Response to Comments

Joint Outfall System
Whittier Narrows 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 Joint Outfall System on October 10, 2014				
Joint Outfall System (JOS)	1	"Restrict" 40 CFR 136 data evaluation procedures. Conditions of the permit must not limit or restrict 40 Code of Federal Regulations (CFR) Part 136 required and recommended data evaluation procedures. This includes a need to include language that will specifically allow the Permittee to conduct multi-concentration tests and conduct 40 CFR Part 136 required dose response relationship evaluations on bioassay data prior to application of the two concentration TST statistical hypothesis test.	The permit specifies the statistical analysis of the Test of Significant Toxicity (TST) to determine toxicity compliance. The TST analysis compares solely the control to the permitted instream waste concentration (IWC), in this case, 100% effluent. This approach does not analyze any other effluent concentrations. The Permittee can always conduct additional replicates for the control and IWC and conduct additional concentrations. However, the analysis will only be evaluated with the control and 100% concentration. If the Permittee chooses to conduct additional effluent concentrations, this data will not be used for compliance. Point of clarification, the concentration-response relationship (termed by Permittee - dose 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. 40 CFR Part 136 provides approved test methods that must be used by dischargers to perform measurements of waste constituents for purposes of reporting under NPDES permits, and provides the procedures by which alternate test methods	None necessary.

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			may be approved by USEPA. These regulations do not limit the discretion of the permitting authority to select the most appropriate test method where more than one method is approved. 40 CFR Part 136 lists the *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (October 2002) (EPA-821-R-02-013)[2] (hereafter, Short-term Methods, October 2002) as an approved method for whole effluent toxicity testing for freshwater discharges. This method requires a multi-concentration test for WET effluent testing, and recommends evaluation of the test results using NOEC-LOEC hypothesis testing or point estimate approach (EC or LC). The 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." (Short-term Methods, October 2002, 9.4.1.2.). The method also states: "2.2.1 The selection of the test type will depend on the NPDES permit requirements, the objectives of the test, and the available resources, the requirements of the test organisms, and effluent characteristics such as fluctuations in effluent toxicity" (Short-term Methods, October 2002, 2.2.1). If the Los Angeles Regional Water Board had included in the tentative permit the NOEC-LOEC test type, then the review of the concentration-response relationship would have been necessary to assist in the interpretation of the calculated test results. Note that NOEC-LOEC method uses the concentration-response relationship to assist and ensure the proper interpretation of the NOEC-LOEC or EC25 test results. Contrary to the Permittee's comment, it is not used prior to the statistical analysis. It is conducted to assist in the interpretation of the more complex, NOEC-LOEC or EC25 test results. On March 17, 2014, USEPA Region 9 approved the use of a two-concentration test (a control compared to the IWC) and found that use of the two-concentration test evaluated using the TST is an acceptable equivalent, under the Alternative Test	

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			Procedure (ATP) process, to the multi-concentration test evaluated using NOEC-LOEC hypothesis testing recommended in 40 CFR section 136.3. The TST was developed by EPA to address the concerns expressed by both the Permittees and the Regulators regarding the NOEC-LOEC hypothesis approach limitations and to reduce the tendency to challenge test results. The conditions of the permit support the test quality assurance procedures included in the Short-term Method, October 2002. The permit includes the required test acceptability criteria (TAC) for each test species and biological endpoint (survival and sublethal). The permitting authority has exercised its discretion to specify in the permit the two-concentration test design when using the TST as approved by the Alternative Test Procedure process. Consequently, the concentration-response relationships subsection in the Test Review section (10.2) of the test method, Short-term Method, October 2002, is not applicable for this approach.	
JOS	2	Test variability & dose-response curves. While variability in WET tests cannot be eliminated entirely, the 40 CFR Part 136 promulgated methods and various United States Environmental Protection Agency (USEPA) guidance document procedures were intentionally developed and incorporated to address this variability and quantify data and result reliability. Conducting multiple concentration WET tests and evaluating the dose-response relationship is one of the more critical and significant method-defined procedures for addressing this variability and validating data.	See response to Comment 1. Utilizing the concentration-response relationship to evaluate the data from multiple concentration WET tests is valuable when the objective of the test is to determine statistical endpoints using point estimation or hypothesis testing with NOEC-LOEC. Since the objective of the TST test is to determine if the permitted IWC, in this case 100% effluent sample, is toxic or not, reviewing the test data of other concentrations is not relevant. Unlike point estimation or NOEC-LOEC hypothesis testing, the reliability of the results from a two-concentration test analyzed using TST will not vary based on the concentration-response relationship. The two concentration test data is validated by reviewing the test acceptability criteria and quality assurance/ quality control (QA/QC) measures, such as: ▪ Performing and evaluating reference toxicant tests; ▪ Evaluating various test condition components, such as water quality measurements (temperature, pH, DO, light	None necessary.

Commenter	#	Comment	Response	Action Taken
			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.	
JOS	3	Dose-response for receiving water toxicity samples. Anomalies in this expected or assumed dose-response curve reduces confidence in the test's ability to accurately estimate "toxicity" or, more specifically, the test's ability to estimate effects associated with pollutants or toxicants. In fact, the USEPA determined that application of a relatively simple dose-response evaluation procedure reduced the false positive rate among non-toxic blank samples from over 14% to less than 5%[1]. Although more challenging to quantify, evaluation of the dose-response relationship is also expected to significantly reduce the false negative error rate as well (see example below). San Jose Creek Receiving Water 12/20/11. It is for these reasons that the 40 CFR Part 136 promulgated chronic toxicity testing protocols concluded that test review, including evaluation of the dose-response relationship, is necessary for ensuring that all test results are reported accurately[2]. In addition to being necessary for accurate result interpretation, the USEPA method	The Permittee did not cite the reference exactly as it is found on page 69963 of the Federal Register. It should read: "For instance, in the WET Interlaboratory Variability Study, the use of the concentration-response relationship **guidance** reduced false positive incidences from above 14% to below 5% for some methods (USEPA, 2001a)." (emphasis added). The observed reduction in the study was attributed to the use of the guidance, not in the use of concentration-response curves. 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 endpoints may not be valid. But these anomalous results would not occur with a two-concentration test evaluated using TST because the results of 100% effluent are compared directly to the control and there are no assumptions that need to be validated. The results of a two-concentration test evaluated	None necessary.

[1] 40 CFR Part 136. Guidelines Establishing Test Procedures for the Analysis of Pollutants; Whole Effluent Toxicity Test Methods; Final Rule. Federal Register / Vol. 67, No. 223 / Tuesday, November 19, 2002 / Rules and Regulations. Page 69963.

[2] 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. [Exhibit 2] Page 49.

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		manual (EPA 821-R-02-013) also directly requires that multiple concentration testing be conducted for all NPDES effluent compliance determination tests. It further requires that an evaluation of the dose-response relationship be conducted and strongly recommends against the use of two-concentration (control and IWC) test designs for NPDES testing (see Attachment B for specific citations from the promulgated methods).	using TST will produce reliable results in these circumstances. The remaining concentration-response patterns identified in the guidance as warranting further review suggested evaluation of factors such as meeting test acceptance criteria, test conditions and reference toxicant testing. T These factors can and should be evaluated when using the two-concentration method and applying TST statistical analysis, and are accounted for in the draft permit. Section 8.11.1 of the Short-term Method, October 2002, recommends a two-concentration test for assessing toxicity in receiving waters: "Receiving water toxicity tests generally consist of 100% water and a control." Section 8.11.3 explains that in cases where the objective of the test is to estimate the degree of toxicity of the receiving water, a multi-concentration test is performed using a ≥ 0.5 dilution series, with a control water. However, in the tentative permits, the objective of the test is to determine whether or not the receiving water is toxic, not to estimate the degree to which it is toxic. Concentration-response curves are not applicable to the two-concentration test. The Permittee's comment that "the USEPA method manual (EPA 821-R-02-013) also directly requires that multiple concentration testing be conducted for all NPDES effluent compliance determination tests." is incorrect. That statement does not take into account the ATP process in 40 CFR 136.5 and that Section 2.2.1 of the same reference (Short-term Methods, October 2002) states that the selection of the test type will depend on the permit requirements. It is also important to point out that when the USEPA Method Manual was issued in 2002, the TST statistical approach had not yet been developed. Therefore, the method and the guidance must be considered in light of the newly develop statistical approach that relies on a two-concentration test. Additional discussion is provided in the response to comment A-	

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			6 and B-1.	
JOS	4	JOS requests that the underlined language be added to Page 26, Section VII.J (first paragraph): Requested language change regarding single-concentration test. "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 ≤0.75 × 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: ((Mean control response - Mean discharge IWC response) ÷ Mean control response)) × 100."	The instream waste concentration (IWC) represents whole effluent toxicity present in the effluent discharged. Since the TST method has been designated in the permit for toxicity compliance, the single effluent concentration at the discharge IWC is the appropriate sample. The language will not be changed and is consistent with the direction that USEPA provided to the Regional Water Board in its September 4, 2014 Formal Objection Letter	None necessary.
JOS	5	JOS requests that the underlined language be added to Page 27, Section VII.J (last paragraph): Multi-concentration design. "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,	As explained in response to Comments 1– 3, concentration-response curves are not applicable to the review of a two-concentration test design (a control compared to the IWC). The language will not be changed and is consistent with the direction that USEPA provided to the Regional Water Board in its September 4, 2014 Formal Objection Letter.	None necessary.

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		expressed in units of the TST. The TST hypothesis (Ho) (see above) test 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 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) 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. O~~n~~ly results generated using the TST statistical procedure on bioassay data meeting 40 CFR Part 136 QA/QC requirements ~~result~~ will be considered for compliance purposes."		
JOS	6	JOS requests that the underlined language be added to Page E-13, Section V.A.5: Replace Subsection V.A.5.c including Table E-4 with alternative language, as follows: "c. Tests identified as "invalid" or "inconclusive" using procedures specified in the referenced method manual and supporting USEPA guidance must be resampled and retested within 14 days. ~~If the effluent toxicity test does not meet all test acceptability criteria (TAC) specified in the referenced test method, Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms (U.S. EPA 2002, EPA-821-R-02-013) (see Table E-4, below), then the Permittee must re-sample and re-test within 14 days."~~	Meeting the TAC specified by the test method is necessary to determine the validity of the test. Replacing the proposed strikeout TAC language with the proposed 'invalid' or 'inconclusive' language is too broad. For example, an out of control reference toxicant test result does not necessarily invalidate associated test results. In the event of a reference toxicant sensitivity being outside the recommended control limits, the reviewer should evaluate the reference toxicant and the effluent test results with respect to the test objective and the test conditions, etc. and determine a course of action to identify and fix any potential problems. Identifying every abnormal reference toxicant sensitivity as a justification for an "invalid" result is not appropriate. Since the listed TAC is the basis on which a two concentration test using TST may be considered invalid or inconclusive for compliance purposes, this alternative language is not appropriate.	None necessary.

