

Response to Comments

Joint Outfall System
San Jose Water Reclamation Plant
Tentative NPDES Permit

This Table describes all significant comments received from interested persons with regard to the above-mentioned tentative permit. Each comment has a corresponding response and action taken.

Commenter	#	Comment	Response	Action Taken
Comments received from the Joint Outfall System ((JOS) formerly County Sanitation Districts of Los Angeles County) on January 16, 2015				
JOS	1a	<p>Use of the two-concentration test design should not be a requirement of the permit.</p> <p>a) <u>Use of the two-concentration test design is inconsistent with the promulgated method.</u></p> <p>The first and last paragraphs in Section VII.J (page 26) of the Tentative Permit mandate the use of a two-concentration test design (control and Instream Waste Concentration or IWC) and prohibit application of a concentration-response¹ evaluation and other data review steps incorporated as part of the concentration-response evaluation. This restriction is inconsistent with mandatory requirements contained in 40 Code of Federal Regulations (CFR) Part 136 promulgated method, Short-Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Water to Freshwater Organisms, Fourth Edition, EPA-821-R-02-013, October 2002 (Promulgated Method). The Promulgated Method requires a minimum of a five-concentration test design for NPDES final effluent testing and evaluation of the concentration response relationship.</p>	<p>The Order has been revised to be consistent with the letter dated February 11, 2015, from USEPA to the State Water Resources Control Board withdrawing approval of the alternate test procedure using a two-concentration test design. As revised, the Order requires the test methods described in <i>Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms</i> (October 2002) (EPA-821-R-02-013), including review of the concentration-response pattern.</p>	<p>Order updated for consistency with February 11, 2015 EPA letter withdrawing approval of the ATP for TST. In addition, Clarifying language was added to section VII.J of the WDR and section V.A.5.a of the MRP.</p>
JOS	1b	<p><u>The mandated use of the two-concentration test design is inconsistent with the provisions in USEPA's TST Guidance Document.</u></p>	<p>See Response to Comment 1a.</p>	<p>See Response to Comment 1a.</p>

¹ For the purposes of this comment letter, the terms “concentration-response” and “dose-response” have equivalent meanings and can be used interchangeably.

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JOS	1c	<p>b) <u>The mandated use of the two concentration test design is inconsistent with NPDES permits issued by USEPA Region IX that also utilize the TST.</u></p> <p>This USEPA-issued general permit for oil and gas exploration required the use of the TST statistical method to analyze <i>multi-concentration</i> WET test results, stating, “This permit is subject to a determination of Pass or Fail from a <i>multiple-effluent concentration chronic toxicity test</i> at the IWC (for statistical flowchart and procedures, see National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document, Appendix A, Figure A-1)”. [Emphasis added.]</p> <p>In addition, USEPA Region IX specifically required the use of a multi-concentration test design with consideration of concentration-response before running the TST statistic, stating, “Following Paragraph 10.2.6.2 of the freshwater EPA WET test methods manual, <i>all chronic toxicity test results from the multi-concentration tests required by this permit shall be reviewed and reported according to EPA guidance on the evaluation of concentration-response relationships</i> in Method Guidance and Recommendations for Whole Effluent Toxicity (WET) Testing (40 CFR Part 136) (EPA/821/B-00-004, 2000)”² [Emphasis added.]</p> <p>The Sanitation Districts request that a similar provision be incorporated into the Tentative Permit to allow for the use of a five-concentration test design and the evaluation of the concentration-response relationship. Such a provision would allow the Districts to conduct chronic toxicity tests in a manner consistent with the toxicity testing provisions contained in recent NPDES permits issued by USEPA Region IX, the requirements contained in the promulgated method, and in a manner consistent with the conditions specified in USEPA’s TST Guidance Document.</p>	<p>See Response to Comment 1a.</p> <p>USEPA neither recommends nor requires review of the concentration-response pattern for a multi-concentration test <i>prior</i> to running the TST statistical analysis. The TST statistical analysis must be conducted regardless of the concentration-response pattern. Review of the concentration- response pattern should be conducted as a component of a broader quality assurance and data review and reporting process.</p> <p>See also Response A-6 for additional information about the benefits of the TST statistical approach.</p>	None necessary

² General Permit No. CAG280000. Authorization to Discharge Under the National Pollutant Discharge Elimination System for FACILITIES Oil and Gas Exploration, Development, and Production Facilities. Signed December 20, 2013. [Exhibit 3] Page 15, Section II.B.2.d.2.

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JOS	1d Part 1	c) <u>Conditions in the Tentative Permit prohibiting the use of a multiple concentration test design and an evaluation of the concentration-response relationship will result in a less accurate estimate of toxicity.</u>	<p>The Order has been revised to be consistent with the letter dated February 11, 2015, from USEPA to the State Water Resources Control Board withdrawing approval of the alternate test procedure using a two-concentration test design. As revised, the Order requires the test methods described in <i>Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms</i> (October 2002) (EPA-821-R-02-013), including a multi-concentration test design, when required, and review of the concentration-response pattern.</p> <p>The State permitting authority, here, the Regional Board, has the discretion to select the statistical approach for analyzing WET test data that is most appropriate for use in a particular permit. (See Section 9.4.1.2 of <i>Short-term Methods</i>, October 2002, EPA-821-R-02-013 (“[T]he statistical methods recommended in the manual are not the only possible methods of statistical analysis.”)) The Regional Board has selected the TST statistical approach for use in this Order.</p> <p>The Method Guidance and Recommendations for Whole Effluent Toxicity (WET) Testing (40 CFR Part 136), July 2000, identifies common patterns of WET test data and provides guidance on using the concentration-response relationship to review WET test results. Some of these response patterns were identified as requiring further review if a toxic result is obtained depending on the statistical approach used. Since the statistical approach is based on assumptions concerning the data set, if the concentration response pattern of the data set does not comply with those assumptions, then the calculated NOEC/LOEC endpoints may not be valid. But these anomalous results would not occur with the TST statistical approach because the results of the instream waste concentration are compared directly to the control, and do not rely upon the same statistical assumptions as the NOEC-LOEC hypothesis testing and point estimation approaches. The TST statistical approach will produce reliable results in these circumstances.</p> <p>The remaining concentration-response patterns identified in the</p>	None necessary

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			<p>guidance as warranting further review suggested evaluation of factors such as test acceptance criteria, test conditions, and reference toxicant testing. These factors can and should be evaluated and are accounted for in the draft permit. Evaluation of these factors and application of the TST approach, which accounts for the inherent variability in WET test data, will produce reliable test outcomes for purposes of permit compliance.</p> <p>USEPA’s Variability Study referenced by the commenter, appropriately applied the concentration-response relationship guidance to data analyzed with the NOEC-LOEC hypothesis testing and point estimation approaches to reduce the false positive error rate. Consideration of the concentration-response relationship is not necessary when analyzing WET test data using the TST approach, and would not be expected to reduce the error rate. Instead, evaluation of test acceptance criteria, test conditions, and reference toxicant testing are appropriate to identify anomalous data prior to analysis using the TST approach.</p> <p>The TST statistical approach for use in the statistical analysis of WET test data has undergone an extensive external peer review process by both the USEPA and the State Water Board. The approach was published in <i>Environmental Toxicology and Chemistry</i> (Denton et al. 2011). Data from over 2,000 WET tests were used to develop and evaluate the TST approach. The TST was tested for nine different WET test methods with 12 biological endpoints (e.g., reproduction, growth, survival) representing most, if not all of the different types of WET test designs currently in use. Over one million computer simulations were also used to select error rates meeting EPA’s RMDs (Regulatory Management Decisions) for the TST approach.</p> <p>The TST statistical approach has been shown to perform as well or better than the NOEC-LOEC statistical analysis of multi-concentration data. The results of TST statistical analysis was compared to analysis using the NOEC-LOEC approach in a “Test Drive Analysis” conducted in California. The results of the test drive are provided in a report dated December, 2011 and published in <i>Environmental Toxicology and Chemistry</i> (Diamond et al. 2013) The findings of the peer-reviewed journal article by Diamond et al, 2013, found that the TST statistical analysis improves understanding</p>	

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			<p>of the discharge condition by correctly identifying toxic and non-toxic samples more often than when using the NOEC-LOEC statistical approach.</p> <p>Additional discussion is provided in the response to comment A-6.</p>	
JOS	1d Part 2	<p>Regarding the technical merit of evaluating concentration-response when running the TST, in its Response to Comments on tentative NPDES permits for the Whittier Narrows and Pomona WRP, which contain chronic toxicity provisions essentially identical to those in this Tentative Permit, the Regional Board indicated that multiple concentration testing and concentration-response evaluations are only conducted to interpret the NOEC or a point estimate, stating, “the concentration-response relationship...is solely a test review step for when the statistical approach uses either a No Observable Effect Concentration (NOEC)/Lowest Observed Effect Concentration (LOEC) or a point estimate (EC25). This permit is not requiring either of these independent approaches.”³ Furthermore, during the adoption hearing for the Whittier Narrows and Pomona WRP NPDES permits, Regional Board and EPA Region IX staff indicated that multiple concentration testing and concentration-response evaluations are not appropriate to use for the TST, and such use would have no statistical or technical merit. However, at page 4-3 of USEPA’s own guidance on the WET testing methods⁴ (Method Guidance), which addresses concentration-response evaluations, states that an “evaluation of the concentration-response relationship generated for each sample is an important part of the data review process that should not be overlooked.” The same page of this reference further concludes that “reviewing concentration-response relationships should be viewed as a component of a broader quality assurance and data review and reporting process.” This process includes data review, evaluation of test acceptability, evaluation of reference toxicant testing results, organism health evaluations, and test variability evaluation.</p>	<p>See Responses to Comments 1a and 1c.</p> <p>USEPA’s Method Guidance addressing concentration-response evaluations, states that an “evaluation of the concentration-response relationship generated for each sample is an important part of the data review process that should not be overlooked.” This guidance was promulgated in 2002, well before development of the TST statistical approach. The guidance assumes that either NOEC-LOEC hypothesis testing or a point estimation analysis will be used to evaluate multi-concentration WET test data. In that circumstance, evaluation of the concentration-response relationship is important to determine whether the assumptions underlying these statistical approaches are reflected in the data. As previously discussed, these same assumptions are not relied upon by the TST statistical approach. A WET test is validated by reviewing the test acceptability criteria and quality assurance/ quality control (QA/QC) measures, such as:</p> <ul style="list-style-type: none"> ▪ Performing and evaluating reference toxicant tests; ▪ Evaluating various test condition components, such as water quality measurements (temperature, pH, DO, light intensity, etc.) to ensure that they are within the typically accepted range; ▪ Examining effluent sampling and handling, and ▪ Plotting control charts to track the lab’s control performance and reference toxicant performance over time. 	Revisions were made to the permit

³ Regional Board, Response to Comments, Joint Outfall System, Whittier Narrows Water Reclamation Plant, Tentative NPDES Permit, October 24, 2014. [Exhibit 6] Page 1.

⁴ USEPA. Method Guidance and Recommendations for Whole Effluent Toxicity (WET) Testing. EPA-821-B-00-004. [Exhibit 7]

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JOS	1d Part 3	<p>In addition, it is our understanding that California is the only state for which the two-concentration TST method has been approved as an Alternative Test Procedure (ATP) (although this approval has been legally challenged). This approval was issued in March 2014, although USEPA released the TST procedure in 2010. Therefore, in the other 49 states (and prior to March 2014 in California), a multi-concentration test design with consideration of concentration-response is a universal requirement when the TST is used. If use of a multi-concentration test design under these circumstances has no statistical or technical merit, then entities running the TST in these circumstances are wasting time and money running the multi-concentration tests. If this was the case, then USEPA should have gone through a formal method promulgation process to allow the two concentration TST method to be used nationwide, rather than introducing a new statistical procedure that requires steps to be performed with no statistical or technical merit.</p> <p>It is for these reasons detailed above that the 40 CFR Part 136 promulgated chronic toxicity testing protocols concluded that test review, including evaluation of the concentration-response relationship, is necessary for ensuring that all test results are reported accurately⁵. In addition to being necessary for accurate result interpretation, the Promulgated Method also directly requires that multiple concentration testing be conducted for all NPDES effluent compliance determination tests. It further requires that an evaluation of the concentration-response relationship be conducted and strongly recommends <u>against</u> the use of two-concentration (control and IWC) test designs for NPDES. Furthermore, the TST Guidance Document also recognizes that toxicity tests should be conducted following these same requirements and furthermore specifically references conducting multiple concentration testing before application of the two-concentration TST statistical procedure.</p> <p>While the Districts agree that evaluation of toxicology</p>	<p>The Regional Board does not disagree with the comment that use of a multi-concentration test design when analyzed using the TST is not efficient for toxicity testing. The two-concentration test design analyzed using the TST approach is a more efficient, cost-effective, and accurate means to determine permit compliance.</p> <p>The Order has been revised to be consistent with the letter dated February 11, 2015, from USEPA to the State Water Resources Control Board withdrawing approval of the alternate test procedure using a two-concentration test design. As revised, the Order requires the test methods described in <i>Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms</i> (October 2002) (EPA-821-R-02-013), including a multi-concentration test design, when required, and review of the concentration-response pattern.</p> <p>See also, Responses to JOS Comments 1a, 1b, 1c, and 1d.</p>	Revisions were made to the permit

⁵ Short-Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Water to Freshwater Organisms, Fourth Ed., EPA-821-R-02-013. October 2002. Section 10.2. Page 49.

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		can be complex and the evaluation of the concentration-response requires specialized expertise, the process and procedures that an Environmental Laboratory Accreditation Program (ELAP) certified laboratory follows to conduct such an evaluation are stringently evaluated every two years. This evaluation includes a site visit and comprehensive audit of all standard operating procedures, training, staff qualifications, documentation, and record keeping every two years by an ELAP auditor.		
	1d Part 4	Finally, some have incorrectly contended that a 2011 State Water Resources Control Board (State Water Board) “Test Drive” analysis ⁶ (Test Drive) definitively demonstrated that the accuracy of the two-concentration test design using the TST was the same or better than the five-concentration test design using the NOEC. It is critical to understand that the Test Drive did not in any way compare the two-concentration TST test design and the five-concentration TST test design. The Test Drive simply compared the TST and NOEC statistical procedures. TST results from final effluent toxicity tests conducted using a five-concentration test design were compared to NOEC results from the same five-concentration final effluent tests. Toxicity tests that were deemed inconclusive and repeated using USEPA’s concentration-response guidance procedures would not have been included in the evaluation. Likewise, the TST results from receiving water/ambient toxicity tests using a two-concentration test design were compared to the NOEC results from the same receiving water/ambient toxicity tests. In contrast, the USEPA did conduct an evaluation of the multiple concentration NOEC method with and without incorporation of a concentration-response evaluation and determined that incorporation of the concentration-response evaluation was responsible for reducing the false positive error rate from 14% to less than 5%. ⁷ Therefore, a similar improvement in the expected error	See Responses to JOS Comment 1d, parts 1-3 above.	None necessary

⁶ Effluent, Stormwater, and Ambient Toxicity Test Drive Analysis of the Test of Significant Toxicity (TST). California State Water Resources Control Board. December 2011. [Exhibit 8]

⁷ 67 Federal Register 69,964 (November 19, 2002).

