



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

Reply to:
WTR-5

JUN 03 2009

Vicente Rodriguez
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Re: BAE Systems San Diego Ship Repair, Inc. – Revised Draft NPDES Permit No. CA0109151 and U.S. Department of the Navy, Naval Base Coronado – Revised Draft NPDES Permit No. CA0109185

Dear Mr. Rodriguez:

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.

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.

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.

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.

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 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.

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 on our review, we would recommend their addition to the Navy's permit. 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.

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.

Sincerely,

Eugene Brumley
for Doug Eberhardt, Chief
NPDES Permits Office