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		~~Table E-4. USEPA Test Methods and Test Acceptability Criteria"~~		
JOS	7	Comment 2 in cover letter. Language in the Tentative Whittier Narrows Permit could be misinterpreted to indicate that receiving water toxicity monitoring is subjected to numeric chronic toxicity limits (MDEL and MMEL) or numeric receiving water triggers. Page E-11, Section V.A.2 "The total sample volume shall be determined by the specific toxicity test method used. Sufficient sample volume shall be collected to perform the required toxicity test. ~~For the receiving water, sufficient sample volume shall also be collected for subsequent TIE studies, if necessary, at each sampling event.~~ All toxicity tests shall be conducted as soon as possible following sample collection. No more than 36 hours shall elapse before the conclusion of sample collection and test initiation." Page E-17, Footnote 19 "The Permittee shall conduct Whole Effluent Toxicity monitoring on receiving water samples as outlined in section VIII.D. If the monthly median chronic toxicity result at the immediate downstream receiving water location is identified as "Fail" and concurrent upstream and/or outfall testing does not rule out the Permittee's outfall as a source of the observed exceedance, the Permittee shall initiate accelerated and TRE Plan initiation testing as described in section V.A.7 and V.A.8. ~~Please refer to section V.A.7 of this MRP for the accelerated monitoring schedule. The median monthly summary result shall be reported as "Pass" or "Fail". The maximum daily single result shall be~~	The language on page 11 of the Whittier Narrows WRP was revised as follows to clarify that the receiving water objective is narrative, not numeric: **19. Chronic Toxicity Narrative Receiving Water Quality Objective** a. There shall be no chronic toxicity in ambient waters as a result of the discharge. b. Receiving water and effluent toxicity testing shall be performed on the same day as close to concurrently as possible. The language regarding Footnote 19 was modified using similar language to specify that the receiving water chronic toxicity requirement is a narrative threshold not a numeric limitation. Footnote 19 was also modified to change the "exactly three independent tests are required" to "up to three independent tests are required". However, the remaining language will not be changed because it is consistent with the permit required TST test and it is consistent with Section 2.4.4 of *EPA Region 8,9, and 10 Toxicity Training Tool (January 2010):* "EPA recommends that WET monitoring in permits be conducted at frequency sufficient to ascertain discharge compliance with WQBELs for WET, WET permit conditions and, ultimately, State water quality standards. Whether or not WET limits are included in a permit, WET monitoring conditions need to specify: (1) an accelerated monitoring schedule following the exceedance of either a WET permit limit or WET permit trigger; and (2) the number of WET test failures during this schedule that will automatically initiate a TRE."	Modified language.

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		~~reported as "Pass or Fail" with a "% Effect". Exactly three independent toxicity tests are required when one toxicity test results in "Fail"."~~		
JOS	8	Add a Section VIII.D. on page E-19: "D. Receiving Water Chronic Toxicity Requirements **1. Discharge In-stream Waste Concentration (IWC) for Chronic Toxicity** The chronic toxicity IWC for this discharge is 100 percent receiving water. **2. Sample Volume and Holding Time** The total sample volume shall be determined by the specific toxicity test method used. All toxicity tests shall be conducted as soon as possible following sample collection. No more than 36 hours shall elapse before the conclusion of sample collection and test initiation. **3. Chronic Freshwater Species and Test Methods** If the receiving waters salinity is <1 ppt, the Permittee shall conduct the following chronic toxicity tests with species and test methods in *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (EPA/821/R-02/013, 2002; Table IA, 40 CFR part 136). In no case shall these species be substituted with another test species unless written authorization from the Executive Officer is received. a. A static renewal toxicity test with the fathead minnow, *Pimephales promelas* (Larval Survival and Growth Test Method 1000.0). b. A static renewal toxicity test with the daphnid, Ceriodaphnia dubia (Survival and Reproduction Test Method 1002.0).	It is not necessary to add the proposed language to the receiving water monitoring section because it would be duplicative of the Whole Effluent Toxicity (WET) Testing Requirements (Section V) of the MRP that apply to both the effluent and the receiving water. The only difference is what the "Monthly Median Summary Result" means. For the effluent, it is the numeric monthly median limit, while for the receiving water it is the narrative water quality threshold. In both cases, not meeting the Monthly Median Summary Result would require initiation of accelerated testing. Since the quality assurance for the TST test is also addressed elsewhere in the permit, it is not necessary to add the requested additional quality assurance language. However, footnote 19 was revised to address compliance with the receiving water threshold. The additional text is shown below: The Permittee shall conduct whole effluent toxicity monitoring as outlined in section V. If the chronic toxicity median monthly threshold at the immediate downstream receiving water location is not met and the toxicity cannot be attributed to upstream toxicity, as assessed by the Permittee, then the Permittee shall initiate accelerated monitoring. If the chronic toxicity median monthly threshold of the receiving water at both upstream and downstream stations is not met, but the effluent chronic toxicity median monthly effluent limitation was met, then accelerated monitoring need not be implemented.	Modified language.

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		c. A static toxicity test with the green alga, Selenastrum capricornutum (also named Raphidocelis subcapitata) (Growth Test Method 1003.0). **4. Quality Assurance and Additional Requirements.** Quality assurance measures, instructions, and other recommendations and requirements are found in the test methods manual previously referenced. Additional requirements are specified below. **a.** The results of the receiving water tests are to be reported as "Pass" or "Fail" and "Percent Effect" 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: undiluted receiving water response ≤0.75 × 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" in undiluted receiving water is defined and reported as: ((Mean control response - Mean undiluted receiving water response) ÷ Mean control response)) × 100. **b.** Tests identified as "invalid" or "inconclusive" using procedures specified in the referenced method manual and supporting USEPA guidance must be resampled and retested within 14 days. **c.** Control and dilution water should be receiving water or laboratory water, as appropriate, and must be approved by the Regional Board before use. If the dilution water used is		

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		different from the culture water, a second control using culture water shall be used. **d.** Monthly reference toxicant testing is sufficient. All reference toxicant test results should be reviewed and reported using the EC25. **e.** Chlorine and ammonia shall not be removed from the receiving water 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)."		
JOS	9	Comment 3 in JOS cover letter. 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 routine sampling requirements versus the accelerated monitoring and TIE/TRE testing periods are addressed below in the responses to comments #10 and 12. The Permittee is required to conduct routine toxicity testing for compliance purposes throughout the permit's term, as is true of all other constituent testing, and as appropriate to maintain the water quality standard.	None necessary.
JOS	10	Page E-14, Section V.A.7. (last sentence of the last paragraph): "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 MMEL."~~	As noted in the backup text for Comment 3, the accelerated chronic toxicity testing is indistinguishable from the routine compliance testing in terms of how the test is conducted. Multi-concentration testing is allowed in this case, however, to provide information about the magnitude of the toxic event to prepare for the TIE/TRE process that would follow if one of the four accelerated test results was a Fail. Thus, the TST results from the accelerated testing can be used as the effluent chronic toxicity compliance monitoring results. The strikeout text in the comment is needed to confirm that compliance monitoring is required during the accelerated monitoring.	None necessary.
JOS	11	Page E-14, 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~~."	Since the permit requires monthly toxicity monitoring utilizing the TST method throughout the permit term for the reasons described above, the proposed deleted language will be retained.	None necessary.

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JOS	12	Page E-15, 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.~~"	The purpose of the TIE/TRE is to identify the source or cause of toxicity in the effluent, not to suspend compliance requirements. Toxicity tests collected during the TRE process may not be suitable for compliance reporting purposes because water samples may undergo manipulations to identify the causative agent, or the sample holding time may be exceeded. For example, in late 2013, the toxicity levels in the effluent from the Pomona WRP triggered accelerated testing and also triggered a TIE/TRE. The 2009 NPDES permit did not contain language specifying continued compliance monitoring during the TIE/TRE process. Consequently, Pomona WRP did not collect final effluent samples for compliance purposes for several months during the time that the TIE/TRE was underway. Language in the tentative NPDES permit addresses this gap.	None necessary.
JOS	13	Comment 4 in JOS cover letter. Initiating accelerated testing within 24 hours of being notified of an MMEL or MDEL WET violation is not practicable. Page E-14, Section V.A.7: "The Permittee shall ensure that they receive results of a failing chronic toxicity test ~~W~~ within 24 hours of the completion of the test ~~of the time the Permittee becomes aware of this result, the Permittee~~ and shall ~~implement an~~ initiate the first of four accelerated monitoring tests ~~schedule~~ within seven calendar days for tests contracted to a commercial laboratory and within six calendar days for tests initiated at the San Jose Creek Water Quality Laboratory consisting of ~~four,~~ five-concentration toxicity tests (including the discharge IWC), conducted at approximately two week intervals, over an eight week period; in preparation for the TRE process and associated reporting, these results shall also be reported using the EC25. If each of the accelerated toxicity tests results in "Pass", the	Based on the logistics described in the comment letter, the allowable time elapsed prior to initiating the accelerated testing shall be revised as follows to reflect the difficulty in obtaining certain species from the supplier: Once ~~Within 24 hours of the time~~ the Permittee becomes aware of this result, the Permittee shall implement an accelerated monitoring schedule ~~consisting of~~ within 48 hours for the *Ceriodaphnia dubia* test, and within 5 calendar days for both the *Pimephales promelas* and *Selenastrum capricornutum* tests. However, if the sample is contracted out to a commercial laboratory, the Permittee shall ensure that the first of four accelerated monitoring tests is initiated within seven calendar days of the Permittee becoming aware of the summary result. The accelerated monitoring schedule shall consist of four, multi-concentration toxicity tests (including the discharge IWC), conducted at approximately two week intervals, over an eight week period; in preparation for the TRE process and associated reporting, these results shall also be reported using the EC25 to provide information in the event of needing to do a TIE. If each of the	Language was modified indicating when accelerated testing must be initiated.

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		Permittee shall return to routine monitoring for the next monitoring period."	accelerated toxicity tests results in "Pass" with the TST analysis, the Permittee shall return to routine monitoring for the next monitoring period. If one of the accelerated toxicity tests results in "Fail", the Permittee shall immediately implement the TRE Process conditions set forth below. 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 MMEL.	
JOS	14	Comment 5 in JOS cover letter. Median Monthly Effluent Limit (MMEL) should be clearly and unambiguously defined as the median of no more than the three tests conducted over a calendar month.	The language was revised from "exactly" to "up to" three.	Language was changed in the WDR.
JOS	15	Page 7, Footnote 3: "The median monthly effluent limitation (MMEL) shall be reported as "Pass" or "Fail". The maximum daily effluent limitation (MDEL) shall be reported as "Pass" or "Fail" and "% Effect." The MMEL for chronic toxicity shall only apply when there is a discharge more than one day in a calendar month period. During such calendar months, ~~exactly~~ no more than three independent toxicity tests will be used to evaluate the MMEL ~~are required~~ when one toxicity test results in "Fail"."	The language was replaced from "exactly" to "up to" three. However, the language regarding the MMEL was not added because it is unnecessary. Additional tests within the month would have to meet the Maximum Daily Effluent Limitation (MDEL) while the Permittee is striving to come into compliance with the median monthly effluent limitation (MMEL).	Similar language was added in Footnote 3.
JOS	16	Page 27, Section VII.J (third paragraph): "The Median Monthly Effluent Limitation (MMEL) for chronic toxicity is exceeded and a violation will be flagged when the median of no more than three independent chronic toxicity tests, conducted within the same calendar month and analyzed using the TST approach, results in "Fail". The MMEL for chronic toxicity shall only apply when there is a discharge more than one day in a calendar month period. During such calendar months, ~~exactly~~ no	The language was revised from "exactly" to "up to" three.	Similar language was added.

