



# California Regional Water Quality Control Board San Diego Region



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**TO:** John Robertus, Executive Officer  
Shipyard Sediment Site Advisory Team

**FROM:** David Barker, Supervising Water Resources Control Engineer  
Shipyard Sediment Site Cleanup Team  
**SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD**

**DATE:** July 19, 2007

**SUBJECT: SHIPYARD SEDIMENT SITE 2005 TENTATIVE CLEANUP AND  
ABATEMENT ORDER No. R9-2005-0126**

This is a status report on the preparation of the draft Shipyard Sediment Site cleanup and abatement order (CAO), the supporting technical report, and the indexed electronic record of documents and other information from the San Diego Water Board's file records pertaining to the draft CAO and the supporting technical report. This report reviews background information, ongoing work activities to prepare an indexed administrative record in electronic format, and projected dates for the formal hearing process to help interested persons place into context the overall status of the CAO proceedings.

### **Pre-hearing Conferences**

On April 29, 2005, the San Diego Water Board staff proposed that the Board issue an order requiring multiple parties to undertake cleanup and abatement for shipyard sediments containing toxic pollutants (Tentative CAO No. R9-2005-0126). The San Diego Water Board also gave notice of a workshop scheduled for June 1, 2005 and subsequent hearing scheduled for June 29, 2005.

The San Diego Water Board agreed to undertake a formal hearing process requested by a number of parties to consider the development and issuance of a CAO for the Shipyard Sediment Site. In light of this decision Board member participation in the workshop was canceled, the June 29, 2005 public hearing was postponed, and the San Diego Water Board appointed the Board chairman, Mr. John Minan, to preside over pre-hearing conferences to address procedural matters. To assure the proceedings in this matter are fair and impartial, the San Diego Water Board staff participating in the CAO proceedings were split into two groups: the Advisory Team and the Cleanup

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Team. Board Chairman Minan presided over pre-hearing conferences on September 26, 2005 and December 6, 2006. Mr. Minan vacated his San Diego Water Board member position at the conclusion of his term and on June 13, 2007 the Board named Board member David King as the new Hearing Officer. Mr. King will preside at future pre-hearing conferences.

Past decisions of the Hearing Officer with regard to order of proceedings, scheduling, and other matters are posted on the San Diego Water Board's website at <http://www.waterboards.ca.gov/sandiego/programs/shipyards/Shipyard%20Sediment%20Cleanup/intro%20r9-2005-0126.html>. The decision most relevant to current status is in Directive No. 3 of the First Amended Order of Proceedings, issued January 30, 2006. This directive provides that prior to the hearing, the Cleanup Team will prepare and circulate a technical report supporting the Tentative CAO<sup>1</sup> together with an indexed record of all relevant technical information supporting the Tentative CAO<sup>2</sup>. The directive also requests that the Cleanup Team investigate the feasibility of providing the indexed record in electronic format.

The Cleanup Team determined that preparation of an indexed electronic record was feasible and has been pursuing that course since January 30, 2006. The initial draft of the technical report prescribed by the Hearing Officer was completed in March 2006. However, the report will not be completed until the supporting documentation upon which the report is based has been indexed to the technical report in a manner that will allow the San Diego Water Board and all parties to track the evidentiary and analytical basis for conclusions presented in the report.

### **Preparation of Administrative Record in Electronic Format**

For the first 6 months of 2006 the San Diego Water Board worked on procuring a contractor to produce the record in electronic format. This work involved determining the available technology and the work that could/would be done by a prospective

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<sup>1</sup> The Tentative CAO that will be circulated with the technical report will include modifications from the original Tentative CAO circulated in April 2005, based on conclusions developed in the technical report from the documentation in the administrative record.

<sup>2</sup> The original intent of San Diego Water Board staff was to develop the technical report supporting the final CAO during the hearing process initiated by the circulation of the Tentative CAO, with the final technical report, based on all evidence and documentation presented during that process, to be made available prior to consideration of the final proposed CAO by the San Diego Water Board at a subsequent meeting. Under this process San Diego Water Board staff would assemble and index the administrative record supporting the final CAO in the event of a subsequent challenge rather than prior to the preparation of the technical report supporting the staff recommendation.

contractor, identifying potential contractors and associated costs, locating funding, and developing a contract under state procurement rules.

The San Diego Water Board identified approximately \$60,000 in the budgets for Fiscal Years 2005/06 and 2006/07 that could be redirected to a contractor to do part of the work to scan the documents in the relevant files of the San Diego Water Board and produce an indexed electronic version of the record. The San Diego Water Board requested \$62,000 from the State Water Resources Control Board's Cleanup and Abatement Account to provide the balance of funding needed for this purpose. The State Water Board approved the request and the additional \$62,000 became available on June 26, 2006.

