Order, “The contractor Discharger(s) will be required to implement automatic monitoring of dredge operations in accordance with Mitigation Measure 4.2.1. and the Quality Assurance Project Plan of the Remedial Action Plan. Automatic systems will be used to measure turbidity and other water quality conditions (DO and pH) using an automatic system throughout dredging operations to provide real-time feedback to the dredge operator. The automatic system will include threshold alarms to alert the dredge operator and/or other appropriate personnel to recognize that one or more water quality criteria have been exceeded.</p> <p>In addition, a periodic manual water quality monitoring program (WQMP) will be implemented by the Discharger(s) to confirm that the requirements of this Order are being met and to inform interpretation of the automatic monitoring performed by the contractor.</p> <p>During dredging, manual water quality samples shall be collected once daily for a minimum of 1 hour at the start of dredging operations. A reference station outside the influence of dredging shall also be sampled at similar depths and frequency for comparison to the samples collected from the dredge area. In accordance with Section 34.1.1 of the CAO Technical Report sampling will be reduced to weekly sampling if no water quality exceedances are observed after 3 consecutive days of monitoring. During weekly water column monitoring (after 3 consecutive days without an exceedance), all water quality parameters will be measured during one monitoring event per week. Consistent with the requirements of the Technical Report, monitoring frequency will return to daily if a significant change in operations occurs (i.e.,</p>	Commenter: San Diego Coastkeeper
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	<p>switching from dredging to material placement or debris removal) or an exceedance of the Receiving Water Limitations described in section IV. of this Order is observed. Monitoring frequency can again be reduced to weekly if 3 consecutive days of monitoring show there are no exceedances. Figure 2 of the Remediation Monitoring Plan provides a decision flow chart summarizing monitoring frequency requirements.”</p> <p>It is not necessary to strengthen monitoring requirements where the existing requirements are protective of water quality objectives.</p>	
30	<p>COMMENT: The Waste Discharge Requirements should allow the Regional Board to request split samples. The Waste Discharge Requirements are silent on the issue of split samples. The Regional Board should be allowed to request split samples in order to ensure that monitoring results are accurate and that water quality objectives are met.</p> <p>RESPONSE: Comment Accepted. The following sentence has been added to the monitoring requirements in section VII.A.1. of the Revised Tentative Order. “The Discharger shall provide split samples to the San Diego Water Board upon prior timely notice.”</p>	Commenter: San Diego Coastkeeper
31	<p>COMMENT: The Waste Discharge Requirements should describe the monitoring station beyond the influence of dredging activities as either “background” or “reference,” and use the term consistently. The Waste Discharge Requirements refer to the monitoring station beyond the influence of dredging activities as both a “background station” and a “reference station.” See Tentative Order § VII(B)(2)(c) at 26; see also Tentative Order § VII(B)(3)(a) at 27. The Waste Discharge Requirements should use one term consistently so that procedure is as clear as possible.</p> <p>RESPONSE: The San Diego Water Board agrees that the Tentative Order’s inconsistent use of the terms background station and reference is confusing. The Tentative Order will be revised to use the term “reference station” consistently throughout the document.</p>	Commenter: San Diego Coastkeeper
32	<p>COMMENT: The Waste Discharge Requirements should list the criteria that need to be met before a sand cap is placed and identify the person responsible for determining whether a sand cap is necessary. Decision rules (b) and (c) discuss the placement of sand caps, but neither describes under what specific circumstances or by whom the decision to place a sand cap will be made. See Tentative Order § VII(D) at 30. The Waste Discharge</p>	Commenter: San Diego Coastkeeper