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		more than three independent toxicity tests will be used to evaluate the MMEL ~~are required~~ when one toxicity test results in "Fail"."		
JOS	17	Page E-9, Footnote 10: "The Permittee shall conduct whole effluent toxicity monitoring as outlined in section V. Please refer to section V.A.7 for the accelerated monitoring schedule. The median monthly summary result shall be reported as "Pass" or "Fail". The maximum daily single result shall be reported as "Pass" or "Fail" and "% Effect." When there is a discharge more than one day in a calendar month period, ~~exactly~~ no more than three independent toxicity tests will be used to evaluate the MMEL. ~~are required when one toxicity test results in "Fail.""~~	The language was revised from "exactly" to "up to" three.	Similar language was added.
JOS	18	Page E-13, Section V.A.5.b: "The Median Monthly Effluent Limitation (MMEL) for chronic toxicity only applies when there is a discharge more than one day in a calendar month period. During such calendar months, ~~exactly~~ no more than three independent toxicity tests will be used to evaluate the MMEL. ~~are required when one toxicity test results in "Fail"."~~	The language was revised from "exactly" to "up to" three.	Similar language was added.
JOS	19	Page E-17, Footnote 19: "The Permittee shall conduct Whole Effluent Toxicity monitoring as outlined in section V. Please refer to section V.A.7 of this MRP for the accelerated monitoring schedule. The median monthly summary result shall be reported as "Pass" or "Fail". The maximum daily single result shall be reported as "Pass or Fail" with a "% Effect". ~~Exactly~~ no more than three independent toxicity tests will be used to evaluate the MMEL. ~~are required when one toxicity test results in "Fail".~~"	The language was revised from "exactly" to "up to" three.	Similar language was added.
JOS	20	Section V.A.4 of the Tentative Whittier Narrows Permit	Overall response: The collection of a single sample means that	Added

Commenter	#	Comment	Response	Action Taken
		concerning most sensitive species screening is confusing and requires clarification.	the one sample collected for the test initiation shall be used to conduct one suite of three-species sensitive screening. Regional Water Board staff agree that for the *Ceriodaphnia dubia* and Fathead minnow tests, it is required to have two more independent composite samples. These samples will be collected for the remaining renewals. With regard to the selection of the most sensitive species, only the species with the highest percent effect shall be used, regardless of the toxicity results, whether it is a "Pass" or "Fail". Please refer to response to Comments 21 through 24 for specific clarifying language changes.	clarifying language.
JOS	21	First, the second sentence of Section V.A.4 of the Tentative Permit (page E-12) states that Permittee shall collect a <u>single</u> effluent sample to conduct the most sensitive species screening. It also contains a requirement to report the results of the most sensitive species screening as effluent compliance monitoring results. However, the fish and invertebrate chronic toxicity tests require that a minimum of <u>three</u> discrete samples be used to conduct the test if the results are to be reported for NPDES compliance purposes. These requirements conflict and need to be reconciled. If the Regional Board would like a compliance determination made during most sensitive species screening, then the requirement to use a single effluent sample to conduct the screening needs to be deleted.	The same sample shall be used to initiate the three different tests (one sample for three species). However, as allowed under the test method for the *Ceriodaphnia dubia* and the Fathead minnow, additional samples may be collected for the renewal water. Each time an additional sample is collected, that sample shall be used to renew both the *Ceriodaphina* and the Fathead minnow tests only. Therefore, Regional Water Board staff recommend the following clarifying language: Species sensitivity screening shall be conducted beginning the first month the permit is in effect. The Permittee shall collect a single effluent sample <u>to initiate</u> and concurrently conduct three toxicity tests using the fish, an invertebrate, and the alga species previously referenced. This sample shall also be analyzed for the parameters required for the discharge<u>, during that given month. As allowed under the test method for the *Ceriodaphnia dubia* and the Fathead minnow, a second and third sample may be collected for use as test solution renewal water as the seven-day toxicity test progresses. However, that same sample shall be used to renew both the *Ceriodaphnia dubia* and the Fathead minnow.</u>	Added clarifying language.
JOS	22	Second, Section V.A.4 requires that, "This sample	During the time that the Permittee is conducting the three-	Added

Commenter	#	Comment	Response	Action Taken
		[the single sample on which most sensitive species screening is to be conducted] shall also be analyzed for the parameters required for the discharge." This language appears to require that the sample used for toxicity testing be run for every analyte for which effluent testing is required. This appears to be a typographical error, as it would cost many thousands of dollars to run this sample for every effluent testing parameter, as the Tentative Permit contains parameter monitoring of over 200 different constituents. This sentence needs to be deleted or additional clarification needs to be provided.	species sensitivity screening, the Permittee is not supposed to monitor for every single analyte in the effluent MRP section. Instead, the Permittee is supposed to collect samples concurrently only for those parameters which need to be sampled during that given month. Therefore, Regional Water Board staff suggest adding the following language: "This sample [the single sample on which most sensitive species screening is to be conducted] shall also be analyzed for the parameters required for the discharge during that given month."	clarifying language.
JOS	23	Finally, Section V.A.4 is ambiguous regarding the process used to select the most sensitive species. In the case where the result for all three species is "Pass", this section specifies that the species exhibiting the highest "Percent Effect" be considered the most sensitive species. However, it is silent on situations where the results for one or more species are "Fail". The permit should contain clear language to address these situations. We recommend that, in such cases, the species with the highest percent effect is chosen as the most sensitive species.	The species exhibiting the highest "Percent Effect" will be considered the most sensitive species. This is seen as the "tiebreaker" when more than one of the three species "Pass" or "Fail" during a suite of species sensitivity screening. For clarification purposes, the Regional Water Board suggest the following language: 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, until such time as a re-screening is required (24 months later).	Added clarifying language.
JOS	24	Page E-12, Section V.A.4 "Species sensitivity screening shall be conducted beginning the first month the permit is in effect. ~~If there is no discharge present, the effluent samples for the 3-species screening shall be collected from the offsite storage ponds near the effluent sampling point.~~ The Permittee shall collect ~~a single~~ effluent samples and concurrently conduct three toxicity	The Permittee misquoted the tentative permit. The sentence regarding the pond does not appear in the Whittier Narrows WRP permit. The other suggested edits have not been incorporated to be consistent with the rest of the permit. Refer to response to comment 22 above.	Some language was modified.

Commenter	#	Comment	Response	Action Taken
		tests using the fish, an invertebrate, and the alga species previously referenced. Th~~is~~ese samples shall also be analyzed for the parameters required for ~~the discharge~~ toxicity testing purposes. ~~If the result of all three species is "Pass", then t~~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. "		
JOS	25	Comment 7 in JOS cover letter. A compulsory reopener provision needs to be included that will require the Order be reopened and modified to be consistent with the requirements and implementation provisions incorporated into the State Water Board Toxicity Plan. Page 16, Section VI.C.1.k "This Order ~~may~~ will be reopened and modified to revise any and all the chronic toxicity testing provisions and effluent limitations to incorporate all elements contained in the State Water Board adopted Toxicity Plan promptly after adoption of such Plan to be consistent with State Water Board precedential decisions, new policies, a new state-wide plan, new laws, or new regulations."	The language was revised as follows: **k.** This Order ~~may~~will be reopened and modified to revise any and all of the chronic toxicity testing provisions and effluent limitations ~~and/or total residual chlorine limitations,~~ to the extent necessary, to be consistent with ~~be consistent with~~ any Toxicity Plan that is subsequently adopted by the State Water Board- promptly after USEPA-approval of such Plan. **l.** This Order may be reopened and modified to revise effluent limitations to the extent necessary to be consistent with new policies, a new state-wide plan, new laws, or new regulations.	The language was revised.
JOS	26	Comment 8 in JOS cover letter. The effluent limits for lead are incorrect should be based on the metals TMDLs for the San Gabriel and Los Angeles River watersheds. To be consistent with previous and current Regional Board practices, as well as WQO 2003-0019 which applied specifically to the Whittier Narrows WRP, the lead limits in the Tentative Permit should be revised to be consistent with the WLAs in the metals	Staff recalculated the lead effluent limitations and revised the lead effluent limitation in the permit.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		TMDLs rather than based on reasonable potential to violate the CTR. Specifically, lead effluent limits for Discharge Point 001 should be based solely on the San Gabriel River Metals TMDL. For lead, this TMDL specifies a wet weather lead WLA of 166 ug/L, per Table 6-2 on page 38 of the San Gabriel River Metals TMDL. To translate the WLA to an effluent limit, the recommended implementation procedures in Section 7.2 on page 46 of the TMDL should be used. These procedures specify that, "...Wet-weather WLAs will not be used to determine monthly permit limits but will only be used in a determination of a daily limit." Therefore, a daily maximum wet weather limit consistent with a WLA of 166 ug/L should be set for Discharge Point 001. Lead effluent limits for Discharge Points 002, 003, and 004 should be set based on the WLAs in the LA River Metals TMDL. This TMDL specifies a wet weather WLA of 62 ug/L.		
JOS	27	Comment 9 in JOS cover letter. Storm water requirements regarding oil and oily materials should not be included in the NPDES permit to avoid conflict with the general industrial storm water permit. Section VI.A.2.l of the Tentative Permit states, "Oil or oily material, chemicals, refuse, or other polluting materials shall not be stored or deposited in areas where they may be picked up by rainfall and carried off of the property and/or discharged to surface waters. Any such spill of such materials shall be contained and removed immediately."	The language was revised as requested.	The language was deleted.
JOS	28	Comment 10 in JOS cover letter.	The proposed permit includes monitoring ~~the~~ for PCBs as aroclors and PCBs as congeners. As stated in the proposed	Revisions were made