The San Diego Water Board hired D-M Information Systems to produce the record in electronic format on May 24, 2006. D-M Information Systems is a CMAS<sup>3</sup> contractor that provides computerized litigation support services for the Office of the Attorney General and has prepared administrative records in electronic format for the San Diego Water Board in other complex proceedings including the BIA challenge to NPDES requirements for MS4 discharges in San Diego County,

Concurrent with the digitization of the record for the CAO proceedings, the San Diego Water Board began work on a new system for digitizing the Board's entire filing system. The Paperless Office System is a new integrated document management solution that will house an electronic library of the San Diego Water Board's file records. The San Diego Water Board did not wish to spend \$122,000 producing an index of the Shipyard Sediment Site CAO record in electronic format and not have the resulting product compatible with the Paperless Office System. From July through September 2006 the Cleanup Team worked on development of common indexing and classification protocols to ensure that the digitized CAO record will both meet the needs of the CAO proceedings and be fully compatible with the Paperless Office System for future document retrievals.

The coincidence of these parallel but distinct initiatives to facilitate records management entailed unavoidable delay in the preparation of the electronic record for the Shipyard Sediment Cleanup proceedings. In late September 2006 the Cleanup Team's contractor, D-M Information Systems, began initial test document scanning and

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<sup>3</sup> A California Multiple Award Schedules (CMAS) contractor is a vendor or company who has participated in a pre-screened, competitive state process that streamlines procurement procedures by establishing approved vendor lists. The contractor offers products, services, and prices from an existing competitively assessed, cost compared multiple award contract. To these products, services and prices, California adds contract terms and conditions, procurement codes, policies, and guidelines. State law (Public Contract Code) provides that state agencies may obtain services from CMAS approved contractors without competitive bidding.

indexing to ensure compatibility. This testing was successfully completed in mid – October and the actual scanning of the CAO record documents began.

The administrative record upon which the San Diego Water Board will rely in making the determinations regarding the liability, or lack thereof, for the parties identified in the Tentative CAO as being responsible for discharging pollutants to the Shipyard Sediment Site is extensive and voluminous. These parties are all major corporate or governmental entities that have been actively engaged in industrial activities on or near San Diego Bay for decades, with commensurately extensive documentation in the files of the San Diego Water Board.

All of the files regarding investigation of discharges associated with each of their industrial activities on or near San Diego Bay as well as files related to existing cleanup or abatement activities by each of the entities, including documentation submitted to the San Diego Water Board in response to the draft Tentative CAO that has been circulated, must be incorporated into the record and indexed. This indexed material will be used by the Cleanup Team in preparing the technical analysis that will provide the necessary evidentiary basis for its recommendations, and by the San Diego Water Board to make the ultimate determinations, regarding the responsibility, or the lack thereof, for each of the entities identified in the Tentative CAO. The record pertaining to the various parties consist of approximately 618 file volumes occupying approximately 130 lineal feet of shelf space, with material comprised of paper documents, microfiche, video tapes, and computer discs.

Since mid-October 2006, San Diego Water Board staff have prepared and submitted documents and other materials comprising the CAO record on a regular basis to the contractor for scanning and indexing. The preparation process is labor intensive on the part of San Diego Water Board staff, involving a substantial amount of set-up work to dismantle paper file volumes, batch the documents by numerous classification types, prepare an index form for each individual document type, and package the documents for shipment to the contractor. The contractor in turn is scanning the documents and populating the document index fields.

Attachment 1 provides summary information on the volume of the record that may ultimately have to be digitized (*i.e.*, scanned) as well as the as the scanning progress to date. The San Diego Water Board's contractor has scanned and indexed approximately 187 paper file volumes which translate to 65,881 pages of material. This represents approximately 30 % of the material that may ultimately have to be scanned to create a complete administrative record for the Shipyard Sediment Cleanup proceedings. We estimate that the scanning and index effort will be completed by fall 2007. Upon completion of the indexed electronic CAO record, pursuant to the directives of the Hearing Officer, the Cleanup Team will release an updated version of

the tentative CAO, the technical report, and the indexed electronic record simultaneously to each currently named designated party to the CAO proceedings.

**Projected Hearing Time Line**

The process for conduct of the CAO hearing for the Shipyard Sediment Site has been set by the Hearing Officer in past decisions.<sup>4</sup> This process establishes that a technical report supported by an indexed record that provides the evidentiary basis for the report will be distributed for public review concurrently with any proposed CAO. This distribution will kick off a 255-day process to bring the matter before the San Diego Water Board for a decision as described in Table 1 below.

