

HANDOUT 1

Overview of outstanding issues/comments from the attached document:

Comments on Preliminary Draft Modifications to Waste Discharge Requirements for the Stockton Port District, submitted July 30, 2014

Outstanding issues have been identified with comment bubbles and highlighted in yellow

ATTACHMENT B

PORT OF STOCKTON
COMMENTS ON PRELIMINARY DRAFT MODIFICATIONS TO
WASTE DISCHARGE REQUIREMENTS
FOR
STOCKTON PORT DISTRICT
FACILITY-WIDE STORM WATER DISCHARGES FROM
MUNICIPAL SEPARATE STORM SEWER SYSTEM AND
NON-STORM WATER DISCHARGES FROM THE PORT OF STOCKTON
SAN JOAQUIN COUNTY (ORDER R5-2011-0005)

Submitted July 30, 2014

The Port greatly appreciates the modifications that were made to the Permit and its attachments. However, the Port provides the following comments that we hope can be addressed before these amendments are finalized and presented to the public and the Regional Water Board for adoption in the hopes of having this as a consent item, and being able to dismiss the petition for review on these issues still remaining in abeyance on appeal at the State Water Board.

Comments on the Permit Amendment Resolution

Resolution, p. 1, para. 4. Please add the following relevant fact and modifications to paragraph 4:

Comment [PB_RBI1]: Outstanding

4. On or about March 4, 2011, the Permittee appealed Order R5-2011-0005 on a variety of issues. On 16 May 2014, in an attempt to resolve the issues in its permit appeal and to clarify the permit's terms, the Permittee submitted a written request to amend portions of its Permit for typographical errors, modification of definitions, use of consistent terminology throughout the Permit, and changes to the Monitoring and Reporting Program. Revisions to monitoring included reduced sampling locations and frequencies, and modification to sampling methods.

Permittee Comment #1

Resolution, p. 1, para.5. The last sentence of this paragraph should be removed since the Port no longer has any "responsibility to comply with the USEPA's AOC" since it has been terminated and no longer applies.

Permittee Comment #2

Resolution, p. 3, item k. This item needs to be modified to remove reference to inlet monitoring during a discharge event. Retention Basin Inlet (RBI) monitoring occurs during storm events when water is being pumped into the Retention Basin. Only the Retention Basin outfall discharge, and the applicable receiving water sites, are sampled during Retention Basin discharge events. This item should be revised as follows:

Comment [PB_RBI2]: Partially outstanding.

Permittee Comment #3

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“Section II.E. of the Monitoring and Reporting Program for the East Complex Retention Basin Monitoring is revised to change from daily monitoring of the basin (at mid-depth) ~~and inlet~~ during a discharge event to monitoring of the ~~inlet and outlet~~ Retention Basin outfall during a discharge event. This will provide information on the quality of the MS4 discharge from the basin.”

Comments on the Permit Findings

Permit p. 12, para. 39/45. This paragraph is continued from page 11 and should not be numbered “39.” The current language contains two sentences that are virtually identical so the Port requests the following edits to improve clarity and eliminate redundancy:

Comment [PB_RB13]: Outstanding.

Permittee Comment #4

~~39: 45. “... Nevertheless, the requirement to implement controls that reduce pollutants to the MEP is may not be limited by the goal of attaining water quality standards. In some circumstances, compliance with MEP is not limited by the goal of attaining water quality standards.”~~

Permittee Comment #5

The paragraphs after this will need to be renumbered accordingly.

Permit p. 14, para 47. Part of a paragraph is stuck in between paragraphs 53 and 54 that needs to be removed.

Permittee Comment #6

Comments on the Permit Provisions

Permit p. 34, item 4. Thank you for making the correction to the typographical error. However, the phrase “or contributing” should be removed or modified to be “or substantially contributing” because otherwise one molecule could arguably constitute a “contribution.” This was an issue in recent citizen suit litigation where the discharge of bacteria was an issue, which was particularly difficult because it is a living, growing organism. For example, a discharge may contribute some copper to a waterway that is impaired for copper, but may actually be diluting the amount in the water because the copper being discharged is below the applicable water quality objective. The Port does not want to have to complete all the exceedance reports when they are not causing or substantially contributing to that exceedance.