Commenter	#	Comment	Response	Action Taken
		The requirement for PCB congener analysis of influent, effluent, and receiving waters using method EPA 1668c should be deleted. Footnote 3 on page E-7, Footnote 15 on page E-11, and Footnote 23 on page E-18 state: "Priority pollutants are those constituents referred to in 40 CFR part 401.15; a list of these pollutants is provided as Appendix A to 40 CFR part 423. PCB as arochlors shall be analyzed using method EPA 608 and PCB as congeners shall be analyzed using method EPA 1668c."	permit, USEPA recommends that until USEPA proposed method 1668c for PCBs is incorporated into 40 CFR 136, Permittees should use for discharge monitoring reports/State monitoring reports: (1) USEPA method 608 for monitoring data, reported as aroclor results, that will be used for assessing compliance with WQBELs (if applicable), and (2) USEPA proposed method 1668c for monitoring data, reported as 41 congener results, that will be used for informational purposes. USEPA Method 608 yields relatively high detection limits when aroclors are analyzed. Due to the high detection limits, method 608 was not able to quantify the actual results at low concentration. In order to provide the data gap at the low range concentration, USEPA Method 1668c will be used because this method will provide a much lower detection limits. Lower concentrations that we have not detected when analyzed by method 608 will now be detected and quantified using method 1668c. Staff recognized that the cost associated with PCB monitoring is significant. To address this issue, staff have reduced the monitoring frequency from semi-annually to annually. In addition, staff have revised the MRP to indicate that if the first three annual monitoring results indicate that the analysis using the method 1668c do not exceed the water quality criteria for aroclors, the Permittee can request to the Regional Water Board to remove the monitoring requirements for congeners using method 1668c.	to the permit.
JOS	29	Comment 11 in JOS cover letter. Clarification of spill reporting requirements is requested. The Sanitation Districts requests that this language be removed. Section VI.C.6.a.iii.(f) of the Tentative Permit requires the Permittee to provide to the Regional Board “a certification that the State Office of Emergency Services [Cal OES or OES, formerly Cal	The language was deleted.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		EMA] and the local health officer or directors of environmental health with jurisdiction over the affected water bodies have been notified of the discharge."		
JOS	30	Comment 12 in JOS cover letter. San Gabriel River wet-weather flow monitoring data should be obtained from USGS Gauge Station No. 11087020, not Station No. 1108500. Footnote 2 on Table 4 (page 6), the last row in Table E-1 (page E-5), Footnote 5 on Table F-9 (page F-49), Section VIII.C.1 (page E-19), and Section IV.C.4.b (page F-45), erroneously identify the USGS gauge station to determine wet or dry conditions for the San Gabriel Rivers Metals TMDL as Station No. "1108500".	Upon verification by the staff, the flow monitoring shall be conducted at station 11087020.The Fact Sheet was revised to point out the corrections made and the rationale for choosing Station 11087020 over Station No. 1108500.	Revisions were made to the permit.
Comments received (as Attachment A) from Joint Outfall System on October 10, 2014 (General/Legal Comments on Toxicity-Related Provisions)				
JOS	A-1	The chronic toxicity limits are premature until the State Water Board adopts its promised statewide toxicity policy.	See Response to comment S1. 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) are not controlling of 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 concluded that numeric effluent limitations for chronic toxicity	

Commenter	#	Comment	Response	Action Taken
			should not be included in the permits. 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 feasible. Furthermore, the permits at issue in City of Davis and City of Lodi included numeric acute toxicity effluent limitations. The permits at issue here, do not include separate effluent limitations for acute toxicity. As a general canon of interpretation, the language of State Water Board precedential orders should be interpreted in a manner that complies with applicable law. If an order may be reasonably interpreted either in a manner that complies with federal law or in a manner that conflicts with federal law, the interpretation that complies with applicable federal law prevails.	
JOS	A-2	The chronic toxicity requirements improperly require use of an unpromulgated test method. a) <u>The Test of Significant Toxicity (TST) without inclusion of a concentration-response evaluation is not a promulgated Part 136 Method.</u> 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: 1. <u>"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).</u> 2. <u>The concentration-response relationship</u>	Refer to response to comment 1 The Regional Water Board agrees that the 2002 Chronic Toxicity Test Method requires concentration-response relationships of multi-concentration bioassay data: "The concentration-response relationship generated for each multi-concentration test must be reviewed to ensure that calculated test results are interpreted appropriately … All WET test results (from multi-concentration tests) reported under the NPDES program should be reviewed and reported according to USEPA guidance on the evaluation of concentration-response relationship (USEPA, 2000a)." (Chronic WET Testing Method, October 2002, 10.2.6.2.) The Test of Significant Toxicity is an alternate approach to statistical analysis of two-concentration WET test data. Section 9.4.1.2 of the EPA test method (Short-term Methods, October 2002) recognizes that "the statistical methods recommended in the manual are not the only possible methods of statistical analysis." USEPA approved the use of a two-concentration test for whole effluent toxicity testing, and found that use of the two-concentration test evaluated using the TST is an acceptable equivalent under the ATP process to the five-concentration test	

Commenter	#	Comment	Response	Action Taken
		generated for each multi-concentration test must be reviewed to ensure that calculated test results are interpreted appropriately" (Section 10.2.6.2) 3. "Tables 1, 3, and 4 (labeled as 3)5 - SUMMARY OF TEST CONDITIONS AND TEST ACCEPTABILITY CRITERIA WITH EFFLUENTS AND RECEIVING WATERS (TEST METHODS 1000.0, 1002.0, AND 1003.0): Test concentrations: Effluents: 5 and a control (required minimum) Receiving Water: 100% receiving water (or minimum of 5) and a control (recommended)" b) USEPA's March 17, 2014 Alternative Test Procedure approval was unlawful. c) Use of an ATP Cannot Be Mandated over Promulgated Methods. d) EPA Guidance cannot Overrule Promulgated Regulations.	evaluated using NOEC-LOEC hypothesis testing recommended in 40 CFR section 136.3. The concentration-response relationships required by the approved method apply only to multi-concentration tests, and therefore are not required or applicable when using the two-concentration test evaluated with the TST. The commenter alleges that the Regional Water Board's use of the TST contradicts USEPA's June 18, 2010 USEPA Headquarters memo, which was submitted as Exhibit 13. However, the introductory paragraph endorses use of the TST as "an additional recommended statistical approach for analyzing WET test data used for whole effluent toxicity (WET) reasonable potential determinations and NPDES permit compliance. The analogy to CECs is incorrect, as the memo explicitly states that TST may be used for NPDES permit compliance. As the permit specifies, the TST and only two concentrations (the IWC and the control) are tested and analyzed for compliance purposes. In the Los Angeles Region, the vast majority of its inland waters are effluent-dominated and its inland dischargers have not conducted mixing zone studies to warrant receiving dilution credits. Therefore, the IWC represents whole effluent, i.e. 100% effluent to be evaluated, therefore five-concentration tests are not necessary. Consequently, concentration-response relationship do not need to be generated. The Permittee has the option of conducting a multi-concentration test. However, only the 100% effluent concentration and the control will be used for compliance determination. The commenter argues that USEPA's approval on March 17, 2014 of a state-wide alternate test procedure to the five-concentration procedure, was unlawful. The legality of USEPA's approval is subject to ongoing litigation. The approval is valid and applicable until and unless a court determines	

Commenter	#	Comment	Response	Action Taken
			otherwise. USEPA's approval does not mandate use of the two-concentration test instead of the five-concentration test procedure. The effect of the approval is that a permitting authority may exercise its discretion to determine whether a two-concentration or five-concentration test procedure is appropriate to determine compliance with NPDES permit effluent limitations for toxicity, when using the TST approach. 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 in an NPDES permit and therefore required for compliance and reporting purposes. (See 40 CFR §§ 122.44(d) and 122.43.)	
JOS	A-3	A maximum daily effluent limit for chronic toxicity is impracticable, unlawful, and inappropriate.	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. Note, 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	

Commenter	#	Comment	Response	Action Taken
			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. 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 was 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 and chronic effects.	
JOS	A-4	USEPA's objections were misplaced and should have been ignored. a) <u>The pre-public notice draft permit contained a valid and enforceable chronic toxicity effluent limitation</u>.	The pre-public notice draft permit did not contain a valid chronic toxicity effluent limitation as required by the Clean Water Act. 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 *defined* by the WET test, it is a method-defined analyte. (*Edison Elec.*	

Commenter	#	Comment	Response	Action Taken
		b) The proposed narrative effluent limits and supplemental numeric triggers are consistent with binding State Water Board precedent. c) USEPA's statements regarding the need for numeric limits are mistaken. d) Binding case law goes against USEPA's interpretations. i. Section 122.44(k)(3) does not apply where the permit contains WQBELs. ii. If Section 122.44(k) applies, there is no requirement that numeric effluent limitations be infeasible **to calculate**. iii. The State Water Board has held that numeric limits for chronic toxicity are not feasible or appropriate. e) USEPA ignores the existence of 40 CFR 122.44(k)(4).	*Institute v. USEPA*, 391 F.3d 1267, 1270 (D.C. Cir. 2004); 40 CFR § 136.6(a)(5)) 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. The Clean Water Act and its implementing regulations also require 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. 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 be capable of expression as averages or maxima (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 …).) 40 C.F.R. § 122.44(k)(3) requires non-numeric effluent limitations in the form of best management practices (BMPs) if	

Commenter	#	Comment	Response	Action Taken
			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. 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." (*NRDC v. Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977); *see also*, *Citizens Coal Council v. EPA*, 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 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.] This Regional Water Board has determined that numeric effluent limitations for chronic toxicity are feasible for discharges from the Pomona and Whittier Narrows WTPs. See response to comment S1 for information regarding other examples in which numeric effluent limitations for chronic toxicity have been found feasible and have been implemented.	
JOS	A-5	Numeric effluent limitations for chronic toxicity remain inappropriate.	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	

Commenter	#	Comment	Response	Action Taken
			quality standards. 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. 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. 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 (TRE) process if the numeric effluent limit is exceeded. 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 *Edison Electric Institute v. USEPA*, 391 F.3d 1267 (2004) (*Edison Electric)*. The Court found that "[i]n designing and refining the WET test methods, EPA sought to minimize the effect of organic idiosyncracy by taking experimental and statistical precautions… WET test methods exhibit a degree of precision compatible with numerous chemical-specific tests already in use." (*Id.* at 1269 & 1271.) With respect to the representativeness of WET test methods, that is, the ability of	

Commenter	#	Comment	Response	Action Taken
			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." (*Id.* at 1273.) 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 *Environmental Toxicology and Chemistry* (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 *Environmental Toxicology and Chemistry* (Diamond et al. 2013), undergoing review by anonymous reviewers.	
JOS	A-6	Numeric limits based on a two-concentration TST are highly problematic.	The TST statistical approach is desirable over the status quo. In the executive summary (at page vii, *Exhibit 3 page 426 of 1898*) of USEPA's *NPDES Test of Significant Toxicity Implementation Document (EPA 833-R-10-003, June 10),* 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." Section 1.2 of USEPA's *NPDES Test of Significant Toxicity Implementation Document-June 2010* (at page 4, Exhibit 3 page 436 of 1898), explains that "the current NPDES WET Program does not control for false negatives. Thus, the TST approach	

Commenter	#	Comment	Response	Action Taken
			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 *prove a negative*, i.e., that their effluent is acceptable (non-toxic)." The two-concentration toxicity test design was evaluated for use, when using the TST was approved by USEPA (Exhibit 10 page 879 of 1898), for use by the State Water Board and its Regional Water Boards, as an acceptable equivalent under the Alternative Test Procedure (ATP) (40 CFR 136.5) to the five-concentration test design evaluated using the NOEC-LOEC statistical approach. Moreover, this Regional Water Board exercised its discretion as the permitting authority to select the TST as the most appropriate statistical approach to evaluate toxicity because of advantages over the traditional five-concentration test design. The need to examine the concentration-response relationship was designed to evaluate the data from multiple concentration WET tests when using the NOEC-LOEC and EC25 endpoints. This data review step was designed to assist with the more complex interpretation of these approaches. The use of the multi concentration test design when using the TST is not necessary nor required for this approach. In fact, the review of the concentration-response relationship when using the TST provides no information to assist in the interpretation of the results Since the objective of the TST test is to determine whether the 100% effluent is toxic or not toxic, reviewing the test data of other concentrations is not relevant.	

