

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

Response to Comments Report

**Tentative Order No. R9-2015-0009
NPDES No. CA0109142**

***Waste Discharge Requirements for
Continental Maritime of San Diego
Discharge to San Diego Bay***

March 16, 2015

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

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

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Introduction

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has prepared this Response to Comments Report on Tentative Order No. R9-2015-0009, NPDES No. CA0109142, Continental Maritime of San Diego Discharge to San Diego Bay (Tentative Order). The Tentative Order was available for public review and comment for 30 days, with the comment period ending on February 5, 2015.

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Comments and Responses

The written comments and San Diego Water Board responses are in the table that follows. The comments are organized according to the person or entity that made the comment. The table indicates if the Tentative Order was revised in response to the comment.

San Diego Water Board Response to Comments
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 Waste Discharge Requirements for Continental Maritime of San Diego

No.	Comment	Response	Action Taken
Continental Maritime of San Diego (Continental Maritime)			
1	<p>Continental Maritime of San Diego respectfully requests chronic toxicity testing requirements be removed from the Tentative Order as it was from Order 97-37. The previous deletion can be confirmed in the State Water Quality Control Board Order WQ-98-07 dated September 17, 1998.</p> <p>The Tentative Order requires chronic toxicity monitoring of our storm water discharges. Our primary concern with the tentative order is firmly fixed on chronic toxicity being a proven inaccurate method of analyzing the extremely rare storm water discharges at our facility. For reference, we do not have industrial effluents at all, we do not have industrial area storm water, and all of our prior NPDES orders required acute monitoring following a San Diego County Superior Court 'Stay of Effectiveness' (Case No. 718025) and the State Water Resources Control Board's subsequent reconsideration and ruling in our favor in 1998 (Order WQ-98-07). The Court and Board found chronic toxicity testing was not an appropriate measure of our storm water discharges. They agreed chronic toxicity samples should be from a continuous effluent to support the renewable water requirement of the analytical method whereas acute toxicity accurately captures a snapshot of the storm event.</p>	<p>The Tentative Order establishes a chronic toxicity effluent limitation for storm water from designated Industrial High Risk Areas and requires periodic chronic toxicity monitoring of the discharges to demonstrate compliance with the chronic toxicity effluent limitation and toxicity receiving water limitation. The chronic toxicity effluent limitation and monitoring requirements replace the acute toxicity effluent limitation and monitoring requirements in the prior NPDES permit, Order No. 2008-00049.</p> <p>Neither the San Diego County Superior Court 'Stay of Effectiveness' (Case No. 718025) nor the State Water Resources Control Board's subsequent reconsideration and ruling in the 1998 Order WQ-98-07, <i>In the Matter of the Petitions of National Steel And Shipbuilding Company and Continental Maritime Of San Diego, Inc. for Review of Waste Discharge Requirements Orders 97-36 and 97-37 of the California Regional Water Quality Control Board, San Diego Region</i>, are binding on the chronic toxicity requirements of the Tentative Order.</p> <p>The chronic toxicity effluent limitation and testing requirements are established in the Tentative Order to be fully protective of San Diego Bay beneficial uses and are consistent with applicable NPDES permit regulations, current U.S. Environmental Protection Agency (U.S.EPA) guidance, draft statewide policy for toxicity assessment and control currently under development by the State Water Resources Control Board, and other NPDES permits regulating storm water discharges which incorporate a chronic toxicity effluent limitation for storm water and/or chronic toxicity monitoring requirements. These considerations are explained in further detail below as well as in the in the Fact Sheet in Attachment F of the Tentative Order.</p> <p>Federal regulations require that NPDES permits include effluent</p>	<p>No changes have been made to the Tentative Order.</p>

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		<p>limitations to control “whole effluent toxicity” where it is determined through a reasonable potential analysis that a discharge causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion. (See 40 CFR 122.44(d)(1)(iv) and 40 CFR 122.44(d)(1)(v)). In Clean Water Act parlance, the term whole effluent toxicity is used to describe the aggregate toxic effect of an aqueous sample as measured by an organism's response upon exposure to the sample. Toxic effects include, but are not limited to, lethality, impaired growth, or reproduction effects. Whole effluent toxicity tests replicate the total effect and actual environmental exposure of aquatic life to toxic pollutants in an effluent without requiring the identification of the specific pollutants. Chronic toxicity tests measure the sub-lethal effects of a discharge or ambient water sample (e.g. reduced growth or reproduction effects). Chronic toxicity tests also include a measurement of acute toxicity lethality because chronic effects such as reduced growth or reproduction cannot be measured if the organisms experience a lethal effect before they can grow or reproduce. Throughout the Tentative Order the term whole effluent toxicity is used interchangeably with the term chronic toxicity.</p> <p>The San Diego Water Board <i>Water Quality Control Plan for the San Diego Basin (9)</i> (Basin Plan) contains a narrative toxicity water quality objective stated in Receiving Water Limitation section V.G.1 of the Tentative Order which provides in relevant part that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in humans, plants, terrestrial animals, and aquatic organisms. The narrative toxicity objective is consistent with the requirements of the federal Clean Water Act Section 101(a)(3) which declares “that it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited.”</p> <p>The Tentative Order concludes in Attachment F of the Fact Sheet that due to the lack of monitoring data, the types of industrial activities conducted on-site, the scale of the industrial activities, and the previous</p>	

