

**SAN DIEGO REGIONAL BOARD RESPONSES TO COMMENTS  
TENTATIVE TO ORDER NO. R9-2008-0049**

**Item No. 08  
Doc. No. 9**

**A. Comments submitted by Continental Maritime of San Diego on June 5, 2008**

<b>REGIONAL BOARD RESPONSES</b>	
<b>COMMENTS</b>	
<p>Recital No. 1</p> <p>Continental Maritime of San Diego, Inc. (CMSD), hereby requests Tentative Order R9-2008-0049 be considered for adoption in concurrence with the Navy and shipyard (NASSCO and BAE) Tentative Orders. The most compelling reason for this request is to avoid a reopener to an approved Order for CMSD, should substantive changes be invoked in the Tentative Orders considered for the Navy and shipyards.</p>	<p>Reopening the permit for modification at a later date is a reasonable action to take.</p> <p>This request was denied because delaying the adoption of this tentative Order to avoid a reopener is not a compelling reason.</p>

**B. Comments submitted by BAE Systems on June 9, 2008**

<p>Recital No. 1</p> <p>I understand that Continental Maritime's permit is still to be heard on July 25. My only comment is that there may be similar issues that pertain to my permit that also pertain to Continental Maritime and I do not want to be held accountable to any precedent that may be set by adoption of their permit. It seems to me that since the Continental Permit is also a shipyard permit with very similar issues, that there is no harm in tolling the adoption of that permit until the other permits are heard. It also seems to me that there is synergy in keeping all of the shipyard permits on</p>	<p>See Response to Comment A. Recital 1.</p>
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<p>the same adoption cycle. Therefore, I urge the Regional Board not to hear the Continental Permit until the other two shipyard (and Navy) permits are heard.</p>	
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**C. Comments submitted by Cory Briggs on June 10, 2008**

<p><b>Recital No. 1</b></p> <p>In reviewing the six permits linked below, I noticed that they do not contain an express prohibition against discharges that cause or contribute to violations of California water-quality standards. Did I miss this prohibition? If so, where is it located? If not, why is the prohibition not in these permits? The permits must contain this prohibition.</p>	<p>The discharge prohibitions, receiving water limitations, and effluent limitations are based on the Basin Plan. The Basin Plan implements the applicable water quality standards.</p>
<p><b>Recital No. 2</b></p> <p>What is the legal basis for the claim in the fact sheet that the CTR does not apply to stormwater discharges? That proposition is false. The State Implementation Plan includes a footnote suggesting that it, the SIP itself, does not apply to stormwater, but there is no legal authority indicating that the CTR itself does not apply to stormwater. I'd like to know what legal authority the fact sheet's claim is based on.</p>	<p>The Regional Board staff agrees with the comment, the text is incorrectly worded and the text should be revised to state:  <u>"The SIP procedures for the implementation of CTR and NTR criteria are not applicable to storm water discharges. However, the toxicity objectives contained in the Basin Plan and the Bays and Estuary Plan are applicable to the discharge of storm water from the Facility to the San Diego Bay."</u></p>

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**D. Comments submitted by Continental Maritime of San Diego on June 11, 2008**

<b>COMMENTS</b>	<b>REGIONAL BOARD RESPONSES</b>
<p>Cover Page</p> <p>Recital No. 1</p> <p>The Cover Page of the Order has an incorrect NPDES Number CA0109134 (should be CA0109142).</p>	<p>The tentative Order will be revised.</p>
<p>Findings</p> <p>Section II.O. Anti-Backsliding Requirement</p> <p>Recital No. 2</p> <p>Because of this change, acute and chronic toxicity testing of the facility's regular effluent discharge is no longer required. All references to toxicity testing in the Tentative Order should pertain to storm water monitoring only.</p>	<p>As described in Finding O. of the tentative Order, the effluent discharge is Storm Water, and the toxicity testing applies to the Industrial Storm Water as summarized in Table E-3 of the Monitoring and Reporting Section. No changes to the tentative Order are necessary.</p>
<p>Limitations and Discharge Requirements</p> <p>Section VI.C.2.a.i and ii.</p> <p>Recital No. 3</p> <p>The Order language should be clarified to specify if a "Fail" occurs during accelerated testing with a storm water sample, and a TIE is required, that the TIE should be performed on the actual storm water sample material that resulted in toxicity (not material from the subsequent storm event). Note: the Discharger will need to collect additional</p>	<p>The Regional Board staff agrees with this comment, and the following will be added as MRP Section V.E.4.</p> <p><b><u>Any TIE conducted as a part of the TRE as specified in section VI.C.2.a of this Order shall be based on the same sample that exhibited toxicity and not from samples collected during subsequent storm events. Therefore, the discharger shall collect additional sample volume, sufficient for a TIE, when in an accelerated testing phase.</u></b></p>

