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July 30, 2009

John Robertus, Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: CRU:9 000000066:KSchwall
Tentative Order No. R9-2009-0099, NPDES Permit No. CA0109134

Dear Mr. Robertus:

On behalf of our client National Steel and Shipbuilding Company (NASSCO), this letter is sent to provide comments regarding certain toxicity-related provisions in Tentative Order No. R9-2009-0099, NPDES Permit No. CA0109134 (the "Draft Permit"), which was made available for public review on July 13, 2009 and included in underline/strikeout changes from the previously released version of the Draft Permit, Tentative Order R9-2008-0050.

I. CHRONIC TOXICITY LIMITATIONS AND MONITORING REQUIREMENTS SHOULD BE DELETED

The Draft Permit has been revised to retain the numeric chronic toxicity limitations that are included in NASSCO's current permit, even though the prior version of the Draft Permit indicated that the development of such numeric limitations is currently "infeasible" because "the SIP¹ contains implementation gaps regarding the appropriate form and implementation of chronic toxicity limits" that the State Board is seeking to address through revision of the SIP. Given the Regional Board staff's prior statement that the operative SIP does not provide adequate guidance for the development and implementation of numeric chronic toxicity limitations, it is inappropriate for such limitations to be re-inserted into the Permit at this time. Accordingly, NASSCO requests deletion of chronic toxicity limitations, and monitoring requirements, until the SIP has been revised and an appropriate regulatory framework for chronic

¹ The "SIP" refers to the "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California."

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toxicity limits in NPDES Permits has been established. The “anti-backsliding” provisions in the Code of Federal Regulations do not apply to the removal of chronic toxicity limitations given the aforementioned inadequacies in the SIP. (40 CFR § 122.44(l)(2)(i)(B)(2)). We also note that two permit cycles ago, upon petition to the State Board, chronic limitations for the Facility’s stormwater discharges were found to be inappropriate, and deleted from the Facility’s permit, because stormwater discharges are intermittent. Since the Facility’s floodwater discharges (M-2, M-3, and M-4) are also intermittent and infrequent, occurring only once or twice per year (or less), chronic toxicity requirements should be removed for the floodwater discharges for the same reason.

To the extent that chronic toxicity limits and testing requirements are nonetheless retained in the Permit, NASSCO requests the following points of clarification. First, Section V.B.1 of Attachment E discusses a chronic toxicity monitoring program that uses two test species, while Section V.B.2 in the following paragraph discusses a program that would require three test species. The required number of test species needs to be clarified. Second, with regard to Section V.B.2’s 3-species screening procedure (if it is intended to apply), the Draft Permit is unclear if NASSCO would be required to test all three species only during the first year, or if NASSCO would be required to test all three species each year.

Third, we note that Section V.B.3.b of Attachment E provides that no dilution allowance is authorized for chronic toxicity testing, and that the chronic instream waste concentrations (“IWCs”) for this discharge are 100% effluent and 62.5% effluent. The Draft Permit further provides that chronic toxicity tests will be performed at these IWCs in addition to three lower concentrations: 50, 25 and 12.5 % effluent. NASSCO requests an explanation of how these IWCs were determined and why two concentrations are included in the Permit. In addition, we request modification of the Permit so that monitoring is required only at the IWC concentration if that is the point of compliance determination. Further, we believe that an IWC of 62.5% suggests a dilution factor may be applicable at some point; if not, testing of multiple concentrations in addition to the 100% sample should not be required.

Finally, Section V.B.3.c in Attachment E states that if the use of artificial sea salts is considered provisional in the test method, then artificial sea salts should not be used to increase the salinity of the effluent sample without written approval by the permitting authority. Please clarify the meaning of “provisional” as used in this section.

II. THE REQUIREMENT OF A “SPLIT SAMPLE” TO TEST FOR MONITORED CHEMICALS NEEDS CLARIFICATION

The current Permit does not require NASSCO to split the effluent sample collected for toxicity tests to concurrently test for monitored chemicals. However, Section V.A.1 of Attachment E to the Draft Permit provides that during the first and fifth years of the Permit’s implementation, a split of the toxicity testing effluent sample is to be “analyzed for all other monitored parameters at the minimum frequency of analysis specified by the effluent monitoring program.” The Draft Permit requires annual toxicity testing for all discharge systems, but at the same time is asking NASSCO to match the frequency of analysis required for monitored

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chemicals, some of which have monitoring requirements that are more frequent (e.g., once per month, once per quarter). It is unclear how a split of annually collected effluent sample used to test for toxicity can be analyzed for chemicals on a schedule more frequent than once per year. The Draft Permit should be revised to clarify this language.

III. ACUTE TOXICITY REPORTING REQUIREMENTS

Regarding Section V.A.6 of Attachment E, because acute testing is performed with a single concentration, we note that a precise LC50 cannot be determined if more than 50% mortality occurs in the single concentration. Also, if more than 50% mortality occurs, an accurate TUa value cannot be determined, as the LC50 is used to calculate the TUa value. Therefore, when more than 50% mortality occurs, it can only be accurately reported that the $LC50 < 100\%$ and the $TUa > 1.0$.

IV. SPECIES FOR TOXICITY TESTING

The Draft Permit proposes changes to the types of organisms used for acute toxicity testing. Consistent with its current permit, NASSCO has been conducting annual 96-hour static-renewal tests using the invertebrate *Americamysis bahia* (formerly known as *Mysidopsis bahia*) for testing acute toxicity of its discharge waters. However, Section V.A.1 of Exhibit E to the Draft Permit provides that two species, one invertebrate and one fish, should be used in the initial toxicity test. The Draft Permit would therefore require NASSCO to institute a second toxicity test using one of the specified fish species, and states that, following an initial concurrent test using both an invertebrate and fish species, NASSCO shall choose the "most sensitive" species and continue routine testing with the most sensitive species. But the Draft Permit does not explain what is meant by the "most sensitive" species or identify how to choose between species if the outcome of toxicity tests are identical for the two species for a given discharge system. Nor does the Draft Permit clarify whether the judgment of sensitivity is to be made on a discharge-by-discharge basis, or for all discharge systems viewed as a whole. (these comments also apply to the chronic toxicity monitoring requirement in Attachment E, Section V.B.1)

Moreover, the Draft Permit provides that the *Americamysis bahia*, which has been used by NASSCO under the current permit, may be used only if another invertebrate species, the *Holmesimysis costata*, is not available. Please explain the basis for this change.

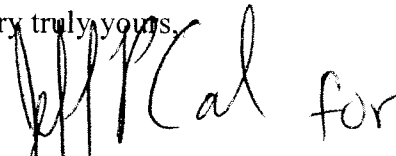
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V. NEW STORMWATER MONITORING REQUIREMENTS SHOULD BE REMOVED FROM NASSCO'S PERMIT

The Draft Permit requires acute toxicity testing for two storm events per year. We believe this requirement is unnecessary because five years of toxicity testing data (from November 2002 through June 2007) demonstrates that the Facility does not have toxicity problems. Indeed, this data indicates that there have not been any failures at the Facility under the "hypothesis" test proposed for acute toxicity in the Draft Permit.

Thank you for your attention to this matter.

Very truly yours,



for

Kelly E. Richardson
of LATHAM & WATKINS LLP