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		<p>rate of the two concentration TST test design would be expected with incorporation of a multiple concentration test design that included a similar concentration-response evaluation.</p> <p>It should also be noted that, although the Test Drive determined that frequency of identifying toxic and non-toxic samples as a whole across all species and endpoints were comparable between the NOEC and TST, an examination of species-specific results indicated that a significantly higher frequency of toxicity detection was observed in the freshwater chronic toxicity tests (specifically for the fathead minnow and <i>Ceriodaphnia</i>). Of particular concern were the Test Drive results for the fathead minnow chronic survival endpoint. The Test Drive reported 52 tests as being “toxic” for this endpoint using the NOEC as compared to 142 tests identified as “toxic” using the TST.⁸ This means that almost three times as many chronic fathead minnow survival tests will be reported as being toxic using the TST than with the NOEC. Although less dramatic, the Test Drive results for the <i>Ceriodaphnia dubia</i> reproduction endpoint also showed significantly more “toxic” determination than did the NOEC. The Test Drive identified 216 tests as “toxic” using the NOEC and 233 tests as “toxic” using the TST⁹. This represents a nearly 8% increase in the number of tests identified as “toxic” using the TST compared to the NOEC. Overall, the Test Drive actually demonstrated that use of the TST will significantly increase the frequency of identifying sample results as “toxic” for the freshwater species used in this Tentative Permit.</p> <p>While some contend that the State Board Test Drive adequately demonstrated that the false positive error rate for the TST statistical test is comparable to the NOEC statistical test, such a conclusion is unfounded. The Test Drive was not able to estimate the false positive error rate of either the NOEC or the TST because the analysis was not conducted on known</p>		

⁸ Effluent, Stormwater, and Ambient Toxicity Test Drive Analysis of the Test of Significant Toxicity (TST). California State Water Resources Control Board. December 2011. Page 28.

⁹ Effluent, Stormwater, and Ambient Toxicity Test Drive Analysis of the Test of Significant Toxicity (TST). California State Water Resources Control Board. December 2011. Page 28.

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		<p>non-toxic blank samples. Tests used in the Test Drive evaluation were performed on effluents, receiving waters, and ambient waters whose actual or true “toxicity” was not known. Some of the tests that exhibited relatively high measured effects may have actually had low actual effects and been “non-toxic” while others that exhibited relatively small measured effects may have been truly “toxic.” Additionally, as discussed above, this analysis failed to examine the impact of eliminating the concentration-response evaluation on false positive error rates as the five-concentration effluent test data all was subjected to concentration-response QA/QC evaluation. In the absence of any actual studies on the error rate of the two-concentration TST method, based on inference from the Variability Study referenced above, the single test false positive error rate for the two-concentration TST method, as it lack concentration-response analysis, is estimated to be approximately 14%. Assuming a similar 14% single test false positive error rate for the two-concentration TST method, a Permittee can expect to observe, on average, a monthly median exceedance (failing two out of three tests conducted in a calendar month) twice during the five-year permit cycled at each WRP even if the final effluent was completely non-toxic.</p>		
	1d Part 5	<p>It is for these reasons detailed above that the 40 CFR Part 136 promulgated chronic toxicity testing protocols concluded that test review, including evaluation of the concentration-response relationship, is necessary for ensuring that all test results are reported accurately¹⁰. In addition to being necessary for accurate result interpretation, the Promulgated Method also directly requires that multiple concentration testing be conducted for all NPDES effluent compliance determination tests. It further requires that an evaluation of the concentration-response relationship be conducted and strongly recommends <u>against</u> the use of two-concentration (control and IWC) test designs for NPDES. Furthermore, the TST Guidance Document also recognizes</p>	See Responses to JOS Comments 1a, 1b, 1c, and 1d, above.	None necessary

¹⁰ Short-Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Water to Freshwater Organisms, Fourth Ed., EPA-821-R-02-013. October 2002. Section 10.2. Page 49.

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		<p>that toxicity tests should be conducted following these same requirements and furthermore specifically references conducting multiple concentration testing before application of the two-concentration TST statistical procedure.</p> <p>While the Districts agree that evaluation of toxicology can be complex and the evaluation of the concentration-response requires specialized expertise, the process and procedures that an Environmental Laboratory Accreditation Program (ELAP) certified laboratory follows to conduct such an evaluation are stringently evaluated every two years. This evaluation includes a site visit and comprehensive audit of all standard operating procedures, training, staff qualifications, documentation, and record keeping every two years by an ELAP auditor.</p>		
JOS	1d, Part 6	<p>Therefore, we request that the following changes be made to the Tentative Permit to accurately reflect allowable and required 40 CFR Part 136 protocol evaluation procedures that include the ability conduct multiple concentration tests and an appropriate dose response relationship evaluation.</p> <p><u>Page 29, Section VII.J (first paragraph):</u> “The discharge is subject to determination of “Pass” or “Fail” and “Percent Effect” from a single effluent concentration chronic toxicity test at the discharge IWC using the Test of Significant Toxicity (TST) approach described in National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document (EPA 833-R-10-003, 2010), Appendix A, Figure A-1, and Table A-1. The null hypothesis (Ho) for the TST approach is: Mean discharge IWC response $\leq 0.75 \times$ Mean control response. A test result that rejects this null hypothesis is reported as “Pass”. A test result that does not reject this null hypothesis is reported as “Fail”. The relative “Percent Effect” at the discharge IWC is defined and reported as: $((\text{Mean control response} - \text{Mean discharge IWC response}) \div \text{Mean control response}) \times 100.$”</p>	See Response to Comment 1a.	Revisions were made to the permit

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JOS	1d Part 7	<p>We request the following changes: <u>Page 30, Section VII.J (last paragraph):</u> “The chronic toxicity MDEL and MMEL are set at the IWC for the discharge (100% effluent) and expressed in units of the TST approach (“Pass” or “Fail”, “Percent Effect”). All NPDES effluent compliance monitoring for the chronic toxicity MDEL and MMEL shall be reported using only the 100% effluent concentration and negative control, expressed in units of the TST. The TST hypothesis (Ho) (see above) test is not tested using a multi-concentration statistical test design; therefore, the concentration response relationship for the effluent and/or PMSDs shall not be used to interpret the TST result reported as the effluent compliance monitoring result. While t The Permittee can opt to monitor the chronic toxicity of the effluent using five or more effluent dilutions (including 100% effluent and negative control) <u>and utilize all 40 CFR Part 136 specified procedures, including evaluation of the concentration response, to determine if results are reliable and should be reported, anomalous and should be explained, or that the test was inconclusive and should be repeated. Only results generated using the TST statistical procedure on bioassay data meeting 40 CFR Part 136 QA/OC requirements result</u> will be considered for compliance purposes. The Board may consider results of any TIE/TRE studies in an enforcement action.”</p>	See Response to Comment 1a. and 1d.	None necessary
JOS	2	<p>The Permittee should not be required to conduct routine toxicity compliance monitoring and should not be liable for continued MMEL and MDEL WET violations after triggering accelerated testing and initiation of the TRE. The 2009 NPDES permit for the San Jose Creek WRP required accelerated testing following an exceedance of its monthly median chronic toxicity trigger. The purpose of the accelerated testing was to confirm that toxicity was indeed present, not simply the result of false positive test results or an ephemeral toxicity event, and to ensure that any toxicity was persistent enough to identify the source of the toxicity. If</p>	<p>The intent of the TIE/TRE is to identify the source/cause of toxicity and to reduce it, not to suspend compliance requirements. Additionally, the public has a right to know if the effluent that is being discharged continues to be toxic, particularly as most of our inland waters are primarily comprised of POTW effluents, subjecting aquatic life to whatever level of toxicity is being discharged. These tests should not be suspended while accelerated monitoring and TIE/TREs are underway. Also, it is inappropriate to suspend final effluent limitations without a compliance schedule, as water quality standards must be maintained throughout the permit term. As illustrated in the example below, the current</p>	

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		<p>accelerated testing confirmed the toxicity, the 2009 permit required a Toxicity Reduction Evaluation/Toxicity Identification Evaluation (TRE/TIE) to identify the specific cause or causes of the observed toxicity. The accelerated testing and TRE process represents essentially a confirmation and diagnosis process, as toxicity cannot be addressed until the cause of the toxicity is known.</p> <p>The Tentative Permit does not allow time for this confirmation and diagnosis process to occur, but instead continues to require monthly chronic toxicity compliance determinations to be made during the accelerated testing and TIE/TRE process. This subjects the Sanitation Districts to additional liability for violations during this critical confirmation and diagnosis process, which is unnecessarily punitive. The Sanitation Districts will be penalized even when all appropriate steps are being timely and diligently taken to resolve the issue. The apparent justification for this requirement is to incentivize the Sanitation Districts to move quickly during this TIE/TRE process, but the Permits themselves contain tight timelines for required actions, so no need exists to impose additional violations during this process so long as the process is being diligently undertaken.</p> <p>In addition to being unnecessarily punitive, assessing compliance during accelerated testing would be challenging because the regulatory threshold used during accelerated testing is different from the threshold for used routine compliance determination. For routine compliance determination, a monthly median TST is used to evaluate compliance. During accelerated testing, a single TST exceedance is used as a TRE trigger. Under this bifurcated approach, a Permittee could “Fail” one of the four accelerated tests while “Passing” the MMEL compliance tests. This would result in the triggering of a TRE on a Permittee that is actually demonstrating compliance. Additionally, if the MMEL compliance monitoring tests and the accelerated monitoring both resulted in “Fail”, it is unclear if additional accelerated testing would be conducted concurrently with the TRE in response to the new MMEL failure. Finally, during the TRE, a Permittee could demonstrate compliance with the MMEL while in the middle of the TRE analysis. In such a situation, it</p>	<p>trigger/accelerated testing regime used in the 2009 NPDES permit has not been adequate to reduce toxicity in the effluent and protect water quality.</p> <p>Toxicity is pollution that is caused by toxic pollutants (or toxicants). TIE/TREs may be the best approach to identify the particular toxicant causing toxic effects, but as a matter of practice, TIE/TREs are often not implemented successfully by permittees to identify and reduce toxicity in the effluent. Neither San Jose Creek East WRP, where <i>Ceriodaphnia dubia</i> was identified as the most sensitive species during 2014, nor San Jose Creek West, where <i>Pimephales promelas</i> was most sensitive, reported an exceedance of the 1.0 TUC monthly median trigger between June 2009 and the end of 2013. However, accelerated testing did take place in January and February of 2014 and was also initiated in November 2014. None of these chronic toxicity tests or accelerated monitoring schedules successfully identified the causative toxicant. This permit reflects a shift in regulatory approach away from the previous oversight-driven model for reducing toxicity, to holding dischargers directly accountable for meeting and maintaining effluent limitations to protect the water quality standard.</p> <p>The Regional Board has no basis to anticipate the substance of the yet to be developed statewide toxicity policy. A revised draft policy has not yet been released to the public or circulated to Regional Board staff. Furthermore, it is inappropriate for the Regional Board to base permitting decisions on draft policy terms.</p> <p>The individual TST test result for routine compliance monitoring is indistinguishable from the control and the 100% sample testing of the accelerated chronic toxicity testing. Although the regulatory compliance of the TST is based on the Monthly Median Effluent Limit (MMEL) and can include up to 3 tests, the procedure for the accelerated testing includes four tests over an eight week period. If any one of the accelerated tests results in a “Fail”, the TIE/TRE process is triggered. As noted in the permit, if the monthly median result is a “Fail”, the effluent has exceeded the chronic numeric limit and is out of compliance for that month. Multi-concentration testing is required during the accelerated testing to provide information about the magnitude of the toxic event (reported using the EC25) to prepare for the TIE/TRE process that would follow if one of the four</p>	

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		<p>is unclear if the Permittee could end the TRE or would be forced to continue TRE implementation even while currently in compliance with the applicable effluent limit.</p> <p>Overall, it seems to be of very little use to require accelerated testing or the initiation of a TRE while the Permittee is actually demonstrating compliance with the applicable limits. By requiring continued compliance monitoring during accelerated testing and TRE initiation, such confounding scenarios are likely to be observed. The only reasonable solution to these multiple conflicts, which are not addressed in any way in the Permits, is to discontinue compliance monitoring during the accelerated monitoring/TIE/TRE process. A less satisfactory, partial solution to some of the conflicts would be to allow the District to discontinue accelerated testing and/or TRE plan implementation if compliance with the applicable limits is demonstrated during a calendar month.</p> <p>Additionally, State Water Board staff has been actively working on the development of a statewide policy/plan to address regulation of WET for several years now. A significant and meaningful part of this process includes working with multiple stakeholders across the state and the issue discussed above has been a part of the discussions with State Board staff. As a result, State Board staff has made its intentions known that, after an initial WET limit violation, no further violations should be incurred during accelerated testing and for a period of six months after initiation of the TRE implementation plan provided that the Permittee conducts the required and appropriate actions to address the WET exceedance. Under staff's proposal, an extension of the six-month exemption could be granted by the regulating authority on a case-by-case basis. This approach would allow for the Permittee to focus any and all available efforts on quickly confirming the persistence of toxicity during accelerated testing and/or more completely characterizing and identifying the toxicity-causing constituent(s) during the TRE instead of conducting additional independent testing that would not be useful in achieving the goal of controlling toxicity. Because the State Water Board approach is an outgrowth of a wider stakeholder process, this suggested approach should have been</p>	<p>accelerated test results was a "Fail". The purpose of the accelerated testing is to determine if the toxicity is persistent in the effluent. Only after establishing that it is persistent would the TIE/TRE need to be initiated. The Permittee has the option of conducting the tests independently. In the hypothetical situation posed by the permittee where an exceedance of the toxicity MMEL would occur in a month that follows the initiation of accelerated testing, the Discharger would not be required to initiate a parallel separate set of accelerated testing. The Discharger would stay the course, complete the set of accelerated testing that was already initiated, and if triggered, then proceed with a TIE/TRE.</p>	