Comment [PB_RB14]: Partially outstanding.

Permittee Comment #7

The “cause or contribute” language is not contained in the Clean Water Act, and is only found in federal rules that apply when performing a reasonable potential analysis under 40 C.F.R. §122.44(d) (pursuant to 33 U.S.C. 1311(b)(1)(C)), which does not apply to MS4s. The proper statutory requirements for a municipal MS4 Permit are set forth in CWA section 402(p) and its MEP standard, and CWA section 301 (i.e., §1311(b)(1)(C)) does not apply. *See Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1165 (9th Cir. 1999). The Court held that the provisions of CWA Section 402(p)(B)(3) for municipal stormwater permits replaced the requirements under CWA Section 301.

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Thus, the Permit's use of the word "contributing" should be removed or be modified by the word "substantially" for the reasons stated above.

4. If the Permittee is found to have discharges notwithstanding the prohibitions in Provision A, or discharges causing or contributing to an exceedance of an applicable benchmark value, water quality objective, waste/wasteload allocation, or receiving water limitation in Provision BC, the Port will not be determined to be in violation of this Order unless it fails to comply with the requirement to report such discharge (Provision C.3.a.), and revise its BMPs to include additional and more effective BMPs, and to implement the same (Provision C.3.b-d). Further, the Port may demonstrate in its SWMP that the use of particular benchmark values are not appropriate (e.g., aluminum, electrical conductivity) due to local ambient conditions or other environmental studies (e.g., Water Effect Ratios).

Permit p. 47, item b.i. The "Sanitary Sewer Overflow and Spill Response" requirements were removed from the Permit. Therefore, the reference in this section b.i. to "Sanitary Sewer Overflow and Spill Response" should be removed from this section and the items should be renumbered appropriately.

Comment [PB_RB15]: Outstanding.

Permittee Comment #8

- b. The Permittee shall update and continue to implement a Municipal Program in its SWMP to effectively prohibit non-storm water discharges and prevent or reduce pollutants in runoff from all municipal land use areas, facilities, and activities to the MEP. At a minimum, the Municipal Program shall address the objectives listed above, as well as the following control measures:
 - i. Sanitary Sewer Overflow and Spill Response;
 - ii. New Development and Construction Requirements for Municipal Capital Improvement Projects;
 - iii. Pollution Prevention at Permittee Facilities;
 - iv. Landscape and Pest Management;
 - v. Storm Drain, Catch Basin, and Storm System Maintenance.

Comments on the Consistent Use of Terminology

MRP p. 10, Item 8, and additional sections referenced below. The term "monitoring" should be removed from the term "storm monitoring event." Addition of the term "monitoring" to describe a storm event as a "storm monitoring event" is not consistently carried throughout the entire Permit, and this change has inadvertently resulted in the use of unnecessary and undefined terminology. For instance in item 8 (MRP, p. 10), "monitoring" is only added to the first instance of "storm event," but not to the next two instances of "storm event," as shown below (*emphasis added*).

Permittee Comment #9

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“Each year, samples shall be collected from urban discharge and receiving water monitoring sites during three **qualifying storm monitoring events and two dry weather monitoring events**. The Permittee shall monitor the first *storm event* of the year preceded by at least 30 days of dry weather. The second and third *storm events* to be monitored shall be preceded by at least three dry weather days. The monitoring events shall be separated by at least 20 days.”

This is one example where the addition of the term “monitoring” to “storm event” is confusing and sets up an unnecessary distinction between a “storm monitoring event” and a “storm event.” This terminology also affects other documents, such as the Port’s Storm Water Management Plan, which is consistent with the original language of the Permit when it references a “qualifying storm event” or “storm event.” Finally, a “storm monitoring event” is not defined in the glossary, while a “storm event” is defined. While we appreciate the Board’s attempt to clarify some the Permit’s terminology, this particular addition should be omitted. This change affects the following sections of the Permit:

- MRP p. 9, item 3.
- MRP p. 10, item 8.
- MRP p. 10, footnotes 4, 5, and 7.
- MRP p. 12, footnote b.
- MRP p. 15, footnote a.
- MRP p. 15, item D.
- MRP p. 17, footnote a.
- MRP p. 19, item H.1.a.
- MRP p. 24 (there are 2 page 24s), Table F, footnote 18.
- Fact Sheet p. 39, item A.
- Fact Sheet p. 40, item B. (see comment below further clarifying this item)
- Fact Sheet p. 42, third paragraph and item VII.G.