Commenter	#	Comment	Response	Action Taken
Comments received (as Attachment B) from Joint Outfall System on October 10, 2014 (Specific Citations from USEPA's Promulgated Freshwater Chronic Method Manual (EPA-821-R-02-013))				
JOS	B-1	"Use of pass/fail tests consisting of a single effluent concentration (e.g., the receiving water concentration or RWC) and a control is not recommended."[7] [7] 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 2.2.3.	Section 2.2.1 which precedes 2.2.3 (Short-term Methods, October 2002) reads: "The selection of the test type will depend on the **NPDES permit requirements (emphasis added)**, the objectives of the test, the available resources, the requirements of the test organisms, and effluent characteristics such as fluctuations in effluent toxicity." Since the toxicity requirements are expressed in terms of Pass/Fail, multi-concentrations are not required. Section 2.2.2 of the test method reads "Effluent chronic toxicity **is generally measured** (emphasis added) using a multi-concentration, or definitive test, consisting of a control and a minimum of five effluent concentrations." "Generally" does not imply all the time. Moreover, acute toxicity testing has primarily used the two-concentration test (a control versus 100% effluent) evaluated with a standard t-test hypothesis testing approach for several decades.	None necessary.
JOS	B-2	"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."[8] [8] 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 8.10.1.	Refer to response to comment A-2.	
JOS	B-3	"The concentration-response relationship generated for each multi-concentration test must be reviewed to ensure that calculated test results are interpreted appropriately."[9]	Refer to response to comment A-2.	

Commenter	#	Comment	Response	Action Taken
		[9] 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 10.2.6.2.		
JOS	B-4	"Tables 1, 3, and 4 (labeled as 3) - SUMMARY OF TEST CONDITIONS AND TEST ACCEPTABILITY CRITERIA WITH EFFLUENTS AND RECEIVING WATERS (TEST METHODS 1000.0, 1002.0, AND 1003.0): Test concentrations: Effluents: 5 and a control (required minimum) Receiving Water: 100% receiving water (or minimum of 5) and a control (recommended)"[10] [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. Tables 1, 3, and 4 (labeled as 3) on pages 76, 165, and 211.	Refer to response to comment A-2.	
Comments received (as Attachment D) from Joint Outfall System on October 10, 2014 (General Technical Comments)				
JOS	D-1	Page 6, Table 4. Lead limits for Discharge 001 (San Gabriel River) Per page F-46 of the Fact Sheet, lead concentrations did not exceed water quality criteria. Therefore, lead limits for Discharge 001 should be based solely on the San Gabriel River (SGR) Metals TMDL. This TMDL specifies a wet weather WLA of 166 ug/L, per San Gabriel River Metals TMDL Table 6-2 on pg. 38. Using SIP procedures, the daily maximum limit for lead should be set at 166 ug/L. Also, the monthly average limit for lead should be deleted because per Section 7.2 (pg. 46) of the TMDL "...Wet-weather WLAs will not be used to determine monthly permit limits but will only be used in a determination of a daily limit."	Staff recalculated the lead effluent limitations and revised the lead effluent limitation in the permit.	Revisions were made to the permit

Commenter	#	Comment	Response	Action Taken
JOS	D-2	Table 4, Footnote 2, as well as page E-5, Table E-1; page E-19, Section VIII.C.1; page F-45, Section IV.C.4.b; and page F-49, Table F-9, Footnote 5. The SGR Metals TMDL states: "In San Gabriel River Reach 2, wet-weather TMDLs apply when the maximum daily flow in the river is equal to or greater than 260 cfs as measured at USGS station 11085000, located at the bottom of Reach 3 just above the Whittier Narrows Dam". However, USGS station 11085000 is actually located below Santa Fe Dam in Baldwin Park. The USGS flow gauging station above Whittier Narrows Dam in Reach 3 is 11087020. All references to this USGS gauging station (RSW-008) should use USGS station number 11087020.	Please see staff response to Comment 30.	Revisions were made to the permit.
JOS	D-3	Page 8, Table 5. Lead limits for Discharge 002, 003, and 004 (Rio Hondo) Per page F-46 of the Fact Sheet, lead concentrations did not exceed water quality criteria. Therefore, lead limits for Discharges 002, 003, and 004 should be based solely on the LA River Metals TMDL. This TMDL specifies a wet weather WLA of 62 ug/L. SIP procedures should be used to calculate effluent limits from this WLA.	Staff recalculated the lead effluent limitations and revised the lead effluent limitation in the permit.	Revisions were made to the permit.
JOS	D-4	Page 11, section V.B.1 State laws do not prevent any degradation of groundwater but rather only prevent degradation that is inconsistent with State Board Resolution No. 68-16. The language needs to be changed to reflect this. The suggested change is: "The discharge shall not cause the underlying groundwater to be degraded <u>except as consistent with State Board Resolution No. 68-18, exceed WQOs</u>, ..."	Staff agreed to change the language as proposed by the Permittee.	Revisions were made to the permit.
JOS	D-5	Page 12, section VI.A.2.l Delete this sub-section in its entirety because this	Please see staff response to Comment 27.	Revisions were made

Commenter	#	Comment	Response	Action Taken
		requirement is already covered by the general permit for storm water discharges associated with industrial activities, where the Whittier Narrows WRP is enrolled under WDID No. 4 19I007151.		to the permit.
JOS	D-6	Page 15, section VI.C.1 The Whittier Narrows WRP discharges to receiving waters that have a GWR (groundwater recharge) beneficial use, to protect the quality of underlying groundwater. Although the tentative permit does not contain Title 22-based effluent limitations as a result of the GWR use, future permits may contain such limits. If so, it would be appropriate to consider attenuation and dilution in setting the end-of-pipe limits. State Board precedential order WQO 2003-0009 addressed this issue, stating that "Since groundwater recharge and use are long-term activities, the Regional Board could reasonably consider dilution and attenuation ... in developing effluent limits to protect the GWR use." We would like to ensure that the option of submitting studies to obtain credit for attenuation and dilution is appropriately preserved for the future. Therefore, we request that the following reopener be added to the permit: "Upon the request of the Discharger, the Regional Water Board will evaluate future studies conducted to evaluate the appropriateness of utilizing dilution credits and/or attenuation factors demonstrated to be appropriate and protective of the GWR beneficial use, on a pollutant-by-pollutant basis. Following this evaluation, this Order may be reopened to modify final effluent limitations, if at the conclusion of necessary studies conducted by the Discharger, the Regional Water Board determines that dilution credits, attenuation factors, or metal translators are warranted."	Staff agreed to add the suggested reopener language as proposed by the Permittee, with a minor revision to exchange “Discharger” with “Permittee”.	Revisions were made to the permit.
JOS	D-7	Pages 21-22, section VI.C.6.a.ii, section VI.C.6.a.iii, and section VI.C.6.c.i On July 1, 2013, Cal EMA changed its name to the California Office of Emergency Services (OES).	Staff replaced Cal EMA with OES throughout the permit.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		References to Cal EMA should be changed to references to OES.		
JOS	D-8	Page 21, section VI.C.6.a.iii, (f) This language requiring a certification statement should be removed. Such a certification was required within 24 hours under the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (SSS WDR) amendments Order No. WQ 2008-002-EXEC, but was removed from the SSS WDR when it was updated and streamlined in 2013 per Order No. WQ 2013-0058-EXEC. No justification has been provided for inclusion of the certification requirement, and it is not clear how the Regional Board would use the information. Additionally, it is not clear under which circumstances such a certification would be required, since OES is not required to be notified of certain smaller spills, and since Regional Board notification is not required when the health department and OES have been notified. It is also not clear when the certification would have to be submitted. The SSS WDR required the notification within 24 hours, but no time frame is specified in the permit. Unnecessary notification requirements complicate spill response and should not be included in the permit.	Staff agreed to remove the following language from the permit: "A certification that the State Office of Emergency Services and the local health officer or directors of environmental health with jurisdiction over the affected water bodies have been notified of the discharge."	Revisions were made to the permit.
JOS	D-9	Page 22, Spill Reporting Requirements, section VI.C.6.b.i (Monitoring) Analyses are shown as being required for total coliform, fecal coliform, AND E.coli (if fecal coliform is positive), enterococcus and relevant pollutants of concern. The current permit language says fecal coliform OR E.coli. Because fecal coliform is typically present in all receiving waters at detectable concentrations, this change would require us to run E. coli on all spills. Running both fecal coliform and E. coli tests would be redundant and would not provide any additional information. We therefore request that the Regional Board change the language	Staff made revisions to duplicate the previous permit's language regarding spills monitoring.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		back to the language in the previous permit, allowing analysis for fecal coliform OR E. coli.		
JOS	D-10	Page E-4, Table E-1, EFF-001 Plant modifications (planned to take place in 2015) are anticipated to allow NPDES effluent to be separated from reuse flow immediately downstream of the final disinfection process. After UV disinfection, NPDES effluent will be directed to river discharge while reuse flow will be stored in effluent storage tanks (tanks that were previously used as chlorine contact tanks and which now serve as a water storage reservoir for the reuse pump station) until reuse demand activates the pump station and stored effluent is pumped for distribution to reuse customers. To avoid any potential impact caused by reuse water storage and to obtain NPDES effluent samples representative of effluent bacterial quality, monitoring for E. coli, fecal coliform and total coliform should be conducted immediately downstream of the UV disinfection and upstream of the effluent storage tanks. Demand for reuse flow at the Whittier Narrows WRP is at levels such that reuse pumping is intermittent and there is always effluent water available for sampling after the dechlorination process. The following change is requested: "The effluent sampling station shall be located downstream of any in-plant return flows and after the final disinfection process, where representative samples of the effluent can be obtained. ~~However, if the recycled water demand is high and there is no effluent water available for sampling after the dechlorination process, then the effluent sample may be collected after the chlorination process, but before the dechlorination step.~~ E. coli, fecal coliform and total coliform sampling shall be conducted immediately downstream of the UV disinfection process. All other effluent sampling shall be conducted downstream of the dechlorination process and inside the plant."	Staff agreed to revise the description of the effluent sampling location to reflect the current plant condition. The suggested language by the Permittee was incorporated into Table E-1.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
JOS	D-11	Page E-5, Table E-1 We request that a statement be added to the RSW-007 and RSW-008 descriptions saying, "This gaging station is operated and maintained by the USGS." The purpose of this statement is to clarify that the Sanitation Districts are not responsible for the operation or maintenance of these stations.	Staff agreed to add the suggested language to clarify that USGS is responsible for operating and maintaining the gauging station.	Revisions were made to the permit.
JOS	D-12	Page E-7, Table E-2, Remaining USEPA priority pollutants Chromium VI is not a USEPA priority pollutant. The USEPA priority pollutant list only includes "Chromium", which refers to total chromium. The reference to sample type for chromium VI should be deleted from this part of the table, as follows: "24-hour composite/grab for VOCs~~,~~ and Cyanide.~~, and Chromium VI~~"	Staff agreed.	Revisions were made to the permit.
JOS	D-13	Page E-7, Footnote 3, also page E-11, Footnote 15 and page E-18, Footnote 23 This footnote refers to the "remaining USEPA priority pollutants", but lists test methods to be used for both PCBs as arochlors and PCBs as congeners. The USEPA priority pollutant list includes seven specific PCB arochlors, but it does not include PCB congeners. PCB arochlors are specific chemical mixtures of various PCBs congeners. EPA priority pollutant monitoring in the past has always been based on arochlors, to be consistent with the promulgated priority pollutant list. Therefore, PCB congener monitoring should not be required as part of the priority pollutant monitoring. Additionally, no justification has been provided for the increased monitoring costs that would be incurred by PCB congener monitoring. There are no PCB water quality impairments in the receiving waters downstream of the WRP. The cost for PCB congener sampling is $875 per test; adding semiannual	Please see response to Comment 28.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		sampling for the influent, effluent, and six receiving water stations would impose an additional cost of $14,000 per year for the Whittier Narrows WRP, with no water quality benefit. Reference to testing PCBs as congeners should be deleted from these footnotes.		
JOS	D-14	Page E-8, section IV.A.1, Table E-3, in row "Total waste flow" and in Footnote 4. Please change as follows: "Total ~~waste effluent~~ flow"	The "Total waste flow" is consistent with the wordings in the 40 CFR part 126 to describe the facilities discharges.	None necessary.
JOS	D-15	Page E-9, Table E-3, Footnote without number This text needs to be identified as a continuation of Footnote 8 on page E-8	The hanging footnote was reformatted.	Revisions were made to the permit.
JOS	D-16	Page E-9, Table E-3, Footnote 9 This footnote needs to be updated as BOD limits are AMEL and AWEL now instead of 30-day and 7-day limits. The recommended language change is: "If the result of the weekly BOD analysis yields a value greater than the ~~30-day average limit~~ AMEL, the frequency of analysis shall be increased to daily within one week of knowledge of the test result for at least 30 days and until compliance with the ~~7-day and 30-day average BOD limits~~ BOD AWEL and AMEL are ~~is~~ demonstrated; after which the frequency shall revert to weekly."	Staff agreed to the proposed changes.	Revisions were made to the permit.
JOS	D-17	Page E-18-19, section VIII.B.2 Most of the monitoring required in this section is duplicative with monitoring required in Table E-5. A note should be added to clarify that this is not a duplicative requirement in relation to the required monthly sampling in Table E-5.	Staff added clarifying language in the MRP section VIII.B.2, to indicate that ammonia monitoring is not a duplicative requirement.	Revisions were made to the permit.
JOS	D-18	Page E-20, section IX.A.3.a	In 2008, the State of California's Surface Water Ambient Monitoring Program (SWAMP) recommended that the state	None Necessary.

