

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS
TENTATIVE TO ORDER NO. R9-2009-0080**

**Item No. 07
Doc. No. 08**

A. Comments submitted by Sandor Halvax, Director Environmental Services, BAE Systems San Diego Ship Repair Inc., on May 27, 2008

COMMENTS	REGIONAL BOARD RESPONSES
<p>Recital No. 1</p> <p>WDR, Page 6, II.B, Water Weight Test Bags, Delete reference to these discharges.</p>	<p>The Regional Board staff agrees with the comment, the text will be deleted.</p>
<p>Recital No. 2</p> <p>ATT. E/MRP, Page E-8, Table E-5, Delete footnote 4 on Flow, This applies to WW Test Bags which have been deleted.</p>	<p>The Regional Board staff agrees with the comment, the text will be deleted.</p>
<p>Recital No. 3</p> <p>ATT. E/MRP, Page E-9, V.A.1, Acute Toxicity. This section should describe the analytical requirement itself, but it appears to address the storm water requirements.</p> <p>Clarify this section to define the test requirements for Acute Toxicity. Move the storm water specific discussion to Section D. As written, it is unclear that the Acute Toxicity Testing requirement applies to other than storm water.</p>	<p>The Regional Board staff agrees with the comment, the text will be modified and will include the following:</p> <p>Section V.A.1 will contain new language stating that the Acute Toxicity Testing requirement applies to all discharges.</p> <p>Section V.A.1 on Page E-9 and E-10 will not be moved to Section in IX.D.</p>

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<p>Recital No. 4</p> <p>ATT. E/MRP, Page E-10, V.A.I, Last Paragraph, Add language re: contained storm water. <u>“For storm water sampling, sampling shall occur during storm events, or if collected, prior to release to receiving water.”</u></p>	<p>The Regional Board staff agrees with the comment, the text will be modified as recommended.</p>
<p>Recital No. 5</p> <p>ATT. E/MRP, Page E-14, V.B, Delete reference to Chronic Toxicity.</p>	<p>The Regional Board staff does not agree with the comment. The reference to Chronic Toxicity describes the monitoring frequency, method for the analysis, quality assurance, and reporting. This is included because chronic toxicity sampling is required once a year.</p> <p>The tentative Order will not be modified.</p>
<p>Recital No. 6</p> <p>ATT. E/MRP, Page E-21, Table E-8, *footnote re: Minimum Frequency. <u>“Sampling shall occur during storm events, or if collected, prior to release to receiving water.”</u></p>	<p>The Regional Board staff agrees with the comment, the text will be modified as recommended.</p>
<p>Recital No. 7</p> <p>ATT. E/MRP, Page E-35, X.D.I, Table E-14, Annual BMP Site Evaluation due February 28. Conflicts with the requirement to submit the report as part of the Storm Water Annual Report due September 1. It is not clear if this is the same as the report required under IX.D.6.d. Since BMPs</p>	<p>The Regional Board staff agrees with the comment, the text will be modified as recommended. The modifications will include the following:</p> <p>The annual BMP Site Evaluation report and the Storm</p>

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<p>are required for more than just storm water, recommend that the annual BMP Site Evaluation report be submitted as part of the annual report. If a separate Stormwater BMP Evaluation report is desired as part of the Annual SW report than that should be made clear.</p>	<p>Water Annual Report are separate reports to be submitted with the annual report.</p> <p>The annual report shall be due September 1.</p>
<p>Recital No. 8</p> <p>Fact Sheet, Page F-8, I.B. Table F-2, SW-002 should be non-industrial storm water. Change description to “Non-Industrial Stormwater”</p>	<p>The Regional Board staff agrees with the comment, the text will be modified as recommended.</p>
<p>Recital No. 9</p> <p>Fact Sheet, III.C.8, Page F-15, The Vessel General permit does not apply to “Vessels tied to a pier...” Delete the words “...tied to a pier or... in the fourth sentence.</p>	<p>The Regional Board staff agrees with the comment, the text will be deleted.</p>
<p>Recital No. 10</p> <p>Fact Sheet, VII.B.3.a, Page F-43, The second paragraph, second sentence, reads to be inclusive of all vessels at the facility, but should a reference to those vessels where the VGP is not applicable only. In the second sentence of the second paragraph change to read “While a vessel is <u>in drydock</u> at the Facility, ...”</p>	<p>The Regional Board staff agrees with the comment, the text will be modified as recommended.</p>

