water quality criteria or not and facilities planning is not factored into that scope of the complainant discharge, this topic is still worthy of discussing. It is a topic that is of great interest in our community, partly due to drought conditions, which opens the discussion of wastewater beyond just our realm of water quality and into the arena of water supply as well.

The feasibility of secondary treatment at the plant has, in fact, been technically and economically explored and is estimated to cost approximately $1.5 billion, but water resource advocates oppose the notion of wasting millions of gallons of water a day when those financial resources could be applied to water recycling upgrades that would allow for reuse and at the same time reduce flows to the plant.

The role of local environmental groups in our community is flexible such that they may apply pressure to the Discharger and other municipalities in this regard.

Two of the environmental groups that have actively engaged in planning discussions with the Discharger have entered into a cooperative agreement, which requires the Discharger to spend $2 million on comprehensively studying recycled water opportunities completely outside the requirements of this draft permit.

This agreement is based on a mutual goal shared by the Discharger and those environmental organizations of

exploring opportunities to increase recycled water use and decrease flows through the Point Loma Ocean Outfall. The cooperative agreement was finalized earlier this year and is available to the public.

The topic of renewing this waiver in the future is tied closely with the results of these studies, but there is no limitation of permit terms in the 301(h) requirements, no sunset provision.

However, the goal of these studies is to identify significant recycled water opportunities, which would, of course, influence any future NPDES permit renewal requests.

Until the studies are completed, however, it is impossible to identify how such recycled water use may be implemented, when it will be implemented, or how it will affect treatment needs at the plant. Regardless of the results of the studies, the current discharge does comply with all relevant State and federal water quality standards and criteria.

At the January Board meeting, Mr. Rayfield also commented on the reduction of total suspended solids from 15,000 to 13,598 metric tons per year in the final year of the five-year permit term.

The requirement to reduce mass loading is based on the Ocean Pollution Reduction Act or O.P.R.A., which amends the Clean Water Act at section 301(j)5. O.P.R.A. requires a

reduction in the quantity of the suspended solids discharged into the marine environment from permit term to permit term. The percent reduction is not specified in O.P.R.A.

The mass emission limits in the draft permit come from U.S. EPA's recommendations on Page 32 of the Tentative Decision Document and are based on dischargers -- on the Discharger's projected annual average effluent flow rate and 80 percent minimum removal of total suspended solids.

Regional Board Staff intends to prepare an Executive Officer Report item that summarizes the City of San Diego's current recycled water use and will specifically quantify the degree of solids reduction through the Point Loma Ocean Outfall due to operations at the North City Water Reclamation Plant.

At the January Board meeting, Mr. King commented on toxic substances and pharmaceuticals that may bio accumulate in the food chain. Fish that are affected by concentrations of these substances in the water column and sediment outside State jurisdictional waters but that may later swim into State waters.

The Tentative Decision Document considered the Discharger's results from sediment monitoring -- sediment monitoring monitoring benthic species and bioaccumulation and fish tissue from all receiving water stations.

While the Outfall sediments are, indeed, outside of

State waters, the sediment monitoring demonstrates compliance with California Ocean Plan standards for sediment chemistry and protection of benthic species.

Laboratory analyses of fish liver and muscle tissue at all of the receiving water stations document that concentrations of toxic metals and toxic organic compounds are within health standards. They are also consistent with concentrations found elsewhere in the Southern California byte. The discharge is in compliance with California Ocean Plan acute and chronic toxicity requirements as well.

With respect to the topic of pharmaceuticals specifically, this is an issue that is of great concern in our community among many other communities.

At the present time, the California Ocean Plan does not have numerical water quality objectives established for these substances; however, the Discharger is partnering with research organizations such as the Southern California Coastal Water Research Project or SCCWRP, to assess the presence and impacts of pharmaceuticals in wastewater discharges in local receiving waters.

The Discharger is also evaluating control strategies through participation in the State's, "No drugs down the drain" campaign to prevent some of these substances from entering the wastewater collection system in the first place.

Page 14

I hope I have addressed these topics to your satisfaction. If you require more discussion, I will be happy to revisit these issues following my presentation.

At this point, I would like to summarize the role of each agency involved in this waiver and draft permit process.

The City of San Diego. The City of San Diego has an obligation to be in compliance with the Clean Water Act.

Although the Clean Water Act includes criteria that defines secondary treatment standards under very specific circumstances, it does not require these criteria and instead requires stringent alternative requirements as defined in Section 301(h) of the Clean Water Act, and additional requirements in Section 301(j)5 associated with water reclamation applies specifically to this Discharger.

The City of San Diego submitted a timely permit application for renewal.

Now, U.S. EPA. U.S. EPA's role is to review that application, take the receiving water monitoring raw data and independently analyze it and then note whether the discharge does or does not meet the applicable Clean Water Act standards.

This evaluation is documented in detail in the Tentative Decision Document, which concluded that the discharge complies with applicable receiving water quality

Page 15

standards, supports beneficial uses that protect human health and aquatic life, and is consistent with maintaining a balanced indigenous population of fish, shell fish, benthic species, and wild life outside the zone of initial dilution.

In other words, U.S. EPA's technical decision document supports that the discharge qualifies for a 301(h) waiver.

Now, the Regional Board's role. The Regional Board also reviews the permit application to determine if all applicable and State and federal requirements for renewal have been met. If so, an NPDES permit based on the 301(h) variance is drafted to also include State waste discharge requirements based on the California Ocean Plan and any other applicable State plans and policies.

This draft permit with errata is what you are considering for reissuance today. If you approve the reissuance, the two subsequent steps required are the permit consideration by the California Coastal Commission and U.S. EPA's publishing of the final decision document. The draft permit would not go into effect without Regional Board and California Coastal Commission approval.

This concludes my presentation on this item. I am now available to answer any questions you may have.

MR. WRIGHT: Thank you very much.

Page 16

Any questions at this time? Yes, Wayne.

MR. RAYFIELD: Thank you, Mr. President, and thank you, Melissa, for an excellent presentation. Two questions.

Could you tell us, please, who the two environmental groups are that are working on this cooperative agreement with the Discharger?

MS. VALDOVINOS: It's Surfrider and Coastkeeper.

MR. RAYFIELD: Wonderful. Congratulations on that. I think it's great to have that kind of cooperation working together.

And, also, I was interested in your comments pertaining to the work that SCCWRP is doing on the pharmaceutical discharge, which I think is a looming problem for us all, and I'm wondering -- or the question is, I guess for Mr. Robertus, can we do an update on that when there are some data available or some inclinations?

I think we ought to aggressively -- as a Board, aggressively follow this issue and what SCCWRP finds out and the like.

MR. ROBERTUS: I will follow up on that. The executive officers have had that as an agenda item on our monthly meeting twice within the last year-and-a-half.

The main issue right now is that nationwide and within the state, particularly the coastal waters, there needs to be more monitoring to assess where these chemicals

Page 17

are, in fact, found. They're referred to now as "pollutants of emerging concern" and, specifically, pharmaceutical and personal care products.

There are some locations where a lot of information is available now. It happens to be in the plumes of ocean discharges, such as Point Loma, but there is evidence that they're coming from other sources and -- and inland waters as well as ocean waters, so I will endeavor to put an Executive Officer's Report together and keep you appraised.

MR. RAYFIELD: Thank you.

MR. WRIGHT: Anything else? Okay. Let's -- thank you very much. We have two speaker slips, Jim Barrett, Director of Public Utilities from the City of San Diego, and Alan Langworthy, Deputy Director of Public Utilities, City of San Diego.

Both individuals have indicated that there's no need for them to speak unless there are questions. So if you have any questions of either individual, now is the time to ask those. Good.

Okay. At this time, I think it would be appropriate to hear from members of the Board. Any final comments on this before we have the recommendation from our E.O. and then take a vote on it? Mr. Thompson?

MR. THOMPSON: Just one real briefly. I am pleased to hear about the cooperative agreement. I think the

Page 18

Discharger is headed in the right direction. They're working with the right parties. I think it's important that that process be expedited as best as practicable.

I know that doing studies like that will involve cost and not sure how that's going to work out with the City, concerning the funding difficulties they're facing just like every city in the State of California, but I would hope that maybe Surfrider and Coastkeeper could help in that aspect as well.

Because I think the quicker we get to a situation where we can really identify what the right answer is to get out of this situation where we're issuing waivers periodically, in this case every five years, I think the better off we'll be.

And when you look long term, that's exactly where we need to go, and I'm very pleased to hear that they are working in that direction. Those are my comments.

MR. WRIGHT: Anybody else? Mr. Destashe?

MR. DESTACHE: I think it's important that we look to the City and their member agencies to look at water reuse and the capabilities of building plants that can or -- not secondary plants, but additional plants that can take the effluent and reuse the water.

In lieu of going to a secondary or tertiary treatment to reduce the flows in this -- in the effluent,

Page 19

because as -- as the need for water increases, the need to process that water and reuse it is going to help in the effluent quantities that we're going to get, and I think it's important that we look at that, and in the future I think we should really take a closer look at it.

MR. WRIGHT: I agree and not just in developing the plants but also the infrastructure that's required to deliver the water.