Commenter	#	Comment	Response	Action Taken
		<p>applied in the Permits.</p> <p>It is our understanding that the USEPA has approved this approach in other recent NPDES permits. This approach was included in the California Regional Water Quality Control Board, San Diego Region's (San Diego Regional Board's) NPDES permit for the San Diego Naval Complex on August 14, 2013, which stated that there would be an initial violation imposed for exceeding the applicable limit, but: "...Any exceedances occurring during a required accelerated monitoring period and, if appropriate, a TRE period shall not constitute additional violations provided that: (1) the Discharger proceeds with the accelerated monitoring and TRE (if required) in a timely manner; and (2) the accelerated monitoring and TRE are completed within one year of the initial exceedance. The San Diego Water Board has the discretion to impose additional violations and initiate an enforcement action for toxicity tests that result in a "fail" after one year from the initial violation. Additionally, a discharger's failure to initiate an accelerated monitoring schedule or conduct a TRE, as required by this Order will result in all exceedances being considered violations of the MDEL or MMEL and may result in the initiation of an enforcement action."¹¹ Prior to adoption of this permit, USEPA sent a comment letter on the Naval Complex permit and in that letter stated that, "EPA has worked closely with the State and Regional Water Boards to ensure effluent limitations and testing are conducted consistent with federal and state requirements."¹²</p>		
JOS	2 Part 2	<p><u>Page E-25, MRP Section V.A.7. (last sentence of the last paragraph):</u></p> <p>"During accelerated monitoring schedules, only TST results ("Pass" or "Fail", "Percent Effect") for chronic toxicity tests shall be reported as effluent compliance monitoring results for the chronic toxicity MDEL and</p>	Refer to Response to JOS Comment 2, Part 1.	None necessary

¹¹ San Diego Regional Board Order No. R9-2013-0064, NPDES No. CA0109169, Waste Discharge Requirements for the United States Department of the Navy, Naval Base San Diego Complex, San Diego County., MRP pg. 21, Para. F. [Exhibit 9]

¹² USEPA Region IX, Letter from David Smith, Manager of the NPDES Permits Office to David Barker, Supervising Water Resource Engineer, San Diego Water Board, July 8, 2013. [Exhibit 10]

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		MMEL.”		
JOS	2 Part 3	Page E-25, MRP Section V.A.8: “ During the TRE Process, monthly effluent monitoring shall resume and TST results (“Pass” or “Fail”, “Percent Effect”) for chronic toxicity tests shall be reported as effluent compliance monitoring results for the chronic toxicity MDEL and MMEL. ”	Refer to Response to JOS Comment 2, Part 1.	None necessary
JOS	2 Part 4	Page E-26, MRP Section V.A.8.d: “ The Permittee shall continue to conduct routine effluent monitoring for compliance determination purposes while the TIE and/or TRE process is taking place. Additional accelerated monitoring and TRE work plans are not required once a TRE is begun. ”	Refer to Response to JOS Comment 2, Part 1.	None necessary
JOS	3 Part 1	Dechlorination of final effluent prior to discharge is part of the treatment process used at each of the Sanitation Districts' water reclamation facilities including the San Jose Creek WRP. Dechlorinating agents are added to the water and mixed immediately prior to discharge into the receiving water through Discharge Point Nos. 002 and 003. Dechlorinating agents are also added to the flows directed toward Discharge Point Nos. 001, 001A, and 001B. However, certain flows routed directly to water recycling are not dechlorinated. As the demand for recycled water increases and influent flows decrease due to water conservation, less effluent is discharged to receiving waters, resulting in significant periods when no final effluent is discharged through various discharge points. The resulting lack of continuous discharge to the receiving water makes routine collection of a 24-hour composite final effluent sample after dechlorination infeasible and in some instances impossible. As water recycling and water conservation increases, the periods with no discharges to receiving water will increase. Furthermore, the Tentative Permit contains requirements to conduct monitoring for chlorine residual in discharges to surface waters, as well as numeric limits for chlorine residual, so any malfunction in the dechlorinating process will be identified and any limit	Staff site visit on January 8, 2015 confirmed the infeasibility of collecting a 24-hour composite sample at the various discharge points and the lack of continuous discharge due to recycled water demand. Staff revised V.C to accept chlorine removal as shown below: <u>“Ordinarily, chlorine may not be removed from bioassay samples</u> Except with prior approval from the Executive Office of the Regional Water Board, chlorine shall not be removed from bioassay samples. <u>However, chlorine may be removed from the San Jose Creek WRP effluent bioassay samples in the laboratory because often the recycled water demand is high and there is no effluent water available for sampling and the sampling locations and logistics are not feasible.</u> Table E-1 was also updated to reflect the accepted sampling protocols. Standard language, however, was retained at V.A.5.f. as shown below: “The Permittee shall perform toxicity tests on final effluent samples. Chlorine and ammonia shall not be removed from the effluent sample prior to toxicity testing, unless explicitly authorized under this section of the Monitoring and Reporting Program...”	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		<p>exceedances reported.</p> <p>The Sanitation Districts believe that the current sampling locations, after chlorination but prior to dechlorination, provide accurate representative samples. Included as Attachment E is the Sanitation Districts' standard protocol for Sample Collection Methods for Acute and Chronic Bioassay Testing, which includes sample dechlorination. This protocol follows the "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms" (EPA-821-R-02-013) [Exhibit 2], which also contains a provision for sample dechlorination prior to the analysis for toxicity (Section 8.8.7).</p> <p>This issue was discussed in detail with staff of the Regional Board at an April 6, 2004 meeting held in conjunction with 2004 renewals of the Pomona and San Jose Creek WRP NPDES permits. As a result of the April 2004 meeting, the Regional Board inserted language into these NPDES permits (Order Nos. R4-2004-0099 and R4-2004-0097) allowing the Sanitation Districts to collect chlorinated samples and simulate the dechlorination process in the laboratory before bioassay testing, provided the practice is documented in the laboratory report. Additionally, the Regional Board has also approved laboratory dechlorination of effluent from the Sanitation Districts' Joint Water Pollution Control Plant (JWPCP) prior to toxicity testing (Order No. R4-2011-0151; NPDES No. CA0053813). Therefore, we request the following changes:</p> <p><u>Page E-24, MRP Section V.A.5.f:</u> "The Permittee shall perform toxicity tests on final effluent samples. Chlorine <u>in the final effluent sample may be removed prior to conducting toxicity tests in order to simulate the dechlorination process at the facility. However, and</u> ammonia shall not be removed from the effluent sample prior to toxicity testing, unless explicitly authorized under this section of the Monitoring and Reporting Program and the rationale is explained in the Fact Sheet (Attachment F)."</p> <p><u>Page E-27, MRP Section V.C</u> "Except with prior approval from the Executive Office of</p>		

Commenter	#	Comment	Response	Action Taken
		<p>the Regional Water Board, chlorine shall not be removed from bioassay samples. However chlorine may be removed from the San Jose Creek WRP effluent bioassay samples in the laboratory because it is not practical to collect dechlorinated samples due to the plant configuration and due to high recycled water demand</p>		
JOS	4	<p>The description of the location and associated limits for Discharge Point No. 001 are incorrect due to being assigned to San Gabriel River Reach 2 instead of San Gabriel River Reach 1.</p> <p>In several places in the Tentative Permit (e.g., Factsheet II.B.), Discharge Point No. 001 is described as being in Reach 2 of the San Gabriel River. However, Discharge Point No. 001 has historically been regulated as being in Reach 1 of the San Gabriel River. The choice of reach is important because different beneficial uses, site-specific objectives, mineral objectives, nitrogen objectives, and Total Maximum Daily Load (TMDL) wasteload allocations (WLAs) apply in the two reaches. Therefore, water quality based effluent limitations will be different depending on the reach assignment for Discharge Point No. 001.</p> <p>As background, the Los Angeles Basin Plan describes San Gabriel River Reach 1 as “San Gabriel River Estuary to Firestone Blvd.” and San Gabriel River Reach 2 as “Firestone Blvd. to Whittier Narrows Dam”. However, the San Gabriel River transitions from unlined to fully concrete lined at a location approximately 1000 feet upstream of Firestone Boulevard. Discharge Point No. 001 is located immediately downstream of the transition from the unlined portion of the river to the lined portion of the river, and therefore discharges into the lined portion of the river. The beneficial uses, site-specific objectives, mineral objectives, nutrient objectives, and WLAs for Reach 2 are commensurate with protection of unlined portions of the river, while these uses/objectives/WLAs for Reach 1 are commensurate with protection of the fully concrete lined portions of the river.</p> <p>Although a strict literal read of the reach designations would call for interpreting the boundary between the two reaches as being in the middle of Firestone Boulevard,</p>	<p>In the Basin Plan and the San Gabriel River TMDL, the dividing line between Reach 1 and Reach 2 of the San Gabriel River is Firestone Blvd. Although Discharge Point 001 is located in Reach 2, it discharges to a concrete-lined section of the San Gabriel River that is about 920 feet upstream of Reach 1. Moreover, the Total Maximum Daily Load (TMDL) waste load allocation applicable to Reach 1 was developed taking into account the load from Discharge Point 001, as described in section 4.1.2 – the Source Assessment section of the TMDL (page 23) and in Table 4-4 of Section 4.3 – Quantification of Sources (page 27) of the TMDL. As a result, the water quality based limits for Discharge Point 001 have been revised to be based on discharging to Reach 1. Revisions to address this issue have been made to the tentative permit, primarily in the Fact Sheet.</p>	<p>Revisions were made to the permit and the Fact Sheet.</p>

Commenter	#	Comment	Response	Action Taken
		<p>Regional Board staff have historically treated the reach boundary as being where the lined portion of the river begins. It has been our understanding that naming the reach boundary as “Firestone Blvd.” was a shorthand means of saying “Where the unlined portion of the river transitions to the lined portion of the river, in the vicinity of Firestone Blvd.” It would certainly make more sense for a reach break to be located where there is a major change in the characteristics of the river than at an arbitrary street crossing.</p> <p>Our understanding of the reach boundary being located at the lined/unlined transition, with Discharge Point No. 001 being in Reach 001, is supported in several Regional Board documents. Examples in the existing NPDES permit for San Jose Creek WRP (R4-2009-0078) include the section where ammonia limits are derived (pages F-44 and F-49, “For San Gabriel River Reach 1 (Discharge Point 001)”) and the section on the San Gabriel River Metals TMDL WLAs (page F-73, “According to Table 2-9, Summary of dry-weather and wet-weather impairments, San Gabriel River Reach 1 has only dry-weather impairment for copper...Therefore, San Jose Creek WRP (via Discharge Points 001, 001A and 001B), which discharges into San Gabriel River Reach 1, will only have a dry-weather effluent limitation for copper.”) The San Gabriel Metals TMDL is also consistent with the reach boundary being at the lined/unlined transition point. This is important, because the reach boundaries and reach names for the San Gabriel River were changed as part of adoption of this TMDL. The TMDL at page 4 describes the environmental setting of Reach 1 as “Reach 1 and Estuary. The Lower Watershed. The lower part of the river flows through a concrete-lined channel in a heavily urbanized portion of the county. Reach 1 extends from Firestone Boulevard to the Estuary, just above the confluence with Coyote Creek”. In addition, TMDL Tables 2-5 and 2-6 include the downstream receiving water location for Discharge Point No. 001, RSW-005 (R-2), in Reach 1 and it is located only shortly below Discharge Point No. 001. Additionally, for the purposes of preparing the 303(d) listing of impaired waters, RSW-005 (R-2) has been treated as being located in Reach 1 of the San Gabriel River. Moving RSW-005 (R-2) will cause</p>		

Commenter	#	Comment	Response	Action Taken
		<p>confusion and inconsistencies in preparation of future 303(d) lists.</p> <p>Finally, it simply makes sense when setting water quality based effluent limits for Discharge Point No. 001 to make them commensurate with the level of protection needed for Reach 1. Discharge Point No. 001 will have no impact on beneficial uses associated with the unlined portions of Reach 2, since its discharge does not travel through any unlined portions of the river. Discharge Point No. 001 will have impacts on water quality in Reach 1, since it serves essentially as the headwaters for Reach 1 in all but rainy periods.</p> <p>Note that the Sanitation Districts do agree with the placement of Discharge Point Nos. 001A and 001B in Reach 2 of the San Gabriel River, as indicated in the Tentative Permit. However, as part of Reach 2, these two outfalls need to be regulated for wet-weather lead in accordance with Table 2-9 in the San Gabriel River Metals TMDL.</p>		
JOS	5	<p>The methodology used in the Reasonable Potential Analysis for benzo(k)fluoranthene at Discharge Point No. 003 is incorrect.</p> <p>The Tentative Permit establishes limits for toxic pollutants at Discharge Point Nos. 002 and 003 based on a reasonable potential analysis (RPA) conducted in accordance with the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). The SIP RPA requires comparison of effluent and the ambient background receiving water quality to water quality criteria. The Tentative Permit RPA used the upstream station RSW-001 (C-1) to describe the ambient background concentration for Discharge Point No. 002, resulting in effluent limits for the constituents chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, and benzo(k)fluoranthene. We agree with this RPA methodology for Discharge Point No. 002.</p> <p>However, it appears that data from several different receiving water stations were used to establish the RPA</p>	<p>Staff revised the EFF-003 RPA using the maximum concentration from RSW-002 (C-2) or RSW-003 (R-10) as the ambient background concentration, as requested. Text revisions to the effluent limits and the fact sheet have been made due to this modification.</p>	<p>Revisions made to the permit and the Fact Sheet.</p>

Commenter	#	Comment	Response	Action Taken
		<p>background ambient receiving water quality for Discharge Point No. 003, including the upstream receiving water station on the San Gabriel River (RSW-003 or R-10), an upstream receiving water station on San Jose Creek (RSW-002 or C-2), and a downstream receiving water station on the San Gabriel River (RSW-004 or R-11). Typically the immediate upstream receiving water station is used to set the ambient background concentration, consistent with the SIP (Section 1.4.3.1 on page 18 of the SIP states, "If possible, preference should be given to ambient water column concentrations measured immediately upstream or near the discharge..."). In this case, since there is little data available for the immediate upstream location RSW-003 (R-10), it is appropriate to use data from an alternative upstream location, RSW-002 (C-2), on the tributary San Jose Creek, especially since San Jose Creek contributes the majority of the flow to the San Gabriel River in the vicinity of Discharge Point No. 003. However, it is unclear why data from the downstream location RSW-004 (R-11) was used as well, since there was adequate data available to conduct the analysis using upstream data in accordance with the SIP. The Fact Sheet for the Tentative Permit, at page F-50, makes mention of using "an abundance of caution", but the standard for an RPA is "reasonable" potential to cause or contribute to a water quality objective exceedance, not "an abundance of caution."</p> <p>When the ambient background receiving water station is appropriately considered to be RSW-002 (C-2) or RSW-003 (R-10), then there is only a reasonable potential to exceed the water-quality criteria for dibenzo(a,h)anthracene; there is no reasonable potential for benzo(k)fluoranthene. Therefore, the limit for this parameter should be removed from Discharge Point No. 003. For consistency, in the Fact Sheet in the table on F-59, the B (background concentration) for benzo(k)fluoranthene should be "0.027" instead of "0.63" and the reason should be marked as "B<C." Likewise the B for dibenzo(a,h)anthracene should be "0.1" instead of "0.12" but no edits to the reason are needed for this parameter. In addition, a clarifying footnote on the source of the limit for</p>		

