

**California Regional Water Quality Control Board
San Diego Region**

Response To Comments

**Tentative Order No. R9-2013-0112
NPDES No. CA0109347**

**Waste Discharge Requirements For The Marine Corps Base, Camp Pendleton,
Southern Regional Tertiary Treatment Plant And Advanced Water Treatment
Plant, Discharge To The Pacific Ocean Via The Oceanside Ocean Outfall**

Mr. Mark Hammond, Compliance Officer, City of Oceanside, and Mr. Mark Bonsavage, Engineering Division Head of Environmental Security, Marine Corps Base, Camp Pendleton, provided comments on Tentative Order No. R9-2013-0112, by email dated September 18, 2013 and by letter dated October 3, 2013, respectively. A full and complete copy of the email and letter with enclosure is included as Supporting Documents Nos. 3 and 4, respectively, for Item No. 5 on the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) November 13, 2013 Board Meeting Agenda.

The San Diego Water Board has prepared this Response to Comments document responding to the City of Oceanside's and Camp Pendleton's comments.

City of Oceanside's Comment:

Section VI.C.7. (page 21) and

Attachment F, Fact Sheet, Section VI.B.7. (page F-35)

The City of Oceanside requested that the San Diego Water Board consider the following language in the Tentative Order:

"Prior to initiation of discharge from new or expanded facilities or processes through the OOO, Camp Pendleton must evaluate the impact of the new discharge on the bacterial receiving water limitations. Should the evaluation show the new discharge to increase the bacterial characteristics in the receiving water then CP must submit a plan and time schedule that outlines the tasks and approaches to achieve full compliance with bacteria receiving water limitations, contained within the Ocean Plan, outside of the initial dilution zone of the Oceanside OO. The time schedule shall include timelines for design, construction and implementation of any new or improved facilities needed for compliance."

The City contends that changes in Camp Pendleton's treatment process or quality of the discharge may have an impact on the bacterial characteristic of the combined outfall discharge to the shared Oceanside Ocean Outfall (Oceanside OO) and may cause or contribute to bacterial exceedances in the receiving waters around the Oceanside OO.

Response to Oceanside: As requested, the Tentative Order has been modified to trigger an evaluation and compliance schedule (if needed), prior to initiation of discharge from new or modified facilities or processes from Marine Corps Base, Camp Pendleton (CPEN) through the Oceanside OO.

Camp Pendleton Comment No. 1

Section III.A. (page 4)

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.

Response to Camp Pendleton Comment No. 1: CPEN comments that there is uncertainty regarding the scope of the waiver of sovereign immunity within the Clean Water Act (CWA). (33 U.S.C. § 1323.) CPEN requests that the San Diego Water Board modify Discharge Prohibition Section III.A. to reflect CPEN's interpretation of the waiver. Without agreeing to CPEN's interpretation, the San Diego Water Board agrees to CPEN's proposed modification to the discharge prohibition to include the language "to the extent permitted by federal law." This change merely affirms existing law that discharges are prohibited to the extent permitted by federal law.

Camp Pendleton Comment No. 2

Attachment A, Definitions, Sanitary Sewer Overflow (SSO) Categories, Definition 1.B. (page A-5)

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 ... "

Response to Camp Pendleton Comment No. 2: CPEN requests that a definition in Attachment A regarding SSOs be modified to reflect CPEN's interpretation of the waiver of sovereign immunity within the CWA. This provision of the Order is a definition, and prohibitions that pertain to discharges from SSOs are covered in other areas of the Order. Accordingly, the San Diego Water Board declines to make the revision.

Camp Pendleton Comment No. 3

Attachment E, Monitoring and Reporting Program, Section V., Table E-6 (page E-8)
Attachment F, Fact Sheet, Section VII.C. (pages F-36 through F-37)

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.

Response to Camp Pendleton Comment No. 3: As requested, the Tentative Order has been modified to reduce monitoring if the results of the first year's testing are within the discharge limitations.

Camp Pendleton Comment No. 4

Attachment F, Fact Sheet, Section IV.A. (page F-15)

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."

Response to Camp Pendleton Comment No. 4: CPEN requests that language in Attachment F, Section IV. A. be modified to reflect CPEN's interpretation of the waiver of sovereign immunity within the CWA. The primary purpose of this provision of the Order is to describe the circumstances under which third-party "citizen suit" actions may be brought. The San Diego Water Board believes changes to this provision are unnecessary and declines to make the revision.

Camp Pendleton Comment No. 5

Attachment H, Sanitary Sewer System Requirements, Section I. (page H-1)

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.

Response to Camp Pendleton Comment No. 5: CPEN requests additional language in Attachment H, Section I to reflect its interpretation of the waiver of sovereign immunity within the CWA. CPEN requests that the San Diego Water Board, without agreeing to CPEN's interpretation of the waiver of sovereign immunity, agree that the waiver is only as broad as the language contained in CWA section 1323 allows. The San Diego Water Board agrees to the proposed language and the Order has been modified accordingly.