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<b>REGIONAL BOARD RESPONSES</b>	
<p><b>COMMENTS</b></p> <p>sample volume when in an accelerated testing phase, to allow a TIE to be conducted with the same sample.</p>	<p>The tentative Order will be revised.</p>
<p>Limitations and Discharge Requirements</p> <p>Section VI.C.2.a.i and ii.</p> <p>Recital No. 4</p> <p>It should be noted that EPA TIE Guidance (EPA/600/6-91/003) recommends that a number of samples over time be tested to assess variability of the discharge prior to initiating a TIE. A recommendation can be provided in the TRE Plan. A suggestion would be to allow some flexibility to assess magnitude and consistency among the first couple of samples during accelerated testing prior to determining when a TIE should be initiated.</p>	<p>The Regional Board staff agrees with this comment, and the following will be added as Section VI.C.2.a.i (d)</p> <p><b><u>The determination of when a TIE is necessary.</u></b></p> <p>The tentative Order will be revised.</p>
<p>Discharge Prohibitions</p> <p>Section III.D.</p> <p>Recital No. 5</p> <p>This section requires clarification, as it states that any storm water discharge must meet the acute toxicity limits. However, the Order requires acute toxicity testing only once per year.</p>	<p>The Regional Board staff agrees with this comment, and the following will be modified in Section III.D</p> <p>The discharge of the first flush of storm water runoff from high risk areas is prohibited except if the pollutants in the discharge are reduced to the extent <b>and demonstrated through testing that the discharge achieves compliance</b> with the acute toxicity limitation specified in section IV.A of this Order. <b><u>The discharge of the remainder of the storm water must also achieve compliance with the acute toxicity limitation specified in section IV.A of this Order but only needs to be demonstrated twice per</u></b></p>

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	<p><u>year, unless under accelerated testing.</u></p> <p>The tentative Order will be revised.</p>
<p>Monitoring and Reporting Program</p> <p>Attachment E Section V.A.</p> <p>Recital No. 6</p> <p>Section V.A. uses the term "calendar year" under monitoring frequency. The Order needs to be clarified whether a one-year period goes from January to December (calendar) or from July to June (Order). This is especially important with regards to storm water monitoring and a storm season that goes from October to May. Samples must be collected and tested at a different time of the year from the previous sampling events (this being a 5-year permit, the Discharger will likely want to test during different months of the storm season).</p>	<p>The Regional Board staff agrees with this comment. "One-year period" term should be July to June because it will include the storm season that goes from October to May. The tentative Order will reflect the change in the term through out the permit.</p> <p>The tentative Order will be revised.</p>
<p>Monitoring and Reporting Program</p> <p>Attachment E Section V.A.</p> <p>Recital No. 7</p> <p>Request flexibility in the sampling schedule, as the Discharger is dependant on when an actual storm event occurs. In addition to annual toxicity testing, during Years</p>	<p>The Regional Board staff agrees with this comment, and the following will be modified in Section V.A.</p> <p>During years 1 and 5 of the Order, a split of each sample shall be analyzed for all other monitored parameters at the minimum frequency of analysis specified by the effluent monitoring program. <b><u>Sampling shall occur during storm</u></b></p>