Commenter	#	Comment	Response	Action Taken
		dibenzo(a,h)anthracene should be added (similar to Footnote 9 in the Fact Sheet) stating the source of the background concentration, B, is RSW-002 (C-2) .		
JOS	6	<p>Water quality based effluent limits for San Jose Creek WRP Discharge Point Nos. 001, 001A, and 001B should be set based on the quality of the receiving waters for these discharges points, not the most stringent limits from San Jose Creek WRP Discharge Point Nos. 002 and 003.</p> <p>We disagree with the approach used in the Tentative Permit to determine the water quality based effluent limitations for Discharge Point Nos. 001, 001A, and 001B. The Fact Sheet for the Tentative Permit (pages F-51 and F-62) indicates the water quality based effluent limits were set as the most stringent limits from “either the East or West Facilities”. (Although not explained fully in the Fact Sheet, it appears that this meant the most stringent limits assigned to either Discharge Point No. 002 or Discharge Point No. 003). We believe this approach is highly inappropriate because it does not consider the specific water quality criteria for the receiving waters in the vicinity of Discharge Point Nos. 001, 001A, and 001B, which are located in different stream reaches than Discharge Point Nos. 002 and 003. Discharge Point No. 001 is near the border of San Gabriel River Reaches 1 and 2; Discharge Point Nos. 001A and 001B are in San Gabriel River Reach 3; Discharge Point No. 002 is in San Jose Creek Reach 1; and Discharge Point No. 003 is in San Gabriel River Reach 3. As such, the water quality objectives for the receiving waters are different. In particular, the San Gabriel Metals TMDL assigns different wasteload allocations (WLAs) depending on the receiving water segment; for example San Jose Creek Reach 1 has a selenium WLA while San Gabriel River Reaches 1 and 2 do not. Additionally, receiving water ammonia limitations are different in difference receiving waters due to different site-specific objectives. Assigning water quality based effluent limitations set based on one receiving water segment to an outfall in a different segment will result in effluent</p>	<p>Staff revised the RPA for 001, 001A, and 001B using the maximum concentration from RSW-004 (R-11) as the ambient background concentration, as requested. Text revisions to the effluent limits and the fact sheet have been made due to this modification.</p> <p>The language that appeared on page F-62 of the tentative permit has been revised as follows in the revised tentative permit:</p> <p>“An RPA was not performed <u>and separate limits were established</u> for Discharge Point Nos. 001, 001A and 001B, <u>Discharge Point No. 002, Discharge Point 003, Discharge Point 004 and Discharge Point 005. Each of these discharge points go to different waterbodies (San Gabriel River Reach 2, San Jose Creek Reach 1, San Gabriel Reach 3, San Gabriel River Reach 4, and San Gabriel River Reach 5, respectively) where different TMDL-based waste load allocations apply because the water quality is calculated based on the proportion of water entering a shared effluent pipeline from the San Jose Creek East and West Facilities</u>the following language”</p> <p>The language that appeared on page F-51 of the tentative permit has been revised as follows in the revised tentative permit:</p> <p>“The CTR and the SIP specify numeric objectives for toxic substances and the procedures whereby these objectives are to be implemented. The procedures include those used to conduct reasonable potential analysis (RPA) to determine the need for effluent limitations for priority pollutants. The USEPA Technical Support Document (TSD) also specifies procedures to conduct reasonable potential analyses which are used for pollutants that are not priority pollutants. <u>The TSD RPA may also be used for pollutants that have non-CTR based water quality objectives.</u> Based on upstream <u>receiving water or downstream</u> conditions, the RPA indicated that limits are needed Discharge Point Nos. 001/001A/001B, 002, or 003, 004 and 005 for Chrysene,</p>	Revisions made to the permit and the Fact Sheet.

Commenter	#	Comment	Response	Action Taken
		<p>limitations that could be either overprotective or underprotective, depending on the constituent. Furthermore, the SIP specifies how water quality based effluent limitations are to be set for priority pollutants, and it does not contain provisions to use approach employed in the Tentative Permit.</p> <p>There more appropriate approach to setting water quality based effluent limitations for Discharge Point Nos. 001, 001A, and 001B is to use the procedures specified in the SIP: conduct an RPA to determine if limits are necessary, then set effluent limits as appropriate. There is adequate data available for the quality of water sent to Discharge Points 001 and 001A (and 001B, since it will receive the same water) to characterize the effluent concentrations. In addition there is data from RSW-004 (R-11), which can be used as the ambient background concentration for Discharge Point Nos. 001, 001A, and 00B, since it is upstream of all of these discharge points. The water quality criteria for the hardness-dependent metals should be determined using the downstream hardness from RSW-006 (R-12) for Discharge Point No. 001A and from RSW-004 (R-2) for Discharge Point No. 001.</p>	<p>Dibenzo(a,h)anthracene, Benzo(k)fluorethene, <u>and/or</u> Indeno (1,2,3-cd) Pyrene. <u>Based on receiving water conditions, the RPA indicated that limits are needed for Discharge Serial Nos. 004 and 005 for Arsenic, Copper and Selenium because the discharge could contribute to an exceedance of the Basin Plan water quality objective.</u></p> <p>Additional text has also been added for each discharge point for clarification.</p>	
JOS	A-1	<p><i>The chronic toxicity limits are premature until the State Water Board adopts its promised statewide toxicity policy.</i></p>	<p>See Response to JOS Comment C1.</p> <p>The commenter cites two State Water Board orders in addition to 2003-0012 (Los Coyotes) for the proposition that State Water Board orders mandate a narrative toxicity limit for discharges from POTWs to inland surface waters (the commenter also cites 2003-0013, which was not a precedential order). WQ 2008-08 (City of Davis) and WQ 2012-001 (City of Lodi) do not control the Regional Water Board's decision to include numeric toxicity limits in this permit. Although the State Water Board did not order the Central Valley Regional Water Board to include numeric effluent limitations in the two orders referenced above, in both cases, the Central Valley Regional Water Board had first concluded that numeric effluent limitations for chronic toxicity were not appropriate. The State Water Board merely upheld the decision of the regional board to not include numeric limits. In contrast, here, the regional board has determined that numeric limitations are both appropriate and</p>	None necessary

Commenter	#	Comment	Response	Action Taken
			feasible. Furthermore, the permits at issue in City of Davis and City of Lodi included numeric acute toxicity effluent limitations. This permit does not include a separate effluent limitation for acute toxicity.	
JOS	A-2 Part a	<p><i>The chronic toxicity requirements improperly require use of an unpromulgated test method.</i></p> <p>a) <u>The TST without inclusion of a concentration-response evaluation is not a promulgated Part 136 method.</u></p> <p>The 2002 Methods make it very clear in several places that a multi-concentration test design with dose- response evaluation is required. Several examples are as follows:</p> <p>“The tests recommended for use in determining discharge permit compliance in the NPDES program are multi-concentration, or definitive, tests which provide (1) a point estimate of effluent toxicity in terms of an IC25, IC50, or LC50, or (2) a no-observed-effect-concentration (NOEC) defined in terms of mortality, growth, reproduction, and/or teratogenicity and obtained by hypothesis testing” (Section 8.10.1)</p> <p>“The concentration-response relationship generated for each multi-concentration test must be reviewed to ensure that calculated test results are interpreted appropriately” (Section 10.2.6.2)</p> <p>“Tables 1, 3, and 4 (labeled as 3)¹³ - SUMMARY OF TEST CONDITIONS AND TEST ACCEPTABILITY CRITERIA WITH EFFLUENTS AND RECEIVING WATERS (TEST METHODS 1000.0, 1002.0, AND 1003.0):</p> <p>Test concentrations: Effluents: 5 and a control (required minimum) Receiving Water: 100% receiving water (or minimum of 5) and a control (recommended)”</p>	Refer to Responses to Comments 1a-d.	None necessary

Commenter	#	Comment	Response	Action Taken
JOS	A-2 Part b	<u>USEPA’s March 17, 2014 Alternative Test Procedure approval was unlawful.</u>	USEPA withdrew its approval of the two-concentration test design as an alternate test procedure on February 11, 2015. The Order has been revised accordingly.	None necessary
JOS	A-2 Part c	<p><u>Use of an ATP Cannot Be Mandated over Promulgated Methods.</u></p> <p>This attempt to impose a mandate would also contradict a June 18, 2010 USEPA Headquarters memo accompanying the TST Implementation Document, from James Hanlon, then Director of the EPA Office of Wastewater Management, which stated: “The TST approach does not preclude the use of existing recommendations for assessing WET data provided in EPA’s 1991 Water Quality-based Technical Support Document (TSD) which remain valid for use by EPA Regions and the States.” [Exhibit 17] Thus, all the TST can be used for is additional information, similar to the CEC monitoring (cited above) where samples are required using a non-promulgated method – however, the difference is - for CECs, that extra data is not being used for compliance determination processes whereas the chronic toxicity data under the TST will be used for that purpose.</p> <p>be amended to make it clear that use of the ATP is optional.</p>	USEPA withdrew its approval of the two-concentration test design as an alternate test procedure on February 11, 2015. The Order has been revised accordingly and complies with the USEPA methods (EPA-821-R-02-013).	None necessary
JOS	A-2 Part d	<u>EPA Guidance cannot Overrule Promulgated Regulations.</u>	The commenter notes that USEPA’s 2010 publication regarding the TST statistical analysis is guidance and not regulation. Similarly, USEPA’s published materials on the point-estimate technique and NOEC-LOEC hypothesis testing methods are guidance and not required statistical approaches. The 2002 Chronic Toxicity Testing Method clarifies that the “statistical methods recommended in this manual are not the only possible methods of statistical analysis ... there are other reasonable and defensible methods of statistical analysis for this kind of toxicity data.” (Chronic WET Testing, October 2002, 9.4.1.2.) Contrary to the commenter’s allegation, the Regional Board does not consider itself bound by USEPA’s 2010 publication. The permitting authority has the discretion in this circumstance to select the means of statistical analysis that is most appropriate for the particular permit to be required for compliance and reporting purposes. (See 40 CFR §§ 122.44(d) and 122.43.)	None necessary

Commenter	#	Comment	Response	Action Taken
JOS	A-3	<i>A maximum daily effluent limit for chronic toxicity is impracticable, unlawful, and inappropriate.</i>	<p>In January 2010, USEPA prepared a document titled, “EPA Regions 8, 9 and 10 Toxicity Training Tool,” which provides interpretation on the permit limit expression for chronic toxicity. This document was designed to assist permit writers in the interpretation of the existing EPA guidelines, regulations and methodology. The document acknowledges that NPDES regulations at 40 CFR 122.45(d) require that all permit limits be expressed, unless impracticable, as both a Maximum Daily Limitation (MDL) and an Average Monthly Limitation (AML) for all dischargers other than POTWs, and as an average weekly limit (AWL) and AML for POTWs. Following section 5.2.3 of the Technical Support Document (TSD), the use of an AWL is not typically appropriate for WET. In lieu of an AWL for POTWs, USEPA recommends establishing an MDL for toxic pollutants and pollutants in water quality permitting, including WET. This is appropriate for multiple reasons. The basis for the average weekly requirement for POTWs derives from secondary treatment regulations and is not related to the requirement to assure achievement of water quality standards. In this case, use of an AWL is impracticable to protect water quality standards. An average weekly requirement comprising up to seven daily samples could average out daily peak toxic concentrations for WET and therefore, the discharge’s potential for causing acute and chronic effects would be missed. Furthermore, the results of the TST approach are expressed as Pass/Fail and therefore are not subject to averaging. An average weekly limit is therefore impracticable.</p> <p>In addition, the acute toxicity limitation that existed in the 2009 NPDES Order to account for acute effects was not included in the 2014 tentative Order because the chronic toxicity limitation is more stringent. The maximum daily effluent limit is intended to protect the aquatic life beneficial uses from survival and sublethal effects that may not be detected by an average weekly limitation. If the chronic toxicity maximum daily effluent limit is removed from the tentative, then a final effluent limitation for acute toxicity would need to be added to the 2014 Revised Tentative Order to protect the water quality standard as well as corresponding effluent and receiving water monitoring for acute toxicity. Additionally, this approach would not protect against high magnitude sublethal effects in a chronic test; meaning it would not be protective of both acute</p>	None necessary

Commenter	#	Comment	Response	Action Taken
			<p>and chronic effects.</p> <p>Compliance with the Monthly Median Effluent Limitation considers up to three samples. To be out of compliance with the MMEL, at least two of three samples must have resulted in a “Fail.” The Maximum Daily Effluent Limitation is based on an initial sample event with samples collected days later for renewal. The renewal is required due to the biological testing and the length of time of the test. To prevent an erroneous toxic classification based on this “single” event, the maximum biological effect allowed under the MDEL is 50%, or double the otherwise applied regulatory threshold of a 25% effect. Mandatory Minimum Penalties do not apply to violations of either of these limits, so any penalty is within the discretion of the Board.</p>	
JOS	A-4	<p><i>Comment A-4. USEPA’s objections were misplaced and should have been ignored.</i></p> <p>a) <u>The Whittier Narrows and Pomona WRP pre-public notice draft permits contained a valid and enforceable chronic toxicity effluent limitation.</u></p> <p>b) <u>The proposed narrative effluent limits and supplemental numeric triggers in the pre-notice draft Pomona and Whittier Narrows WRP NPDES permits, as well as the 2009 San Jose Creek WRP NPDES permit, were consistent with binding State Water Board precedent.</u></p> <p>c) <u>USEPA’s statements regarding the need for numeric limits are mistaken.</u></p> <p>d) <u>Binding case law goes against USEPA’s interpretations.</u></p> <p>i) <u>Section 122.44(k)(3) does not apply where the permit contains WQBELS.</u></p> <p>ii) <u>If Section 122.44(k) applies, there is no requirement that numeric effluent limitations be infeasible to calculate.</u></p> <p>iii) <u>The State Water Board has held that numeric limits for chronic toxicity are not feasible or appropriate.</u></p> <p>e) <u>USEPA ignores the existence of 40 CFR 122.44(k)(4).</u></p>	<p>The Pomona and Whittier Narrows pre-public notice draft permits did not contain a valid chronic toxicity effluent limitation as required by the Clean Water Act.</p> <p>Whole effluent toxicity (whether chronic or acute) is the aggregate toxic effect of an effluent measured directly by an aquatic toxicity test. Because it is both measured and <i>defined</i> by the WET test, it is a method-defined analyte. (<i>Edison Elec. Institute v. USEPA</i>, 391 F.3d 1267, 1270 (D.C. Cir. 2004); 40 CFR § 136.6(a)(5))</p> <p>An effluent limitation for whole effluent toxicity must be stated in terms of the results of a whole effluent toxicity test, by definition. The Clean Water Act defines “effluent limitation” broadly, as “any restriction . . . on the quantities, rates and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters . . . including schedules of compliance.” (CWA § 502(11).) But a narrative toxicity “limit” fails to answer the question of how “no chronic toxicity” is to be translated into particular test results. The narrative prohibition is not a valid effluent limitation under the Clean Water Act because it is inoperable and does not function as a restriction on the discharge. The narrative prohibition is insufficient to achieve and maintain the water quality standard in the receiving water because it is not a limit that can be measured or enforced.</p> <p>The Clean Water Act and its implementing regulations also require</p>	None necessary