	<p>Requirements should list the criteria that need to be met before a sand cap is placed and identify the person responsible for determining whether a sand cap is necessary. As is noted in Donald MacDonald’s Expert Report for the Cleanup and Abatement Order, “failure to establish clearly interpretable decision rules. . .will almost certainly result in decisions that are not consistent with the expectations of the. . .Regional Board and other participants in the process.” See MacDonald Report § E.3.7 at 26.</p> <p>RESPONSE: The Discharger’s compliance with the provisions of the RAP pertaining to sand covers is required under section V.S. of the Tentative Order. The RAP provides the general rules for placement of sand caps in Appendix B of the RAP at section 5.4.1. The RAP provides that clean sand cover will be placed in these two areas:</p> <ol style="list-style-type: none"> 1. Areas within the required remedial footprint that are beneath piers and other overwater structures, which will receive a layer of clean sand cover material placed over the pre-existing grade; and 2. Dredged areas that have been subjected to confirmatory sampling, as described in the Appendix C of the RAP in section 3.5. <p>The provisions for placement of sand covers contained in section VII.D of the Tentative Order have been revised to more explicitly describe the criteria that need to be met before a sand cap is placed and to identify that the decision will be made by the Dischargers in consultation with the San Diego Water Board. See section VII.D in the Revised Tentative Order. See also the response to Comment 9.</p>	
33	<p>COMMENT: The Waste Discharge Requirements should include stronger sediment disposal monitoring to protect public health. The Waste Discharge Requirements should require that dewatered sediment be tested to determine pollutant concentration before a landfill is selected. The Waste Discharge Requirements state that dewatered sediment will be stockpiled and tested to determine its suitability for disposal at selected landfills. See Tentative Order § VII(E) at 30. Because landfill acceptance criteria depend on the nature and concentration of pollutants, dischargers must test the sediment before it is stockpiled to determine which landfill phase classification is appropriate.</p> <p>RESPONSE: The Revised Tentative Order contains the appropriate requirements to ensure</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>that the dewatered sediment will be tested to determine pollutant concentrations before a landfill is selected.</p> <p>The Revised Tentative Order provides in section VII.E that prior to sediments leaving the sediment management areas the Discharger(s) shall perform analytical testing of stockpiled sediment (unless the analytical testing was conducted on sediment samples obtained in situ prior to dredging) as dictated by landfill acceptance criteria, to demonstrate and document the material's suitability for disposal at selected landfill(s). Specific requirements for waste characterization at the disposal site will shall be developed by the Dischargers after one or more disposal facilities have been identified. Specific testing requirements will be based on the Waste Discharge Requirements of the disposal facilities.</p> <p>It should also be noted that the Dischargers are responsible under California Code of Regulations (CCR) Title 27, Division 2, Article 2, section 20200 for accurate characterization of wastes, including determinations of whether or not wastes will be compatible with containment features and other wastes at a landfill, and whether or not wastes are required to be managed as hazardous wastes under Chapter 11 of Division 4.5 of Title 22 of the CCR.</p> <p>Reporting Requirement VIII.A.3 of the Tentative Order has been revised to require the Discharger(s) to submit the waste manifests for the dredged material transported to a final disposal location.</p>	
<p>34</p>	<p>COMMENT: The Waste Discharge Requirements should define how often dewatered sediment will be tested and set a maximum volume of sediment that will be allowed to accumulate in each sediment management area. The Waste Discharge Requirements are silent as to how often dewatered sediment will be tested and the maximum volume that will be allowed to accumulate in each sediment management area. The maximum volume should be calculated based on the capacity of the plastic sheeting designed to contain fugitive dust. This will reduce the impact the dredging will have on air quality in neighborhoods adjacent to the staging areas.</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>RESPONSE: Dewatered sediments will be tested in accordance with the requirements set forth by the receiving landfill(s). The RAP provides in Appendix B, Quality Assurance Project Plan Section 5.2.4 that the height and weight of the stockpiles will not exceed restrictions applicable to the offloading site at the Sediment Management Area (SMA). The primary constraints for the SMA capacity include ensuring no overflow, run-on/run-off control and mobility of equipment within the SMA for handling and loading of trucks. The maximum volume of sediment that will be allowed to accumulate in each sediment management area will be addressed during the SMA design process.</p>	