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<p>Recital No. 11</p> <p>BMP Plans, V.III.C, Page G-7, Edits to BMP 16. Delete BMP 21. 16. Delete "... graving dock, shipbuilding ways, and marine railway..." Delete BMP 21 in its entirety.</p>	<p>The Regional Board staff agrees with the comment, the text will be modified as recommended, and BMP 21 will be deleted.</p>
<p>Recital No. 12</p> <p>12. <u>Steam Condensate</u></p> <p>The tentative draft order provides an effluent limitation for temperature applicable to steam condensate discharges. Immediately below Table 6 on page 15 the order states "<i>At no time shall any discharge be greater than 20 °F over the natural temperature of the receiving water</i>". This limitation is overly conservative and unnecessary to protect San Diego Bay beneficial uses. Steam condensate discharges at BAE Systems are "<i>existing discharges</i>" as defined in the "California Thermal Plan", are exceptionally low in volume and have negligible effect on the ambient receiving water temperature.</p> <p>The California Thermal Plan defines existing discharges as "Any discharge (a) which is presently taking place, or (b) for which waste discharge requirements have been established and construction commenced prior to adoption of this plan, or (c) any material change in an existing discharge for which construction has commenced prior to the adoption of this plan." Steam condensate discharges at BAE Systems are "existing discharges" that have occurred since prior to 1971, the year the California</p>	<p>The Regional Board staff agrees with part of this comment.</p> <p>AGREE</p> <p>If a discharge existed before 1971 then the applicable water quality objective is "<i>Elevated temperature waste discharges shall comply with the limitations necessary to assure protection of beneficial uses</i>" and may not necessarily require the discharge not to be greater than 20 °F over the natural temperature of the receiving water if it does not adversely affect beneficial uses.</p> <p>DISAGREE</p> <p>While the discharger has submitted a number of items to establish an existing discharger prior to 1971, the documentation does not identify when the discharge existed. Therefore, the discharge is treated as a New Discharge that requires the</p>

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<p>Thermal Plan was originally adopted, and are currently included as an authorized discharge in Order No.R9-2002-0161 (issued on November 13,2002). The California Thermal Plan requires existing discharges into enclosed bays "... comply with limitations necessary to assure protection of beneficial uses." Steam condensate discharges from piping systems have been eliminated. The discharges authorized in the permit are for those minimal drips and leaks that may occur from hoses providing steam to vessels and are exceptionally low volume and dispersed over a wide area they will not adversely affect beneficial uses.</p>	<p>maximum temperature of the waste discharge not exceeding the natural temperature of the receiving water by more than 20°F.</p> <p>Even if the discharger had established an existing discharger prior to 1971, without sufficient new information demonstrating that no reasonable potential exists to cause an exceedance of the temperature effluent limitation, the Anti-Backsliding Policy would prevent the elimination of this limitation for the renewed permit.</p> <p>The tentative Order will not be modified.</p>
<p>Recital No. 13.</p> <p>13. <u>Receiving Water Limitations</u></p> <p>The tentative draft order includes a receiving water limitation that should be revised to specify how compliance with the limitation is determined. Section V. Receiving Water Limitations, A. Surface Water Limitation includes the following statement "<i>The discharge of waste shall not cause or contribute to an exceedance of any applicable water quality objective or standard contained in applicable statewide water quality control plans, the California Toxics Rule, or the San Diego Basin Plan.</i>" Although the Fact Sheet (pages F-39, attachment F) explains that monitoring in the receiving water will be used to determine compliance with receiving water limitations, BAE Systems request a similar statement be added to the receiving water limitation (page 35 of</p>	<p>Section V.A. Surface Water Limitations will not be changed as recommended because this would limit the ability of the Regional Board to determine compliance because monitoring in the receiving water is only one of many factors the Regional Board uses to determine permit compliance.</p>