Commenter	#	Comment	Response	Action Taken
			<p>that effluent limitations be expressed numerically unless a numeric limit is not feasible. Because numeric limits for whole effluent toxicity expressed in terms of the whole effluent toxicity test are feasible for the discharges from the Pomona and Whittier Narrows WTPs, numeric limits are required. Likewise, because numeric limits for whole effluent toxicity expressed in terms of the whole effluent toxicity test are feasible for the discharges from the San Jose Creek WRP, numeric limits are required and are included in the permit.</p> <p>Regulations implementing the Clean Water Act establish a strong presumption that effluent limitations will be numeric. For example, the regulations assume that effluent limitations will generally be capable of expression as averages or mass (see 40 C.F.R. § 122.45(d) (requiring all permit effluent limitations for continuous discharges from POTWs, “shall unless impracticable be stated as ... average weekly and average monthly discharge limitations); 40 C.F.R. § 122.45(f) (“All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass ...).)</p> <p>40 C.F.R. § 122.44(k)(3) requires non-numeric effluent limitations in the form of best management practices (BMPs) if numeric effluent limitations are infeasible. The necessary implication from this provision is that numeric effluent limitations are always required, if feasible (in which case, best management practices are merely optional elements of the permit.) The only alternate reading of this provision would conclude that in cases where numeric limitations are feasible but not actually incorporated into a particular permit, BMPs are not necessary. This reading is illogical.</p> <p>Courts have recognized that the CWA allows non-numeric effluent limitations instead of numeric limits in those instances where numeric limits are infeasible. “When numerical effluent limitations are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels.” (<i>NRDC v. Costle</i>, 568 F.2d 1369, 1380 (D.C. Cir. 1977); <i>see also</i>, <i>Citizens Coal Council v. EPA</i>, 447 F.3d 879, 895-96 (6th Cir. 2006) (upholding EPA’s coal remining effluent limitation guidelines that incorporate BMPs where numeric effluent limitations are not feasible).) Stormwater discharges are the most common</p>	

Commenter	#	Comment	Response	Action Taken
			<p>circumstance in which numeric limits are found to be infeasible, given the intermittent and variable nature of stormwater discharges and the lack of necessary data on which to base numeric limits. But the examples are few outside of the stormwater context, such as drainage from coal remining and placer mining operations, and certain vessel discharges. [67 Fed. Reg. 3370-01; 61 Fed. Reg. 3403-02; 73 Fed. Reg. 34296-01.]</p> <p>This Regional Water Board has determined that numeric effluent limitations for chronic toxicity are feasible for discharges from San Jose Creek WTP. See response to comment C-1 for information regarding other examples in which numeric effluent limitations for chronic toxicity have been found feasible and have been implemented.</p>	
JOS	A-5	<p><i>Numeric effluent limitations for chronic toxicity remain inappropriate.</i></p>	<p>The permit includes numeric chronic toxicity effluent limitations because the effluent data showed that there is reasonable potential for the pollutants to be present in the discharge at levels that would cause or contribute to a violation of the water quality standard.</p> <p>The narrative toxicity effluent limits with prescriptive accelerated monitoring and toxicity reduction evaluation triggers that have been used in NPDES permits in this Region have not adequately addressed how to achieve and maintain compliance with the water quality standard for chronic toxicity in the San Gabriel River and its tributaries.</p> <p>Numeric toxicity effluent limitations are an efficient regulatory tool because the measurement of compliance is clearly defined. Because of the availability of toxicity testing methods and applicable USEPA guidance endorsing these methods, the Regional Water Board finds that numeric effluent limits for toxicity are both feasible and appropriate to protect water quality standards.</p> <p>The Regional Water Board agrees that an important step to achieving compliance with a Whole Effluent Toxicity (WET) water quality standard is a toxicity reduction evaluation to identify the constituents of concern. But a numeric effluent limit will prompt proactive efforts by permittees to comply with the limitation and address toxicity in advance of violations that may impact aquatic life. This Order also requires the discharger to conduct the Toxicity Identification Evaluation (TIE)/Toxicity Reduction Evaluation</p>	

Commenter	#	Comment	Response	Action Taken
			<p>(TRE) process if the numeric effluent limit is exceeded.</p> <p>USEPA’s decision to include the WET testing methods as approved test methods under 40 CFR Part 136 was upheld by the United States Court of Appeals for the D.C. Circuit in <i>Edison Electric Institute v. USEPA</i>, 391 F.3d 1267 (2004) (<i>Edison Electric</i>). The Court found that “[i]n designing and refining the WET test methods, EPA sought to minimize the effect of organic idiosyncrasy by taking experimental and statistical precautions... WET test methods exhibit a degree of precision compatible with numerous chemical-specific tests already in use.” (<i>Id.</i> at 1269 & 1271.) With respect to the representativeness of WET test methods, that is, the ability of test results to predict instream effects accurately, the Court concluded that studies on the subject “support the representativeness of the WET test methods in general, and several [studies] demonstrate representativeness with regard to particular Western waters.” (<i>Id.</i> at 1273.)</p> <p>The TST statistical approach for use in the statistical analysis of WET test data was peer reviewed by the State of California. Additionally, the TST approach was also published in <i>Environmental Toxicology and Chemistry</i> (Denton et al. 2011), undergoing review by anonymous reviewers. Data from over 2,000 WET tests were used to develop and evaluate the TST approach. The TST was tested for nine different WET test methods with 12 biological endpoints (e.g., reproduction, growth, survival) representing most, if not all of the different types of WET test designs currently in use. Over one million computer simulations were also used to select error rates meeting EPA’s RMDs (Regulatory Management Decisions) for the TST approach. In addition, the State Water Resources Control Board conducted a test drive analysis of the TST as compared to the current NOEC approach, and reported the results in a report dated December, 2011 and published in <i>Environmental Toxicology and Chemistry</i> (Diamond et al. 2013), undergoing review by anonymous reviewers. Also, see Response to Comment A-4.</p>	
JOS	A-6	<i>Numeric limits based on a two-concentration TST are highly problematic.</i>	<p>See Response to Comment 1d.</p> <p>The TST statistical approach is desirable over the status quo. In the executive summary (at page vii, <i>Exhibit 3 page 426 of 1898</i>) of</p>	

Commenter	#	Comment	Response	Action Taken
			<p>USEPA's <i>NPDES Test of Significant Toxicity Implementation Document (EPA 833-R-10-003, June 10)</i>, USEPA states that "The traditional hypothesis testing approach under EPA's TSD is still considered valid as applied; however, that approach can now be advanced through the TST approach by providing new incentives to permittees to provide valid, high quality WET data."</p> <p>Section 1.2 of USEPA's <i>NPDES Test of Significant Toxicity Implementation Document-June 2010</i> explains that "the current NPDES WET Program does not control for false negatives. Thus, the TST approach allows permitting authorities to minimize the occurrence of false negatives (i.e., declaring the IWC non-toxic when it is actually exhibiting unacceptable toxicity), while also minimizing the occurrence of false positives (i.e., declaring the IWC toxic when it is actually acceptable). The TST approach has the added advantage of providing permittees with a clear incentive to improve the precision of test results (e.g., decrease within-test variability and/or use more replicates within a WET test than the minimum required in the EPA WET test method) to reach a definitive conclusion as to whether unacceptable toxicity is observed in a test. Thus, using the TST approach, a permittee can in fact <i>prove a negative</i>, i.e., that their effluent is acceptable (non-toxic)."</p>	
Comments received (as Attachment B) from Joint Outfall System on January 15, 2015				
JOS	B-1	IV.A. Table 4 (EFF-001), pg 6. Remove Selenium from EFF-001 limits. A selenium limits is not appropriate for San Gabriel Reach 2. There are no WLAs for selenium assigned to this reach in the SGR Metals TMDL, and there is no selenium impairment for this reach. The WLAs are for San Jose Creek Reach 1. Also, note that San Jose Creek Reach 1 is no longer listed as impaired for selenium, as of the 2010 303(d) list.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-2	IV.A. Table 4 (EFF-001), pg 6. Add EFF-001 to Ammonia Nitrogen Limits (or remove reference to just EFF-001A and EFF-001B) No ammonia limits are listed for EFF-001.	Staff agreed to the proposed changes.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
JOS	B-3	IV.A. Table 4 (EFF-001), pg 6. Change "Total Nitrogen" to "Nitrate Plus Nitrite as Nitrogen" for EFF-001/A/B. Total Nitrogen should be Nitrate + Nitrite (total inorganic nitrogen) limit of 8. Justification for this limit is the Basin Plan objective (per F-3), and the objective is for nitrate plus nitrite as nitrogen (see Page 3-32, footnote d of the 2014 amendments to the Basin Plan for San Gabriel River from Valley to Firestone).	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-4	IV.b. Table 5 (EFF-002), pg 8. Remove Total Trihalomethanes limits. Our calculations indicate that there is no reasonable potential for total trihalomethanes at EFF-002.	Staff reviewed Total Trihalomethanes limits using TSD methodology and there is reasonable potential at EFF-002.	None necessary.
JOS	B-5	IV.B. Table 5, Footnote 11, last sentence, pg 9. Change "are required" to "may be conducted" This will make Footnote 11 consistent with Footnote 5 (page 7) and Footnote 16 (page 11). If we are not able to obtain three tests for some reason, we will not be in violation for simply not collecting the samples.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-6	IV.C. Table 6 (EFF-003), pg 10. Change "Total Nitrogen" to "Nitrate Plus Nitrite as Nitrogen" for EFF-003. Total Nitrogen should be Nitrate + Nitrite (total inorganic nitrogen) limit of 8. Justification for this limit is the Basin Plan objective (per F-36), and the objective is for nitrate plus nitrite as nitrogen (see Page 3-32, footnote d of the 2014 amendments to the Basin Plan for San Gabriel River from Valley to Firestone).	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-7	IV.C. Table 6 (EFF-003), pg 10. Remove Benzo(k)fluoranthene and Dibenzo(a,h)anthracene limits for EFF-003. There is no footnote explaining where these limits came from for EFF-003 like there is for EFF-002 (Footnote 9). There was detections in background at RSW-003 but they were not over the criteria, so there was no RP. See comments on F-59.	Staff agreed to remove the limit for Benzo(k)fluoranthene at EFF-003. Text has been added to explain the RPA and limit for Dibenzo(a,h)anthracene at EFF-003. Specifically, reasonable potential to exceed water quality criteria of .049 µg/L was identified because the constituent was detected in the effluent at EFF-003 and the background exceeded the criteria at RSW-002 at .1 µg/L on August 10, 2011. (Since most of the upstream flow at EFF-003 is from the San Jose Creek, RSW-002 is representative of the background.)	Revisions were made to the permit.
JOS	B-8	VI, pg 11. Add a table or tables for effluent limits for EFF-004 and EFF-005. Effluent limits to protect surface water have to be established in an NPDES permit.	Tables, a map, and text have been added to specify effluent limits, receiving water locations and monitoring requirements for EFF-004 and EFF-005.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
JOS	B-9	V.A.1, pg 12. Add "or above 70°F if the ambient temperature is less than 60°F". This language was used in the previous permit, and no explanation was provided to why the language was dropped.	Text in Tentative is per the updated standard language.	None necessary.
JOS	B-10	V.A.18.b, pg 13. Delete "on the same day" so that it reads, "Receiving water and effluent toxicity testing shall be performed on the same day as close to concurrently as possible." Effluent samples are 24-hour composites and receiving water samples are grab samples. Therefore, very little information regarding whether or not effluent toxicity obtained through routine toxicity testing is contributing to receiving water toxicity (or lack of toxicity) can be ascertained. Furthermore, additional tests conducted to meet the effluent MMEL may or may not include concurrent testing of the receiving water.	The existing text has been retained, after discussions with JOS concerning this comment.	None necessary
JOS	B-11	I.A, pg E-2. After "Annual analyses shall be performed during the month of August" add (except for bioassessment monitoring, which will be conducted in the spring/summer)". Bioassessments are done annually, but are not done in August.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-12	Table E-1, pg E-4. For INF-001 and INF-002, remove "(East)" and "(West)" from Monitoring Location Name. East and West are identified in the Discharge Point Source column.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-13	Table E-1, pg E-4. Add "/or" so that this reads, "Sampling stations shall be established at each point of inflow to the sewage treatment plant and shall be located upstream of any in-plant return flows and/or where representative samples of the influent can be obtained." Currently under typical operation no in-plant flows return upstream of the influent sampling locations. However, piping is available to route certain flows (secondary skimmings) on the East side to a location upstream of the influent sampling location if needed due to limitations in downstream sewers or other unusual conditions.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-14	Table E-1, pg E-6. For RSW-003, change to "upstream of <u>Discharge Point...</u> "	Staff agreed to the proposed changes.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
JOS	B-15	Table E-1, pg E-6. For RSW-010, change to "34.131833 N, 117.970722 W..."	Staff agreed to the proposed changes.	Revisions were made to the permit
JOS	B-16	Table E-1 Receiving Water Stations, pg E-7. Add to table "Downstream San Gabriel River (unlined above Santa Fe Dam)", "RSW-011", "34.131417 N, 117.950476 W, no further than 100 ft. downstream of Discharge Point No. 005. This location is also used for San Gabriel River ammonia receiving water point of compliance." New downstream station for Discharge Point No. 005.	Staff agreed to the proposed changes.	Revisions were made to the permit
JOS	B-17	Table E-3, INF-002, pg E-8. For the parameter Flow, add Footnote 2 to the sampling frequency of "continuous"	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-18	Table E-2 and E-3, pg E-8 and E-9. Divide into PCBs as arochlors and PCBs as congeners rows like the effluent is done for clarity.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-19	IV.A. footnote 10, pg E-9. Modify to read "Concentration = [(East Concentration x metered East Flow to outfall pipeline) + (West concentration x metered West Flow to outfall pipeline)] / (East Flow to outfall pipeline + West Flow to outfall pipeline)". Since the concentrations are the same, we use the metered flow directly from the East and West plants to do the flow-weighting calculations for all the discharges and reuse off the outfall pipeline, including 001, 001A, 001B, and outfall reuse (Rio Hondo System and PERG). Cannot use flow to 001 as it is sometimes zero.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-20	Table E-4, pg E-10. Change Turbidity sample type to "calculated" and frequency to "continuous". All samples that are continuous, 24-hr composite, and grab except pH, temperature, and total residual chlorine are calculated from East and West. This includes turbidity. If a grab sample was taken to prove compliance with the 10 NTU limit, then it would still be collected from East and West and flow-weighted (not an outfall EFF-001/A/B grab sample).	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-21	Table E-4, Footnote 15, pg E-10. Add "Total residual chlorine cannot be monitored using a continuous recorder at Discharge Nos. 001, 001A, and 001B"	Staff agreed to the proposed changes.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		and is only monitoring by a grab sample at these outfalls. These outfalls are at a remote location in a streambed several miles downstream of the plant. Equipment cannot be maintained there due to vandalism and storm flooding." Delete "Furthermore, additional monitoring requirements specified in Order section IV.A. shall be followed. "This footnote is missing language about not being able to continuously monitoring chlorine residual at EFF-001, EFF-001A, and EFF-001B . The sentence about additional monitoring requirement specified in Order section IV. A. should be removed as it applies to continuous monitoring as a trigger for additional grab samples.		
JOS	B-22	Footnotes 17, 39, and 61, pgs E-10, E-14, and E-18. At the end of the footnotes add, "If the total coliform analysis results in no detection, a result of < the reporting limit for total coliform will be reported for both fecal coliform and <i>E.coli</i> ."As written, the footnotes don't specify what should be reported in CIWQS for fecal coliform and <i>E.coli</i> if they are not required to be conducted.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-23	Footnotes 21, 43, and 65, pgs E-11, E-15, and E-19. Remove everything after the first sentence so that it reads "MBAS is Methylene blue active substances and CTAS is cobalt thiocyanate active substances." Justification for monitoring should be provided in the Fact Sheet, not in the MRP. Also, there is no MCL for CTAS, so the GWR use can not be used as a justification for monitoring for CTAS.	Footnote revised as follows. Justification for CTAS monitoring is provided in IV.C.2.b.vii. of the Fact Sheet: Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-24	Table E-5 (EFF-002) Footnote 33, pg E-14. Change Footnote 37 on turbidity continuous frequency to Footnote 33. Similar to EFF-001 and EFF-003.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-25	Table E-5 (EFF-002) Footnote 33, pg E-14. Add "A grab sample can be used to determine compliance with the 10NTU limit. A flow-weighted 24-hour composite sample may be collected for turbidity at EFF-002 in place of the recorder to determine the flow-proportioned average daily value." Same language as Footnotes 11 and 14 from EFF-001/A/B.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-26	Table E-5 (EFF-002, footnote 47, pg E-16. Add "PCBs <u>as</u> arochlors"	Staff agreed to the proposed changes.	Revisions were made to the permit.