Commenter	#	Comment	Response	Action Taken
		Algal assemblages should not be analyzed as part of this monitoring program. There are no validated methods available for interpretation of algal taxonomy results. The Southern California Algal IBI is a water quality index and does not effectively correspond to biotic integrity at this time. In addition, the Southern California reference sites are primarily based on mountain streams. An index using such a reference site would be expected to greatly underestimate the biotic integrity in lower elevation streams (which are the types of streams within the Sanitation Districts' bioassessment program). Moreover, there are site-specific issues such as the frequent scraping of the concrete lined channels, non-wadable stream reaches, lack of access to stream length, and lack of sampling sites bracketing Sanitation Districts' discharge outfalls. These site specific concerns all lead to an inadequate characterization of the biomass and algal assemblages for each specific site. Furthermore, there are only three algal taxonomy laboratories in the nation that are proficient in following SWAMP Quality Assurance and Quality Control standards. The labor costs are equal to $170/sample and the identification cost for each sample is $1094 making the total cost per sample $1264. This would increase the cost of the Districts' bioassessment program for the Pomona WRP by an additional $3,791 annually. This represents a cost increase with no apparent benefit. Algal identification is a tool which is better suited for regional monitoring programs in which random locations are sampled. The Sanitation Districts are currently contributing approximately $430,000 per year to a regional monitoring program for the SGR; this program includes receiving water algal sampling. Note that when the regional monitoring program was established, one of the key changes was to move algal monitoring from the NPDES permits to the regional program. The following change is requested: "*a. The bioassessment program shall include an analysis of the community structure of the instream macroinvertebrate and ~~algal assemblages~~ and physical habitat assessment*	include algae as a component of SWAMP monitoring (Incorporating Bioassessment Using Freshwater Algae into California's Surface Water Ambient Monitoring Program [SWAMP], Technical Report, 2008). Since then, algal monitoring has been incorporated into many other regional and local monitoring programs (including NPDES monitoring and reporting programs) by various Regional Water Boards throughout the state, including the Los Angeles Regional Water Board. Monitoring for algal biomass and taxonomic composition of algal assemblages provides information beyond that which is obtainable through bioassessment with benthic macroinvertebrates alone. The addition of an algal component to bioassessment monitoring satisfies the USEPA's recommendation to utilize multiple bioindicators, and facilitates a "weight of evidence" approach to interpretation of biomonitoring results. The algal Index of Biotic Integrity does provide one useful method for the interpretation of the health of streams, and continued algal monitoring throughout the state should lead to improvement of this index and/or development of new indices in the future. As primary producers, algae are the most directly responsive of the common bioindicators to nutrients, and can be very valuable in assessing nutrient impairments, which is a major problem in streams throughout the Los Angeles region. Algal assemblages also can be valuable for diagnosing the cause(s) of many types of impairments, such as heavy-metal contamination, organic enrichment or siltation. While algal sampling is very useful for regional monitoring programs that rely upon sampling at random stations, it can be equally valuable for assessment of ecosystem health and trend monitoring at fixed locations to evaluate stressors, such as a wastewater discharge. Any logistical issues or other impediments to conducting the required bioassessment monitoring generally can be dealt with by relocating sampling stations as warranted upon consultation with Regional Water Board staff.	

Commenter	#	Comment	Response	Action Taken
		at monitoring stations RSW-001D, RSW-002D, and RSW-003D."		
JOS	D-19	Page E-21, Reporting Requirements, A.5 This language should be changed as follows, to reflect current practices: "Each monthly monitoring report shall include a determination of compliance with receiving water ammonia water quality objectives at either RSW-002, RSW-003, or ~~and~~ RSW-005, depending on which station is downstream of the plant discharge at the time of sampling."	Staff agreed to add the suggested language.	Revisions were made to the permit.
JOS	D-20	Page E-23, Discharge Monitoring Reports (DMRs) X.C.1 to X.C.3. Electronic submittal of DMRs took effect October 1, 2014. Therefore, hard copy DMRs will no longer be submitted.	Staff revised the language in the permit to conform with the CIWQS electronic submittal of DMR reports,	Revisions were made to the permit.
JOS	D-21	Page E-24, Other Reports X.D.1 Typo: remove "acute and", as there is no acute toxicity testing requirements in the permit.	Typo has been corrected.	Revisions were made to the permit.
JOS	D-22	Page F-4, Facility Description, Section II.A.1. Page 20 of the tentative order Section VI.C.5.b.vi states that the local limits evaluation is to be submitted "based upon the schedule specified in the NPDES Permit issued to the JWPCP." Such report was submitted on 8/22/2012, and it included an analysis of whether local limits associated with the Whittier Narrows WRP needed to be changed. Due to the interconnectedness of the JOS, it is not practical to evaluate the need to revise local limits for individual treatment plants, rather such an evaluation is only appropriate on a system-wide basis. We therefore request that the language relating to local limits be amended as follows: "However, a re-evaluation will be required following ~~this NPDES permit renewal~~ the renewal	Suggested edit has been incorporated into the permit.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		of the NPDES permit issued to the Joint Water Pollution Control Plant (JWPCP)."		
JOS	D-23	Page F-4, Facility Description, Section II.A.2. This description needs to be updated to more fully reflect UV disinfection treatment that has been added to the facility. Please change as follows: "Treatment at the Whittier Narrows WRP consists of primary sedimentation, activated sludge biological treatment with nitrification and denitrification, secondary sedimentation, inert media filtration, ~~chlorination, and dechlorination~~ and UV disinfection. The UV disinfection system has been incorporated into a dual barrier disinfection system which includes application of chlorine as free chlorine at a very low dosage upstream of the UV disinfection to inactivate any virus that is not readily susceptible to UV, followed by UV disinfection to inactivate any other pathogens that are more susceptible to UV. Since effluent that has been disinfected using the UV process does not carry residual chlorine, a minimal amount of chlorine is added to the UV-disinfected effluent to provide minimal residual chlorine to reclaimed water supplied for direct reuse. Treated wastewater that is not conveyed to direct reuse is dechlorinated prior to discharge in order to remove any chlorine residual.	Staff agreed to incorporate the updated process changes into the permit.	Revisions were made to the permit.
JOS	D-24	Page F-5, Facility Description, Section II.A.3. This description needs to be updated to more fully reflect UV disinfection treatment that has been added to the facility. Please change as follows: "Under normal operation conditions, sodium hypochlorite is used only in small dosages to supplement the UV disinfection, as part of the dual barrier disinfection process described under Item 2 above. Sodium hypochlorite may be ~~The disinfecting agent is~~ added to the treated effluent prior to the filters to destroy bacteria, pathogens and viruses, ~~and~~ to minimize algal growth in the filters, or may be added to	Staff agreed to incorporate the updated process changes into the permit.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		provide minimal residual chlorine to reclaimed water supplied for direct reuse. In the event of bypass or UV system failure, the Whittier Narrows WRP may revert to using sodium hypochlorite for disinfection whereby ~~Additional~~ disinfectant may be dosed prior to the serpentine chlorine contact ~~chamber~~ tanks. Prior to discharge, sodium bisulfite is added to the treated effluent to remove residual chlorine."		
JOS	D-25	Page F-5, Facility Description, Section II.A.6. This item can be deleted if the requested changes in items A.2 and A.3 are incorporated.	Staff agreed to delete this subsection.	Revisions were made to the permit.
JOS	D-26	Page F-11, Compliance Summary The summary of the NOV is incorrect. First, one of the dates is wrong in the summary. Second, the section of the NOV addressing failure to accurately report potentially toxic results (i.e., the language stating, "The Permittee also failed to accurately report data from toxicity tests that should have resulted in its effluent being declared toxic, and/or failed to collect a new effluent sample, conduct a toxicity test on the new effluent sample, and analyze as specified in the permit.") does not apply to the Whittier Narrows WRP. There were no instances of these failures occurring in relation to toxicity testing at the Whittier Narrows WRP. Therefore, the sentence addressing this portion of the NOV needs to be deleted. We therefore request the following language change to the compliance summary: "On June 6, 2014, the Regional Water Board issued the Joint Outfall System a Notice of Violation for failure to report a valid toxicity test result in September 2011 (effluent), April 2012 (effluent), ~~February~~ August 2012 (ambient receiving water), and March 2013 (effluent). ~~The Permittee also failed to accurately report data from toxicity tests that should have resulted in its effluent being declared toxic, and/or failed to collect a new effluent sample, conduct a toxicity test on the new effluent sample, and analyze as specified in the permit.~~	Staff corrected the correct month of violation to August 2012 and the last sentence of the compliance summary was deleted.	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
JOS	D-27	Page F-20, section III.E.6, Watershed Management The Los Angeles & San Gabriel Rivers Watershed Council is no longer conducting a watershed-wide monitoring program. Therefore, this language needs to be updated, as follows: "The accompanying Order fosters the implementation of this approach by protecting beneficial uses in the watershed and requiring the Discharger to participate with ~~the Los Angeles and San Gabriel River Watershed Council, and~~ other stakeholders, in the development and implementation of a watershed-wide monitoring program.	Staff agreed to the suggested changes.	Revisions were made to the permit.
JOS	D-28	Page F-20, Section III.E.6, Watershed Management The Los Angeles & San Gabriel Rivers Watershed Council is no longer conducting the watershed-wide monitoring program. Therefore, this language needs to be deleted.	Staff agreed to the suggested changes.	Revisions were made to the permit.
JOS	D-29	Page F-25, section IV.C.2, Applicable Beneficial Uses and Water Quality Criteria and Objectives Numbering of Subsections e. and f. Typo: Subsections should be renumbered as a. and b.	Typo has been corrected.	Revisions were made to the permit.
JOS	D-30	Page F-41, Table F-8, Copper Under the column titled "Reason", on the row for "Copper", it says "TMDL WLA". The copper limits are not based on the TMDL but rather on the basin plan objectives. Delete "TMDL WLA" and replace with "Tier 2, B>C, and detected in the effluent."	Staff agreed to the suggested changes.	Revisions were made to the permit.
JOS	D-31	Page F-53, Table F-11. Summary of Chronic Toxicity Exceedances Recommend changing Title to "Table F-11. Summary of Chronic Toxicity Data" since no actual examples of	Staff agreed to the suggested changes. The table title would now read: Table F-11. Summary of Chronic Toxicity Data	Revisions were made to the permit.