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<p>the order) to ensure it is clear to the reader how compliance is determined.</p> <p>To eliminate any questions on the compliance requirements for the receiving water limitations, the BAE Systems requests the tentative order be revised to clearly state that compliance with the receiving water limitations will be determined in the receiving water. BAE Systems recommends the following sentence be added to the end of V.A. Surface Water Limitation - "Compliance with this limitation will be determined through monitoring of the receiving water (San Diego Bay and the Pacific Ocean) using appropriate methods as specified by the Regional Water Board."</p>	

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B. Comments submitted by Cory J. Briggs, Briggs Law Corporation on June 2, 2009

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<p>Recital No. 1</p> <p>I wanted to let you know that I have the same concerns about Tentative Order no. R9-2009-0080, which the Regional Board will consider next week, and ask that you take appropriate steps to address my concerns.</p> <p>As you know, last year I submitted a couple of comments on proposed permit no. R9-2008-0049. You responded by indicating that my comments would be incorporated into that proposed permit. Attached to this message is a copy of the document in which you acknowledged that my comments would be incorporated into that permit. (My comments and your response appear on pages 3 and 4 of the attachment.)</p> <p>I have the same concerns with regard to Tentative Order no. R9-2009-0080. Accordingly, I ask that Tentative Order no. R9-2009-0080 be modified to address my concerns, as was done for proposed permit no. R9-2008-0049. I also ask that you include this e-mail and the attachment in the administrative record for Tentative Order no. R9-2009-0080 because I will be unable to attend next week's meeting and submit these materials myself.</p>	<p>The Regional Board staff had already addressed this comment in the Underline/Strikeout Tentative Order R9-2009-0080.</p> <p>Mr. Briggs was contacted and Mr. Briggs agreed that his concerns had indeed already been addressed in the Underline/Strikeout Tentative Order R9-2009-0080.</p> <p>However, in the errata, the text has been modified to be more accurate. The spirit of the text has not been changed.</p>

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C. Comments submitted by Doug Eberhardt, US Environmental Protection Agency on June 3, 2009

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<p>Recital No. 1</p> <p>We have reviewed the subject revised draft National Pollutant Discharge Elimination System (NPDES) permits for BAE Systems San Diego Ship Repair, Inc. and the U.S. Department of the Navy, Naval Base Coronado. Our review and comments are limited to the subject of toxicity requirements. We wish to acknowledge the considerable progress made in development of NPDES permit limits and conditions which address our interest in proper implementation of acute toxicity requirements specified in California Basin Plans and other applicable State-wide plans and policies.</p>	<p>Comment noted.</p>
<p>Recital No. 2</p> <p>Nearly a year ago, in June 2008, we discussed with your staff our support for reissuance of the draft Continental Maritime permit which now contains an acute toxicity effluent limit, associated monitoring requirements, and other conditions for the discharge of industrial stormwater. At that time, we recommended to your staff the use of "Pass or Fail" units of expression for limiting and reporting acute toxicity; the renewal of 96-hour acute toxicity tests at 48-hours using the original effluent sample (due to the short duration of some storm events); and the limited use of East Coast marine species for acute toxicity testing when West Coast marine species are available. We appreciate that these two proposed permits (BAE Systems and Navy Base Coronado) contain acute toxicity provisions consistent with those adopted in the Continental Maritime permit.</p>	<p>Comment noted.</p>

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<p>Recital No. 3</p> <p>EPA continues to strongly support the San Diego Regional Water Board's approach for expressing acute toxicity effluent limits and the compliance determination language and supporting conditions as proposed in the subject draft revised permits. Together, these requirements are fully consistent with the Clean Water Act (CWA), NPDES regulations requiring effluent limits, the Basin Plan and applicable State-wide plan and policy requirements for acute toxicity. Furthermore, the proposed requirements follow EPA Regions' 9 and 10 May, 1996 guidance document and November, 2007 technical training tool document on the topic of whole effluent toxicity implementation in NPDES permits, and EPA's October, 2002 "Short-term Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms." We continue to view the proposed requirements as model acute toxicity language for industrial stormwater discharges.</p>	<p>Comment noted.</p>
<p>Recital No. 4</p> <p>We strongly advocate this approach for acute toxicity in these permits for the following reasons. The proposed effluent limit, compliance determination language, and implementation provisions for acute toxicity are legally sound, technically correct, clearly stated, and implementable. The proposed effluent limit, in combination with conditions for: (1) accelerated monitoring when elevated levels of acute toxicity are reported in the effluent and (2) appropriate TRE/TIE conditions which direct the permittee to identify and correct the causes of toxicity when elevated levels of acute toxicity are repeatedly reported, meet EPA's expectations for acute toxicity implementation in NPDES permits for industrial stormwater in California.</p>	<p>Comment noted.</p>