MRP p. 10, footnote 6. Changes are needed to sections of the Permit where the term “dry weather monitoring” is used or when the Board has used the term “dry weather monitoring” to replace the term “dry season” in an attempt to clarify the monitoring requirement. The Permit inconsistently used the term “dry weather” and “dry season” to describe the two dry weather/season monitoring events, and we appreciate the Board’s attempt to remedy these inconsistencies. However, the current modifications have inadvertently resulted in the loss of the “seasonal” aspect of the dry weather monitoring. That is, when the term “dry season” was replaced with “dry weather” in describing this monitoring event, the requirement to monitor in the “dry season” was omitted. However, seasonal information is required by the Permit so that the Port’s discharges are characterized year-round. For example, the methylmercury monitoring section (item iii.a., p. 65) says that the “objective of the monitoring is to obtain seasonal information.” See also the MRP section of the Fact Sheet (Fact Sheet P. 39, item a.; p. 40, item

Comment [PB_RBI6]: Partially outstanding.

Permittee Comment #10

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b.). This objective will not be met if dry weather monitoring does not occur in the dry season. Therefore, the Permit needs to state that the dry weather monitoring event is to occur in the dry season. This clarification should be placed in footnote 6 (MRP p. 10), as follows:

⁶ Dry weather monitoring events shall be preceded by at least seven days of no rainfall; the two dry weather monitoring events shall be separated by at least 14 days of no rainfall. Dry weather monitoring events shall occur in the dry season (June 1 through September 30)."

If this requested change is not incorporated throughout the Permit, the Port requests that the term "dry season" be retained where the Permit originally employed this terminology. This would affect the modifications made in the following sections of the Draft Permit:

- MRP p. 15, item D.
- Fact Sheet p. 39, item A.
- Fact Sheet p. 40, item B. (see comment below further clarifying this item)

Comment [PB_RBI7]: Not changed here.

MRP p. 15, item D

D. Receiving Water Monitoring

All receiving water samples shall be grab samples, collected at mid-depth, in mid-stream of the receiving water, and in a manner that measures the water quality impacts of corresponding urban discharge outfalls. Receiving water monitoring shall be taken after discharges from D-2, ~~D4~~, D-10, ~~D11~~, RBI, RB (if discharging), and WC have occurred. Attachment B shows the approximate locations of the receiving water sampling stations. Each year, samples shall be collected **coinciding with the three qualifying storm events and two monitoring events during the dry season**⁴³¹⁴ in accordance with the Port's sampling and analysis plan. Receiving water monitoring shall include at least the following:

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Fact Sheet p. 39, item A

A. Urban Discharge Monitoring

There are five urban discharge monitoring stations at the East Complex stations D-2, ~~D-4, D-10, D-11,~~ and the retention basin outfall. The West Complex has a single discharge point that is monitored at a pump station at the southwest corner of the island. These stations account for every urban discharge outfall at the Port. The goals of this monitoring are to act as a performance standard to monitor long-term trends in urban storm water quality, and provide data for estimating pollutant loads discharged to receiving waters. If additional sample station locations are needed, they shall be established under the direction of Board staff, and a description of the stations shall be attached to this MRP. Urban discharge monitoring shall be consistent with the frequency and schedule shown on Table F. Sample collection and analysis shall follow standard U.S. EPA protocols. Each year, samples shall be collected **during three qualifying storm events** (40 CFR §122.26(d)(2)(iii)(A)(1)); and **two ~~during the dry weather monitoring events~~ season**, at a minimum.

Fact Sheet p. 40, item B

B. Receiving Water Monitoring

The receiving water monitoring component of the Monitoring and Reporting Program (MRP) includes three monitoring stations in the San Joaquin River, one in the DWSC, and one in Burns Cutoff. Stations are located either upstream and downstream of the Port's storm sewer discharges, depending on the time relative to the tidal cycle.