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JOS	B-27	Table E-5 (EFF-002, pg E-17. Change Perchlorate, 1,4-Dioxane, 1,2,3-Trichloropropane, and MTBE to 24-hour composite. These are not grab samples.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-28	Table E-6 (EFF-003) Footnote 59, pg E-18. Change "EFF-0013" to "EFF-003"	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-29	Table E-6, Footnote 66, pg E-19. Delete the last two sentences, starting with "If the chronic toxicity median monthly threshold at the immediate downstream receiving water location is not met..." Table E-8 is a listing of effluent requirements. Language on receiving water requirements is not appropriate in this table but should instead be included in Table E-8.	Staff agreed to the proposed changes.	Revisions were made to the permit..
JOS	B-30	Table E-6 (EFF-003), Footnote 70, pg E-20. Change "PCBs mean the sum ..." to "PCBs <u>as congeners</u> means the sum ..."	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-31	Table E-6 (EFF-003), pg E-21. Change Perchlorate, 1,4-Dioxane, 1,2,3-Trichloropropane, and MTBE to 24-hour composite. These are not grab samples.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-32	Table E-6 (EFF-003), pg E-21. Remove NDMA and Footnote 75. NDMA is already required semiannually for EFF-001/A/B and EFF-002 because it is a priority pollutant. On Footnote 75, it would be duplicative and waste of efforts to run NMDA using a drinking water method for an NPDES permit.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-33	Add Table E-7 and E-8, pg E-21. Tables of monitoring parameters need to be added for EFF-004 and EFF-005. Monitoring requirements to protect surface waters have to be included in NPDES permits.	Staff agreed. Table E-7 has been added to include monitoring parameters for both EFF-004 and EFF-005.	Revisions were made to the permit.
JOS	B-34	IV.D, pg E-21. Delete the sentences stating, "The Permittee shall monitor the discharge of tertiary-treated effluent at EFF-004 and EFF-005 as directed in the Water Recycling Requirements (WRR) for the IRRP Facility. The effluent limitations for EFF-004 and EFF-005 will be established in a WRR for that groundwater replenishment project." Effluent limits and monitoring requirements to protect surface waters have to be established in an NPDES permit.	The language has been revised. Refer to IV.D.	Revisions were made to the permit.

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JOS	B-35	<p>V.A.2, pg E-22.</p> <p>Delete the sentence stating, "For the receiving water, sufficient sample volume shall also be collected for subsequent TIE studies, if necessary, at each sampling event." TIE testing would only be conducted after exceeding the MMEL or MDEL and after failing one or more accelerated tests. The way the language is currently written, it might be misinterpreted to mean that a TIE should be conducted immediately after failing the MMEL or MDEL.</p>	<p>Staff agree that collecting the extra sample volume during routine compliance sampling is not worthwhile. Collecting the extra volume, however, during the accelerated monitoring is justified for any potential TIE testing. Text has been modified as shown below:</p> <p style="padding-left: 40px;">For the receiving water, sufficient sample volume shall also be collected <u>during accelerated monitoring</u> for subsequent TIE studies, if necessary, at each sampling event."</p>	Revisions were made to the permit.
JOS	B-36	<p>V.A.4 Species sensitivity screening, pg E-23.</p> <p>The sampling requirements for the NPDES permit can vary by month, since in some months it is necessary to collect samples for parameters that need to be monitored quarterly, semi-annually, or annually. Therefore, as written the language would require different parameters to be analyzed depending on which month the most sensitive screening analysis is run. During months in which quarterly, semi-annual, or annual sampling is required it could be difficult to collect enough sample volume to run all the necessary parameters. A more reasonable requirement would be to require the sample used for the most sensitive species screening to be analyzed for the parameters required on a monthly basis. Language is proposed to provide this change. Change the sentence to read, "This sample shall also be analyzed for the parameters required on a monthly frequency for the discharge during that given month."</p>	Staff agreed to the proposed change.	Revisions were made to the permit.
JOS	B-37	<p>V.A.4 Species sensitivity screening, pg E-23.</p> <p>Remove "If the result of all three species is "Pass", then the species that exhibits the highest "Percent Effect" at the discharge IWC during species sensitivity screening shall be used for routine monitoring during the permit cycle. Likewise, if two or more species result in "Fail," then the species that exhibits the highest "Percent Effect" at the discharge IWC during the suite of species sensitivity screening shall be used for routine monitoring during the permit cycle. " Replace with something that covers all the alternative results such as "The species that exhibits the highest "Percent Effect" at the discharge IWC during the suite of species sensitivity screening shall be used for routine monitoring during the permit cycle. " A third possible combination of 2 pass and 1 fail is not described. Best to just describe the conditions for determining</p>	<p>Text added to cover the possible combination of 2 pass and 1 fail, as shown below:</p> <p style="padding-left: 40px;">If the result of all three species is "Pass", then the species that exhibits the highest "Percent Effect" at the discharge IWC during species sensitivity screening shall be used for routine monitoring during the permit cycle. <u>If only one species fails, then that species shall be used for routine monitoring during the permit cycle.</u> Likewise, if two or more species result in "Fail," then the species that exhibits the highest "Percent Effect" at the discharge IWC during the suite of species sensitivity screening shall be used for routine monitoring during the permit cycle, until such time as a rescreening is required (24 months later).</p>	Revisions made to the permit.

Commenter	#	Comment	Response	Action Taken
		in any case. You would not set a most sensitive species to be one that had a lower IWC than another species.		
JOS	B-38	<p>V.A.5.f, pg E-24.</p> <p>Remove the second sentence of this requirement, relating to disallowing removal of ammonia and chlorine. Ammonia removal requirements are addressed on page E-27, Section V.B. For chlorine, change the language to read "Except with prior approval from the Executive Officer of the Regional Water Board, chlorine shall not be removed from bioassay samples. However, chlorine may be removed from the San Jose Creek WRP effluent bioassay samples in the laboratory because often the recycled water demand is high and there is no effluent water available for sampling over the weir after the dechlorination process." The Regional Board recently granted an exemption from collecting dechlorinated effluent at the Pomona WRP due to difficulties in sample collection caused by high demand for recycled water. A similar exemption is needed for San Jose Creek WRP . Chlorine residual limits will readily identify and address any malfunctions in the dechlorinating systems. Specific reasons why an exemption is needed are: 1) There is only intermittent flow at each of the outfalls for both SJC East and West. SJC WRP sends FE to receiving waters at three potential locations (EFF-001, EFF-002, and EFF-003) and also sends a significant percentage of flow to individual recycled water users. Discharge at the three receiving water locations is intermittent based on recycled water needs and management decisions as to where the flow will be diverted. This completely prohibits 24-hour composite sample collection at any one of the individual outfall locations. To overcome this problem, the Laboratory collects the 24-hour composite samples in the plant, immediately after chlorination, at locations where the presence of effluent flow is guaranteed 24 hours a day. Attempting to move the composite sampling location to a site where de-chlorinated effluent could be collected would mean placing sampling equipment and infrastructure in a location where effluent flow could not be guaranteed 24 hours a day. 2) Installation of sampling equipment and infrastructure for collection of 24-hour composite samples would be unreasonably difficult. There are</p>	Refer to revisions noted in the Response to Comment 3.	Revisions made to the permit.