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<p>1 and 5 of the permit, the Discharger will also be required to have analytical chemistry (as specified in the Order) performed on these same effluent samples.</p>	<p><u>events. If there are no storm events in the first year then sampling shall occur as soon as possible, likewise for the fifth year, if conditions for administrative extension are met.</u></p> <p>The tentative Order will be revised.</p>
<p>Monitoring and Reporting Program Attachment E Section V.A.</p> <p>Recital No. 8 Section V.A. says that, during Years 1 and 5, each sample shall be analyzed for all other monitored parameters, in addition to the annual toxicity testing. However, Table E-3 of Section E.IX.A.3.C. states that analytical chemistry will be performed twice each year. Clarification needs to be made as to what exactly is required during Years 1 and 5.</p>	<p>The Regional Board staff agrees and Table E-3 will be modified with the following two changes:</p> <p>Header Column:  <u>“Minimum Frequency” add an asterisks (*)</u>  <u>In the footnotes add an asterisk (*) and the following: Sampling shall occur during storm events. If there are no storm events during the year, then sampling shall occur as soon as possible. If there are no storm events during the fifth year and conditions for administrative extension are met, then sampling shall occur as soon as possible.</u></p> <p>Add an additional row to the end with the following:  <u>“Remaining CTR Priority Pollutants (footnote)5, ug/l, grab, twice in year one and twice in year five, (footnote)2”</u></p> <p>In the footnotes add footnote 5: <u>As specified in the Table of Paragraph (b)(1) of 40 CFR 131.38</u></p> <p>The tentative Order will be revised.</p>

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<p>Monitoring and Reporting Program</p> <p>Attachment E Section V.A.</p> <p>Recital No. 9</p> <p>Request clarification of this language, as the Discharger is only required to conduct acute testing once per year. Does this mean, perform the 2 tests and determine the most sensitive species the 1st year, and then test in subsequent years only with the most sensitive species? Or, is the Discharger required to test 2 species in each year?</p>	<p>The Regional Board staff agrees with this comment. The discharger is required to test 2 species in each year and Section V.A. will be modified to:</p> <p>... continue to conduct routine toxicity testing using the single, most sensitive species, <u>including testing for accelerated monitoring, until the next sensitivity testing the following year.</u></p> <p>The tentative Order will be revised.</p>
<p>Monitoring and Reporting Program</p> <p>Attachment E Section V.C.</p> <p>Recital No. 10</p> <p>Results relative to control also need to be greater than the lower 10% percentile PMSD as specified in Quality Assurance Section E.V.D.7. of the Permit This section references Table 3-6 in EPA/833/R-00/003,2000. This clarification needs to be added to Section E.V.C. Compliance Determination.</p>	<p>The Regional Board staff agrees with the comment that for the test to be valid, it must meet the QA listed in the QA Section E.V.D. immediately following the Compliance Determination Section E.V.C.</p> <p>Since the QA is in the section immediately following Attachment E Section E.V.C., the tentative Order will not be revised.</p>
<p>Monitoring and Reporting Program</p> <p>Attachment E Section V.E.1.</p>	<p>Attachment E Section V.E.1. will be modified to include the suggestion and the following:</p>

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<p>Recital No. 11 Suggest adding "likely" before "source of toxicity" and "and or previous investigations that have identified the cause of toxicity" after housekeeping records.</p>	<p><b>1.</b> If an acute WET permit limit is exceeded and the <b>likely</b> source of toxicity is known (e.g., a temporary plant upset), then the permittee shall conduct one additional toxicity test using the same species and test method. This test shall begin within 14 days of receipt of test results exceeding an acute WET permit limit. If the additional toxicity test does not exceed an acute WET permit limit, then the permittee may return to their regular testing frequency. <b><u>The determination of the likely source of toxicity must be demonstrated by implementing the first two parts of the TRE workplan (VI.C.2.a.i. (a) and (b) of this Order).</u></b></p> <p><b>2.</b> If an acute WET permit limit is exceeded and the source of toxicity is not known, then the permittee shall conduct accelerated toxicity testing using the same species and test method. The accelerated toxicity monitoring shall include monitoring of the next 4 storm events. This testing shall begin within 14 days of receipt of test results exceeding an acute WET permit limit or trigger. If none of the additional toxicity tests exceed an acute WET permit limit or trigger, then the permittee may return to their regular testing frequency.</p> <p><b>3.</b> If one of the additional toxicity tests exceeds an acute WET permit limit, then, within 14 days of receipt of this test result, the permittee shall initiate a TRE as specified in section VI.C.2.a of the Order.  The tentative Order will be revised.</p>



