



DEPARTMENT OF THE NAVY  
COMMANDER NAVY REGION SOUTHWEST  
937 NO. HARBOR DR.  
SAN DIEGO, CALIFORNIA 92132-0058

IN REPLY REFER TO:  
5090  
Ser N45JWW.ch/013  
January 10, 2013

Wayne Chiu, P.E.  
California Regional Water Quality Control Board,  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego California 92123-4340

Dear Mr. Chiu:

SUBJECT: COMMENT - TENTATIVE ORDER NO. R9-2013-0001, REGIONAL  
MS4 PERMIT, PLACE ID: 786088WCHIU

On behalf of Navy Region Southwest I respectfully submit these comments on the draft Regional MS4 Permit.

In a conscious policy decision, supported by the CWA, the MS4 permit mandates toxicity monitoring for receiving waters. This policy direction recognizes some very important and unique aspects of storm water discharges namely; they are intermittent, flow is unpredictable, and they are short duration representing a very temporary condition in the receiving water.

Receiving water toxicity testing is consistent with the San Diego Region Basin Plan which states that "All waters shall be maintained free of toxic substances in concentrations that are toxic, or that produce detrimental physiological responses in human, plant, animal, or aquatic life". It is also consistent with the current draft of the State Water Board Policy for Toxicity Assessment and Control as well as the recently adopted Framework for Monitoring and Assessment in the San Diego Region. Together these documents insure that reliable and statistically and scientifically sound information is produced to show permit compliance, and guide decisions about, and the evaluation of, the progress of efforts to protect and restore the quality and beneficial uses of waters in the San Diego Region.

The Navy supports the use of toxicity testing of the receiving water as described in Provision D Monitoring and Assessment Program Requirements. Toxicity testing of the receiving water, as opposed to testing 100% storm water, is protective of water quality and beneficial uses and accurately measures toxicity impacts from storm water discharges.

Lastly, as articulated in the MS4 Fact sheet F-36:

*"[t]he inclusion of receiving water limitations is also consistent with the Ninth Circuit Court of Appeals' ruling in Defenders of Wildlife v. Browner (191 F.3d 1159, 1166 (1999)) that the permitting authority has discretion regarding the nature and timing of requirements that it includes as MS4 permit conditions to attain water quality standards."*

We support the San Diego Regional Board's use of toxicity testing of the receiving water in all NPDES Stormwater Permits where toxicity limitations or monitoring requirements are determined necessary to insure water quality protection. This position is supported by the CWA, Porter Cologne Act, State Policy, US EPA-approved Regional Basin plans.

The Navy requests that you consider these comments in the upcoming permit adoption. The points of contact for this letter are Mr. Christopher Haynes at [christopher.a.haynes@navy.mil](mailto:christopher.a.haynes@navy.mil) or (619)532-2285 and Mr. Brian Gordon at [brian.gordon@navy.mil](mailto:brian.gordon@navy.mil) or (619)532-2273.

Sincerely,

A handwritten signature in cursive script that reads "Brian S. Gordon". The signature is written in dark ink and is positioned above the typed name.

B. S. GORDON  
By direction