Commenter	#	Comment	Response	Action Taken
		exceedances are provided in the table. In each case, the monthly median TUc of 1.0 was clearly met.		
JOS	D-32	Page F-53, Table F-11. Summary of Chronic Toxicity Exceedances Table F-11. Incorrect test dates given. Test date 1/17/14 is incorrect; it should read 1/18/14. Test date 1/22/14 is incorrect; it should read 1/23/14.	Staff corrected the test dates as indicated in their comment.	Revisions were made to the permit.
JOS	D-33	Page F-54, section IV.D.1 "The effluent limitations for lead and zinc have been relaxed based on the San Gabriel River watershed metals TMDLs … and the Los Angeles Rivers Metals TMDL…" The effluent limitations for lead were relaxed based on the lack of reasonable potential for exceedances of basin plan criteria for lead. The wording in this paragraph needs to be updated accordingly.	The quoted statement is factual and a correct statement.	None necessary.
JOS	D-34	Page F-54, section IV.D.1 Typo. Delete the word "pollutant" at the end of the Anti-backsliding Requirements section.	Staff corrected the typo.	Revisions were made to the permit
JOS	D-35	Page F-58, Table F-14 The basis for the copper limit should be changed from "TMDL to "Basin Plan".	Staff added “SIP/CTR”/TMDL to clarify the basis for deriving effluent limitation for copper.	Revisions were made to the permit.
JOS	D-36	Attachment H, page H-3, section B Page 20 of the tentative order Section VI.C.5.b.vi states that the local limits evaluation is to be submitted "based upon the schedule specified in the NPDES Permit issued to the JWPCP." Such report was submitted on 8/22/2012, and it included an analysis of whether local limits associated with the Whittier Narrows WRP needed to be	Staff inserted “JWPCP” to the specified section.	Revisions were made to the permit

Commenter	#	Comment	Response	Action Taken
		changed. Due to the interconnectedness of the JOS, it is not practical to evaluate the need to revise local limits for individual treatment plants, rather such an evaluation is only appropriate on a systemwide basis. We therefore request that the Local Limits Evaluation section in Attachment H be amended as follows: "In accordance with 40 CFR part 122.44(j)(2)(ii), the POTW shall provide a written technical evaluation of the need to revise local limits under 40 CFR part 403.5(c)(1) within 180 days of issuance or reissuance of the JWPCP NPDES permit."		
Comments received from Southern California Alliance of Publicly Owned Treatment Works (SCAP), California Association of Sanitation Agencies (CASA), and Bay Area Clean Water Agencies (BACWA) on October 10, 2014				
SCAP, CASA, and BACWA,	S1	**Adoption of Permits with Numeric Effluent Limits for Toxicity Is Premature and Contrary to Existing State Water Board Precedent** Adoption of a permit that contains numeric effluent limits for toxicity and mandates use of the Test of Significant Toxicity (TST) in advance of the promulgation of a statewide policy on this issue is inappropriate and premature. As noted in comments submitted by the Sanitation Districts of Los Angeles County (LACSD), the current policy in effect for toxicity effluent limitations specifies inclusion of narrative effluent limitations with triggers for initiation of toxicity identification and reduction evaluation (TIE/TRE) procedures, consistent with precedential State Water Board Orders WQO 2003-0012 and WQO 2003-0013. There, the State Water Board found that the applicability of final numeric effluent limitations in permits for wastewater treatment plants discharging to inland waters, bays and estuaries is an issue of statewide importance that should be addressed in the statewide implementation plan (SIP). The State Water Board has been working with stakeholders, U.S. EPA and regional water boards to develop revised toxicity	The Pomona and Whittier Narrows Water Reclamation Plant (WRP) tentative National Pollutant Discharge Elimination system (NPDES) permits are written consistent with the direction provided by USEPA's Formal Objection Latter dated September 4, 2014, and USEPA's approval of the two-concentration test for WET testing evaluated using the TST as an acceptable equivalent under the ATP process to the five-concentration test evaluated using NOEC-LOEC hypothesis testing as requested by the State Water Resources Control Board. 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. 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	None necessary.

Commenter	#	Comment	Response	Action Taken
		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. **SCAP/CASA/BACWA requests that the chronic toxicity limits contained in the tentative permits 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.**	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. The numeric effluent limitation for chronic toxicity in this Order employs the Test of Significant Toxicity (TST), statistical approach. The TST is recommended by the most recent USEPA guidance as an appropriate statistical approach for toxicity testing. USEPA, this Regional Board, and other regional boards are using the TST to determine compliance with numeric effluent limitations for toxicity. Additional information about and the basis for utilizing a TST-based limit is included in the fact sheet on pages F-50 and F-64 of the Whittier Narrows WRP tentative NPDES Order. The commenter raises two issues regarding the effluent limitation for chronic toxicity. First, whether the limit should serve as a numeric effluent limitation or, rather, as a trigger for additional evaluation of toxic constituents in the effluent. Second, whether the TST is the appropriate statistical test to determine compliance with the numeric limit, whether that limit be a numeric effluent limitation or a trigger for further analysis. This Order must include effluent limitations that will achieve and maintain compliance with water quality standards in. the San Gabriel River and its tributaries (Clean Water Act § 301(b)(1)(C); 40 C.F.R. § 122.44(d)). The Basin Plan for the Los Angeles Region includes a narrative water quality standard for toxicity that requires all surface waters to "be maintained free of toxic substances in concentrations that are toxic." Effluent limitations in this Order must assure that the discharge will not cause or contribute to an exceedance of this standard. Federal regulations establish an explicit presumption that a numeric effluent limit – rather than a non-numeric limit – is required by the Clean Water Act to make reasonable further progress toward the goal of eliminating pollutants into the	

Commenter	#	Comment	Response	Action Taken
			nation's waters. Non-numeric effluent limits may only replace numeric effluent limits in an NPDES permit if a numeric limit is "infeasible." (40 C.F.R. § 122.44). This presumption applies to effluent limitations for toxicity: "A limit on whole effluent toxicity refers to a numeric effluent limitation ...." 54 Fed. Reg. 23868, 23871. Because a numeric limit for chronic toxicity is feasible, a numeric limit must be included in this Order. 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 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 approach simplifies the statistical interpretation of toxicity test results and increases confidence in the results as compared to the statistical approaches, such as NOEC-LOEC. The "trigger" approach referenced in the commenter's letter has	

Commenter	#	Comment	Response	Action Taken
			been criticized by USEPA in public comments (2008 letter regarding) and during quality reviews of California's NPDES program (2008 final report, 2014 draft report). USEPA's current criticism of this approach is not new. More than 25 years ago, in the 1989 preamble to 40 CFR 122.44(d)(1) [NPDES rules governing water quality based permitting], responding to public comment requesting that whole effluent toxicity (WET) not be used as an enforceable effluent limit, USEPA stated: "EPA requires [WET] limits where necessary to meet water quality standards. EPA does not believe that a whole effluent toxicity trigger alone is fully effective because it does not by itself, restrict the quantity, rate, or concentrations of pollutants in an effluent." 54 Fed. Reg. 23868, 23875. The Regional Board concurs with USEPA's criticism of the "trigger" approach. USEPA formally endorsed the TST as an improved statistical approach using hypothesis testing to evaluate data generated from WET methods. The TST has undergone an extensive external peer review process by both the USEPA and the State Water Board. Additionally, this approach underwent a "Test Drive Analysis" in California and has been published in an international peer reviewed toxicological journal (Diamond et al., 2013). Note, this "test drive analysis" was a request by many permittees including this specific Permittee. In 2014, the State Water Board asked for the review and seeked approval to use only two concentrations (the control and IWC) when using the TST in permits. USEPA reviewed and determined—based on the evidence presented in the State Water Board's request—that the results of a two-concentration TST test and multi-concentration NOEC-LOEC tests—are acceptably equivalent under the ATP process at 40 CFR 136 for use in all NPDES permits issued by State and Regional Water Boards. The findings of the peer-reviewed journal article by Diamond et al, 2013, found that the TST improves understanding of the discharge condition by correctly identifying toxic and non-toxic samples more often than when using the multi-concentration NOEC-LOEC. The permit's proposed numeric effluent limits for chronic toxicity, expressed in terms of the TST hypothesis test achieve the requirements for NPDES effluent limitations under	

Commenter	#	Comment	Response	Action Taken
			the CWA and its implementing regulations. Because of the availability of toxicity testing methods and applicable EPA guidance endorsing these 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."	
SCAP, CASA, and BACWA,	S2A Part 1	**Provisions Restricting How the TST Is Utilized Are Inappropriate and Entirely Inconsistent with Promulgated Methods and the Anticipated Statewide**	Refer to response to comment 1. Use of multi-concentration tests are appropriate if the effluent	None necessary