I, too, wanted to thank the environmental community and the City for working together on this. But to the City or to all, I think the handwriting is on the wall. So during the next five years, significant improvements need to be made to reduce mass loadings at the Point Loma Plant through, largely I would think, through water recycling.

As -- as you've heard, this Board is very keen on the agencies making headway in this region on the area of water recycling. I don't need to say that again, I guess, but I think it should be pretty clear by now. We harp on this just about every meeting.

So -- and I don't know if City wants to make any statement at this time or not, but we do appreciate your work on this as well.

It is a complex situation, in part because it's not just the City of San Diego. The City of San Diego is responsible for running the plant, but as -- as Grant just

Page 20

mentioned, there are a lot of member agencies involved. I'm not sure how many, about 15, I suppose, somewhere in that order, and those different agencies have different ideas about water recycling. They're kind of upstream, downstream differences of opinion and so on that need to be thrashed out.

There is an organization, what's it called -- the other member agencies, but I don't know that that organization really has much power to make decisions. Ultimately, it's the City of San Diego that carries the big stick.

So anything else? Yes, Wayne.

MR. RAYFIELD: Well, I just have one last thought, and it's on this partnering with the environmental community and the Discharger.

I hope both groups will, as they go through this process, see if there are any lessons learned if you will from working together that can be documented and might benefit others.

I really think it's a great model, and I'd like to ask both groups that, keep your eyes open, and think about what you're doing, what develops that -- that could be applied in other similar situations perhaps. Let's learn from these things.

MR. WRIGHT: With that, Mr. Robertus?

Page 21

MR. ROBERTUS: Before I make my recommendation, I'd like to acknowledge the work off Alan Langworthy. I don't think we'll see Alan again here at the Board in five years, because I know he's departing his long tenure with the City in the near future, but Alan has been at the forefront of the Staff coordination with us at the executive level and at the Staff level to deal with the issues.

He's also been engaged with SCCWRP dealing with the tasks that have been presented to the Southern California Coastal Water Resource Project over the last 40 years. Not that Alan's been with them for 40 years, but he has been an integral part of our water quality challenge solution set, and I can't give him credit for the coalition of the environmental groups, but I can certainly note his work with our Staff and this Board in the past years. So, thank you, Alan.

MR. WRIGHT: John, I would just echo those comments. Alan, you've been a great public servant. I hope you will continue. There's always volunteer work out at the Water Conservation Garden pulling weeds and trimming bushes.

MR. LANGWORTHY: Thanks for the opportunity.

MR. WRIGHT: I'm always recruiting.

MR. ROBERTUS: With that, it's with great pleasure that I recommend to the Board the adoption of the permit of the tentative order with the caveat that EPA must also adopt and

Page 22

approve this permit, which I anticipate will take place in about 30 days.
MR. WRIGHT: Mr. King, did you wish to make a motion?
MR. KING: Yeah. I'll make a motion to adopt the Resolution with errata.
MR. DESTACHE: I'll second.
MR. WRIGHT: Okay. We have a second from Mr. Destashe. Any further discussion?
All those in favor of the motion say aye?
(Board Collectively agreed)
MR. WRIGHT: The motion is approved unanimously. Thank you very much.
Okay. Continuing, Item 7. Again, I have a brief statement. We've only been at this for an hour, folks, I'd like to continue for at least another half hour.
MR. ROBERTUS: Mr. Chair, the Staff person isn't here.
MR. WRIGHT: We will take a brief -- very brief break.
(Pause in the proceedings)
MR. WRIGHT: The Board will come to order.
While we're waiting for Wayne to return, I have a brief statement to read into the record.
The public hearing on Item 7, consideration of an NPDES permit reissuance for BAE Systems San Diego Ship Repair, Discharge to San Diego Bay, Tentative Order Number R9-2009-0080 is now open.

Page 23

Will all persons wishing to speak on this matter please stand and affirm that they've taken the oath that's on the speaker slips and the oath -- if you would stand, please.
(Whereupon all prospective speakers were duly collectively sworn by the Board Chair)
MR. WRIGHT: Okay. Thank you. With that, we'll begin the presentation by Staff. And who speaks for Staff?
MR. ROBERTUS: Vicente Rodriguez will be speaking for Staff.
MR. WRIGHT: How much time, Mr. Rodriguez, do you need?
MR. RODRIGUEZ: 10 or 15 minutes.
MR. WRIGHT: 10 or 15 minutes, how much do you need?
MR. RODRIGUEZ: About 15.
MR. WRIGHT: 15. Well, that's stretching it. Keep it closer to 10 if you would.
MR. RODRIGUEZ: Good morning, Chairman Wright and members of the Board. My name is Vicente Rodriguez. I'm a Water Resource Control Engineer in the Core Regulatory Unit. At this time, I would like to enter the Regional Board files regarding this matter into the record.
In your agenda package is included an underlying strikeout revision of the tentative order that is a result of comments received. You can find it as Supporting Document Number 2, and in the supplemental package is an

Page 24

errata sheet with further revisions of the tentative order. You can find the errata sheet as Supporting Document Number 9.
The Regional Board has received a number of comments, and they are included in the agenda. Also included in the agenda is the Regional Board Staff response to comments. There's an additional supplemental errata sheet that is not included in the agenda package, that document is Supporting Document Number 10, and it has been provided to you this morning.
The supplemental errata sheet has two minor changes. The first change deletes the following language from Section 5A. Quote, "Have the reasonable potential to cause" end quote. The second change clarifies acute toxicity applies to non-storm water discharges by making some minor changes in Section 4A2 and Table 6.
Besides Supporting Document Number 10, there is no new information that was not in your initial agenda package. The tentative order before you is titled Tentative Order Number R9-2009-0080, NPDES Number CA019151, waste discharge requirements BAE Systems San Diego Ship Repair, Inc., discharge to the San Diego Bay.
If adopted, this tentative order would reissue waste discharge requirements or WDR's regulating the discharge of storm water and non-storm water waste to

Page 25

surface waters. This WDR shall serve as an NPDES permit.
This slide lists our projects of reissuing permits to seven similar shipyard facilities located around San Diego Bay with NPDES permits. Campbell Shipyard is included for reference, but they have closed since 1999. It is also a list of where we are in -- it is also a list of where we are in reissuing the permits.
The tentative order you will be considering for BAE Systems is one of these permits.
The first one considered by the Board was adopted last year for Continental Maritime of San Diego.
The next one, U.S. Naval Base Coronado, will be considered in the next agenda item, and the remaining four are tentatively planned for a later Regional Board meeting. These are NASSCO, U.S. Navy Graving Dock, U.S. Naval Base San Diego, U.S. Naval Base Point Loma.
In drafting the tentative orders for this list, the Regional Board staff consulted with the dischargers, State Board, and U.S. EPA, especially in evaluating the toxicity issue.
Since the adoption of the Continental Maritime Permit, the remaining dischargers all have submitted additional information for consideration of the time schedule for compliance with the permit. This has been incorporated into the permit as interim limitations.

Page 26

In this slide you will see a map of the facility in relation to the rest of the bay. The facility is a full service ship repair facility and occupies approximately 10 acres of land and 16 acres of water on the eastern waterfront of central San Diego Bay.

The San Diego Unified Port District is the lessor to BAE Systems. The facility consists of five piers ranging in length from 257 feet to 700 feet and two floating dry docks.

In this slide you will see the -- you will see the five piers at the facility. The piers, or landing places for ships, secure and support vessels that are undergoing repair operations as well as barges used to house vessel crews while ship's repairs are being conducted.

A concrete wharf is utilized to access the floating dry dock. Waste items staged and transported across piers may include spent abrasives, paint, petroleum products, sanitary waste, and general refuse and debris.

In this slide you will see the facility's two floating dry docks. The dry docks are used to conduct repair and maintenance activities which cannot normally be conducted while the vessel is in the water.

These activities generally include hull repair, abrasive blasting, hydroblasting, painting, the repair or full replacement of shafts, propellers, or rudders, and the

Page 27

repair or replacements of valves and fittings below the waterline.

Ship launching and recovery is accomplished by means of internal ballast (phonetic), which take in and discharge sea water used to raise and lower the dry docks.

Waste generated during ship repair include spent abrasives, paint, rust, petroleum products, marine growth, and general refuse and debris. Both dry docks are contained to prevent storm water and wash water from entering the receiving water.

Onshore facilities include a painting and abrasive blasting area located at the foot of Pier Number 3, and a paint booth located on the southeast section of the facility.

On the north end of the facility is an area used for steam cleaning, pressure washing of vehicles and equipment, which includes a sump where effluent are collected and drained to a three-stage clarifier and discharges to the Metropolitan Sanitary Sewer System.

Manufacturing storage areas and material staging after are also on-site to support ship repair operations.

Discharges from the facility to San Diego Bay include fire protection water, dry dock ballast tank water, bay water, and steam condensate from hoses to ships.

The supply water for the fire -- the supply water

Page 28

for the fire protection water, cooling water, and dry dock ballast water is pumped from the San Diego Bay.