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		<p>indication in the prior NPDES permit that reasonable potential for the Continental Maritime facility to exceed toxicity effluent limitations exists, reasonable potential under the Tentative Order exists to exceed the Basin Plan toxicity water quality objective. (Tentative Order Fact Sheet at Page F-17). Thus an industrial storm water effluent limitation for toxicity is mandated in the Tentative Order pursuant to the previously cited federal regulations.</p> <p>U.S.EPA Region IX has advised the San Diego Water Board to establish appropriate toxicity effluent limitations for discharges of industrial storm water from shipyards and other industrial facilities into San Diego Bay. By letter dated February 25, 2015, U.S.EPA Region IX expressed their support for incorporating chronic toxicity effluent limitations for industrial storm water discharges in the Tentative Order and commented that use of these chronic toxicity effluent limitations conforms to longstanding U.S.EPA regulations and policy. Continental Maritime currently has acute toxicity effluent limitations for industrial storm water discharges. To ensure protection of the San Diego Bay receiving waters from the sublethal effects of industrial storm water discharges on survival, growth, and reproduction of aquatic life, U.S.EPA Region IX has recommended the application of chronic toxicity effluent limitations and testing as being preferred over acute toxicity limitations and testing. The use of chronic toxicity allows for a more accurate determination of compliance with the toxicity water quality objective, with respect to “detrimental physiological responses”. For example chronic effects, such as detrimental physiological responses affecting fertilization, growth, and reproduction, may be present, even when acute effects such as the death of an organism are not apparent (Tentative Order Fact Sheet at Page F-18).</p> <p>Regulatory approaches on the application of chronic toxicity effluent limitations and monitoring requirements for industrial storm water discharges have evolved since September 17, 1998, when the State Water Board issued Order WQ-98-07 in the matter of the petitions of</p>	

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		<p>National Steel and Shipbuilding Company (NASSCO) and Continental Maritime of San Diego, Inc. Advances have been made in the statistical approach used to assess chronic toxicity test results through U.S.EPAs' Test of Significant Toxicity (TST) method of evaluation. The TST method is required under the Tentative Order and provides increased confidence in chronic toxicity data assessments in determining whether a discharge is toxic or non-toxic. The State Water Board demonstrated support for the use of chronic toxicity as a valid measurement of the impacts of storm water on receiving waters in the reissuance of the California Department of Transportation statewide NPDES Storm Water Permit, Order 2012-0011-DWQ, on September 19, 2012. This Order requires chronic toxicity monitoring of storm water runoff from outfalls greater than 18 inches when the discharge is to an Area of Special Biological Significance (ASBS) and data analysis using the TST method. Similar requirements to conduct chronic toxicity monitoring of storm water runoff are contained in the San Diego Water Board's Regional Municipal Separate Storm Sewer (MS4) Permit, NPDES Order No. R9-2013-0001, adopted on May 8, 2013. Chronic toxicity effluent limitations and monitoring requirements for industrial storm water discharges are also incorporated into the San Diego Water Board's General Boatyard Permit, NPDES Order No. R9-2013-0026, adopted on May 8, 2013. In addition, the State Water Board draft <i>Policy for Toxicity Assessment and Control</i>, dated June 2012, recommends the use of chronic toxicity tests for industrial storm water discharges.</p> <p>Based on all of these considerations no changes to the Tentative Order are needed or warranted.</p>	

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2	Remove the three questions following the first paragraph which imply compliance benchmarks in Attachment E, section IV, Receiving Water and Sediment Monitoring Requirements.	<p>The monitoring and reporting program in the Tentative Order and other recently adopted National Pollutant Discharge Elimination System (NPDES) permits are question-driven to better explain the purpose of the monitoring that is established in the program. For the purposes of the Tentative Order, the San Diego Water Board agrees that some of the receiving water monitoring questions could be improved to better explain the purpose of the monitoring. The questions have been retained and modified in the Tentative Order to address Continental Maritime's concerns as shown below. Modified text is displayed in underline or strikeout format.</p> <p>(1) Does the receiving water meet water quality standards <u>listed in section V of this Order, Receiving Water Limitations?</u></p> <p>(2) Are the receiving water conditions getting better or worse over time?</p> <p>(3) What is the relative contribution of the Facility discharge to pollution in the receiving waters? <u>Does the Facility cause or contribute to violations of the Receiving Water Limitations in Section V. of this Order?</u></p>	Tentative Order Section IV of Attachment E and section VII.E of Attachment F have been revised.
3	Change the annual receiving water monitoring frequency in Attachment E, section IV, Receiving Water and Sediment Monitoring Requirements, Paragraph C. 3. A. to require monitoring during one qualifying storm event (QSE) with a storm water release per year.	The San Diego Water Board agrees that the intention of the receiving water monitoring program is to determine the effects of any discharge from Continental Maritime on the receiving water. For this reason, the Tentative Order has been revised to clarify that receiving water monitoring is required once annually during a QSE.	Tentative Order Table E-3 in Attachment E has been revised.
4	Remove the chronic toxicity requirement in Table E-3 yet specify acute toxicity testing to accurately capture aquatic life affects from our rare storm water releases.	See response to Comment No. 1. Based on all of these considerations no changes to the Tentative Order are needed or warranted.	No changes have been made to the Tentative Order.