Commenter	#	Comment	Response	Action Taken
		currently no sampling locations for collection of de-chlorinated effluent within SJC WRP. Installation of appropriate infrastructure and sampling equipment would be extremely difficult given that many of the discharge pipes carrying the de-chlorinated effluent are underground and are inaccessible or are too close to receiving waters to adequately engineer safe and secure sampling infrastructure. In addition, it is not feasible to create sampling locations at the outfalls themselves due to inevitable vandalism and/or environmental damage to sampling equipment. The outfalls themselves are accessible to the public and previous experience has shown us that sampling equipment setup in such situations cannot be adequately maintained.		
JOS	B-39	V.A.9.e, pg E-27. Change to read, "Any additional QA/QC documentation or any additional chronic toxicity-related information, <u>will be made available for inspection</u> upon request of Regional Water Board staff." All records and documents associated with test results for submitted for NPDES purposes are always available for inspection upon request. Furthermore, the Districts' laboratory and contracted laboratories are committed to complying with all required reporting provisions and make every effort to do so. However, recent NOV's have alleged that our failure to submit QA/QC documentation not specifically required under current MRP provisions constitute a violation. We request the changes above to eliminate any future misunderstandings regarding these obligations.	Staff agreed to the following revision: "Any additional QA/QC documentation or any additional chronic toxicity-related information, upon <u>written</u> request <u>from the</u> of Regional Water Board staff <u>Assistant Executive Officer or the Executive Officer.</u> "	Revisions made to the permit.
JOS	B-40	V.C, pg E-27. Remove this requirement, which relates to chlorine removal.	Staff revised text as per the Response to JOS Comment 3.	Revisions were made to the permit.
JOS	B-41	Table E-8 header and Footnote 78, pg E-28. Add "RSW-008, 009, and 010". These are the upstream/downstream stations for 004 and 005.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-42	VIII.A.1, pg E-28. Change to read, "The Permittee shall monitor receiving water at RSW-001 (C-1), RSW-002 (C-2), RSW-003 (R-10), RSW-004 (R-11), RSW-005 (R-2), RSW-006 (R-12), RSW-007 (R-13), RSW-008, RSW-009, RSW-010, and RSW-011 as follows. RSW-008, RSW-009, RSW-010, and RSW-011 are	Staff revised text as follows: The Permittee shall monitor receiving water at RSW-001 (C-1), RSW-002 (C-2), RSW-003 (R-10), RSW-004 (R-11), RSW-005 (R-2), RSW-006 (R-12), and RSW-007 (R-13), <u>RSW-008, RSW-009, RSW-010, and RSW-011</u> as follows. Monitoring requirements at	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		not required to be sampled until such time as there is discharge from Discharge Point Nos. 004 or 005. Monitoring requirements at RSW-006 (R-12) and RSW-007 (R-13) are applicable when reclaimed water is discharged through Discharge Point Nos. 001A or 001B." Add the upstream/downstream stations for 004 and 005 and qualify when to start sampling. Also the existing statement about 001A and 001B is confusing.	RSW-006 (R-12) and RSW-007 (R-13) are applicable when reclaimed water is discharged through Discharge Point Nos. 001A or 001B. <u>Water shall be sampled at each location when present. However, monitoring does not need to be conducted at RSW-008, RSW-010, and RSW-011 if there is no discharge.</u> "	
JOS	B-43	Table E-8, Footnote 81, pg E-29. Add "For example" at the start of the last sentence, so it reads, "For example, if the chronic toxicity median monthly threshold of the receiving water at both upstream and downstream monitoring stations is not met..." Addition of this language will clarify that the scenario described in the last sentence is not the only situation in which toxicity may be attributed to upstream sources.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-44	Footnote 85, pg E-30. "Dioxin concentration in effluent = \sum " should be replaced with "Dioxin concentration = \sum " This footnote relates to receiving water.	Staff agreed to the proposed change.	Revisions were made to the permit.
JOS	B-45	II.B. Discharge Point 001, pg F-7. Change the sentence "It is located in Reach 2 of the San Gabriel River" to "It is located in Reach 1 of the San Gabriel River." Discharge Point No. 001 has always been regulated as being in Reach 1. The reason for changing the way it is regulated at this point is unclear.	Discharge point 001 lies within Reach 2 of the San Gabriel River as defined in the Basin Plan, approximately 940 feet upstream of the division between Reach 1 and Reach 2. The effluent limitations applicable to Discharge Point 001 have been revised because the San Gabriel River is concrete lined at the outfall which prevents any groundwater percolation. Staff agree to the following clarification "It is located in Reach 2 of the San Gabriel River as defined in the Basin Plan approximately 940 feet upstream of the division between Reach 1 and Reach 2. However, the Total Maximum Daily Load for Metals and Selenium in the San Gabriel River (SGR Metals TMDL) considers Discharge Point No. 001 to be in Reach 1 of the San Gabriel River. For the purposes of this Order, Discharge Point No. 001 is considered to lie in Reach 1. TMDL implementation guidance makes this assumption, a concrete apron at the outfall in Reach 2 ensures all discharge is to Reach 1, and water quality objectives and beneficial uses are judged to be fully protected at and downstream from the outfall into Reach 1."	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
JOS	B-46	II.B. Discharge Point 003, pg F-8. Remove "at the Reach 2 boundary" from the last sentence of the first paragraph so it reads, "It is located in Reach 3 of the San Gabriel River." Discharge Point No. 003 is not near the boundary of Reach 2.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-47	II.B. Discharge Point 004, pg F-8. Change Reach 3 to Reach 4 so it reads, "Discharge to the unlined Reach 4 of the San Gabriel River." Change needed to be consistent with the Basin Plan.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-48	II.B. Discharge Point 005, pg F-8. Change Reach 3 to Reach 5 so it reads, "Discharge to the unlined Reach 5 of the San Gabriel River." Change needed to be consistent with the Basin Plan.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-49	II.B. Discharge Point 005, fourth paragraph, pg F-8. Change the first sentence to read, "The San Gabriel River and San Jose Creek are unlined near the points of discharge, except Discharge Point No. 001." 001 discharges to the lined portion of the San Gabriel River.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-50	2.C.1, second paragraph, pg F-9. Change the second sentence to read, "The copper limit was applied in dry weather in Reach 1 and the Estuary of the San Gabriel River." There were no copper limits applied for discharges to Reach 2.	Staff deleted the referenced paragraph and revised text in IV.C.3. .	Revisions were made to the permit.
JOS	B-51	Table F-4, pg F-20. Remove 11/10/09 data from Table F-4. This sample was taken during a three species screening. During such screenings, under the old permit only the compliance species was reportable for compliance purposes. Ceriodaphnia was not the compliance species and thus results were not reportable for compliance purposes.	Staff agreed to insert <u>Species Screening</u> into Table F-4 and revise the introduction to Table F-4 (II.D.1) to note that the 11/10/09 data was not reported for compliance purposes. However, three individual tests had more than 1.0 TUc during the compliance testing <u>and three species screening</u> as shown in the tables below.	Revisions were made to the permit.
JOS	B-52	II.E, pg F-20. Change to read, "Up to 10,000 acre-feet per year (8.93 mgd)..." 10,000 acre-feet is 8.93 mgd, not 13.4 mgd.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-53	II.E, pg F-21. Remove the statement. "Therefore, the effluent limitations for 004 and 005 will be established in a Water Recycling Requirement for that spreading facility." Limits for 004 and 005 that are related to protection of surface waters must be established in an NPDES permit, not WRRs. WRRs contain	Staff agreed to the proposed changes.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		requirements to protect public health.		
JOS	B-54	II.E second paragraph, pg F-21. Replace "to achieve a higher level of virus deactivation as required for reuse." with "to reduce health and safety risk to the public." The reason for replacing the gaseous chlorine is to reduce the health and safety risk to the public.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-55	IV.A, pg F-30. "This order authorized the discharge of tertiary-treated wastewater from Discharge Point Nos. 001, 001A, 001B, 002, 003, 004, and 005." This sentence needs to reflect the new 004 and 005 discharge points.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-56	IV.C.2.b.ix, pg F-36. Change "Effluent limits for total nitrogen of 8 mg/L are based" to "Effluent limits for nitrate plus nitrite as nitrogen of 8 mg/L are based..." The Basin Plan objective is for nitrate plus nitrite as nitrogen. See Page 3-32, footnote c of the Basin Plan.	Staff agreed to the following changes. Revised paragraph is as follows: The effluent limits for nitrate as nitrogen of 10 mg/L and nitrite as nitrogen (NO ₂ -N) of 1.0 mg/L <u>for EFF-001</u> are based on the Basin Plan <u>groundwater narrative</u> water quality objectives, where beneficial uses include GWR , and best professional judgment. Effluent limits for <u>nitrate plus nitrite as total nitrogen</u> of 8 mg/L <u>for the other discharge points</u> are based on the Basin Plan surface water quality criteria for San Gabriel River Reach 2 <u>and San Jose Creek</u> .	Revisions were made to the permit.
JOS	B-57	IV.C.3, pg F-50. Explain the statement, "As a result and in an abundance of caution, if the constituent was present at only one of the receiving water stations immediately above and below the outfall, that value was used as the background concentration for the RPA." It is not clear which data was used for the reasonable potential analysis for the various discharge points. The data is not shown and there is a only footnote in the WDR indicating that RSW-001 was used for 002, with no corresponding footnotes for 003. Overall, RPAs must be conducted in accordance with the SIP, which indicates a strong preference or locations upstream or near the discharge. Additionally, the standard for determining whether there is a potential to cause or contribute to a water quality exceedance is "reasonable" potential, not "in an abundance of caution."	Reasonable potential analysis (RPA) revised to not include data from a receiving water station downgradient of the outfall. Text revised in the permit to accommodate the revised RPA.	Revisions were made to the permit.
JOS	B-58	IV.C.3, third paragraph, pg F-51. Remove 003 from the statement, "Based on upstream or downstream conditions, the RPA indicated that limits are	Staff has revised IV.C.3 for clarity and to remove the reference to using downstream conditions to conduct the RPA. The updated RPA indicates that chrysene limits are needed for Discharge Point	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		needed for Discharge Point Nos. 001/001A/001B and 002 for Chrysene..." It is not clear which background value B was used for 003. See comment on table F-14.	002 only.	
JOS	B-59	IV.C.3, fifth paragraph, pg F-51. Change the last sentence to read, "...because the TMDL implementation does require a limit at Discharge Point No. 002 in San Jose Creek Reach 1." Discharge Point No. 002 is in San Jose Creek Reach 1, not Reach 2.	Section IV.C.3 revised to provide clarity.	Revisions were made to the permit.
JOS	B-60	IV.C.3., fifth paragraph, pg F-51. Add a new sentence to the end of the paragraph stating, "RPA was not present for lead, but a limit was required for all the discharge points because they are either in or tributary to San Gabriel River Reach 2." No explanation is given for the lead limits.	Staff agreed to the proposed change with the addition shown below. "RPA was not present for lead, but a limit was required for all the discharge points because they are either in or tributary to San Gabriel River Reach 2 <u>where a San Gabriel Metals and Selenium TMDL limit is specified.</u> "	Revisions were made to the permit.
JOS	B-61	Tables F-13 and F-14, CTR #16 both EFF-002 and EFF-003, pg F-52 and F-57. The Reason for TCDD should be "Not Detected" not "MEC>C"	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-62	Table F-14, CTR #64 Benzo(k)fluoranthene and #74 Dibenzo(a,h,) anthracene, pg F-59. The B values for these should be "<0.02" and "0.024", respectively and the Reason should be MEC<C and B<C. No RP for these for 003. Likewise there is no RP for 004 and 005.	Revised using the maximum of C-2 and R-10. No RP for Benzo(k)fluoranthene but there is RP for Dibenzo(a,h,) anthracene at EFF-003. RPA table updated accordingly.	Revisions were made to the permit.
JOS	B-63	IV.C.4.b. Shared Effluent Pipeline, pg F-62. Replace header and text with " Multiple Discharge Points Separate effluent limits were established for Discharge Point Nos. 001, 001A and 001B, Discharge Point No. 002, Discharge Point 003, Discharge Point No. 004, and Discharge Point No. 005. Each of these discharge points go to different waterbodies (San Gabriel River Reach 2, San Jose Creek Reach 1, San Gabriel Reach 3, San Gabriel River Reach 4, and San Gabriel River Reach 5, respectively) where different TMDL-based waste load allocations apply. " It is not appropriate to set water quality based effluent limits on a proportion of water from a facility. Water quality based effluent limits need to be set based on a water quality objectives at each specific discharge location.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-64	IV.C.4.c. second paragraph, pg F-62. After "(Tier 3) for Reach 2." add, "This WLA applies in San	Staff agreed to the proposed changes.	Revisions were made to

Commenter	#	Comment	Response	Action Taken
		Gabriel River Reach 2 and all upstream reaches and tributaries." Then change the next sentence to read, "Therefore, an effluent limitation has been prescribed for lead at all of the discharge points." To explain lead limits further.		the permit.
JOS	B-65	IV.C.4.c., after the paragraph ending in "... USGS station 11087020 will be used.", pg F-63. Add a paragraph stating, "Similarly, San Jose Creek Reach 1 has TMDL wasteload allocations for selenium in dry weather impairment. Therefore, limits were set for selenium in Discharge Serial No. 002, which discharges to San Jose Creek Reach 1." To explain selenium limits.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-66	IV.C.4.d, pg F-63. Change bolded "Sample calculation for Lead for the East Plant:" to "Sample calculation for Discharge Point No. 002:" In NPDES permits, water quality based effluent limits are assigned to discharge points, not "plants". Water quality based effluent limits need to be based on the specific water quality considerations at each discharge location, regardless of where the water was produced.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-67	IV.C.4.d. Paragraph after Step 7, pg F-64. Change to the first two sentences of this paragraph to read, "The San Gabriel Metals and Selenium TMDL includes a concentration limit for lead, which applies to the Reach 2 of the San Gabriel River and all upstream reaches and tributaries. The TMDL also states ..." See page 37 of TMDL.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-68	Tables F-15 (001/001A/001B) and F-18, pgs F-66 and F-74. Change Total Nitrogen limits for EFF-001/001A/001B to limits for Nitrate Plus Nitrite as Nitrogen. To be consistent with the Basin Pan water quality objective, which is for total inorganic nitrogen.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-69	Tables F-15 (001/001A/001B) and F-18, pgs. F-66 and F-75. Remove Selenium limit from 001, 001A, and 001B. The SGR Metals TMDL did not assign a WLA for selenium in SGR Reach 2, and there is no impairment in this reach. Therefore, there is no justification for a water quality based effluent limit.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-70	Tables F-15 (001/001A/001B) and F-18, pgs F-66 and F-75. Remove Chrysene limit from 001, 001A, and 001B. There was no Chrysene RP in the analysis that was submitted for 001 and 001A.	Staff agreed to the proposed changes.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
JOS	B-71	Tables F-16 (EFF-002) and F-19, pgs F-67 and F-77. Remove Total Trihalomethanes limit from 002. There is no RP for total trihalomethanes at 002.	Staff reviewed Total Trihalomethanes limits using TSD methodology and there is reasonable potential at EFF-002.	Updated TTHM per updated RPA.
JOS	B-72	Tables F-17 (EFF-003) and F-20, pgs F-68 and F-78 Change Total Nitrogen limit for EFF-003 to a limit for Nitrate Plus Nitrite as Nitrogen. To be consistent with the Basin Plan water quality objective, which is for total inorganic nitrogen.	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	B-73	Tables F-17 (EFF-003) and F-20, pgs F-68 and F-78. Remove limits for Benzo(k)fluoranthene and Dibenzo(a,h,) anthracene. No RP for these for 003. Likewise there is no RP for 004 and 005.	As noted in the Response to Comment B-62, RP is present at EFF-003 for Dibenzo(a,h,) anthracene. Effluent limit table updated accordingly.	Revisions were made to the permit.
JOS	B-74	VI.B.2.a, pg F-80. Remove requirement to conduct the special study "Disinfection Byproducts Continued Monitoring." There is no study entitled, "Montebello Forebay Groundwater Recharge Project Study" so it will not be possible to provide a summary. Also, no justification has been provided as to why a new monitoring plan for disinfection byproducts should be proposed. The tentative NPDES permit already contains requirements for disinfection byproduct monitoring to protect receiving waters. Any additional studies needed regarding the Montebello Forebay recharge product should be issued as part of the WRRs for that project.	Monitoring is already ongoing as required by the Montebello Forebay WRR. Monitoring requirement deleted from this permit.	Revisions made to the permit.
JOS	B-75	VI.B.2.c, pg F-81. Remove the requirement to submit an "Antidegradation Analysis and Engineering Report for Proposed Plant Expansion." There is no plant expansion proposed, so this is not requirement is not applicable.	Text revised as follows: Added at the beginning of the provision: " <u>In the event of any proposed plant expansion</u> , this provision is based on..." and " <u>Prior to any plant expansion</u> , this provision requires the Permittee to submit the Antidegradation Analysis and Engineering Report for <u>the</u> Proposed Plant Expansion to the Regional Water Board for approval.	Revisions made to the permit.
JOS	B-76	VIII.C., pg F-86. Delete the last sentence, starting with "Additional information on the CCW is available at..." CCW refers to the Calleguas Creek Watershed. This sentence is not applicable to this permit.	Staff agreed to the proposed changes.	Revisions made to the permit.
JOS	B-77	VIII.D, pg F-86. Change CCW to "SGR watershed" The CCW is not applicable to this permit.	"CCW" changed to San Gabriel River watershed".	Revisions made to the permit.

Comments received from the United States Environmental Protection Agency (USEPA) on January 15, 2015

USEPA	E-1	<p>Chronic Toxicity EPA strongly supports the proposed numeric monthly and daily WQBELs for chronic toxicity and the corresponding compliance evaluation and reporting requirements.</p>	We thank the USEPA for their comments in support of the tentative permit.	None necessary
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Comments received from the National Association of Clean Water Agencies (NACWA) on January 16, 2015

NACWA	N-1	<p>Mandating use of the Test of Significant Toxicity (TST), an approach that EPA has not approved or officially sought comment on, in a CW A permit is highly problematic. In 2010, NACWA reviewed and commented on a guidance document from the U.S. Environmental Protection Agency (EPA) detailing the TST. Although EPA had not officially released the guidance for public review and comment, NACWA and several other stakeholders wrote to EPA to raise significant concerns with the use of the TST approach in CW A programs. Since that time, EPA has provided no additional information on the TST for public review and has done nothing to address the significant concerns raised by stakeholders in 2010. NACWA's comments from 2010 are attached for your reference. Compounding the issues with the TST in the case of the tentative permit for the San Jose Creek Water Reclamation Plant, are the restrictions the permit places on the use of the TST, mainly the prohibition on conducting multi-concentration tests and dose-response evaluations, discussed below.</p>	See Responses to Comments 1a, 1b, 1c, and 1d.	None necessary
NACWA	N-2	<p>Conditions imposed by the tentative permit improperly limit or restrict the use of data evaluation procedures either <i>required</i> or recommended by EPA in 40 Code of Federal Regulations (CFR) Part 136. Numeric limits based on a single effluent concentration chronic toxicity test using the TST, as prescribed in the tentative permit, are highly problematic and will inevitably lead to a substantially higher rate of false conclusions regarding the measurement of toxicity. Allowing a discharger to conduct multiple concentration tests and evaluate the dose-response relationship is one of the more critical and significant method-defined approaches to address variability within a test and validate data that have been acknowledged to be inherently variable. Interpretation of the 40 CFR Part 136 methods specifically calls for evaluation of the dose-response relationship to ensure that test results are interpreted and reported accurately. This cannot be done without multiple dilution testing.</p>	<p>See Response to Comment 1d.</p> <p>As noted by the commenter, whole effluent toxicity is a method-defined analyte, meaning that it is both measured and defined by the WET test. In <i>Edison Electric Institute v. USEPA</i>, 391 F.3d 1267 (D.C. Cir. 2004), the court found that “[i]n designing and refining the WET test methods, EPA sought to minimize the effect of organic idiosyncrasy by taking experimental and statistical precautions... WET test methods exhibit a degree of precision compatible with numerous chemical-specific tests already in use.” (<i>Id.</i> at 1269 & 1271.) With respect to the representativeness of WET test methods, that is, the ability of test results to predict instream effects accurately, the court concluded that studies on the subject “support the representativeness of the WET test methods in general, and several [studies] demonstrate representativeness with regard to</p>	None necessary