Contact storm water is generally not discharged to the San Diego Bay but may be treated on-site and then discharged to the Metropolitan Sanitary Sewer for disposal. However, discharges of storm water may occur to the San Diego Bay when the holding capacity is exceeded or the storm water collection and treatment system is not operating properly.

The premises of the facility, including piers and dry docks is bermed to prevent the discharge of contact storm water. Storm water is collected at 6 storm water diversion systems, 21 holding tanks, and 4 treatments systems.

The tentative order contains a significant change from the previous order. This change is regarding the acute toxicity effluent limitation. Before I explain this change, I would like to explain three terms, toxicity, chronic toxicity, and acute toxicity.

Toxicity is a degree to which a substance is able to damage an exposed organism. Chronic toxicity is a property of a substance that has toxic effects on an organism when the organism is exposed to the substance continuously or repeatedly at low concentrations. An example of this would be significantly reduced growth or

Page 29

reproduction.

Acute toxicity is a property of a substance that has toxic effects on an organism when the organism is exposed to a substance in a short space of time at high concentrations. An example of this would be immediate death.

The tentative permit has both chronic and acute toxicity limitations. The chronic toxicity effluent limitation for the tentative order is 1 TUc. This is an existing limitation carried over from the previous two permits. EPA also recommends 1 TUc for toxicity at the end of pipe if no dilution is available. This is not a new change.

The acute toxicity effluent limitation for this tentative order is a discharge shall achieve a rating of "pass" for acute toxicity with compliance to turbine (phonetic) by observed mortality compared between the effluent discharge and the laboratory control, and then a statistical test is used to evaluate whether the mean response of the two samples is the same.

If it is, then it passes, and the Discharger is in compliance. If not, it fails, and the Discharger is out of compliance.

In the previous order, the limitation is ambiguous. This new acute toxicity effluent limitation provides a clear

Page 30

definitive test and can be more easily applied and enforced. The new acute toxicity effluent limitation is at least as protective as the Basin Estuary's Policy toxicity requirements because the limitation also requires control, have a survival rate of at least 90 percent, and this limitation applies 100 percent of the time.

The limitation complies with the narrative objective and will be in compliance that waters shall be maintained free of toxic substances. The methods used are applicable to storm water discharges, and they are consistent with U.S. EPA standard protocols.

The adoption of the underlying Tentative Order Number R9-2009-0080 with errata and supplemental errata is recommended. This concludes my presentation.

Are there any questions?

MR. WRIGHT: Mr. Rodriguez, thank you for your presentation. Are there any questions at this time?

Okay. Let's move on. I have a speaker slip from Mr. Sean Halvax from BAE Systems, and I assume you have a brief presentation.

MR. HALVAX: I have some brief comments, Mr. Chairman.

MR. WRIGHT: How much time?

MR. HALVAX: Five, eight minutes, most.

MR. WRIGHT: All right. Five minutes.

MR. HALVAX: We do have a couple of handouts that go to

Page 31

a specific issue that I'd like to address in addition to my general comments if that's okay with the chairman.

Again, my name is Sean Halvax, and I'm with BAE Systems San Diego Ship Repair. I would like to thank Staff and specifically Vicente for working with us. We've been working for some time on the renewal of this permit along with U.S. EPA as well and have looked through the permit with a pretty fine-toothed comb and, again, Vicente was diligent in his response, and he was very collaborative with his -- working with the shipyard and the renewal of the permit.

Since the -- since the adoption of this permit, the prior permit, BAE Systems has eliminated several discharges including cooling water, some water weight test bags. We've improved our B and P's. We've continued to implement those and conduct training.

We've also expanded our storm water diversion system because the existing toxicity -- acute toxicity limitation, which Vicente referred to, we're incapable of consistently meeting that limitation, so we've expanded that system and additional expansion may be necessary even under this new permit.

The concern, of course, is those episodic events that can overwhelm us or if there's power outages and that sort of thing, those are the most difficult things we have

Page 32

to deal with with prohibiting the discharge of storm water from the facility.

Although I provided a pink speaker slip, my real purpose of my discussion today has to go with a specific technical issue on the -- the discharge of steam condensate drips, et cetera, from hoses that are connected to the ships when they're tied up.

That -- steam condensate is an existing discharge. The handout I gave you really is used to identify that it's an existing discharge that, you know, when we came to the site, there were installed boilers, 1945 vintage, actually, and those were operating at the site when we came to the site in 1979.

The Regional Board's review of the prior tenant recognized the steam -- the condensate and boiler blow down discharges from the facility, so we would support that the steam discharge or thermal discharge, if you will, from the site is an existing discharge as identified in the thermal plan.

And so we would ask that that -- that discharge be considered as an existing discharge. In doing so, the applicable standard then becomes a thermal plan for existing discharges.

The other -- the other comment or question had to do with anti-backsliding, because even though -- because

Page 33

there was a -- a limitation for a 20 degree delta from receiving water in a prior permit. We believe that this is appropriately identified as an exception to the anti-backsliding provision.

Specifically, it's a minor technical -- technical issue, technical deviation. And, for the record, that would be 40 CFR 122.44LiB2, but there are exceptions to the backsliding provisions in -- if that's an ongoing concern for Staff regarding that thermal discharge.

That's my comments today. Again, I want to thank Staff, and we'll have the opportunity to respond to any comments that may -- may come up. Thank you very much.

MR. WRIGHT: Thank you for your brevity.

Let's move to speakers Laura Hunter followed by Kalla Hirschbein, followed by Mekaela Gladden, and Gabriel Solmer. I don't know if that's the order that you prefer but --

MS. HUNTER: That would be great.

MR. WRIGHT: Okay.

MS. HUNTER: Thank you and good morning. My name is Laura Hunter, and I'm with the Environmental Health Coalition.

We have not been in front of you in quite a while, but we have a very, very long history with these shipyard and Navy discharge permits. So we do support the permit, as

Page 34

some speakers following me may have some more technical issues that they want to bring up, but I just want to make one -- couple of comments from a historical perspective and why it's important -- why consistency is important here.

We have a variety of dischargers, Continental Maritime already has their permit. The commercial shipyards and military facilities both have very comparable kinds of activities, and it is very important from a fairness perspective that they all be regulated equally, and also from a bay protection and -- standard, that if everybody's discharging into one water body, it's very important that they all have to play by the same rules.

I think that's not a radical idea. Fair, consistent regulation makes sense, and so we really do support that, you know, this permit follow in the tracks of the Continental permit that was before it, and that that's very, very important that, you know, each Discharger not, you know, that you don't have some weaker permits and some stronger permits especially when you've got comparable kinds of activities.

So we think that that's very, very important and, you know, basically we support the permits. I don't think that anything that Sean raised gives us any significant heartburn, I'll leave that to the speakers following me.

And I think it's a very good improvement to clarify

Page 35

the acute toxicity standard, because after the last round of permits, we had numerous meetings on that that people really didn't know what it meant, and what it meant to pass, fail, that kind of stuff, so I think that's a really big improvement. So thank you very much.

MR. WRIGHT: Thank you.

Ms. Hirschbein, Kalla Hirschbein.

MS. HIRSHBEIN: Good morning. My name is Kalla.

MR. WRIGHT: Oh, I forgot to mention to the speakers that if you do have business cards, please give those to the recorder.

MS. HIRSHBEIN: I just would like to also express support for the proposed tentative order prepared by Staff and supported by the EPA.

We're not requesting anything above and beyond the other permit holders other than that they be held to the same standards, so I'm in agreement with Laura. That's pretty much it. I'll reserve the rest of my comments for the following item.

MR. WRIGHT: Appreciate your brevity.

Ms. Gladden, Mekaela Gladden.

MS. GLADDEN: Good morning. Mekaela Gladden, I'm from Briggs Law Corporation. While both this permit and the next permit that you're going to hear require compliance with CTR, neither permit explicitly states that the samples

Page 36

should be taken at the point of discharge.

The TCR requires compliance at the point of discharge, and that's from the CTR, the federal register, also the State court in Diverse Environmental Conservation Organization versus the State Water Resources Control Board as well as, I believe it was last February, Federal District Court in two Santa Monica Baykeeper cases also stated the same thing.

Unfortunately, the Regional Board's permit writer, Vicente Rodriguez, recently submitted a declaration to the federal district judge under penalty of perjury that the CTR does not apply at the point of discharge.

He said, "The Regional Board does not consider the TCR to require compliance at the point of discharge," that was the quote.

San Diego Coastkeeper could not disagree more with Mr. Rodriguez' characterization. If the person who wrote the permit says that compliance at the point of discharge is not the standard, then the polluter, the person receiving the permit, will come back later and argue that point and, therefore, to ensure compliance with the CTR and the Clean Water Act to counteract Mr. Rodriguez' statement, the Regional Board must add a statement to the permit that states explicitly that samples collected for those purposes have determined compliance with the CTR must be taken at the

Page 37

point of discharge.

If the Regional Board is unwilling to add the explicit statement, then the Regional Board must state their position on the record today. Thank you.

MR. WRIGHT: Thank you.

Ms. Solmer, Gabriel Solmer. Welcome.