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5	<p>Continental Maritime commented that the costs of implementing the Tentative Order requirements, primarily with respect to chronic toxicity, sediment quality triad sampling and analysis, and Storm Water Pollution Prevention Plan maintenance, will be 363% to 696% higher than the previous NPDES Order.</p>	<p>The requirements of this Tentative Order are similar to other facilities on San Diego Bay, regulated under NPDES permits, such as Naval Base San Diego (Order No. R9-2013-0064) and Naval Base Point Loma (Order No. R9-2014-0037).</p> <p>No changes to the Tentative Order are needed or warranted with respect to the application of a chronic toxicity effluent limitation and chronic toxicity monitoring requirements for industrial storm water discharges (See Response to Comment No. 1).</p> <p>Partially in response to this comment the San Diego Water Board has revised the Tentative Order to reduce the frequency of receiving water column monitoring from annually to once annually when a qualifying storm event occurs resulting in a discharge to San Diego Bay. (See Response to Comment No. 3). Continental Maritime diverts most industrial storm water flows to the sanitary sewage system, and rarely discharges storm water flows to San Diego Bay. The requirement to conduct receiving water column monitoring will rarely be triggered under these circumstances and the reduction in receiving water monitoring costs will be a significant savings. Another consideration in projecting monitoring costs is that storm water sampling is also only required if there is a discharge to San Diego Bay which again should result in a significant cost savings. Continental Maritime's projected cost estimates represent a worst-case scenario and actual costs will likely be less than they have estimated especially for the sediment quality triad sampling and the Storm Water Pollution Prevention Plan (SWPPP) as explained below.</p> <p>The initial sediment chemistry screening required in the receiving water sediment monitoring program described in Attachment E of the Tentative Order at section IV.C.4 may include sampling at 14 locations. Benthic community monitoring will likely be conducted at fewer stations based on the conceptual model that is required to be submitted for assessing the sediment monitoring program design. In addition, the</p>	<p>See responses to Comment Nos. 1 and 3 above.</p>

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		<p>Tentative Order does not require that sediment sampling be conducted annually. Over the five year term of the Tentative Order, one initial sediment chemistry screening event and one sediment quality triad monitoring event are required at yet to be determined locations.</p> <p>To achieve maximum efficiency and economy of resources in conducting monitoring, the Tentative Order provides, in section IV.B of Attachment E, that Continental Maritime may establish or join a San Diego Bay monitoring coalition with other dischargers and groups conducting monitoring in San Diego Bay. Monitoring coalitions enable the sharing of technical resources, trained personnel, and associated costs and could create an integrated monitoring program within San Diego Bay. Continental Maritime could consider forming a monitoring coalition or make other arrangements to work with other dischargers conducting monitoring in San Diego Bay such as BAE Systems, NASSCO and the US Navy to have one contractor sample multiple sites.</p> <p>The Tentative Order requires, in section XII of Attachment G, that the Storm Water Pollution Prevention Plan (SWPPP) be revised prior to changes in industrial activities or as necessary in response to violations of the Tentative Order. This requirement to maintain the SWPPP is a standard requirement in all NPDES Permits dealing with regulation of storm water flows including but not limited to the statewide <i>General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities</i>, Order No. 2009-0009-DWQ and the statewide <i>General Permit for Storm Water Discharges Associated with Industrial Activities</i>, Order No. 2014-0057-DWQ. While the Tentative Order requires that the SWPPP be reviewed annually and revised as necessary to reduce or prevent pollutant discharges, this annual review should result in limited changes to the SWPPP at a minimal cost.</p>	

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6	Continental Maritime of San Diego respectfully requests the facility contact, title and phone and authorized person to sign and submit reports in Attachment F, Table F-1 be changed to Dewey Youngerman per the signature information provided.	By e-mail dated December 23, 2014, Continental Maritime sent a form signed by the Vice President and General Manager authorizing Russell McCarthy and Dewey Youngerman to sign reports for the Facility. Table F-1 of Tentative Order has been revised accordingly.	Tentative Order Table F-1 has been revised.
U.S. Environmental Protection Agency, Region IX			
7	Consistent with EPA policy and State and Regional Board practices, we fully support the use of chronic toxicity limitations in this permit.	The San Diego Water Board appreciates the support from the U.S. Environmental Protection Agency, Region IX.	No changes have been made to the Tentative Order.

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