



DEPARTMENT OF THE NAVY
COMMANDER NAVAL REGION SOUTHWEST
SAN DIEGO REGIONAL BOARD
937 NO. HARBOR DR.
SAN DIEGO CALIFORNIA 92132-0058
WATER QUALITY
CONTROL BOARD

IN REPLY REFER TO:
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March 11, 2013

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Kristin Schwall
California Regional Water Quality Control Board,
San Diego Region
9174 Sky Park Court, Suite 100
San Diego California 92123-4340

Dear Ms. Schwall:

SUBJECT: COMMENT - TENTATIVE ORDER NO. R9-2013-0026, Place ID:
785854

On behalf of Navy Region Southwest I respectfully submit these comments on the draft General Waste Discharge Requirements for discharges of industrial storm water from boatyard and boat maintenance and repair facilities in the San Diego Region.

1. Toxicity Monitoring/Requirements in the Receiving Water are Protective of SD Bay Water Quality

In a conscious policy decision, supported by the Clean Water Act (CWA), the San Diego Regional Board proposed a draft Regional Municipal Separate Storm Sewer System (MS4) permit, Order No. R9-2013-0001. The draft MS4 permit includes receiving monitoring for toxicity to insure that receiving waters are protected from the discharge of toxic substances. This policy direction recognizes some very important and unique aspects of storm water discharges namely; they are intermittent, flow is variable, and they are short duration representing a very temporary condition in the receiving water. In contrast, the proposed Order for the boatyards includes chronic toxicity monitoring and effluent limits at the end of the pipe (100% storm water). We oppose this approach. In Order No. WQ 98-07, the State Water Resources Control Board (State Water Board), in response to the petitions of National Steel and Shipbuilding Company and Continental Maritime of San Diego, Inc., ruled on the use of chronic toxicity testing requirements for storm water. The State Water Board found that "Chronic toxicity for storm water is not a valid measurement of the impacts of storm water on receiving waters. The chronic toxicity limitation for storm water will be deleted." Rather, the Navy supports the use of toxicity testing in the receiving water when determined necessary to protect water quality.

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2. State and Regional Policies Support Toxicity Monitoring/ Requirements in the Receiving Water

Receiving water toxicity testing is consistent with the San Diego Region Basin Plan which states that "All waters shall be maintained free of toxic substances in concentrations that are toxic, or that produce detrimental physiological responses in human, plant, animal, or aquatic life". Case law reinforces and supports this focus on receiving water quality verses discharge sources. "It is clear under both the Clean Water Act and the Porter-Cologne Act that the focus of a basin plan is the water bodies and the beneficial uses of those water bodies, not the potential sources of pollution for those water bodies."¹ Receiving water toxicity testing is also consistent with the current draft of the State Water Board Policy for Toxicity Assessment and Control as well as the recently adopted Framework for Monitoring and Assessment in the San Diego Region. Together these documents insure that reliable and statistically and scientifically sound information is produced to demonstrate water quality protection, guide decisions about and evaluate the progress of efforts to protect and restore the quality and beneficial uses of waters in the San Diego Region. The end of pipe toxicity testing proposed in the boatyard permit cannot provide this essential information and is therefore inappropriate for storm water discharges.

3. Consistent Application Toxicity Testing

Toxicity limitations for storm water discharges are not technology based discharge limitations. Instead they are driven by water quality protection goals and are a water quality based effluent limitation (WQBEL). Case law supports this focus on the water body, verses the discharger, "water quality standards set the permissible level of pollution in a specific body of water without direct regulation of the individual sources of pollution."² See additional cases in support.³

When focused on the water body, it is essential that the approach in applying water quality based standards, such as toxicity, be consistent for all storm water discharges that have the potential to impact water quality. The major source of toxicity in storm water is copper and zinc. Copper in San Diego Bay comes from a number of sources with storm water representing about 7% of the overall loading to the bay (Chadwick etal,

¹ **City of Arcadia v. State Water Resources Control Bd.** 191 Cal.App.4th 156 (2010).

² **City of Arcadia v. U.S. Environmental Protection Agency,** 411 F.3d 1103, (Cal.),2005

³ **Natural Resources Defense Council, Inc. v. County of Los Angeles.** 636 F.3d 1235 (Cal.),2011, citing *Union Oil*, 813 F.2d at 1483 (citing *EPA v. Calif. ex rel. State Water Res. Control Bd.*, 426 U.S. 200, 205 n. 12, 96 S.Ct. 2022, 48 L.Ed.2d 578 (1976)

2003). Copper loading from storm water discharges to San Diego Bay can be further broken down with municipal runoff representing about 70%, and runoff from industry and military installations together contributing roughly 25% (Johnson et al., 1998). These loading numbers demonstrate that copper loading is similar in all types of storm water discharges and supports a consistent approach on regulating both municipal and industrial storm water discharges. Not only will this better protect water quality, it also provides a coherent and reasonable regulatory approach for all dischargers.

4. Source Control is the Appropriate Long Term Mechanism to Improve Storm Water Discharges

Although the application of individual Best Management Practices is an important part of an effective storm water management program and is appropriate in the boatyard permit, we also believe that the long term solution to toxicity from copper and zinc loading involves source control. The largest sources of these metals, coming primarily from transportation related sources, cannot be effectively controlled and regulated by storm water permits. This is why the Navy supports Assembly Bill 1251 that proposes a comprehensive look at source identification and control to improve water quality.

5. Conclusion

The Navy supports the San Diego Regional Board's use of toxicity testing of the receiving water in all NPDES Stormwater Permits where toxicity monitoring requirements are determined necessary to insure water quality protection. Toxicity testing of the receiving water is protective of water quality and beneficial uses and is the only technique that accurately measures toxicity impacts from storm water discharges. This position is supported by the CWA, Porter Cologne Act, State Policy, and US EPA-approved Regional Basin plans. In the longer term, source identification and control are necessary to meet water quality objectives. The Navy requests that you consider these comments in the upcoming permit adoption.

The points of contact for this letter are Mr. Christopher Haynes at christopher.a.haynes@navy.mil or (619)532-2285 and Mr. Brian Gordon at brian.gordon@navy.mil or (619)532-2273.

Sincerely,



B. S. GORDON

By direction