MS. SOLMER: Thank you very much. Good morning, Chairman Wright and Board members. My name is Gabriel Solmer, I'm the legal director for San Diego Coastkeeper. It's good to be back in front of you. It's even better to fit in front of the podium again. I do have pictures if anyone wants to see the twins, but onto the topic at hand.

Clearly Coastkeeper agrees with what's been said by the previous speakers. We're in agreement on the overall permit. We made much the same comments on the Continental Maritime permit as you'll hear today and for the Navy's next -- the next permit, which is the Navy's, and the consistency for all the issued permits is very important, but certainly even more important is consistency with the law as you just heard stated by Ms. Gladden.

We are greatly disturbed that your Staff would become a voluntary witness for a current permit holder and ask for any of your clarification as to what approval, if any, Mr. Rodriguez had to make those statements. This is

particularly troubling as the declaration, as Ms. Gladden pointed out, contradicted recent state case law.

I would also like to just point out one brief issue with the supplemental errata sheet. If I can call your attention to item -- Document Number 11, Errata Number 1, the receiving water limitations.

The change is -- the permit used to say, "The discharge of waste shall not cause, have the reasonable potential to cause, or contribute," and the errata has stricken the words "have the reasonable potential to cause," and if Staff could provide some explanation as to why that has been changed.

I believe that the language is substantially similar in another section of the permit, the discharge prohibitions, which is Section 3K, which still, I believe, states the discharge of waste that cause or contribute to the violation of water quality standards designated beneficial uses and water quality objectives developed to protect beneficial uses is prohibited.

So we're concerned or just have some questions as to why the same language would be stricken in another part of the permit, and we would support leaving that language in the permit. Thank you very much.

MR. WRIGHT: Thank you.

MR. KING: Gabriel, I have one quick question. Does

anybody have a copy of this declaration of Mr. Rodriguez?

MS. SOLMER: I have one copy, I don't have four, but I can give you --

MR. KING: I can give it back to you if you want.

MS. HAGAN: For the Board, I have it --

MR. WRIGHT: Did you have a question, Ms. Hagan?

MR. THOMPSON: Well, I think we ought to have Ms. Hagan address the issue that's been raised concerning this declaration or Mr. Robertus, either one.

MR. ROBERTUS: I'll defer to the attorney on that.

I did want to clarify in the comments by Gabriel Solmer, were you talking about Document Number 10 or Document Number 11?

MS. SOLMER: I have Document Number 11, but the revision is to the receiving water limitations.

MR. ROBERTUS: Above that designation, was that Item Number 7 or Item Number 8?

MS. SOLMER: I believe it's the same change on both issues.

MR. ROBERTUS: Thank you.

MS. HAGAN: Mr. Chair, I can offer some information about the declaration. The Regional Board Staff was requested to prepare a declaration in a litigation matter wherein which the Coastkeeper has sued the Department of the Navy relative to the 2002 NPDES permit that was adopted by

the Regional Board, and Vicente's declaration was reviewed through management through Mike McCann and myself in terms of reviewing it to -- to determine whether it was elaborating on what the permit actually says from the Regional Board standpoint.

And so I don't believe there was any problem, legal problem with the Regional Board Staff person offering a declaration in a litigation matter. It's been done on a number of occasions that I'm aware of when the intent is not to advocate for a particular position but to discuss the contents of an existing Board order.

MR. WRIGHT: Mr. Robertus?

MR. ROBERTUS: I'd like a point of clarification from Gabriel if you could. When you made the comment "take the sample at the point of discharge," are you referring to sampling an effluent sample or receiving water sample?

MS. SOLMER: I'm sorry. Can you repeat that?

MR. ROBERTUS: You said that you agreed with Mekaela Gladden's comments, and her comment referred to the requirement to -- with CTR compliance to take the sample at the point of discharge. Are you talking about sampling the whole effluent, or are you talking about sampling in the receiving water at the point of discharge?

MS. SOLMER: No, the whole effluent.

MR. ROBERTUS: The effluent.

MS. SOLMER: Before it enters the receiving water.

MR. ROBERTUS: Okay. Thank you.

MR. WRIGHT: Mr. King? Okay.

Mr. Vicente, we're back to you. All right. There were a number of issues raised, and I -- I have about three of them here. Would you comment, please, BAE, Mr. Halvax had some comments, Mekaela Gladden as well.

MR. RODRIGUEZ: Yes. Mr. Halvax had mentioned the steam condensation discharge, and I -- the comments were if it was an existing discharge in 1971 then the effluent limitation would be slightly different.

At the time that he submitted that information, it wasn't conclusive the discharge had been occurring since 1971, and in the meantime I had compared it with our attorney to ensure that anti-backsliding would not be an issue, and she stated to me that it would be an issue, and so even if a discharge had been established prior to 1971, the fact that it was in the previous permit, the limit would continue in the new permit.

MR. WRIGHT: Okay. Continue.

MR. RODRIGUEZ: Okay. In regards to the receiving point -- the receiving waters sample, the Regional Board has always determined compliance of the receiving water by sampling in the receiving water.

The -- the CTR that applies at the end of pipe must

Page 42

be established through effluent limits, and we have done that. So the effluent limits or CTR at the end of pipe have been established through the state implementation policy. Those are the effluent limits.

The CTR criteria, which is the basis for the effluent limits does not apply at the end of pipe but in the receiving water. So there's -- there's a slight difference there as to the CTR criteria, which is the basis for the effluent limits.

MR. WRIGHT: Board members, any -- any other questions?

MR. LOVELAND: Mr. Chairman, I guess I would ask the -- the other speakers, did that clarify -- clarification resolve the issue or are you still in disagreement?

MS. SOLMER: Disagreement.

MR. WRIGHT: Okay. The answer was, they're still in disagreement. Let's see. Let's hear from the BAE representative.

MR. HALVAX: Just for the record, if we could differentiate whether the existing discharge from the anti-backsliding question that may be helpful for me going forward. If it's an -- if we can define that it is an existing discharge, that limits what my options are going forward.

MR. WRIGHT: Ms. Hagan?

MS. HAGAN: Mr. Chair, if I may, the existing discharge

Page 43

on the temperature limit. Apparently the existing permit contains the temperature limit from the thermal plant.

So in order to relax that limit, if you were to find that, in fact, BAE's discharge, the steam condensate discharge preexisted prior to adoption of the thermal plan in 1971, and BAE has offered up the photograph with the truck and some other documentation to establish that it was an existing discharge before 1971, because the permit -- the existing permit contains the temperature limit from the thermal plant, you would need to comply with anti-backsliding requirements that don't allow you to relax the limitations that already exists in a permit absent certain exceptions applying.

And one possible exception, but I don't know the answer to this is if, in fact, BAE has been in compliance consistently with the temperature limit in their permit, an exception might be available to anti-backsliding and -- but would you first have to determine based on the information you have that you believe the existing discharge -- an existing -- the temperature limit from the thermal plan should not have been imposed because, in fact, the discharge existed in 1971.

So if you think you have enough information before you to determine whether that was an existing discharge, then we could look at the anti-backsliding issue perhaps

Page 44

more closely. But if you don't determine it was an existing discharge, then we don't get to the anti-backsliding question.

MR. ANDERSON: Did you replace the boiler?

MR. HALVAX: Those boilers have subsequently been replaced, and we're actually looking to continue replacing them with electric units, but we still have them in operation to provide steam to ships, so this is the connection and disconnection. So there are replacement boilers at the facility, yes.

I would also note, though, that the -- the -- this order identifies that there are no -- that the facility has been in compliance with all of its effluent limitations.

MR. WRIGHT: Okay. Were we at terms of the information that's been brought to bear -- is this information that -- this is just brought to us today, so --

MS. HAGAN: I know that Staff had received that information previously. It wasn't included in the agenda package. I don't know if it was received prior to distribution of the agenda package or not. I think it would be appropriate for you to accept it if you want to consider the existing discharge question.

MR. WRIGHT: Yeah. I'm willing to accept it. I'd like to hear from other members of the Board.

Mr. Destache?

Page 45

MR. DESTACHE: Yeah. Just a point of clarification, Katherine. If I understand correctly, we have to determine that it was an existing -- in existence prior to 1971?

MS. HAGAN: Yes. There may be -- there's probably a date in 1971 when the thermal plan was adopted that needs to preexist that adoption date.

MR. DESTACHE: So we'd have to do an investigation as to whether it was pre-'71 and we -- I mean, I guess I'm going to -- and I'm going to redirect the question to the BAE representative then.

Do you -- you mention that the -- the differential is relatively minimal?

MR. HALVAX: The -- the effluent limit is 20 degrees delta from the receiving water. And, you know, a drop of steam, I don't know how long it takes to cool before it hits the water from 20 degrees up, but it may or may not meet that limit.

And so -- and under the thermal plan, the test isn't the specific numerical delta from the receiving water, it's whether there's an impairment to the receiving water as a result of that thermal discharge.

MR. DESTACHE: Okay. Thanks for that.

I don't know if that helps, but, I mean, the fact of trying to determine whether it was in existence, potentially it was, but we'd have to go back that far to --

Page 46

to -- and then make a determination at this Board level that it was existing?

