



California Regional Water Quality Control Board

San Diego Region



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November 3, 2005

Mr. John Minan
Regional Board Chair
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

In reply refer to:
MGMT:03: 0284.05 DBarker

Mr. John Robertus
Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

Dear Chairman Minan and Mr. Robertus:

SUBJECT: SHIPYARD SEDIMENT CLEANUP TEAM COMMENTS ON ORDER OF PROCEEDINGS DATED OCTOBER 18, 2005

The Shipyard Sediment Cleanup Team is submitting the attached *Shipyard Sediment Cleanup Team Comments on the Order of Proceedings*. A copy is also posted on the Regional Board website at <http://www.waterboards.ca.gov/sandiego>.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Please contact me if you have any questions at (858) 467-2989 or via e-mail at DBarker@waterboards.ca.gov.

Sincerely,

David Barker
Supervising Engineer

California Environmental Protection Agency

Mr. John Minan
Mr. John Robertus
Comments on Order of Proceedings

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November 3, 2005

Enclosure: Shipyard Sediment Cleanup Team Comments on the Order of Proceedings

cc: Shipyard Process Distribution List via email

California Environmental Protection Agency

**SHIPYARD SEDIMENT CLEANUP TEAM COMMENTS ON THE
ORDER OF PROCEEDINGS DATED OCTOBER 18, 2005**

Comments on Item 3 The Proposed Order of Proceedings

1. **Phase II.** It would be highly advantageous from the outset of the proceedings for all designated parties to have access to an indexed electronic record of all documents relied on by the Regional Board in considering the development and issuance of a cleanup and abatement order. The record would include evidence in the files of the Regional Board relevant to the site and as well as the record developed during the course of the proceedings. The first paragraph of the Phase II section in the Proposed Order of Proceedings should be revised to designate the Advisory Team with the task of organizing the preparation of the indexed electronic record for the Regional Board proceedings. This effort would include the Advisory Team taking the lead on facilitating an agreement among the parties with regard to sharing the costs, contracting with the company that will do the actual work, and providing review and evaluation of the contractor work product.

Revise the sentence starting with “In addition, the Cleanup Team, as part of the distribution of the Technical Report, shall provide a specific format for submitted comments...” to “In addition, the Cleanup Team, ~~as part of the distribution of the Technical Report,~~ shall, within two weeks after release of the Technical Report, provide a specific format for submitted comments...”

2. **Phase III.** Phase III should be revised to establish guidelines and specify deadlines for written submittals of non-evidentiary policy statements from interested persons. The Cleanup Team anticipates that written submittals from interested persons (e.g. natural resource agencies and other regulatory agencies) may require written responses from the Regional Board on complex issues in the Phase V Response to Comments Document.
3. **Phase IV.** The clause “excluding the cleanup team” should be added so that the first sentence begins with “The Designated Parties, excluding the Cleanup Team, shall then have 30 days...” so that it is clear that the Cleanup Team’s role is to provide one response to comments document and that work begins under Phase V following submission of all testimony, comments, written submittals, and other evidence. The revision would also clarify that the cleanup team is not excluded from providing rebuttal evidence under Phase V.

Phase IV should also be revised to establish guidelines for written submittals of non-evidentiary policy statements from interested persons.

4. **Phase V.** Replace the sentence “The Cleanup Team should not submit any new evidence in Phase V.” with “The Cleanup Team may submit rebuttal evidence and related comments.”

Phase V should also be revised to provide for requests by the Cleanup Team for additional time beyond the stated 60-day time frame to prepare the response to comments document, revisions to the Technical Report and CAO, and to summarize continuing areas of disagreement. It is likely that there will be a considerable number of voluminous written submittals on a variety of complex technical and legal issues given the scope of the sediment cleanup issue, the high degree of public interest in the proceedings, the lack of consensus among the various parties and interested persons, and the potential for future appeals and litigation. In addition, the need for the Cleanup Team to maintain steady progress on other priority projects is another variable that can affect the time needed by the Cleanup Team to complete the work required under phase V. Accordingly the procedures should provide for requests by the Cleanup Team for additional time beyond 60 days to consider and develop written responses, to all of the evidence and comments submitted under Phases III and IV, develop proposed revisions to the Technical Report and/or Tentative CAO, and summarize continuing areas of disagreement.

5. **Phase VI.** Phase VI wording should be changed to “There will be a minimum 45-day public notice period prior to the hearing before the Regional Board.”
6. **Phase VII.** The term “public record” is not defined (Phase II uses the term “administrative record”). To clarify, the last sentence should be replaced with following two sentences: “The hearing officer will close the hearing when testimony by Parties and other interested persons is concluded. The Regional Board will not allow the introduction of new or additional evidence following the close of the hearing.”

Phase VII does not provide the Cleanup Team with an opportunity to provide a written response to written submittals from interested persons prior to the hearing. This needs to be addressed.

7. **Phase VIII.** Add the sentence “The Regional Board and Advisory Team may discuss the proposed changes with the Cleanup Team.” Revise the last two sentences of sentence of Paragraph 1 to state “Brief public comments will be allowed on the proposed changes, if any, to the revised Tentative CAO. No new or additional evidence will be admitted at this meeting.

The three paragraphs of Phase VIII dealing with number of copies to be submitted, deadline for identifying additional responsible parties, and 15-day deadline for written comments seem out of place. They should be located elsewhere in the document.

8. **Appendix A.** Revise Appendix A accordingly to conform to any changes.