



UNITED STATES MARINE CORPS
MARINE CORPS INSTALLATIONS WEST-MARINE CORPS BASE
BOX 555010
CAMP PENDLETON, CALIFORNIA 92055-5010

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ENV\WWS
October 3, 2013

Ms. Joann Lim
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

Dear Ms. Lim:

SUBJECT: COMMENTS ON TENTATIVE ORDER R9-2013-0112, NATIONAL
POLLUTANT DISCHARGE ELIMINATION SYSTEM NO. CA0109347

On April 29, 2013, Marine Corps Base Camp Pendleton (CPEN) provided to the Regional Water Quality Control Board (RWQCB) an application to renew the National Pollutant Discharge Elimination Permit CA0109347, which was to expire November 1, 2013. The RWQCB provided CPEN with the tentative Order R9-2013-0113 on September 6, 2013 and had requested that written comments be provided no later than 5:00 p.m., October 7, 2013. CPEN is providing comments as Enclosure (1). If you have any questions, please contact me at (760) 725-9753 or contact Mr. Brian Y. Shin at (760) 725-0141. Thank you.

Sincerely,

A handwritten signature in black ink that reads "M. J. Bonsavage".

M. J. BONSAVAGE, P.E.
Head, Engineering Division
Environmental Security
By direction of the
Commanding General

Enclosure: 1. Marine Corps Base Camp Pendleton Comments to the
Regional Water Quality Control Board San Diego
Region Regarding Tentative Order R9-2013-0112

MARINE CORPS BASE CAMP PENDLETON
COMMENTS TO
THE REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
REGARDING TENTATIVE ORDER R9-2013-0112

(1) Section III.A: Language limiting ANY discharges not covered by the tentative permit or separate WDRs may POTENTIALLY run afoul of Congress's waiver of sovereign immunity in the CWA (e.g., certain discharges to land that do not implicate "waters of the US" or other cognizable state regulatory interests for which a clear waiver of sovereign immunity exists). CPEN requests the following language: "The discharge of waste from SRTTP and/or AWT to a location other than the Oceanside Ocean Outfall (Discharge Point No. 001), unless specifically regulated by this Order or separate WDRs TO THE EXTENT PERMITTED BY FEDERAL LAW, is prohibited." This permits the SWRCB to maintain jurisdiction should our interpretation of the scope of Congress's waiver of sovereign immunity be incorrect, but does not foreclose our ability to raise our legal position regarding the sovereign immunity waiver should a dispute ever arise.

(2) Attachment A, SSO Definition 1.B: CPEN requests the following language to comply with the Congressional waiver of sovereign immunity in CWA: "Result in a discharge to a drainage channel and/or surface water OF THE UNITED STATES..."

(3) Attachment E, Section V, Table E-6: CPEN requests that the minimum test frequency for chronic toxicity be established at once per month only for the first year of the permit and that the minimum frequency be reduced to once per quarter in subsequent years if the results of the first year's testing are within the discharge limitations.

(4) Attachment F, Section IV.A: Language that makes ALL discharges to land from the SRTTP/AWT "violations" governed by the Water Code is POTENTIALLY beyond the scope of Congressional waiver of sovereign immunity in CWA. CPEN requests the following language: "Discharges from the SRTTP and AWT to land that are not discharges to waters of the United States are POTENTIALLY governed by the Water Code and are not subject to third party lawsuits under the CWA because the Water Code does not contain provisions allowing third party lawsuits."

(5) Attachment H, Section I: CPEN requests the following language: "Any sanitary sewer overflow (SSO) from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited TO THE EXTENT PERMITTED BY FEDERAL LAW." This is consistent with the qualification regarding the Basin Plan contained in Attachment G, Footnote 1.