The thermal plan was put in place to meet the requirement of the initial permit, and I guess at this point, I would like to see some kind of -- some kind of Staff input as to whether they believe that -- that the thermal plan can be adhered to in its current -- in the boiler's current condition and the condensate's current condition.

MR. WRIGHT: Mr. Rodriguez?

MR. RODRIGUEZ: My understanding is that they've met the limits because they have not discharged steam condensate. If they were to discharge steam condensate, they probably would not meet the limit.

Is that correct?

MR. DESTACHE: Thank you.

MR. WRIGHT: Okay. So we're at a bit of a dilemma here.

MR. RAYFIELD: I have a question.

MR. WRIGHT: Wayne?

MR. RAYFIELD: Thanks. If they're not discharging, is this question moot here, or is there a plan to discharge? And this is a two-part question.

Under the existing thermal plan, I didn't get the words exactly as stated I don't think, but it seems to me the statement was something like discharges along as it --

Page 47

there's no impairment to the receiving waters, is that pretty much what you said?

MR. RODRIGUEZ: Yes.

MR. RAYFIELD: Yeah. How in the world do you measure impairment to the receiving waters on a steam condensate discharge any way?

So that's the second part of the question, but the first part is in -- if they're not discharging, do we have an issue here, or is there a plan to begin discharging or make some changes?

MR. RODRIGUEZ: No. There is -- they are not discharging, and they -- I don't believe they intend to discharge, but they want the ability to discharge in case there's a leak.

MR. RAYFIELD: I'm sorry. They want what?

MR. RODRIGUEZ: The ability to discharge in case they have a leak.

MR. RAYFIELD: Okay.

MR. RODRIGUEZ: And regarding --

MR. RAYFIELD: Well, wouldn't a leak be an exception, I mean, to the regular operation if there were a leak, if there were to be one?

MR. RODRIGUEZ: No. It would be a violation.

MR. RAYFIELD: Yeah. It would be.

MR. WRIGHT: Mr. Thompson?

Page 48

MR. RAYFIELD: I mean, obviously, a leak is not something you anticipate, maybe you ought to plan for, but not anticipate.

MR. WRIGHT: Mr. Thompson, could you help clarify? I'm trying to think this through, and I'm thinking that we're making a big deal out of --

MR. THOMPSON: I think we are. I think, with all due respect to BAE, I think what they're trying to do is -- is eliminate a situation where if they have a condensate leak out of a shore steam connection to a ship that that would become a discharge that they cannot measure or may be in violation.

There's only -- there's only a couple of ways you're going to have this particular discharge is if they've got -- if their shore steam connection at the pier is leaking and somehow or another it ends up in the bay or if it's an actual connection between the host of the ship and there may be a -- a connection that's actually sitting over the water that would discharge into the water.

If, in fact, they had a steam leak, which, as soon as the steam hits the air, it's going to start condensate, and it's going to turn into water and drop.

You know, I think that's the real issue, but understanding how that really works in practice, that's very rare these days. That's really a function of maintenance of

Page 49

the facilities and the equipment used to make those shore steam connections to the ships, and I think that removing the requirement that we have in place is immaterial in my mind because if, in fact, they are in compliance with their own practices, which they should be concerning those types of connections, then they would never even have that situation occur.

MR. WRIGHT: Okay. I think we've spent enough time on this. Let's -- let's have -- any comments, remaining comments?

MR. LOVELAND: I'm still confused, Mr. Chairman. This issue on the sampling point. We've got a disagreement, but I've heard from the Staff. Is the attorney in agreement that -- with the Staff's representation that the sampling is done properly and that the -- and that the statement by Staff in the -- in the litigation case were correct and that if -- and that there's no point to the -- to the allegation?

MS. HAGAN: I would actually like to take a few minutes to look into this issue, and I -- I believe Staff is correct. I'm looking at the Divers case that was mentioned by two of the speakers, and I don't see immediately the principle that they state it stands for.

I -- I do want to distinguish the Divers case relates to the -- the prior permit, and so I need to -- I guess I would like to have a moment to talk with Staff. It

Page 50

seems like a very important issue. If we could have a brief break, or it seems like the only remaining issue at this point in this matter.
MR. LOVELAND: I have one other question, though, Mr. Chairman, that's different from that and maybe when Staff starts to think about it.
I thought I heard you say, Mr. Rodriguez, that the toxicity level was measured by 90 percent survival 100 percent of the time, but the slide said 90 percent survival 50 percent of the time, and I'm wondering if I just misunderstood.
MR. RODRIGUEZ: Yes. The slide is for the Basin Estuary Policy, that's the limit for the policy. And the limit, the effluent limitation is 90 percent survival 100 percent of the time. That would be more stringent than the Basin Estuary Policy. So it complies with the Basin's Estuary Policy.
MR. LOVELAND: Oh, I see. You're saying -- so the permit is 90 percent 100 percent of the time, the policy is half of that.
MR. RODRIGUEZ: Yes, so to speak.
MR. WRIGHT: Mr. Rodriguez, would you get together with Ms. Hagan and address the -- help her address the issue that George has brought up and -- rather than take a formal break here.

Page 51

MS. HAGAN: Mr. Chair, I do need to take a look at this. I don't know how long it will take. So if you want me to be able to confirm whether I agree with staff or want to advise you to accept the comments by the speaker, I'll need to take a few minutes.
MR. WRIGHT: Okay. Let's get it right. We will -- we will take a five-minute break.
(Pause in the proceedings)
MR. WRIGHT: Okay. Let's get back to Item 7. And for those of you who are here for 7 and 8, thank you for your patience. We just want to make sure we do this right.
Catherine?
MS. HAGAN: Yes, I've had a chance to look into the contention about the need to establish end of pipe limits for all CTR criteria, and, in my opinion, you're not obligated to do that, and the limits that Staff has -- have included are appropriate.
MR. WRIGHT: Okay. Anything else from anybody? Ms. Solmer?
MS. HAGAN: Mr. Wright, may I add one comment on the temperature issue with the thermal plan? I just wanted to point out that that's something that you would always be free if, in fact, BAE were to demonstrate to the Staff in the -- in the future that it was, in fact, an existing discharge, it's certainly something you could reopen the

Page 52

permit to make a targeted change for.
MR. WRIGHT: Okay. Mr. Rodriguez, I see you're walking back. Did you have any further comments on it? Did you hear the comments from Catherine?
MR. RODRIGUEZ: Yes. Oh, what I would like to add is I believe what the commenters would like to hear is that the effluent limits based on CTR apply at the end of pipe before the receiving water. That statement I agree with.
MR. WRIGHT: Okay. And -- and where is that written? It's part of the --
MR. RODRIGUEZ: It's -- it's in the permit.
MR. WRIGHT: It's in the permit.
MR. RODRIGUEZ: And I could try and find that for you.
MR. WRIGHT: Please.
MR. RODRIGUEZ: It might take a --
MR. WRIGHT: Ms. Solmer, anything while he's looking for that?
MS. SOLMER: I think you termed it right. I think we've all come to that agreement on that statement. I don't know that that statement word for word is written in the permit, but that's our understanding of the permit, and we may want to include that wording so that there's no confusion with the other parties.
MR. WRIGHT: Well, let's find it.
MR. RODRIGUEZ: Okay. If you could turn to Page E3.

Page 53

MR. WRIGHT: A3?
MR. RODRIGUEZ: E.
MR. WRIGHT: E3. Okay.
MR. RODRIGUEZ: Okay. Section 1A, I believe that addresses it. Specifically it says that all samples shall be taken at the monitoring location specified below unless otherwise specified before the monitoring flow joins or is diluted by any other waste stream body of water or substance.
MR. WRIGHT: Okay. I think that covers it. All right. Thank you.
Mr. Robertus. Do you have a recommendation?
MR. ROBERTUS: I do, Mr. Chair. The recommendation is before you on the slide, which reads adoption of the underlined strike out Tentative Order R9-2009-0080 with errata and supplemental errata.
MR. WRIGHT: Okay. Mr. Thompson, do you have a motion?
MR. THOMPSON: I so move the staff recommendation to adopt the permit as indicated by Mr. Robertus.
MR. WRIGHT: Is there a second?
MR. RAYFIELD: Second.
MR. WRIGHT: Any further discussion? All those in favor of the motion say aye.
(Board collectively agreed)
MR. WRIGHT: Motion is approved unanimously. Thank you

Page 54

very much.
Let's move on to Item Number 8. Okay. Again, I have a brief statement to read, so with your forbearance, I'll read it.
The public hearing on Item 8, consideration of NPDES permit reissuance for the U.S. Navy at Naval Base Coronado discharge to San Diego Bay and Pacific Ocean tentative order number R9-2009-0081 is now open.
Would all the persons wishing to speak on this matter please stand and take the following oath or affirm they've taken the following oath, and I'll just read it from one of the speaker slips.
(Whereupon all prospective speakers were collectively duly sworn by the Board Chair)
MR. WRIGHT: Okay. Thank you. With that we'll have the Staff presentation, and, Mr. Rodriguez, a busy day for you. So how long is your presentation expected to be?
MR. RODRIGUEZ: Ten minutes.
MR. WRIGHT: Ten minutes. Fine. Make it no longer.
MR. RODRIGUEZ: Good morning, Chairman Wright and members of the Board. My name is Vicente Rodriguez, I'm a Water Resource Control Engineer in the Core Regulatory Unit.
At this time, I would like to enter the Regional Board's files regarding this matter into the record.
In your agenda package is included an underlined