All receiving water samples shall be grab samples, collected at mid-depth, in mid-stream of the receiving water. Receiving water sampling may be postponed or eliminated if hazardous weather and/or river flow conditions prevent safe access to sampling location. Receiving water monitoring shall be taken after discharges from D-2, ~~D-4, and D-10, and D-11,~~ RB (if discharging), and WC have occurred and shall be consistent with the frequency and schedule shown on Table F. Attachment B shows the approximate locations of the receiving water sampling stations. Sample collection and analysis shall follow standard U.S. EPA protocols. Each year, samples shall be collected **during three qualifying storm events** and **two ~~during the dry weather monitoring events~~ season**, at a minimum.

MRP p. 24, Table F, note e. The item should be modified to reflect that field screening for illicit discharges is intended to occur during the dry season and not during a dry weather monitoring event. The term "dry weather monitoring" should be removed and the term "per dry season" should be retained. As is, the modifications are inconsistent with the illicit discharge monitoring section (Item I, MRP p. 22).

MRP p. 25, item III.A. It is the intent of this section that special RB monitoring occur during the "wet season" and during the "dry season;" that is, the monitoring structure is seasonal.

Permittee Comment #11

Permittee Comment #9

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Specifically, the term “storm weather” should be removed and the term “wet” should be retained because “storm weather season” is not defined in the Permit, but “wet season” is defined in the Permit. Further, the term “weather” should be removed from the term “dry weather seasons” because the term “dry season” qualifies the time of year when one of the two samples should be collected. A “dry weather” sampled could be collected on any dry weather day.

Similar modifications were made to the Fact Sheet p. 42, item G. The Port requests that these modifications also be removed, and the original language retained.

Fact Sheet p. 39, item A, paragraph 2. The term “wet season” should not be removed because the three storm events are to be monitored in the wet season.

Permittee Comment #9

Fact Sheet p. 40, item B, paragraph 2, last sentence. The modifications in the last sentence of paragraph two should be omitted because monitoring is to occur during three qualifying “storm events” and during “dry season” events. As written, this section is inconsistent with Fact Sheet p. 40, item A, the description of urban discharge monitoring. The last sentence of item B should read as follows:

Permittee Comment #9

“Each year, samples shall be collected **during three storm events and two during the dry season**, at a minimum.”

Comments on the Monitoring and Reporting Program

MRP p. 13. This page only contains notes from the Previous Table. Once the table is amended, these notes should go on page 12 and page 13 should be removed.

Permittee Comment #12

MRP p. 15, item D. RBI should not be listed as a discharge requiring concurrent receiving water sampling since RBI is not an urban discharge site.

Comment [PB_RBI8]: Outstanding.

See Permit excerpt above.

Permittee Comment #13

MRP p. 16, Table C. As described in the Port’s request for modifications (Attachment A), the R-5 drainage description or location should be changed to “upstream” of the West Complex pump station, consistent with its actual location.

Permittee Comment #14

MRP p. 17, item E. Because the RB is considered an urban discharge, limits should be placed upon how often this site is sampled. For instance, WC, D-4, and D-11 are monitored for three events during the storm season and two events during the dry season. RB monitoring should similarly be limited to a maximum of three monitoring events during the wet season and two during the dry season. Otherwise, wet storm water years could result in excessive and costly monitoring of RB and the up and downstream receiving water sites. The Port requests that the following sentence be added to item E:

Permittee Comment #15

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"Consistent with the frequency of urban discharge monitoring described in Section II.B.8., a maximum of three (3) samples must be collected at RB during the wet season and two (2) samples during the dry season."

MRP p. 18. Again, there are spacing issues where a paragraph is cut off and the remainder of the page is blank, which needs to be fixed before the final draft is released. There is also a second page 18 after page 19, so this needs to also be fixed.

Permittee Comment #16

MRP p. 20, item 4.b. This section inappropriately sets the trigger for preparation of a TRE Corrective Action Plan to observation of statistically significant toxicity as defined in MRP §II.H.2.d. However, preparation of a TRE Corrective Action Plan should follow the formal trigger of a TRE, as defined in MRP p. 20, item 4.a, and after a class of toxicant is identified through TIEs, as discussed in MRP p. 20, item 3. The bulleted items of MRP p. 20 item 4.b that are to be the content of the TRE Corrective Action Plan cannot be completed if a toxicant has not been identified. Thus, revisions should be made to set a trigger for preparation of a TRE Corrective Action Plan after a formal TRE is triggered. Requested revisions are shown below.