	<p>The Board must also recognize that the accuracy of whole effluent toxicity tests is unknown, and "cannot be determined in a meaningful way" according to EPA¹. That is, it is unknown as to whether a laboratory conducted WET test will reflect what is observed instream at the effluent-receiving water interface. Additionally, the quality of WET tests and their respective results cannot be evaluated using tests of effluent samples of known toxicity like a test for a chemical parameter can be evaluated by testing samples of known concentration. The whole effluent testing paradigm, as established by EPA, simply does not make available the quality control tools commonly available in chemical parameter measurements (e.g., matrix spiking, matrix spike duplicates, calibration blanks, standards, laboratory control sample, limit of quantitation, limit of detection, internal standards, surrogate spikes, and initial precision and recovery requirements). This emphasizes the need for a permittee to collect as much data as possible for each sample analyzed when using WET tests to represent the quality of effluent samples. Without multiple dilutions, permittees are left only with blanks (controls) and replication (for controls and one dilution) to evaluate the reliability of a WET test result. Even given these two quality control tools, there is no requirement that the variability of the controls or the single dilution tested meet a quality control maximum. EPA developed and implemented the Minimum Significant Difference (MSD) concept to address variability in WET tests, but these MSD requirements were developed based on a database of multi-dilution tests. MSD requirements for single dilution tests do not exist and have not been provided to allow proper qualification of test results for this permit. While reference toxicity test information is available, unlike other quality control tools where a failure results in effluent data being invalidated, a reference toxicity test that does not fall within quality control limits does not invalidate the associated effluent test. This explains why EPA has routinely supported multiple concentration testing for all CW A WET compliance determination tests. If the Regional Board believes use of the TST is appropriate, the permit must be modified to include language that will specifically allow the permittee to assess the reliability of toxicity tests of the effluent using five or more effluent dilutions as well as utilize all 40 CFR Part 136 specified procedures. These are vital quality assurance/ quality control procedures that must be available to permittees.</p> <p>Further, the Board needs to implement multi-dilution WET</p>	<p>particular Western waters." (<i>Id.</i> at 1273.)</p> <p>An advantage of the TST approach is that test results with lower variability are more likely to result in a "Pass" of samples that are non-toxic or have levels of toxicity that are below the regulatory threshold, thereby providing an incentive to permittees to increase test precision and performance by, for example, increasing the number of replicates within a test. The State Water Board's "Test Drive Analysis" discussed in Response to Comment 1d, Part 1, found that conducting additional test replicates would reduce the chances of the two-concentration TST analysis classifying a non-toxic sample as toxic.</p>	
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		tests in this permit so that the Board can be sure that conclusions regarding WET measurements associated with the discharge are reliable. Limiting the ability of a permittee to utilize the appropriate promulgated chronic toxicity testing protocols is inappropriate and NACWA is not aware of any other state that is limiting permittees in this manner. Contrary to the proposed permit action, the collection of more data (more dilutions, more replicates) in each test should be encouraged by the Board. This approach is in the best interests of the permittee, the Board, and the aquatic life of the receiving water.		
NACWA	N-3	<p>Toxicity is not a pollutant, but an effect which indicates that additional investigation is needed to determine what is causing the effect. NACWA strongly believes that the toxicity identification evaluation/toxicity reduction evaluation (TIE/TRE) process is the best approach for a discharger to investigate and ultimately identify the underlying issue. Requiring TST results to be reported as effluent compliance monitoring during the accelerated monitoring that follows a toxicity event and initiation of the TIE/TRE is inappropriate, counterproductive, and should not be included in the tentative permit. NACWA understands that State Water Board staff and numerous stakeholders are working to develop a statewide toxicity plan that would mandate accelerated testing and/ or TIE/TRE implementation after an initial toxicity violation. This is an approach that NACWA has advocated for on the national level as well, and commends the state for considering this approach. During this time of accelerated monitoring and investigation, however, further violations should not be incurred provided that the permittee is conducting all of the required and appropriate actions to address the exceedance.</p> <p>A permittee cannot identify the causes of toxicity- the purpose of the TIE/TRE -without toxicity being present and measured. It is counterproductive to penalize a permittee for reporting toxicity when the permittee has not been provided the opportunity to identify the cause of the toxicity and remove it. The approach taken in the permit is not constructive and will result in resources being redirected to dealing with the violation rather than solving the toxicity problem. Efforts conducted after an identified exceedance should focus on identifying the cause of the exceedance and addressing it. Continued routine monitoring during accelerated testing and/ or TIE/TRE plan implementation will only serve to increase reported violations that could subject the discharger to liability without contributing anything toward</p>	See Response to comment JOS 2.	None necessary

		actually identifying and controlling toxicity.		
Comments received from Heal the Bay on January 20, 2015				
Heal the Bay	H-1	<p><u>Numeric Chronic Toxicity Effluent Limits Must be Included</u> Heal the Bay has long-advocated for the development and implementation of the State Water Resources Control Board toxicity policy. There is no clear indication from the State Water Board as to when, if ever, the policy will be released for public comment. Meanwhile, our state’s waters continue to suffer from toxicity impairments. As such, the Regional Boards cannot wait any longer to implement numeric toxicity effluent limits. Although the statewide toxicity policy has yet to be adopted, the Regional Board’s inclusion of numeric water quality based effluent limits for chronic toxicity in the Permit is a necessary step to protect coastal waters. We support the Regional Board’s inclusion of numeric chronic toxicity effluent limits in the Permit as it is critical for NPDES permittees to ensure that their discharge does not have toxic impacts. Furthermore, we support the inclusion of the Test of Significant Toxicity (“TST”) approach in the Permit.</p> <p>Over the last 12 months, numerous NPDES permits in Region Four have been adopted that included numeric chronic toxicity effluent limits.1 It is critical that this Permit follow suit and include numeric chronic toxicity limits. Over ten years have passed since the State Water Resources Control Board began modifying the toxicity statewide implementation plan. It is inappropriate to wait any further for the revised draft statewide implementation plan to be released to incorporate numeric chronic toxicity effluent limits into NPDES permits. The language in the Permit complies with narrative water quality standards for toxicity in the basin plan. Excluding numeric chronic toxicity limits from the Permit would also be inconsistent with recent NPDES permits adopted by this board. Toxicity testing is the “safety net” to identify toxic impacts to aquatic life - it is important that all future NPDES permits include numeric chronic toxicity limits.</p>	We thank Heal the Bay for their comments in support of the tentative permit.	None necessary
	H-2	<p><u>Effluent Monitoring Frequency Reduction Lacks Justification</u> Effluent monitoring frequencies for a number of constituents in the Permit has changed from daily to weekly when compared to current monitoring provisions (temperature, pH, settleable solids, total suspended solids, fecal coliform, E.coli). The Permit gives</p>	No limit change is proposed. Daily reporting of operational parameters, such as pH, temperature, Biological Oxygen Demand and Total Suspended Solids, was initiated while the Permittee completed Nitrification-Denitrification, a major operational change, and sought compliance with ammonia limits	None necessary

		specific justification for monthly, quarterly, and semiannual monitoring frequencies, however, in no way is it identified when a constituent should be monitored weekly. What is the justification for the change in effluent monitoring frequency for these constituents? Decreasing monitoring frequency weakens the ability of monitoring programs to account for variability and ensure that water quality standards are maintained. Most notably, monitoring frequency for total suspended solids has been reduced; total suspended solids monitoring is key to assess plant's daily performance. At a minimum, total suspended solids monitoring frequency should remain daily to be consistent with current monitoring provisions.	during the last two permit cycles. Successful operation without upset and without exceedances of the final effluent limitations for temperature, pH, settleable solids, and total suspended solids over the last permit cycle decreased the need for frequent sampling. Further, the operator measures these parameters daily so more frequent sampling data is available, if necessary. Total coliform sampling remains daily and additional fecal or Ecoli sampling is triggered if any bacteria are present. The reduction in sampling is a change in monitoring procedure and is noted in the MRP.	
Comments received from the California Association of Sanitation Agencies on January 16, 2015				
CASA	C-1	<p><u>The Permit Contains Numeric Effluent Limits for Toxicity, pgs 7, 11 and 29.</u></p> <p>Adoption of a permit that contains numeric effluent limits for toxicity, and specifically prescribes use of the Test of Significant Toxicity (TST) approach, in advance of the promulgation of a statewide policy on this issue is inappropriate and premature. The State Water Board has been working with stakeholders, U.S. EPA and regional water boards to develop revised toxicity provisions for inclusion in a statewide water quality control plan through a public process, and release of a revised draft is expected soon for public comment. An appropriate statewide plan will replace the current patchwork of regional water board practices with a consistent and standardized approach to toxicity. Adoption of numeric effluent limits for toxicity in an individual Regional Board permit is thus premature and interferes with a significant amount of work being done at the state level. CASA requests that the chronic toxicity limits contained in the tentative permit be removed and replaced with a narrative chronic toxicity limit and triggers, at least until such time as there is a comprehensive statewide toxicity plan to govern those terms.</p>	<p>The San Jose Water Reclamation Plant (WRP) tentative National Pollutant Discharge Elimination system (NPDES) permit is written consistent with the direction provided by USEPA's Formal Objection Letter regarding the Pomona and Whittier Narrows WRP permits, dated September 4, 2014. The Regional Water Board has concluded that the numeric effluent limitations for chronic toxicity in these permits are required by the Clean Water Act and federal regulations; are feasible, appropriate and necessary to maintain the water quality standard in the receiving water; and that existing State Water Board precedent does not restrict the Board's authority to impose numeric effluent limitations where the Regional Water Board has determined that numeric limits are feasible and appropriate based on current circumstances and information.</p> <p>The narrative effluent limits with accelerated monitoring and toxicity reduction evaluation triggers that have been used in NPDES permits in this Region have not adequately addressed toxicity. The narrative approach is an oversight-driven model that essentially requires the Regional Water Board to manage dischargers' efforts to reduce and control toxicity and lack incentives for permittees to address the toxicity in a timely manner.</p> <p>The State Water Board has declined to make a determination regarding the propriety (and feasibility) of numeric effluent limitations for chronic toxicity. (See WQ Orders 2003-0012 and 2003-0013). The State Water Board declared in the 2003 Orders that the issue would be better addressed through a modification to the Policy for Implementation of Toxics</p>	None necessary

Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy or SIP). The State Water Board replaced the numeric effluent limits for toxicity in the permits at issue with narrative effluent limits (i.e., a series of actions performed by the permittee intended to address effluent toxicity), with the expectation that the SIP would soon be modified. More than ten years and two NPDES permit cycles have since passed, and no such modification has been made. (See draft Policy for Toxicity Assessment and Control, SWRCB, October 2012). Concerns about the application of mandatory minimum penalties for violations of a numeric toxicity effluent limitation have also been statutorily corrected. (See Water Code § 13385(h)(2)(i)(1)(D)). This Regional Water Board must therefore exercise its own discretion to determine whether numeric effluent limitations for chronic toxicity are feasible and appropriate at this time.

Today, numeric limits for chronic toxicity are endorsed by USEPA. The TST statistical approach simplifies the interpretation of toxicity test results and increases confidence in the results as compared to the statistical approaches, such as NOEC-LOEC.

Because of the availability of toxicity testing methods, and the need to include effluent limits that will achieve and maintain compliance with water quality standards, the Regional Board finds that numeric effluent limits for toxicity are both feasible and appropriate to protect water quality standards. The majority of the other states already utilize numeric effluent limitations for chronic (or acute) toxicity, and have done so for some time. This permit is not the first in the state to adopt a numeric effluent limitation for chronic toxicity, or to utilize the TST. (See, e.g., R9-20013-0026 (General NPDES Order for discharges from boatyards); R8-2012-0035 (NPDES Order for Orange County Sanitation District)). The State's Ocean Plan also sets numeric limits for chronic toxicity that have been incorporated into NPDES permits as numeric effluent limitations. This Regional Board has already endorsed the TST and has begun implementing it in the Los Angeles MS4 permit, wastewater permits, and individual industrial stormwater permits, to fully integrate chronic toxicity testing programs and their results across the Region. A numeric chronic toxicity effluent limitation utilizing the TST was also included in NPDES permit Order No. R4-2013-0172 (NPDES permit for the University of Southern California, adopted by the Regional Water Board on November

			7, 2013) and NPDES permit Order No. R4. 2014-0033 (NPDES permit for the Calleguas Municipal Water District Regional Salinity Management Pipeline). And on May 8, 2014, this Regional Water Board adopted NPDES permits for Simi Valley Water Quality Control Plant Order No. R4-2014-0066, Camarillo Water Reclamation Plant Order No. R4-2014-0062, and Hill Canyon Wastewater Treatment Plant Order No. R4-2014-0064 that included numeric chronic toxicity effluent limitations using the TST method.” Similarly, on November 6, 2014, this Regional Board adopted NPDES permits for Pomona and Whittier Narrows WRPs that include numeric chronic toxicity effluent limitations based on the TST statistical approach.	
CASA	C-2	<p><u>The Permit Contains Provisions Inappropriately Restricting How the TST Is Utilized, pg 30.</u></p> <p>Several conditions within the permits improperly limit or restrict the permittee’s ability to conduct recommended data evaluation procedures. For example, the tentative permit states that “... The TST hypothesis (Ho) (see above) is not tested using a multi-concentration test design; therefore, the concentration response relationship for the effluent and/or PMSDs shall not be used to interpret the TST result reported as the effluent compliance monitoring result. While the Permittee can opt to monitor the chronic toxicity of the effluent using five or more effluent dilutions (including 100% effluent and negative control) <i>only the TST result will be considered for compliance purposes.</i>” (Emphasis added.) Limiting the ability of a permittee to utilize the appropriate promulgated chronic toxicity testing protocols, including the availability of a multiconcentration test, will significantly increase the false positive rate when using the TST. Moreover, prohibiting such activities is entirely inconsistent with what is expected to be contained in the statewide toxicity plan.</p>	Refer to responses to comment 1a, 1b, 1c, and 1d.	None necessary
CASA	C-3	<p><u>The Permit Contains Provisions Requiring Continued Monitoring for Compliance Purposes During Accelerated Testing and TIE/TRE Implementation, pg E-25.</u></p> <p>Requiring that TST results be reported as effluent compliance monitoring during these accelerated monitoring schedules and initiation of the TIE/TRE is inappropriate, counterproductive, and should not be included in the tentative permit. Specifically, the tentative permit states that “... TST results (“Pass” or “Fail”, “Percent Effect”) for chronic toxicity tests shall be reported as effluent compliance monitoring results for the chronic toxicity MDEL and MMEL.” This provision could place the discharger in</p>	See Response to Comment JOS 2.	None necessary

	<p>immediate jeopardy of compliance violations, and is entirely inconsistent with what is expected to be contained in the statewide toxicity plan. CASA has been working with State Water Board staff and numerous stakeholders in developing the statewide toxicity plan, and it is our understanding that after an initial toxicity violation, accelerated testing and/or TIE/TRE implementation will occur. During that time no further violations should be incurred provided that the permittee conducts the required and appropriate actions to address the exceedance. Toxicity efforts conducted after an identified exceedance should focus on identifying the cause of the exceedance and addressing it. Continued routine monitoring during accelerated testing and/or TRE plan implementation will not assist in achieving those goals, and will only serve to increase reported violations that could subject the discharger to liability without contributing anything toward actually identifying and controlling toxicity. Dischargers should not be liable for continued toxicity violations after triggering accelerated testing and initiation of the TRE.</p>		
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