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<p>Monitoring and Reporting Program Attachment E Section V.D.6.  Recital No. 12 In Section E.V.D.6, the paragraph discusses reporting requirements when performing multi-concentration tests. However, all acute toxicity tests required by this Order are performed using a single concentration of undiluted sample material. Therefore, this paragraph does not apply to this Order and should be struck or designated 'not applicable'.</p>	<p>This will be designated not applicable.  The tentative Order will be revised.</p>
<p>Monitoring and Reporting Program Attachment E Section V.F.1.  Recital No. 13 Because acute testing is performed with a single concentration, it should be noted that an accurate LC50 cannot be determined if more than 50% mortality occurs in the single concentration. Also, if more than 50% mortality occurs, a precise TUa value cannot be determined, as the LC50 is used to calculate the TUa value. Therefore, when more than 50% mortality occurs, it can only be accurately reported that the <math>LC50 &lt; 100\%</math> and the <math>TUa &gt; 1.0</math>.</p>	<p>Comment noted  The tentative Order will not be revised.</p>
<p>Monitoring and Reporting Program Attachment E Section V.C.</p>	<p>See Response to Comment in Recital No. 3 and No. 4</p>

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<p>Recital No. 14 Please refer to prior comments provided under the TRE section.</p> <p>Monitoring and Reporting Program</p> <p>Attachment E Section V.D.7.</p> <p>Recital No. 15 In addition to using statistical significance to determine a test exceedance, mean sample results relative to the concurrent control also need to be greater than the lower 10% percentile PMSD as specified in Quality Assurance Section E.V.A.4.g of the Acute Testing Requirements. It should be further clarified that the lower 10% percentile PMSD value is not an acceptability criterion, but rather used to avoid erroneously concluding that an effect exists when differences from control are small and consequently penalizing data that is less variable than typical (EPA/833/R-00/003,20)</p> <p>Recital No. 16 Section E I. CMSD has not been issued a sediment Cleanup and Abatement Order. Comment: Delete language.</p> <p>Monitoring and Reporting Program</p>	<p>The Regional Board staff agree with the comment that the text "excessive variability invalidates a test result" implies that the data quality is the issue and not that the storm water has failed the toxicity limit.</p> <p>Comment noted.</p> <p>The tentative Order will not be revised.</p> <p>The Regional Board staff agrees with this comment and the text will be deleted and replaced with the following text: <b><u>Sediment monitoring, as specified in this MRP is required.</u></b></p> <p>The tentative Order will be revised.</p>

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<p>Attachment E Section IX.A.3.a</p> <p>Recital No. 17 'Sampling of stored or contained storm water shall occur at the time the stored or contained storm water is released.' Comment: Sampling of stored or contained storm water shall occur <i>prior to</i> or at the time the stored or contained storm water is released.</p>	<p>Regional Board staff agrees with the comment and Section IX.A.3.a will be modified to include "<u>prior to or</u>"</p> <p>The tentative Order will be revised.</p>
<p>Monitoring and Reporting Program</p> <p>Attachment E Section X.B.3. Table E-8</p> <p>Recital No. 18 Continue sediment monitoring reporting on the current schedule of September 1<sup>st</sup>.</p>	<p>The Regional Board staff agrees with the comment, the text in Table E-8 will be modified for the "Annual" sampling frequency" as follows:</p> <p>Delete "January 1 through December 31" and replace with "<u>July 1 through June 30</u>"</p> <p>The tentative Order will be revised.</p>
<p>Fact Sheet</p> <p>Attachment F Section I.B. paragraph 2</p> <p>Recital No. 19 CMSD has not been issued a sediment Cleanup and Abatement Order. Comment: Delete language.</p>	<p>The Regional Board staff agrees with this comment and the text will be deleted.</p> <p>The tentative Order will be revised.</p>

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<p>Fact Sheet Attachment F Section II.B. paragraph 3  Recital No. 20 CMSD has not been issued a sediment Cleanup and Abatement Order. Comment: Delete language.</p>	<p>The Regional Board staff agrees with this comment and the text will be deleted.  The tentative Order will be revised.</p>
<p>Fact Sheet Attachment F Section VI.E.3  Recital No. 21 Section E. 3. The General Shipyard Permit for CMSD was Order 97-37 NPDES, No. CAG039002, not Order 97-36, NPDES CAG 039001. CMSD believes Order 97-36 was NASSCO or BAE (Southwest Marine). CMSD has not been issued a sediment Cleanup and Abatement Order. Comment: Delete language.</p>	<p>The Regional Board staff agrees with this comment and the text will be deleted.  The tentative Order will be revised.</p>