

MINUTE ITEM

This Calendar Item No. 47 was approved as
Minute Item No. 47 by the California State Lands
Commission by a vote of 2 to 0 at its
10-30-07 meeting.

**Minute Item
47**

10/30/07

SAN DIEGO BAY SHIPYARD SEDIMENT SITE

Calendar Item 47: The Commission was asked to send a letter to the San Diego Unified Port District in regards to the Port of San Diego's involvement in the San Diego Regional Water Quality Control Board cleanup and abatement order for the shipyard sediment site. The item was approved with an amendment to the letter by a vote of 2-0 (Chiang and Bugsch).

002800

MINUTE PAGE

CALENDAR ITEM

47

A 78

10/30/07

S 39

CONSIDERATION OF THE PORT OF SAN DIEGO'S INVOLVEMENT IN THE SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD'S PROPOSED CLEAN UP AND ABATEMENT ORDER FOR THE SHIPYARD SEDIMENT SITE

BACKGROUND

Sediment pollution levels are elevated above background levels along the eastern shore of central San Diego Bay in an area extending approximately from the Sampson Street Extension south to Chollas Creek and from the National Steel and Shipbuilding Company Shipyard facility (NASSCO) and the BAE Systems San Diego Ship Repair Facility (BAE Systems) shoreline out to the Bay's main shipping channel (the "Shipyard Sediment Site"). The San Diego Regional Water Quality Control Board (Regional Board) is investigating the extent and sources of the contamination and has issued a Tentative Cleanup and Abatement Order (TCAO). The State Lands Commission (Commission) staff has provided this background and investigated and reviewed the Regional Board's proceedings to assist the Commission in determining what actions it may wish to take to address the issue.

PREVIOUS COMMISSION ACTION

On December 14, 2006, the Commission adopted a resolution regarding Sediment Quality in San Diego Bay. (Copy attached as Exhibit A.) The Resolution documents the elevated levels of pollutants in the Bay, the sources of such pollutants and the actions taken by the Regional Board. The Resolution urged "the Regional Board to move as expeditiously as possible in issuing and implementing a Cleanup and Abatement Order that effectively remediates the contamination and protects the public resources."

REGIONAL BOARD'S PROCEEDINGS

The Regional Board has documented violations at the identified shipyards over many years. In April 2005, Regional Board staff recommended that the Regional Board issue an order requiring multiple parties to undertake cleanup and abatement of the Shipyards

CALENDAR ITEM NO. 47 (CONT'D)

(TCAO No. R9-2005-0126). Pursuant to a request from interested parties, the Regional Board is undertaking a formal hearing process.

PARTIES

Responsible Parties

The Regional Board has named NASSCO, BAE Systems (formerly Southwest Marine Inc.), the City of San Diego, Marine Construction and Design Company and Campbell Industries, Inc., San Diego Gas and Electric, a subsidiary of Sempra Energy Company, and the United States Navy in the TCAO as dischargers, responsible for the cleanup of the waste and the abatement of the effects of waste discharges at the Site. The City and Navy own and operate storm sewer systems through which they discharge pollutants into the Bay. The Navy is also responsible based on past operations at the Naval Station San Diego.

Port of San Diego

The Regional Board has determined not to name the Port of San Diego (Port), a non-operating landowner, as a discharger in the TCAO, at this time. The Port owns the land occupied by the NASSCO Shipyard facility, the BAE Systems San Diego Ship Repair Facility, and the cooling water tunnels for the San Diego Gas and Electric Company's Silver Gate Power Plant.

The Regional Board considers the Port secondarily responsible, that is, responsible to comply with the CAO if the primarily responsible lessees fail to comply with the CAO. The Regional Board found the Port could be held primarily responsible because it owns the land, had knowledge of the activity causing the discharge and had the ability to control the activity. However, because the Port is a public entity, there is no evidence the Port initiated or contributed to the discharge of waste, and the tenants appear to have sufficient resources to clean up the site, the Regional Board determined not to name the Port as primarily responsible. This is consistent with past State Water Board practice with respect to non-operating public agency landowners.

The Regional Board further determined, "The Port of San Diego is a responsible compliance of its tenants with the cleanup and abatement orders issued by the Regional Board." The Board expressly reserved the right to name the Port as a Discharger if it "*becomes clear that the Port's tenants have failed to comply with the order.*" (Emphasis added).

CALENDAR ITEM NO. 47 (CONT'D)

Designated Parties

The Regional Board has granted Designated Party Status to San Diego Baykeeper, Environmental Health Coalition and San Diego Port Tenant Association. The designation allows these entities to fully participate in the Regional Board's proceedings, including presenting evidentiary testimony.

EVIDENTIARY RECORD

Much of the Regional Board's time has been spent developing and preparing the evidentiary record to support a CAO. The Regional Board contracted with D-M Information Systems in May 2006 to produce an electronic record. The record pertaining to the various parties consists of approximately 618 file volumes occupying approximately 130 lineal feet of shelf space. As of July 2007, approximately 30% of the material had been scanned and indexed. Preparation of the record has been slowed by efforts to integrate it with a new digitized filing system for all of the Regional Board's records. The Regional Board anticipates the record will cost \$122,000.

PROJECTED HEARING TIMELINE

The Regional Board issued a draft Technical Report for the TCAO in March 2006. The Technical Report cannot be completed until the supporting documentation on which it is based has been indexed in a manner that will allow the Regional Board and all parties to track the evidentiary and analytical bases for the Technical Report's conclusions. Release of a revised TCAO, Technical Report and the digitized indexed record will start a 255-day process to bring the matter before the Regional Board:

CALENDAR ITEM NO. 47 (CONT'D)

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

Regional Board staff estimates the record will be complete by November 2007 as indicated in the above timeline. However, staff has set a firm date for completion of the record as December 17, 2007 to allow for unforeseen circumstances. If the date for completion of the record slips to December 17, 2007, then the Board's deliberations on the TCAO should occur on or about September 3, 2008.