Page 55

strikeout revision of the tentative order that is a result of the changes made from the prior draft.
MR. WRIGHT: Mr. Rodriguez, that does say Item 7.
MR. RODRIGUEZ: Oh, you know what, that should say Item 8. Sorry about that.
MR. WRIGHT: Okay.
MR. RODRIGUEZ: In your agenda package is included an underlined strikeout revision of the tentative order that is a result of changes made from the prior draft, you can find it as Supporting Document Number 2.
Under the supplemental package is an errata sheet with further revisions of the tentative order, you can find the errata sheet as Supporting Document Number 9. The Regional Board received a number of comments, and they are included in the agenda.
Also included in the agenda is the Regional Board Staff's response to comments. There's an additional Regional Board staff response to comments that is not included in the agenda package. That document is Supporting Document Number 10 and is -- and it has been provided to you this morning.
Supporting Document Number 10 addresses three comments from the Navy, Comments Number 9, 15, and 16. For Comment Number 9, the Regional Board staff agrees and the tentative order will be changed. For Comment 15, the

Page 56

Regional Board Staff agrees with part of the comment, and so the receiving water monitoring and self-monitoring reports will be changed.
For Comment Number 16, the Regional Board Staff does not agree with the comment, and the tentative order will not be changed.
In addition to Supporting Document Number 10, you have received a supplemental errata sheet. That document is Supporting Document Number 11. The supplemental errata -- supplemental errata sheet has four minor changes.
The first change deletes the following language from Section V.A., quote "have the reasonable potential to cause" end quote. The remaining three changes implement the modification and Staff response to comments in Supporting Document Number 10.
Besides the two Supporting Documents Number 10 and Number 11, there is no new information that was not in your initial agenda package.
The tentative order before you is titled, Tentative Order Number R9-2009-0081, NPDES number CA0109185, waste discharge requirements for the United States Department of the Navy, Naval Base Coronado, San Diego County.
If adopted, this tentative order would reissue waste discharge requirements or WDR's regulating the discharge of storm water and non-storm water waste to

Page 57

surface waters. This WDR shall serve as an NPDES permit.
As I mentioned in the previous agenda item, this permit is one of seven permits we are working on.
In this slide you will see a map of the facility in relationship to the rest of the bay. This facility is composed of the following installations: This -- Naval Air Station North Island, Naval Amphibious Base Coronado, Naval Outlying Landing Field Imperial Beach, Naval Radio Receiving Facility.
Naval Air Station North Island provides aviation support shore facilities, three aircraft carrier piers, industrial maintenance support, aircraft maintenance, bachelor quarters, and dining facilities, training facilities support the infrastructure of the utilities' roads and grounds.
The three piers at Naval Air Station North Island are used to berth aircraft carriers, support vessels, and barges which receive area ship support services such as supplies and minor maintenance. Ship support services on the three piers include loading supplies and equipment on to ships.
Berth site ships maintenance may include abrasive blasting, tiger blasting, metal grinding, painting, tank cleaning, removal of bilge and ballast water, removal of paint, sheet metal work, electrical work, mechanical repair,

Page 58

engine repair, hull repair, and sewage disposal.
Berth site ship repair activities are generally less complex than the ship repair activities conducted at commercial shipyards or at the Discharger's grading dock or floating dry dock.
Berth site maintenance may be conducted by Navy personnel, civil service personnel, or civilian contractors. Ship maintenance may also be conducted on the piers, boats, ship sections, or parts can placed on the piers or adjacent lands for repairs. The ship maintenance activities may be conducted by Navy personnel, civil service personnel, or civilian contractors.
The breadth of the work performed by the civilian contractors is typically greater than the work performed by the Naval personnel. Some complex ship repair work is conducted inside various support buildings near the pier.
Industrial activities at Naval Air Station are classified into the following major industrial categories: Aircraft/helicopter repair and maintenance, airport/heliport cleaning and degreasing, cogeneration plant, electrical utilities, fuel storage and dispensing, gasoline service station, hazardous substance storage, material storage, metal abrasion, electroplating, painting and sandblasting, pumping station, repair and maintenance, ship support services, small boat maintenance and repair, vehicle repair

Page 59

and maintenance, water/wastewater treatment plant, and miscellaneous.
Some discharges from Naval Air Station North Island are classified as steam condensate, diesel engine cool water, pier boom cleaning, utility vault and manhole dewatering, pier cleaning, and miscellaneous discharges associated with facility maintenance.
There are 21 piers located at Naval Amphibious Base Coronado, which are used to secure boats and barges.
Industrial activities at Naval Amphibious Base Coronado are classified into the following major industrial categories: Fire station, fuel storage and dispensing, general repair and maintenance, hazardous substance storage, material storage, metal processing, planting and sandblasting, recycling collection center, services for boats, supports, small boat maintenance, and repair facilities, vehicle and equipment maintenance, vehicle and boat storage, and water/wastewater treatment.
Point source discharges for Naval Amphibious Base Coronado are classified as utility, vault, and manhole dewatering, pier cleaning, Reverse Osmosis Water Purification Unit product water, boat rinsing, swimmer rinsing, and miscellaneous discharges.
Naval Radio Receiving Facility is primarily used for Naval Special Warfare Training. There are a few

Page 60

structures on this installation, although a maintenance shop is used on a daily basis. An antenna is located at the Naval Radio Receiving Facility, though it is not in operation.
Point source discharges for Naval Radio Receiving Facility are classified as utility vault and manhole dewatering and miscellaneous discharges associated with facility maintenance.
The mission of the Naval Outlying Landing Field Imperial Beach is an extension of Naval Air Station North Island is to provide a practice field for helicopter operations and miscellaneous support facilities that serve the military population in the Imperial Beach area.
Naval helicopters from Naval Air Station North Island conduct daily landing practice and lift turning operations at the site. Helicopters are not stationed at the site. Approximately 30 percent of the total areas of the previous storm water infiltration.
Industrial activities at Naval Outlying Landing Field Imperial Beach are classified into the following major categories: Fire station, hazardous substance storage, and material storage.
Point source discharges from the Naval Outlying Landing Field Imperial Beach are classified as miscellaneous discharges associated with facility maintenance.

Page 61

The industrial storm water discharges from Naval Air Station North Island are associated with runways and flight lines, the industrial facilities and the berth areas -- berthing areas.
A total of 58 outfalls drain the storm water from the industrial areas of Naval Air Station North Island into San Diego Bay and the Pacific Ocean. A total of 54 outfalls drain storm water runoff from industrial areas and Naval Amphibious Base Coronado into San Diego Bay.
Storm water discharges from Naval Radio Receiving Facilities are considered nonindustrial and are not subject to regulation by this order.
Three outfalls drain the runoff from industrial areas at Naval Outlying Landing Field Imperial Beach into the Tijuana River.
This tentative permit has acute toxicity for -- that should be "storm water source discharge" not "point source discharge."
The acute toxicity effluent limitation for this tentative order is the Discharger shall achieve a rating of "pass." For acute toxicity with compliance determined by observed mortality compared between the end point discharge in a laboratory control and then a statistical test is used to evaluate whether the mean response of the two samples is the same.

Page 62

If it is, then it passes and the Discharger is in compliance. If not, then it fails and the Discharger is out of compliance.

In the previous order, the limitation is ambiguous. The new acute toxicity effluent limitation provides a clear definitive test that can be more easily applied and enforced.

The new acute toxicity effluent limitation is at least as protective as the Basin Estuary Policy toxicity requirements because the limitation also requires that the control have a rate of at least 90 percent and this limitation is applied 100 percent of the time.

This limitation provides narrative objective of the Basin Plan that water shall be maintained free of toxic substances, storm water discharges, and they are consistent with U.S. EPA standards.

You can find the exact language of the acute toxicity effluent limitation in your Executive Officer's summary report under, "Significant changes."

The adoption of the underlying strikeout tentative order R9-2009-0081 with errata and supplemental errata is recommended. This concludes my recommendation.

MR. WRIGHT: Any questions at this time?

Mr. Rodriguez, just looking at the EPA letter that has to do with Item 7 and 8, and in the next to the last

Page 63

paragraph, there's a notation that the BAE Systems permit contains chronic toxicity monitoring requirements, and it goes on to say it's not clear why the same chronic toxicity monitoring requirements are not included in the Naval Base Coronado permit, and they go on to say that the EPA would recommend the addition to the Navy's permit.

Comment on that?

MR. RODRIGUEZ: Yeah. The -- the chronic toxicity in the BAE Systems is brought over from the previous permit for Naval Base Coronado. It was not in the previous permit, so there's no data to establish reasonable potential, and the new tentative permit has a requirement to monitor for chronic toxicity to generate data to determine if it -- that requirement is required for the next reissuance of the permit.

MR. WRIGHT: Okay. Thank you.

