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GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

January 29, 2019

Mr. Jason Lee
Director – Health, Safety & Environmental
Ultramar Inc.
2402 East Anaheim Street
Wilmington, CA 90744

Dear Mr. Lee:

TRANSMITTAL OF RESPONSE TO COMMENTS FOR THE TENTATIVE WASTE DISCHARGE REQUIREMENTS (WDRS) AND NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR ULTRAMAR INC., WILMINGTON MARINE TERMINAL, BERTH 164, 961 LA PALOMA AVENUE, WILMINGTON, CALIFORNIA (NPDES NO. CA0055719, CI NO. 2165)

On December 18, 2018, the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board) transmitted the tentative Waste Discharge Requirements (WDRs) and National Pollutant Discharge Elimination System (NPDES) permit for the subject Facility. One comment was submitted by the Los Angeles Waterkeeper and Heal the Bay jointly on December 19, 2018. Regional Water Board staff considered the comment submitted and is providing a response to the comment (enclosed). No change has been made to the tentative WDRs and NPDES permit.

In accordance with administrative procedure, the Regional Water Board at a public hearing to be held on **February 14, 2019**, at 9:00 a.m., at the Port of Long Beach Hearing Room, 4801 Airport Plaza Drive, Long Beach, will consider the tentative WDRs and NPDES permit that was transmitted to you on December 18, 2018. It is expected that the Board will take action at the hearing; however, as testimony indicates, the Board, at its discretion, may order further investigation.

If you have any questions, please contact Ching To at Ching-Yin.To@waterboards.ca.gov or at (213)576-6696.

Sincerely,

Cassandra D. Owens, Chief
Industrial Permitting Unit (NPDES)

IRMA MUÑOZ, CHAIR | DEBORAH SMITH, EXECUTIVE OFFICER

Mr. Jason Lee
Ultramar, Inc.
Wilmington Marine Terminal, Berth 164

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Enclosures

MAILING LIST

Ms. Elizabeth Sablad, Environmental Protection Agency, Region 9, Permits Branch (WTR-5)
Ms. Robyn Stuber, Environmental Protection Agency, Region 9, Permits Branch (WTR-5)
Ms. Becky Mitschele, Environmental Protection Agency, Region 9, Permits Branch (WTR-5)
Mr. Kenneth Wong, U.S. Army Corps of Engineers
Mr. Bryant Chesney, NOAA, National Marine Fisheries Service
Mr. Jeff Phillips, Department of Interior, U.S. Fish and Wildlife Service
Mr. William Paznokas, California Department of Fish and Wildlife, Region 5
Ms. Amber Dobson, California Coastal Commission, South Coast Region
Mr. Tim Smith, Los Angeles County, Department of Public Works
Mr. Angelo Bellomo, Los Angeles County, Department of Public Health
Ms. Linda Shadler, Los Angeles County Sanitation Districts
Mr. Theodore Johnson, Water Replenishment Districts of Southern California
Ms. Rachel McPherson, Port of Los Angeles
Ms. Annelisa Moe, Heal the Bay
Ms. Sylvie Makara, Heal the Bay
Mr. Bruce Reznik, Los Angeles Waterkeeper
Mr. Arthur Pugsley, Los Angeles Waterkeeper
Ms. Joan Matthews, Natural Resources Defense Council
Ms. Corinne Bell, Natural Resources Defense Council
Mr. Jason Weiner, Ventura Coastkeeper
Mr. Mark Phair, Ultramar, Inc.
Mr. Mark Snyder, Ultramar, Inc.
Ms. Shannon Hubbard, Ultramar, Inc.

RESPONSE TO COMMENTS ON THE TENTATIVE NPDES PERMIT

Ultramar, Inc.

Wilmington Marine Terminal, Berth 164

NPDES Permit No. CA0055719

This Table describes all significant comments received from interested parties with regard to the above-mentioned tentative permit. Each comment has a corresponding response and action taken.

No.	Comment	Response	Action Taken
Comments received from the Los Angeles Waterkeeper and Heal the Bay jointly on December 19, 2018			
1	<p>Los Angeles Waterkeeper has reviewed the tentative permit referenced above, and generally agrees with the requirements in the tentative order, with one exception discussed below. We note that there were no discharges during the period of the previous permit. We support the switch to TST for toxicity testing and agree with the anti-backsliding findings. We believe the WQBELs and other conditions support the anti-degradation findings for those pollutants for which the receiving waters are listed as impaired.</p> <p>We suggest that the wording of the partial CEQA exemption found in Water Code Section 13389 for WDR/NDPES permits (p. F-7, Section B) be amended to read "Chapter 3 of CEQA" because the current characterization of the partial exemption is too broad. Also, we believe that the case cited for support (<i>County of Los Angeles v. State Water Resources Control Board</i> (2006) 143 Cal. App. 4th 985) does not support the argument that the exemption, which facially applies to the EIR requirements in Chapter 3, actually applies to all of CEQA. This is because the question before the <i>County of Los Angeles</i> court was whether the discretionary EIR requirements in Chapter 2.6 applied despite the partial Water Code exemption that facially applied to Chapter 3. The Court found that the EIR requirements in Chapter 2.6 were also inapplicable, but whether the partial CEQA exemption in Water Code Section 13389 applied to more than EIR requirements was not before the Court. Thus, to the extent that the Court discusses other sections of CEQA besides Chapter 2.6, the holdings are dicta. We also note the <i>County of Los</i></p>	<p>This comment pertains to ongoing litigation and will only be briefly discussed. The Los Angeles Regional Water Quality Control Board's (Regional Water Board's) NPDES permit is exempt from all requirements of CEQA and the Regional Water Board believes that Water Code § 13389 and 23 Cal. Code Regs. § 3733; as well as the cases <i>County of Los Angeles v. State Water Resources Control Board</i> (2006) 143 Cal. App. 4th 985, 1007 and <i>City of Burbank v. SWRCB</i> (2003) 4 Cal. Rptr. 3d 27 (unpublished) support that position.</p>	None necessary.

Response to Comments
 Ultramar, Inc.
 Wilmington Marine Terminal, Berth 164

No.	Comment	Response	Action Taken
	<p><i>Angeles</i> Court recognized there was “no evidence the Legislature ever intended to...otherwise modify Water Code section 13389” despite nearly contemporaneous amendments to CEQA. (See <i>County of Los Angeles v. State Water Resources Control Board</i> (2006) 143 Cal. App. 4th 985, 1007.) Additionally, such a broad reading of <i>County of Los Angeles</i> at a minimum creates tension with an on point ruling from the Supreme Court of California. The Supreme Court of California described the partial CEQA exemption referenced in Section B as limited to CEQA’s <i>EIR requirements</i>, and not encompassing the entire statute. (<i>Mountain Lion Foundation v. Fish and Game Comm’n.</i> (1997) 16 Cal. 4th 105, 116.) The Supreme Court also held in <i>Mountain Lion</i> that “where exceptions to a general rule are specified by statute, other exceptions are not to be presumed unless a contrary legislative intent can be discerned.” (<i>Mountain Lion</i> at 116.) It is hard to reconcile this rule of statutory interpretation with the approach taken by the <i>County of Los Angeles</i> Court, especially if the latter Court were interpreting the Water Code Chapter 3 exemption as broadly applicable to all of CEQA. (We note that the scope of the partial CEQA exemption in Water Code Section 13389 is currently being litigated in <i>In Re POTW Cases</i>, Lead Case BS 171009.).</p>		