Comment [PB_RB19]: Outstanding.

Permittee Comment #17

- b. No later than 90 days ~~from the detection of statistically significant chronic toxicity following the identification of a pollutant or class of pollutant, as defined described in paragraph 2.d 4.a. above,~~ the Permittee shall submit to the Central Valley Water Board staff a TRE Corrective Action Plan that shall, at a minimum, discuss the following items:...

Paragraph 2.d.

- d. The Permittee shall analyze the survival and sub-lethal endpoint data from the chronic tests using a standard t-test approach and statistical analysis methods consistent with *Methods for Measuring the Acute toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (2002)*, EPA/821/R-02/012, page 86). The Permittee shall compare toxicity of each undiluted sample to a laboratory control. Additionally, Permittee shall compare the toxicity of downstream receiving water sample(s) to corresponding upstream receiving water sample(s), if available, as defined in paragraph e. below. Statistically significant chronic toxicity is thus defined as toxicity of downstream receiving water sample(s) relative to the upstream receiving water sample, if available, and relative to the laboratory control. If an upstream location is not available, statistically significant chronic toxicity is defined as toxicity of downstream receiving water sample(s) relative to the laboratory control.

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MRP p. 20, item 3 & 4

3. Toxicity Identification Evaluation (TIE) Protocols

- a. Upon detection of statistically significant chronic toxicity, as defined in paragraph 2.d. above, the Permittee shall perform a TIE using the same species and test method and according to the following U.S. EPA test method manuals: *Toxicity Identification Evaluation: Characterization of Chronically Toxic Effluents, Phase I (1992)* EPA/600/6-91/005F; *Methods for Aquatic Toxicity Identification Evaluations, Phase II Toxicity Identification Procedures for Samples Exhibiting Acute and Chronic Toxicity (1993)*, EPA/600/R-92.080; and *Methods for Aquatic Toxicity Identification Evaluations, Phase III Toxicity Confirmation Procedures for Samples Exhibiting Acute and Chronic Toxicity (1993)*, EPA/600/R-92/081.
- b. The Permittee shall complete chronic Phase I (Toxicity Characterization Procedures) TIEs for all sites demonstrating a statistically significant result to any 1-test organism.
- c. The Permittee shall conduct a TIE on any test species demonstrating a statistically significant toxicity result at any sampling station. The Permittee may utilize TIE Prioritization Metric to rank sites for TIEs.

4. Toxicity Reduction Evaluation (TRE) Protocols

- a. When the same pollutant or class of pollutants is identified through two TIE evaluations at a monitoring location, the Permittee shall perform a TRE of the toxic pollutant or the class of pollutants that has been identified through the TIE process in accordance with *Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations (1989)* (EPA/600/2-88/070).
- b. No later than 90 days from the detection of statistically significant chronic toxicity, as defined in paragraph 2.d. above, the Permittee shall submit to the Central Valley Water Board staff a TRE Corrective Action Plan that shall, at a minimum, discuss the following items:
 - i. the potential sources of pollutant(s) causing toxicity;

MRP p. 23. The text drops off on this page mid-sentence and leaves the rest of the page blank. This should be fixed.

MRP p. 30, Table G and MRP p. 27, item G. The use of minimum levels (ML) in the Permit remains problematic. The State Water Board's *Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) states that it expressly

Permittee Comment #18

Comment [PB_RB110]: Outstanding. The non-SIP MLs remain in the table, but allowance was provided for the possibility for using different MLs, if request is approved by the EO.

Permittee Comment #19

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does not apply to the regulation of storm water discharges (p. 3, footnote 1 of SIP). Ideally, the ML column of Table G, and the related discussion of SIP MLs in MRP p. 27, item G should be deleted.