Commenter	#	Comment	Response	Action Taken
		Plan **Dischargers Must be Allowed to Conduct Multi-Concentration Tests, Dose Response Evaluations, and Use All 40 CFR Part 136 Testing Protocols for Compliance Purposes** Several conditions within the permits improperly limit or restrict 40 Code of Federal Regulations (CFR) Part 136 required and recommended data evaluation procedures. Limiting the ability of a permittee to utilize the appropriate promulgated chronic toxicity testing protocols, including the availability of a multi-concentration test and dose response evaluations, will significantly increase the false positive rate when using the TST.1 Moreover, prohibiting such activities is entirely inconsistent with what is expected to be contained in the statewide toxicity plan, and could result in confusion and the need to reopen this permit once such a plan is adopted. 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 increased rate of "false positives." Allowing a discharger to conduct multiple concentration tests and evaluate the dose-response relationship is one of the more critical and significant method-defined procedures for addressing this variability and validating data that has been acknowledged to be inherently variable. In recognition of this, interpretation of the 40 CFR Part 136 methods has called for evaluation of the dose-response relationship as necessary for ensuring that test results are reported accurately, and why USEPA has in the past suggested that multiple concentration testing be conducted for all NPDES effluent compliance determination tests. Consequently**,**	limitations are expressed in terms of NOEC- LOEC, where the objective of the toxicity test is to determine the "no-effect concentration". Using the TST approach, numeric chronic toxicity final effluent limitations are expressed in terms of Pass or Fail with a percent effect because the objective of the test is to determine whether or not the effluent (at the permitted, IWC) discharged is toxic, and not to determine at which concentration there is a "no effect concentration." The TST approach determines whether the effluent at the permitted instream waste concentration (IWC) (which for these permits is 100% effluent) is toxic by comparing it to a control. This is often called a two-concentration test or a single concentration test comparison (the permitted IWC) to a control. The latter is referred to in Appendix H of Test Methods in *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms* (U.S. EPA 2002, EPA-821-R-02-013), specified in 40 CFR 136. In 2014, in response to a request by the State Water Board, USEPA Region 9 evaluated and determined that the use of this two-concentration test instead of a multi-concentration test, when using the TST, is equivalent under 40 CFR section 136.5. Therefore, the use of the two-concentration design when using TST is available for use in California's NPDES permits and complies with 40 CFR section 136.3 and 136.5.	
SCAP, CASA, and	S2A Part 2	SCAP/CASA/BACWA concurs with the suggestions made by LACSD in its comments on the tentative permits and	See response to comment 2.	None necessary.

Commenter	#	Comment	Response	Action Taken
BACWA,		recommends that the permits be modified to include language that will specifically allow the permittee to monitor the chronic toxicity of the effluent using five or more effluent dilutions as well as utilize all 40 CFR Part 136 specified procedures, including evaluation of the dose-response relationship, to determine if results are reliable. These are vital quality assurance / quality control procedures that must be available to permittees.	SCAP's reference to "dose-response relationships" is referred to as concentration-response relationship in section 10.2.6.2 of the 40 CFR 136 Test Method, Short-term Methods, October 2002 The guidance to review concentration-response relationship was designed to assist in the more complex review of other statistical approaches, the NOEC-LOEC and point estimates (EC25 and LC50). As the Short-term Method, October 2002, manual says on page 50, the concentration-response review must be reviewed to ensure that calculated test results are interpreted appropriately. Since these tentative NPDES permits contain numeric chronic toxicity final effluent limitations expressed in terms of Pass or Fail with a percent effect based on a two-concentration test under the TST approach, it is not appropriate to evaluate the WET testing data using concentration-response relationship. The review of the concentration-response relationship is a component of test review step (is not a QA (Quality Assurance) step) and is necessary when the statistical approach of NOEC-LOEC or a point estimate approach (EC25; LC50) are required in the permit. The Permittee is confusing a test review step with QA components of the method. These QA components include the review of control performance, meeting the required test acceptability criteria and the reference toxicant testing as steps to review and evaluate the quality of the data. The tentative permits include **required** Test Acceptability Criteria (TAC) per the 40 CFR Part 136 Test Method, in Table E-4 of the Monitoring and Reporting Program (MRP). Additionally, the permit specifies the conditions required when using the two-concentration/TST statistical approach. This was reviewed and approved by USEPA as an ATP in California.	
SCAP, CASA, and BACWA,	S2A Part 3	SCAP anticipated that these procedures will be available under the terms of the statewide toxicity plan when it is released, meaning any restrictions in these permits will be inconsistent with statewide policy.	See response to Comment 25 from JOS. The Regional Water Board has no basis to anticipate the substance of the Statewide toxicity plan. A revised draft policy has not yet been released to the public or circulated to Regional	None necessary.

Commenter	#	Comment	Response	Action Taken
			Water Board staff. Furthermore, it is inappropriate for the Regional Water Board to base permitting decisions on draft policy terms.	
SCAP, CASA, and BACWA,	S2B Part 1	Toxicity is not a pollutant, but an effect, and as such accelerated monitoring and the TIE/TRE process are the best methods of allowing a discharger to investigate and ultimately identify the toxicant.	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, the Permittee has not implemented TIE/TREs successfully to identify and reduce toxicity in its effluent. For example, at the Pomona WRP, following an exceedance of the 1.0 TUc monthly median trigger in September 2013, conducted an excessive amount of accelerated testing events (ten instead of six) for three months prior to initiating a TIE/TRE in January 2014. On July 23, 2014, ten months after the 1.0 TUc monthly median trigger exceedance, JOS submitted the results of their TIE/TRE report, which were inconclusive. JOS was unable to successfully identify the causative toxicant. One advantage of the shift in regulatory approach away from the previous oversight-driven model for reducing toxicity is to hold dischargers directly accountable for meeting and maintaining effluent limitations to protect the water quality standard.	None necessary.
SCAP, CASA, and BACWA,	S2B Part 2	SCAP comments that it is inappropriate and counter-productive to require the reporting of TST effluent compliance monitoring results during these accelerated monitoring schedules and initiation of the TIE/TRE. They further request that reporting requirements not be included in the tentative permit for Pomona or Whittier Narrows WRP.	It is inappropriate to suspend final effluent limitations outside a compliance schedule scenario as water quality standards must be maintained throughout the permit term As illustrated in the response to Comment S2B Part 1 above, the current trigger/accelerated testing regime used in the 2009 NPDES permits has not been adequate to reduce toxicity in the effluent and protect water quality.	None necessary.
SCAP, CASA, and BACWA,	S2B Part 3	SCAP and CASA members have 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.	The Regional Board has no basis to anticipate the substance of the Statewide toxicity plan. 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.	None necessary.

Commenter	#	Comment	Response	Action Taken
Comments received from Central Contra Costa Sanitary District (CCCSD) on October 10, 2014				
CCCSD	1	CCCSD does not routinely submit comments on permitting actions in regions outside the San Francisco Bay Area. However, CCCSD believes it important to record our concers with the toxicity monitoring and compliance elements in the two Tentative Orders (TO) for Whittier Narrows and Pomona Water Reclamation Facilities which are dramatically different from the toxicity standards being developed by the State Board through the development of the statewide Toxicity Plan. CCCSD supports the comments being submitted by CASA and BACWA on this aspect of the TOs. CCCSD has been working with other wastewater dischargers throughout California and State Board staff to develop a viable statewide Toxicity Plan that achieves the objective of consistency with monitoring for, and responding to, potential whole effluent toxicity in wastewater discharges. The toxicity program elements in the TOs are not consistent with the State Board's Toxicity Plan elements and would not be acceptable for statewide implementation. CCCSD believes that process initiated by the State Board in which significant state and stakeholder resources have been invested needs to be completed before significant changes to toxicity program elements of wastewater dischargers' permits are processed.	Please see response to comments above for SCAP/CASA/BACWA.	None necessary.
Comments received from Western States Petroleum Association (WSPA) on October 10, 2014				
WSPA	1	WSPA objects to the premature incorporation of numeric toxicity limits into the Whittier Narrows and Pomona Water Reclamation Plant Permits (Permits). This action circumvents extensive efforts to date by the State Water Board (SWRCB). WSPA, along with EPA Region 9 and others in the regulatory community, has	Please see response to comments above for SCAP/CASA/BACWA.	None necessary.

Commenter	#	Comment	Response	Action Taken
		been participating in the SWRCB regulatory development process to revise the Inland Surface Waters, Enclosed Bays and Estuaries Plan (Plan) to establish a statewide policy for toxicity. The formal objection letter to staff from EPA IX (dated September 4, 2014) is misleading and contrary to their own approval of both the 2009 Whittier & Pomona Permit renewals containing narrative objectives and the SWRCB order for Whittier in 2003 mandating the use of narrative limits and numeric toxicity triggers. This change in direction by USEPA as expressed in their September 4th letter should be considered suspect. The administrative record is replete with decisions & permit adoptions by various regional water boards and the SWRCB in support of narrative limits; all without objection by EPA IX. USEPA has chosen to not issue their test of significant toxicity (TST) protocol nationwide for public comment and scrutiny, and has relied upon imposing the TST on a permit by permit basis within various water board regions throughout the west. It is unsound policy for a regional board to incorporate TST provisions in this manner, especially considering the pending toxicity Plan to be soon issued by the SWRCB. WSPA recommends the Board remove the TST provisions these Permits and revert back to narrative provisions from the 2009 renewals until the SWRCB adopts their toxicity Plan.		
Comments received from City of Los Angeles, LA Sanitation (LA SAN) on October 10, 2014				
LA SAN	1	LA SAN supports the current toxicity policy in effect which requires narrative effluent limitations and triggers for initiation of toxicity identification and reduction evaluations (TIE/TRE). Requiring numeric effluent limitation in NPDES	Please see response to comments above for SCAP/CASA/BACWA.	None necessary.

Commenter	#	Comment	Response	Action Taken
		permits prior to adoption of revised toxicity provisions into each regions Basin Plan and the State Implementation Plan (SIP) is premature and may interfere with and contradict the current toxicity work that is being performed by multiple stakeholders, including treatment plants, U.S. EPA, and State and Regional Boards. LA SAN requests that the chronic toxicity limits contained in NPDES permits be removed and replaced with a current narrative chronic toxicity limit – with triggers for accelerated testing and further toxicity identification and toxicity reduction evaluations.		
LA SAN	2	LA SAN believes that the LARWQCB must allow permittees the full range of data evaluation procedures found in 40 CFR 136. Requiring permittees to comply with numeric toxicity limits based on single chronic toxicity test at 100% effluent as required in the Test of Significant Toxicity (TST) will lead to false positives and future, unwarranted liability. Furthermore, monitoring toxicity using five or more effluent dilutions as well as all available 40 CFR 136 required chronic toxicity data evaluation procedures is consistent with what is expected to be adopted by the SWRCB in the forthcoming statewide toxicity plan.	Please see response to comments above for SCAP/CASA/BACWA.	None necessary.
LA SAN	3	The purpose of TIEs and TREs is to identify the cause and evaluate methods to address toxicity. Assessing compliance during accelerated testing and TIE/TRE monitoring efforts does nothing to assist permitees in identifying and evaluating toxicity, but rather unnecessarily discourages implementation of TIE/TREs and increases liability with no noticeable improvement in water quality. LA SAN requests that the provisions for continued toxicity violations after triggering accelerated testing and initiation of a TRE removed from LACWRP's permits and all future NPDES permits.	Please see response to comments above for SCAP/CASA/BACWA.	None necessary.

Commenter	#	Comment	Response	Action Taken
Comments received from the United States Environmental Protection Agency (USEPA) on October 10, 2014				
USEPA	1	**Chronic Toxicity** USEPA strongly supports the proposed numeric WQBELs for chronic toxicity. .	We thank the USEPA for their comments in support of the tentative permit.	None necessary.
Late comments, received from the Heal the Bay on October 14, 2014, will not be included in the agenda package.				