All right. Let's go to our speakers. I have three speaker slips. From the Navy, Admiral Hering, Brian Gordon, and Chris Stransky, and from the note here, I understand, Admiral, that you will be speaking for the others as well.

And welcome, and how much time do you need, sir?

ADM. HERING: About 15 minutes, and I'm going to speak first then I'll allow my Staff to complete the review.

MR. WRIGHT: All right. Thank you.

ADM. HERING: Chairman Wright, Board members, I'm

Page 64

Rear Admiral Hering, and I'm here on behalf of the United States Navy. I'm the Regional Commander of the Southwestern United States.

I'd like to start my overview on these proceedings stating my strongest commitment for all environmental media programs in the San Diego area and move to a discussion of importance to the San Diego military and to close by addressing our tremendous concern with the storm water toxicity standards in this permit.

Starting in the 1990's, the Navy saw bilge water as a major water quality problem and issued and installed a comprehensive treatment facility, including retrofitting our piers so that Navy ships would no longer discharge bilge water into the Port of San Diego.

In 2003, the California legislature followed our lead and passed a law restricting discharge of bilge water for large passenger ships.

Likewise, we were the first to recognize the negative impacts of creosote and arsenic treated pilings over the years in the San Diego Bay and have replaced more than a thousand pier pilings or thousands of pier pilings at Naval Installation San Diego and others with recycled plastic pilings.

Further, we have instituted hundreds of best management practices throughout our bases to minimize the

Page 65

impacts of our storm water discharges. Many of those BMP's were developed by people in this room. Some examples include installation of storm water filtration systems at our central recycling centers and on all of our new piers.

The construction of roofs over industrial activities and the use of mechanical sweepers on paved sweepers. The implementation of those BPM programs have changed the face of what is on the waterfront, and to categorize all of our facilities as industrial and equal to the shipyard in all respects is a gross mischaracterization of what we do and how we do it.

Shifting to other environmental media. When the California Resources Board recognized the significant health impacts of ships operating along the coastlines of the United States, the Navy implemented a cold ironing practice at our piers as a model.

In addition, the Navy has one of the highest recycling rates in the state to include a 76 percent solid waste diversion, way above the State's mandates.

The Navy in San Diego is a leader in economic or in environmental protections and has used alternative fuel as energy conservers, and those are just a few examples of how we've addressed the problems.

The San Diego Navy Region Complex is a core part of San Diego's economy. The 2008 economic study released last

Page 66

year conducted by UCSD shows that the military contributes nearly $25 billion to the local economy. The report found more than 27 percent of our jobs in this county are driven by Department of Defense presence. The San Diego County is the number one recipient of all Department of Defense dollars in the United States.

More Naval ships and more Naval forces are coming to San Diego to take advantage of the benefits here, including the USS Carl Vinson, and in 2010, the measures of all the Navy's first littoral combat ships will be home ported here.

This economic activity, however, is not the purpose of me being here. It is the by-product of our mission and will only remain so as long as our mission remains sustainable.

San Diego Naval installations are the core, the largest military concentration in the Pacific and are absolutely vital to our national security. They are strategically important for their deep water port, and they provide us great access to sea training ranges.

The San Diego Naval Installations played a crucial role in the training of the successful rescue mission of Captain Richard Phillips on the pirate ships off Somalia, and I'm here to tell you today that the permit conditions proposed by this Staff will have a prolonged and long-term

Page 67

impact on our ability to continue operations here in the San Diego Bay.

The biggest problem with the proposed permit, and I cannot overstate what a critical concern this represents, are the conditions related to the storm water toxicity. The toxicity requirements inappropriately applied excessively conservative ignores toxic effects of the area source pollutants and gives an inherently infeasible to meet condition that could cost the United States taxpayers more than $300 million in compliance costs to construct infrastructure to capture our storm water and divert discharges.

The Navy -- the Navy waterfront operations are easily distinguishable from a shipyard that you permit. To consider us a shipyard is a stretch of the term and the regulation and should have a profound effect on long-term impacts of our installations in San Diego.

The further parallel is that -- the further parallel that is erroneous is the fact that the shipyard's compliance strategy, namely diversion to the City's sewer system, is not available to the Navy due to the City's capacity requirements. Therefore, any findings of feasibility that the Regional Board may have will have direct impacts and will not be allowed by the Navy to be a course of action.

Page 68

The Navy performed a comprehensive multi-year peer-reviewed, and I include peer-reviewed by EPA, scientific study of the storm water toxicity and was requested by the Board in 2002 and presented the results of that study to the Board of our staff in 2006.

The study concluded that storm water discharges from Navy installation facilities rarely cause toxicity in the bay and that measured toxicity in the end of pipe storm water samples is not predictive of toxic impacts in the bay water, and that will be a subject that my Staff discusses with you shortly.

Further, we will be discussing how it is an emerging consensus that the substantial portion of storm water contaminants are from the areas such as -- are from area sources such as automobile brake pads and others.

Senator Kehoe has, in fact, carried a bill that seeks to create a long-term program to eliminate these contaminants similar to what the California legislature did decades ago to tackle air pollution.

The Senate's Environmental Quality Committee in its analysis of the bill noted that the ubiquity of copper in the urban environment and the technical difficulty of impracticality of treating storm water to remove it means that compliance with copper T.M.D.L.'s will not be feasible without source reduction of the copper itself.

Page 69

Costs could be into the billions of dollars to remediate if source reduction measures are not taken. Truth is, no matter what we do, technology will not clean the water to a standard that will allow us to comply.

This offers an explanation of why the Regional Board's own parking lot and the facilities continue to fail the same toxicity standards that you are applying on to our facilities.

Unlike the Navy, the Regional Board staff has offered scientific based evidence of demonstrating why storm water runoff from the Navy installations are having an adverse impact on San Diego Navy, and the Regional Water Quality Control Board staff has not provided us any scientifically based findings that give the amount of contaminants for source areas the small particle size that is technically or economically feasible for us to achieve.

I will now turn the rest of this over to my Staff to provide some additional details, and I appreciate the opportunity to speak.

MR. WRIGHT: Thank you. Who is speaking next?

MR. GORDON: Brian Gordon. I have a short presentation. Chairman Wright, Board members, Brian Gordon representing the Navy.

While she's bringing that up, I just wanted to start by saying that the order for Naval Base Coronado is of

Page 70

particular importance. It would be --
MR. WRIGHT: Mr. Gordon, how much time do you need for your presentation?
MR. GORDON: 15, 20 minutes tops.
MR. WRIGHT: Please keep it as brief as possible. 15 minutes.
MR. GORDON: Okay. I'll try and do that.
I just wanted to -- as I started, I wanted to emphasize the importance of this particular order, because the requirements that go into the Naval Base Coronado permit are also going to be seen -- most likely seen in the Naval Base Point Loma, Naval Base San Diego, and the graving dock permit.
So this meeting today is really about the permits that are going to apply to all of the Navy installations in the San Diego area.
Some other issues I'm going to talk about. I'll be providing some more details on our concerns with the toxicity standard and we'll propose an alternative standard that's both protective and scientifically defensible.
I will also discuss provisions in a tentative order that address thermal limitations for steam condensate effluent limits for TCDD equivalents, and we'll also ask for support from the Board for a case by case exception that we filed.

Page 71

Although all of these issues are important to us, as Admiral Hering stated, the toxicity standard is our most critical concern and the one we believe could have significant long-term impacts on not only the Navy but other dischargers if applied equally across the region.
It's -- if it was applied equally, hundreds, if not thousands, of dischargers and municipal dischargers would be out of compliance with the toxicity standard.
I was going to go into some detail on what the toxicity standard is, but Vicente's already done that.
Essentially, it's taking it an end of pipe sample of the storm water and running a toxicity test on it and then taking laboratory controls and running a toxicity test on it and then doing a statistical comparison, and if there's a significant difference statistically between the two, then it would be a failure. If there's no significant difference, then it would be considered a pass. That's the existing standard -- or the proposed I should say.
The existing standard for Naval Base Coronado is slightly different. It had that 90 percent survival rate that you saw on Vicente's slide.
During 2002-2003, we objected to that standard, it was still an end of pipe toxicity standard, and the Board, as the Admiral mentioned, requested that we do a toxicity study to propose an alternative standard, and we did that.