If reference to SIP MLs is not removed in its entirety, the Port requests that only SIP MLs be retained in the Permit. Table G lists MLs for non-priority pollutants. These pollutants are not listed in the SIP and the required MLs have no basis and some cannot be consistently achieved using commercially available 40 CFR Part 136 approved methods. For example, standard laboratory technologies for measuring BOD typically report with RLs of 4-5 mg/L, while special low-level techniques and added expense are required to meet the Permit-required RL of 2 mg/L (personal communication with T. Albertson, Caltest Analytical Laboratories). The Port requests that MLs for non-priority pollutant constituents be removed. The requested revisions to Table G are shown in Attachment B of the Port's request for Permit modifications (dated May 16, 2014). Consistent with changes to Table G, the Port requests that MRP p. 27, item G be modified as follows:

- G. For priority toxic pollutants that are identified in the CTR (~~65 Fed. Reg. 3168240~~ C.F.R. §131.38), the MLs published in Appendix 4 of the Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California 2005 (SIP) shall be use for all analyses, unless otherwise specified. Appendix 4 of the SIP is included as Table G. ~~For pollutants not contained in Appendix 4 of the SIP, the test method and method detection limit (MDL) listed in Table G shall be used for all analyses, and the ML for these parameters shall be lower than or equal to the lowest applicable water quality criteria from the Basin Plan and/or the SIP.~~

CONSTITUENTS	NPDES Permit Table G MLs	Caltest RLs
Total Petroleum Hydrocarbons	5	0.05
Total Suspended Solids	2	3
Total Dissolved Solids	2	10
Volatile Suspended Solids	2	3
Total Organic Carbon	1	0.5
Dissolved Organic Carbon	1	0.5
Biochemical Oxygen Demand	2	5
Chemical Oxygen Demand	20-900	50
Total Kjeldahl Nitrogen	0.1	0.1
Alkalinity	2	3
Total Ammonia-Nitrogen	0.1	0.1
Nitrate-Nitrite as N	0.1	0.05
Dissolved Phosphorus	0.05	0.01
Total Phosphorus	0.05	0.01
Total Hardness	2	5
MBAS	0.5	0.1

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CONSTITUENTS	NPDES Permit Table G MLs	Caltest RLs
Chloride	2	1
Fluoride	0.1	0.05
Methyl tertiary butyl ether (MTBE)	1	0.5
Perchlorate	4 µg/L	2 µg/L
Turbidity	0.1 NTU	0.05
Specific Conductance	1µmhos/cm	Meter

MRP p. 35, Table G. Table G includes a list of pyrethroid insecticides to be measured in water, along with corresponding Estimated Limits of Detection (ELOD). Pyrethroid insecticides are not priority pollutants, thus there are no corresponding MLs in the SIP. The Permit does not define or discuss what an ELOD is, how the ELOD values were established, or how an ELOD is to be used with regard to monitoring and reporting. Similar to the other non-priority pollutants in Table G, the column of ELOD values should be deleted.

Comment [PB_RBI11]: ELODs remain. Same as above for MLs. Alternative ELODs can be used, but request is subject to EO approval.

Permittee Comment #20

Pyrethroid Pesticides	NPDES Permit Table G ELOD (ng/L)	Caltest MDL (ng/L)
Bifenthrin	0.10	0.2
Cyfluthrin	0.20	0.2
Cypermethrin	0.20	0.2
Deltamethrin/Tralomethrin	0.15	0.6
Esfenvalerate/Fenvalerate	0.05	0.2
Fenpropathrin	0.50	0.2
Lambda-cyhalothrin	0.20	0.2
Permethrin	1.0	5.0

MRP p. 30, Table G and MRP p. 27, item G.

Comment [PB_RBI12]: Outstanding. The non-SIP MLs remain in the table, but allowance was provided for the possibility for using different MLs, if request is approved by the EO.

Permittee Comments #19, 20

Additional Factual Change to the Tentative Permit Modification Resolution

Permit modification resolution, Item i. p. 3. The following sentence should be modified for accuracy:

“~~Organochlorine pesticides and p~~Polychlorinated biphenyls (PCBs) have not been detected in the Port’s urban discharge monitoring since 2000, and only one organochlorine pesticide has been detected among the 122 receiving water samples collected since the Port began monitoring organochlorine pesticides in 2008.”