<p>35</p>	<p>COMMENT: The Waste Discharge Requirements should require protocol to ensure that less-toxic sediment is not mixed with sediment that is more toxic to reduce the net concentration of pollutants. It is critical that contractors not, inadvertently or otherwise, combine dewatered sediment that is less toxic with sediment that is more toxic to decrease the net concentration of pollutants and qualify the resultant mix for admission to landfills of a lower phase classification. These landfills are often not lined and therefore risk groundwater contamination if filled with toxic sediment.</p> <p>RESPONSE: Comment Accepted. The Discharger(s) are subject to regulations in CCR, Title 22, Division 4.5, Chapter 15, Article 12 which apply to owners and operators of facilities that treat or store hazardous waste in piles. Mixing of different waste types such as non-hazardous waste with hazardous waste is prohibited under these regulations.</p> <p>The following requirement has been added to section T.9 of the Revised Tentative Order: “If sediments meeting hazardous waste criteria are encountered, the hazardous waste must be segregated from other materials, in accordance with CCR, Title 22, Division 4.5, Chapter 15, Article 12.”</p>	<p>Commenter: San Diego Coastkeeper</p>
	<p>The Waste Discharge Requirements Should Require That Noncompliance Reports That May Endanger Human Health Or The Environment Be Shared With Community Members</p>	

<p>36</p>	<p>COMMENT: The Waste Discharge Requirements state that dischargers must report any noncompliance that may endanger human health or the environment to the Regional Board. See Tentative Order § VIII(E) at 31. However, the adjacent community should be notified if public health or the environment is at risk. The Waste Discharge Requirements should require that reports of noncompliance that may endanger human health or the environment be shared with community members and should detail a method for disseminating the information.</p> <p>RESPONSE: Comment accepted. The noncompliance reporting requirement contained in section VIII.C of the Revised Tentative Order has been modified to require the Discharger(s) to provide notifications of noncompliance which may endanger human health or the environment to Community Members pursuant to the procedures for emergency notifications contained in the RAP, Appendix E, Community Relations Plan when directed to do so by the San Diego Water Board.</p> <p>Moreover the community will be kept updated on the progress of the remediation, as set forth in the approved Community Relations Plan (Appendix E to the RAP), which is incorporated by reference as set forth in section II Finding J and section V.I of the Revised Tentative Order.</p>	<p>Commenter: San Diego Coastkeeper</p>
<p>The Sediment Management Unit For Polygon NA19 Must Not Be Smaller Than The Area Established In The Cleanup And Abatement Order</p>		
<p>37</p>	<p>COMMENT: The sediment management unit for polygon NA19 seems to be smaller than the dredge remedial area for that polygon established in the Cleanup and Abatement Order. See Tentative Order Attachment A Figure 4; see <i>also</i> Cleanup and Abatement Order at 43. To ensure that the area being dredged is consistent with that agreed upon by the Project's stakeholders during the development of the Remedial Action Plan, the sediment management unit for polygon NA19 must be at least as large as the area established in the Cleanup and Abatement Order.</p> <p>RESPONSE: Tentative Order Attachment A, Figure 4 is an older version of the sediment mitigation unit remediation area. Appendix C to the RAP, Figure 4 contains the current figure. The most current figure will be included in the Revised Tentative Order. The area of the NA19 Theissen polygon is approximately 32,000 square feet, and the NA19 sediment management unit remedial area is approximately 39,106 square feet.</p>	<p>Commenter: San Diego Coastkeeper</p>

	<p>The Background Station Should Be Located Upstream Of The Remedial Footprint</p>	