TCAO DIRECTIVES

The TCAO concludes that aquatic life, aquatic-dependent wildlife and human health beneficial uses are all impaired. The TCAO establishes cleanup levels that Regional Board staff concludes are consistent with relevant water quality control plans and policies and will provide maximum public benefits to the people of the State. The draft Technical Report for the TCAO rejects natural recovery and subaqueous capping in favor of dredging. The Report concludes dredging, although difficult to implement because the Shipyard Sediment Site is currently a working shipyard, is considered to be technologically feasible.

The TCAO requires that:

- (1) The Discharger(s) shall take all corrective actions necessary to cleanup contaminated marine bay sediment at the Site to attain designated sediment quality levels;

CALENDAR ITEM NO. 47 (CONT'D)

- (2) The Discharger(s) shall submit a Remedial Action Plan (RAP) to the Regional Board within 90 of issuance of the CAO;
- (3) The Discharger(s) may begin implementation of the RAP within (60) days of submission to the Regional Board; and
- (4) The Discharger(s) shall implement remedial action measures that ensure that marine sediment pollutants attain their respective cleanup levels at all monitoring points and throughout the Site.

The implementation schedule, monitoring, evaluating and reporting are to be determined by amendment to the final CAO. Failure to comply with the CAO may result in significant fines and penalties.

RECOMMENDATION

While the Legislature has granted management authority over most of the contaminated lands to the Port of San Diego, the Commission retains oversight responsibility over the land and the Port. The Commission may wish to consider steps to assure that the Port of San Diego as trustee is diligently pursuing the expeditious handling of the Regional Water Board action to meet its schedule and to provide all assistance necessary to keep the Board on schedule. The Port should take all necessary steps to ensure its lessees compliance with the CAO when issued.

Staff recommends that the Commission send a letter to the Port urging it to provide necessary staff resources to support the Board's execution of any final CAO. The letter should also direct the Port to take all reasonable and necessary actions to ensure that its lessees comply with any final CAO.

**CALIFORNIA STATE
LANDS COMMISSION****EXECUTIVE OFFICE**
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202JOHN GARAMENDI, *Lieutenant Governor*
JOHN CHIANG, *Controller*
MICHAEL C. GENEST, *Director of Finance*PAUL D. THAYER, *Executive Officer*
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
Voice Phone 1-800-735-2922**“EXHIBIT A”****RESOLUTION BY THE CALIFORNIA STATE LANDS COMMISSION
REGARDING SEDIMENT QUALITY IN SAN DIEGO BAY**

WHEREAS, elevated levels of pollutants above background conditions exist in the San Diego Bay (Bay) bottom marine sediment generally between the Sampson Street extension and the mouth of Chollas Creek in the City of San Diego (Shipyard Sediment Site), and

WHEREAS, the concentrations of these pollutants causes or threatens to cause conditions of pollution, contamination, and nuisance in the Bay that impairs the aquatic life, aquatic dependent wildlife, and human health, categories of beneficial uses at this site, and

WHEREAS, shipyard, municipal, and industrial dischargers have caused or permitted the discharge of pollutants to the Shipyard Sediment Site resulting in the accumulation of pollutants in the marine sediment, and

WHEREAS, more than 50 years of discharges into the Bay have left nationally recognized toxic hot spots in the Bay, and

WHEREAS, a 1998 National Oceanographic and Atmospheric Administration, *State of the Coastal Environment* report found pervasive toxicity and toxic hot spots in the Bay, and

WHEREAS, many chemicals in the contaminated sediments are of concern to human health, and

WHEREAS, studies indicate that there are significant health risks to people who consume Bay fish at higher rates of consumption than the average recreational fisher, and

WHEREAS, the *Survey of Fishers on Piers in San Diego Bay* undertaken by Environmental Health Coalition conducted in 2004 reveals that a significant population of fishers frequently fish near contaminated areas of the Bay, and

WHEREAS, this potential public health threat led the Port of San Diego to place fish advisory warnings at piers throughout the Bay, and

000252

CALENDAR PAGE

002806

MINUTE PAGE

WHEREAS, in April 2005 the San Diego Regional Water Quality Board (Regional Board) released a Tentative Cleanup and Abatement Order (TCAO) for eight named parties, including both major shipyards, to remove 885,000 cubic yards of tainted sediment at an estimated cost of \$96 million, and

WHEREAS, delays in issuing a TCAO are detrimental to the quality of water and sediments in the Bay and its users; therefore, be it

RESOLVED, by the California State Lands Commission that it supports a cleanup plan for San Diego Bay sediments that fully protects beneficial uses and human health, and be it also

RESOLVED, that the California State Lands Commission urges the Regional Board to move as expeditiously as possible in issuing and implementing a Cleanup and Abatement Order that effectively remediates the contamination and protects the public resources.

Adopted by the State Lands Commission on December 14, 2006.

DEFERRED

Minute Item 48

10/30/07
PRC 8727
W 26202
J. Brown

POSEIDON RESOURCES (CHANNELSIDE) LLC (APPLICANT); CABRILLO POWER I LLC (LESSEE)

Calendar Item 48: The Commissioners listened to staff presentations and took testimony from the public pertaining to the application by Poseidon Resources Channelside LLC and Cabrillo Power 1 for use of sovereign lands to construct a desalination facility. The Commission decided to postpone the vote until the next meeting.

002808

MINUTE PAGE