Page 72

I did want to mention there was a letter from the EPA, and I need to address that. It was a June 3rd letter. Actually, did I go too -- actually, I skipped a slide there. Hang on a second.
This is a little bit about the study. It was a four-year study, cost about a million dollars, and the goal of the study, as I mentioned before, was to provide an alternative toxicity standard that was protective.
As you can see, the study was very comprehensive and included hundreds of samples of measurements, and as the Admiral mentioned, in 2006, we did present this to the Board. And our proposal included several elements, but our primary recommendation and the most important recommendation was to have the toxicity standards applied to the receiving waters because it represents the true impacts to the bay, and the Board at that time, they didn't take specific action on that proposal.
The only element that has been accepted that comparison and controls is also one of the elements that we proposed and that -- that is one of the changes you've seen.
Like I said, I wanted to address EPA's comment letter, which was dated June 3rd. The EPA made some -- some specific statements, and one of them was that the Navy testing approach appeared to be biased.
I don't know how to say this. We strongly

Page 73

completely disagree with that comment. In fact, as was previously mentioned, the EPA, SCCWRP, and a number of organizations were all involved in the peer review and helped us to develop the methods that we used in that study.
In fact, these are a couple of the peer review comments that we received, and the first one, Dr. Burton from Wright State University, is well-known in this field. And, you know, he's saying it's one of the most extensive, and it is one of the most extensive storm water toxicity studies ever performed.
And the next one is Dr. Denton from the EPA, and she compliments the Navy. "Overall, the Navy has done an extensive job of collecting and analyzing storm water for toxicity assessments." So we were actually rather shocked and were on a phone call with the EPA yesterday, and, frankly, they weren't able to explain as of yesterday why that put that comment in.
Just a little bit on our technical approach just really quickly. When we did the study, we sampled both at the end of the pipe and in the receiving water, and then we ran toxicity and chemistry testing on those samples.
The findings of the -- Admiral Hering mentioned some of the study results, and these are the study results. One, the Navy storm water rarely causes toxicity in the receiving waters. Only twice in over 200 tests did we see

Page 74

any toxicity, and those two tests were for samples collected during the first storm event of the year after a record dry period.

We did measure and continue to measure toxicity at the end of the pipe, but regardless of the end of pipe results, there's no toxicity except for those two instances in the receiving water. So the study concluded, as the Admiral mentioned, that the end of pipe results are not predictive of toxic impacts in the bay.

We also conducted storm water plume mappings and concluded storm water plumes are short in duration, limited spatially, and relatively low in magnitude.

We also ran a number of TIE's, toxicity identification evaluations, and we identified copper and zinc as the primary toxicants of concern in Navy storm water runoff, which isn't a big surprise. Copper and zinc are known to be toxic, and they're found everywhere in the urban environment.

So our concerns with the proposed toxicity, one, that it is overly protective. As the Admiral mentioned, it ignores area-wide pollutant sources, and that the infeasibility to consistently meet this without collecting and diverting storm water as the shipyards have done.

Like I said before, the Navy has only failed two out of over 200 tests in the receiving water, so we're not

Page 75

causing impacts in the bay, and so the beneficial uses are really being protected. The proposed standard, which is the end of pipe standard in the permit, requires compliance at the end of the pipe 100 percent of the time for discharges that are affected by a wide range of factors. Storm water runoff is affected by a lot factors.

It's a well-known fact that storm water discharges are not consistent. Pollutant concentrations will vary, flow rates will vary, and so toxicity results will also vary.

This standard does not take into account the variability of storm water discharges and applies whole effluent toxicity test methods that were originally designed for processed discharges that have consistent flow volumes and pollutant concentrations. As I mentioned, it ignored area-wide pollutant sources.

The proposed standard that are typical in all urban environments that contribute to toxicity in storm water runoff and, in particular, copper and zinc, the contribution of pollutants from storm water runoff from area sources is undisputed and supported by numerous scientific studies.

For example, the T.M.D.L. study from your Staff for Chollas Creek estimates that sources such as automobiles provide a majority of the copper in the Chollas Creek watershed.

Page 76

The 2006 Air Toxic Hot Spot Program Report produced by the Air Pollution Control District estimates that 99 percent of the zinc and 90 percent of the copper comes from mobile area and natural emission sources and that -- that presents atmospheric deposition that lands everywhere in the county.

The issue regarding area source pollutants is not just a Navy concern. As the Admiral mentioned, it's been recognized by the legislature and the City of San Diego is sponsoring a bill, SB 346, Senator Kehoe's Bill, that would require brakes be redesigned to eliminate pollutants such as copper and zinc, I think it's the way we get to this issue.

And then the Admiral mentioned that he actually read the -- the Senate Environmental Quality Committee analysis of the bill. I'm not going to reread it, but that's what the Admiral read.

So without any industrial activity, these sources alone are more than enough to cause toxicity in storm water runoff if measure at the end of the pipe. Your own parking lot, as the Admiral mentioned, which is a parking lot that is typical of parking lots across the County, fails the toxicity standards that you're imposing on us.

These are the results of the Regional Board parking lot back in 2004. As you can see, the runoff failed the toxicity standard 90 -- the current toxicity standards eight

Page 77

out of nine times it was tested, and the proposed standard four out of nine times that it was tested. This demonstrates that even a typical parking lot cannot pass the end of pipe toxicity standards and speaks to the feasibility of compliance.

I often hear, and you may hear this today, that the Clean Water Act states no toxics in toxic amounts, and our contention is that if a discharge does not cause toxicity in the receiving water, it's not in toxic amounts.

Your approach end of pipe testing means everyone is violating the Clean Water Act because all storm water, industrial, municipal, and the Regional Board parking lot will fail this toxicity standard. These dischargers will not meet toxicity standards as proposed in the Naval Base Coronado order.

If you apply the toxicity standard in the receiving water as you're going to see our proposal, then you will know if these dischargers are toxic in toxic amounts.

Okay. Feasibility. The infeasibility, meaning the standard. Consistent compliance with this toxicity standard would require the Navy to collect all storm water runoff and discharge it to the City's Sanitary Sewer System.

At least that would be a method of compliance if it was possible, which it's not, because the City's not going to accept our storm water. The volume's just too high.

Page 78

A 2005 engineering study, and this was mentioned by the Admiral, estimates it would cost about $300 million to install infrastructure to collect and divert the storm water. And, again, that would be if we could divert to the sewer, which isn't an option.

Besides the Navy, only the commercial shipyards and the boatyards have end of pipe toxicity standards for their storm water runoff and all the -- although the shipyards have tested treatment technology, they and the boatyards have instead diverted their storm water to the sewer system because of their inability to consistently meet this standard. Which, as I stated before, it's not an option for us.

So it puts the Navy in a position of continued noncompliance with the standard that's just simply overly stringent.

Your Staff's responses to comments states that there may be other options, like isolating high risk areas for diversions to the Sanitary Sewer, which we've already done at many locations, or building grassy swells, which we've also done that at several locations.

Our point is, regardless of whether it's a high risk area or not, we cannot consistently meet this standard any more than the shipyards or boatyards or your own parking lot. This is not a high risk area issue. This is an all

Page 79

storm water discharge issue. Storm water discharges are too variable to consistently meet the strict end of pipe toxicity limits 100 percent of the time.

So this is -- okay. This is what we're proposing. Although we still believe testing in the receiving water is the correct approach, we're proposing a slight variation of that.

This idea would have us test end of pipe sample toxicity, but initially make that an action level and not a strict limit, and then if we were to fail using your standard, then we would -- we would conduct a TRE, a toxicity reduction evaluation, and submit a report with proposed corrective actions, and we would implement those corrective actions, of course, after working with your staff.

Then we would go back, retest both the end of the pipe and the receiving water sample. Now, if we fail toxicity at the end of the pipe and the receiving water sample after all this, then that's a failure and a violation of the order. This -- this would require a change in the definition of the toxicity failure in the order.

This idea counts for the large degree of variability in storm water discharges, it eliminates testing for the sake of testing. What I mean by that is, the tentative order requires accelerated testing for end of pipe

Page 80

failures, but it really doesn't allow time to implement corrective measures, so, you know, what's the point of conducting additional monitoring before you have a chance to conduct a TRE and make some changes? Our proposal also addresses the most important question, is the discharge impacting the receiving water?

Okay. So I'm going to switch gears. That was a little bit on the toxicity. I had a couple other issues I wanted to address. One was something you actually heard from BAE, the order applies to standard for steam condensate, that's from the California Thermal Plan as you heard before, and it -- it's applying that the standard for new discharges.

And steam condensate discharges have occurred at Naval Base Coronado since about the 1940's, well before the thermal plan was adopted. So it's really an existing discharge under the thermal plan, and the appropriate standard requires beneficial uses be protected, that's what the standard would require.

And because this discharge volume is extremely small, it's about approximately 350 gallons per day, but this is from 33 different discharge points over a very big area. There's not going to be thermal impacts in the bay.

The Navy conducted -- we even did modelling, not in San Diego Bay, but we had a modelling done at a base in

Page 81

New Jersey, and it showed that the changes from steam condensate discharge in these small volumes is negligible.

So the same would be the case for San Diego Bay, plus the cost to install a steam condensate return system for Naval Base Coronado, it would be in the millions of dollars. The estimate was about $13 million.

So what we're asking, and, actually, your -- your Staff actually did comment that they agreed that if the discharge would be existing, but they also said we hadn't provided documentation, and I'll provide this to Vicente today.

But this is actually what they call a property record in the Navy, and it shows that the steam system at Naval Base Coronado was installed in July 1945.

And so this is what we're requesting. We request thermal plan standard for new discharges be deleted from the order, and the standard for existing discharges be applied to steam condensate.

And, you know, to demonstrate there's no thermal impacts, you know, we recommend you add some receiving water monitoring near the point of discharge to show that any change in temperature is negligible.

Okay. This is, actually, a fairly complicated issue, and I know Vicente commented on that. This is something we received today.