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<p>Recital No. 5</p> <p>We have reviewed the May 27, 2009 letter from the Navy criticizing the proposed acute toxicity requirements. This letter refers to the Navy's 2006 comprehensive study of stormwater toxicity. While EPA appreciates the Navy's work on this study, and believes that the collected data are valuable, EPA does not agree with the all of the conclusions reached by the Navy based on these data. For example, the Navy's conclusion that there was less than 1% observed toxicity is based on statistical methods which are inconsistent with EPA's whole effluent toxicity methods manuals. The Navy's testing approach appears to be biased toward not finding toxicity in situations where a test shows significantly reduced survival relative to control samples. We also disagree that the proposed permits are somehow inconsistent with EPA's March, 1991 "Technical Support Document for Water Quality-based Toxics Control", as implied by the Navy's May 27, 2009 letter. We'd like to reiterate that the proposed permits' provisions on acute toxicity are consistent with current EPA policies and regulations.</p>	<p>Comment noted.</p>
<p>Recital No. 6</p> <p>We note that the BAE Systems permit contains chronic toxicity monitoring requirements. It is not clear why these same chronic toxicity monitoring requirements are not included in the Naval Base Coronado permit and, based our review, we would recommend their addition to the Navy's permit.</p>	<p>The Regional Board staff agrees with the comment.</p> <p>The requirements are carried over from the existing permit, Order No. R9-2002-0161. For Naval Base Coronado, the existing permit, Order No. R9-2003-0008 did not have these requirements. However, the tentative order for Naval Base Coronado will be modified because the non-storm water discharges for both facilities are similar.</p> <p>The tentative order text for BAE Systems will not be modified.</p>

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<p>Recital No. 7</p> <p>Also, we have reviewed the fact sheet for the proposed BAE Systems permit, and do not agree with the rationale provided for not including chronic toxicity limits. Following 40 CFR 122.44(d)(1), it is our view that when a discharge presents the reasonable potential for exceeding Water Quality Standards, effluent limits for such a discharge need to be established.</p>	<p>The Regional Board staff agrees with the comment, the text will be modified as recommended. The State Board intended to modify the SIP specifically to address the implementation issues of establishing chronic toxicity limits. The State Board anticipated that the review of this issue would occur within the year 2004. Since the State Board has not yet modified the SIP for establishing chronic toxicity limits, the modifications in the errata will reinstate the chronic toxicity limits, based on Anti-Backsliding, for non-storm water and will include the following:</p> <p>Chronic toxicity: The chronic toxicity of undiluted discharges to San Diego Bay which consist of water taken from San Diego Bay shall not exceed 1 TUc, except where the chronic toxicity of San Diego Bay water at the intake location exceeds 1 TUc. Where the chronic toxicity of San Diego Bay water at the intake location exceeds 1 TUc, the chronic toxicity of undiluted discharges to San Diego Bay which consists of water taken from San Diego Bay shall not exceed the chronic toxicity of San Diego Bay water at the intake location. (In the absence of test results demonstrating otherwise, it will be assumed that the chronic toxicity in San Diego Bay water at the intake location does not exceed 1 TUc).</p>	
<p>Recital No. 7</p> <p>We recommend that these permits be adopted, with the revised acute toxicity requirements proposed by Regional Water Board staff. If you have questions regarding this correspondence, please contact Robyn Stuber, of our NPDES Permits Office, at 415/972-3524.</p>	<p>Comment noted.</p>	