<p>38</p>	<p>COMMENT: The Waste Discharge Requirements note that the background station will be located 1,000 feet from the dredging activity in the direction of the head of the bay and beyond the influence of construction activities. See Tentative Order § VII(B)(2)(c) at 26. But in the Receiving Water Monitoring Diagram, the station is located south, or downstream, of the remedial footprint. See Tentative Order Attachment C. Because an accurate background measurement is vital to the success of water quality monitoring, the background station must be upstream of the remedial footprint and beyond the influence of construction activities.</p> <p>RESPONSE: While the narrative description in the Tentative Order and the Remedial Monitoring Plan described in Attachment C of the RAP both correctly describe the required location of the background station, Attachment C, Figure 1 of the Tentative Order depicts the background station in error. The actual position of the background monitoring station will be located 1,000 feet toward the head of the Bay from the remedial footprint and beyond the influence of dredging. This figure will be corrected and included in the Revised Tentative Order.</p>	<p>Commenter: San Diego Coastkeeper</p>
	<p>The Port District Objects To Being Named As A Discharger</p>	
<p>39</p>	<p>COMMENT: 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).</p> <p>RESPONSE: Various State Water Resources Control Board (State Water Board) Orders and policy memoranda clearly establish that the San Diego Water Board has the discretion to name the Port District as a “Discharger” in the Tentative Order even though it will not be involved in or controlling the day to day operations of the Project, subject to certain considerations. In Order No. WQ 90-3 the State Water Board held that the Port District may properly be named as a “Discharger” in waste discharge requirements (WDRs) under the California Water Code with the provision that 1) the WDRs should not hold the Port District responsible for the day to day operation of the regulated facilities or for monitoring requirements and 2) the WDRs must provide the Port District with the opportunity to attain tenant compliance prior to San Diego Water Board enforcement action against the Port District. The inclusion of the Port District as a “Discharger” in the Tentative Order, under these circumstances, is discretionary. This being</p>	<p>Commenter: San Diego Unified Port District</p>

	<p>said, it is not the customary practice of the San Diego Water Board to name the Port District as primarily responsible in WDRs or NPDES permits issued to its tenants. Moreover the Port District, in its comment letter, offered its assistance in maintaining the Project applicants' compliance with the Tentative Order as well as its independent assistance in enforcing the Coastal Development Permits as necessary. Based on these considerations the Tentative Order will be revised to remove the Port District as a Discharger. The San Diego Water Board may exercise its discretion during these proceedings to name the Port District as a Discharger which is secondarily liable for permit obligations under the Tentative Order.</p> <p>In applying similar reasoning, the Tentative Order will be revised to also exclude the U.S. Navy as a Discharger. The Tentative Order also includes the U.S. Navy as a "Discharger" based on its ownership of the S-Lane parcel where sediment dewatering and stockpiling operations are scheduled to occur. As with the Port District, the U.S. Navy is a "non-operating" landowner and will not be engaged with the day to day operations of the Project at the S-Lane parcel. The inclusion of the U.S. Navy as a "Discharger" in the Tentative Order, under these circumstances is not mandatory. Based on these considerations the Tentative Order will be revised to remove the U.S. Navy as a Discharger. The San Diego Water Board may exercise its discretion during these proceedings to name the U.S. Navy as a Discharger which is secondarily liable for permit obligations under the Tentative Order.</p>	
<p>40</p>	<p>COMMENT: 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.</p> <p>RESPONSE: See response to comment 39.</p>	<p>Commenter: San Diego Unified Port District</p>
<p>41</p>	<p>COMMENT: 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.</p> <p>RESPONSE: Comment noted. Persons who own land on which a discharge is occurring can properly be included as "dischargers" in waste discharger requirements under the California</p>	<p>Commenter: San Diego Unified Port District</p>

	<p>Water Code. This principle is based on three elements: ownership of the land, knowledge of the activity and the ability to control it where the source of the discharge is the land and the activities on the land. The application of these general principles to the S- Lane parcel would support the Port District' s position that it should not be held accountable as a public trustee for discharges from the S-Lane parcel over which it has no jurisdiction with the possible exception of discharges from the S Lane Parcel into a municipal separate storm water (MS4) conveyance system owned or operated by the Port District.</p>	
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