**Table 1. Shipyard Sediment Site, Tentative CAO R9-2005-0126 Projected Hearing Time Line**

Interval (days)	Projected Start Date	Event	Driver
0	11/1/07	Release of revised Tentative CAO, Technical Report and digitized, indexed record	Time needed to complete indexing and digitizing CAO record
90	1/30/08	90-day Public Comment period, discovery & submission of evidence	Order of Hearing Officer <sup>4</sup>
30	2/29/08	30-day Public Comment on comments submitted during 90-day Public Comment period, additional discovery & submittal of rebuttal evidence	Order of Hearing Officer <sup>4</sup>
60	4/29/08	Cleanup Team revises Technical Report and CAO, as needed, in response to comments	Order of Hearing Officer <sup>4</sup>
45	6/13/08	Preparation for and noticing of CAO Hearing	Order of Hearing Officer <sup>4</sup>
2	6/15/08	Hearing on CAO	Order of Hearing Officer <sup>4</sup>
30	7/15/08	San Diego Water Board deliberation on evidence produced in Hearing process and vote on CAO	Order of Hearing Officer <sup>4</sup>

An alternative, bifurcated, process that could start earlier, but would not, necessarily, shorten the total time needed to work through the proceedings, is possible. That part of the record that has been scanned and indexed to date includes most of the documentation relating to the existence of wastes that cause or threaten to cause

<sup>4</sup> See First Amended Order of Proceedings dated January 30, 2006.

conditions of pollution or nuisance in San Diego Bay. The Cleanup Team could produce and circulate the components of the ultimate technical report that cover the jurisdictional basis and necessity for a CAO in support of the proposed findings in the Tentative CAO that address those issues while D-M Information Services continues to scan and index the remaining files (those related to the identification of persons who may have caused or permitted the discharge or deposit of the wastes).

Under this scenario, the hearing to address the existence, nature, and extent of wastes at the Shipyards Sediment Site, and whether cleanup or abatement activities should be undertaken, would precede the hearing on who should be held accountable for taking cleanup or abatement measures. The San Diego Water Board would have to conduct two consecutive hearing processes before reaching the point of considering issuance of a final CAO. Parties tentatively identified as being responsible for discharging pollutants to the Shipyards Sediment Site would be compelled to participate in the first hearing process prior to the Board making final findings on who should be held accountable for cleanup and abatement activities in the second hearing process. Parties and interested persons would be entitled to review and provide written comments on technical information applicable to the issues relevant to each separate hearing, and to review and provide written comments on the portion of the preliminary tentative Cleanup and Abatement Order relevant to those issues. The Cleanup Team would need to prepare written responses to evidence and comments received at each hearing.

The Cleanup team is not recommending that you pursue the alternative, bifurcated, process; however I did want to present it as an alternative for discussion purposes. All of the foregoing factors should be carefully considered in evaluating whether to proceed with the alternative, bifurcated, process.

DTB:dtb

cc: Shipyards Sediment Distribution List

**Attachment 1. Progress Report on Scanning and Indexing of Documents and Other Information Pertaining to Tentative CAO R9-2005-0126 and the Supporting Technical Report for the Shipyard Sediment Site.**

Record Series	PAPER MEDIA VOLUME PROJECTED			OTHER MEDIA VOLUME PROJECTED		PAPER MEDIA VOLUME SCANNED & INDEXED				OTHER MEDIA VOLUME SCANNED & INDEXED	
	File Volumes	Reference Reports	Linear Feet	Microfiche @ 55 Images per Microfiche	Discs & Video/Audio Tapes	File Volumes	Reference Reports	Pages	Linear Feet	Microfiche @ 55 Images per Microfiche	Discs & Video/Audio Tapes
US Navy	236		42.2	22	67						
City of San Diego	117		25.1	3							
Chevron	17		0.7	0							
SDGE	21		0.0	205							
Texaco	0		0.1	0							
ARCO	3		0.2	0							
MARCO Campbell Industries	4		0.0	7							
BAE/Southwest Marine	69		13.2	9	53	67		19,993	8.0		51
NASSCO	104		18.8	1	124	85		25,104	10.0		63
Shipyard Sediment Site	35		6.0	0	32	35		20,785	8.3		32
Chollas Creek TMDL	11		2.5	0							
Shipyards Miscellaneous	1		0.3	0							
Technical Report References	0	164	18.0	0							
<b>TOTALS</b>	<b>618</b>	<b>164</b>	<b>127</b>	<b>247</b>	<b>256</b>	<b>187</b>		<b>65,881</b>	<b>26.4</b>		<b>146</b>