

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

**Item No. 08
Doc. No. 13**

A. Comments submitted by Russell McCarthy, Manager, Environmental, Health and Safety, Continental Maritime of San Diego, Inc. on June 5, 2008

| COMMENTS | REGIONAL BOARD RESPONSES |
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| <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>This request was denied because delaying the adoption of this tentative Order to avoid reopening the permit at a later date is not a compelling reason.</p> |

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

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| <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 the same adoption cycle.</p> <p>Therefore, I urge the Regional Board not to hear the Continental Permit until the other two shipyard (and Navy) permits are heard.</p> | <p>See Response to Comment A. Recital 1.</p> |

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C. Comments submitted by Cory J. Briggs, Briggs Law Corporation on June 10, 2008

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| <p>Recital No. 1</p> <p>In reviewing the six permits linked below, I noticed that they do not contain an express prohibition against discharges that cause or contribution 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 Regional Board staff agrees with the comment, the text will be revised in to include the following:</p> <p>Discharge Prohibitions, Section III.K.</p> <p><u>“The discharge of wastes that cause or contribute to the violation of water quality standards (designated beneficial uses and water quality objectives developed to protect beneficial uses) is prohibited.”</u></p> |
| <p>Recital No. 2</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 will be revised to state:</p> <p>Attachment F-Fact Sheet, Section IV.C.3.</p> <p><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> <p>Findings, Section II.I.</p> <p><u>“These rules include water quality criteria for priority pollutants and are applicable to this discharge.”</u></p> |

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| | <p>Findings, Section II.J.</p> <p><u>“The SIP is not applicable to the storm water discharges authorized by this Order.”</u></p> <p>Receiving Water Limitations, Section V.A.</p> <p><u>“Unless specifically excepted by this Order, the discharge, by itself or jointly with any other discharge(s), shall not cause violation of the CTR Saltwater criteria nor the CTR Human Health - Organisms Only criteria.”</u></p> <p>Attachment F-Fact Sheet, Section IV.D.1</p> <p>Annual monitoring of the CTR priority pollutants has been added to <u>determine compliance with receiving water limitations and to</u> help determine background levels in the receiving water for future permitting efforts (i.e., if the Discharger wanted to add an additional industrial discharge in future permits) and provide data to help determine long-term trends in receiving water quality.</p> |

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D. Comments submitted by Russell McCarthy, Manager, Environmental, Health and Safety, Continental Maritime of San Diego, Inc. on June 11, 2008

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| <p>Recital No. 1</p> <p>Cover Page</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>Recital No. 2</p> <p>Findings</p> <p>Section II.O. Anti-Backsliding Requirement</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> |

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| <p>Recital No. 3</p> <p>Limitations and Discharge Requirements Section VI.C.2.a.i and ii.</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 sample volume when in an accelerated testing phase, to allow a TIE to be conducted with the same sample.</p> | <p>The Regional Board staff agrees with this comment, and the following will be added as MRP Section V.E.4.</p> <p><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></p> <p>The tentative Order will be revised.</p> |
| <p>Recital No. 4</p> <p>Limitations and Discharge Requirements Section VI.C.2.a.i and ii.</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><u>The determination of when a TIE is necessary.</u></p> <p>The tentative Order will be revised.</p> |

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| <p>Recital No. 5</p> <p>Discharge Prohibitions Section III.D.</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 <u>and demonstrated through testing</u> that <u>the discharge achieves</u> compliance with the acute toxicity limitation specified in section IV.A of this Order. <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 year, unless under accelerated testing.</u></p> <p>The tentative Order will be revised.</p> |

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| <p>Recital No. 6</p> <p>Monitoring and Reporting Program Attachment E Section V.A.</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 to 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> |

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| <p>Recital No. 7</p> <p>Monitoring and Reporting Program Attachment E Section V.A.</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 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>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. <u>Sampling shall occur during storm 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> |

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| <p>Recital No. 8</p> <p>Monitoring and Reporting Program Attachment E Section V.A.</p> <p>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: “Minimum Frequency” add an asterisks (*) In the footnotes add an asterisk (*) and the following: <u>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>Recital No. 9</p> <p>Monitoring and Reporting Program Attachment E Section V.A.</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>Recital No. 10</p> <p>Monitoring and Reporting Program Attachment E Section V.C.</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> |
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| <p>Recital No. 11</p> <p>Monitoring and Reporting Program Attachment E Section V.E.1.</p> <p>Suggest adding "likely" before "source of toxicity" and "and or previous investigations that have identified the cause of toxicity" after housekeeping records.</p> | <p>Attachment E Section V.E.1. will be modified to include the suggestion and the following:</p> <ol style="list-style-type: none"> 1. If an acute WET permit limit is exceeded and the <u>likely</u> 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. <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> 2. 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. 3. If one of the additional toxicity tests exceeds an acute WET permit limit, then, within 14 days of receipt of |

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| | <p>this test result, the permittee shall initiate a TRE as specified in section VI.C.2.a of the Order.</p> <p>The tentative Order will be revised.</p> |
| <p>Recital No. 12</p> <p>Monitoring and Reporting Program Attachment E Section V.D.6.</p> <p>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.</p> <p>The tentative Order will be revised.</p> |

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| <p>Recital No. 13</p> <p>Monitoring and Reporting Program Attachment E Section V.F.1.</p> <p>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 LC50 < 100% and the TUa > 1.0.</p> | <p>Comment noted</p> <p>The tentative Order will not be revised.</p> |
| <p>Recital No. 14</p> <p>Monitoring and Reporting Program Attachment E Section V.C.</p> <p>Please refer to prior comments provided under the TRE section.</p> | <p>See Response to Comment D. Recital No. 3 and No. 4</p> |

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| <p>Recital No. 15</p> <p>Monitoring and Reporting Program Attachment E Section V.D.7.</p> <p>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>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>Recital No. 16</p> <p>Section E I . 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 and replaced with the following text:</p> <p><u>Sediment monitoring, as specified in this MRP is required.</u></p> <p>The tentative Order will be revised.</p> |

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| <p>Recital No. 17</p> <p>Monitoring and Reporting Program Attachment E Section IX.A.3.a</p> <p>'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 or</i> 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>Recital No. 18</p> <p>Monitoring and Reporting Program Attachment E Section X.B.3. Table E-8</p> <p>Continue sediment monitoring reporting on the current schedule of September 1st.</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> |

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| <p>Recital No. 19</p> <p>Fact Sheet Attachment F Section I.B. paragraph 2</p> <p>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> |
| <p>Recital No. 20</p> <p>Fact Sheet Attachment F Section II.B. paragraph 3</p> <p>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>Recital No. 21</p> <p>Fact Sheet Attachment F Section VI.E.3</p> <p>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.</p> <p>The tentative Order will be revised.</p> |

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E. Comments submitted by Brian Gordon, NAVFACSW Environmental, US Navy on June 11, 2008

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| <p>Recital No. 1</p> <p>Hi John, I noticed the Continental Maritime(CM) NPDES permit is still on the schedule for the 25 July hearing. Since many of the conditions in that permit are the same or similar to conditions in the Navy and other shipyard permits it makes a lot of sense to postpone the CM permit. My concern is the CM permit will set precedent for the other permits. I don't understand why the a single shipyard permit would be separated from the others.</p> <p>I request the Regional Board consider postponing the CM permit to align with the other NPDES permits.</p> | <p>The timely adoption of revised NPDES Permits is essential. This permit is ready and at this time there is no compelling reason to further delay adoption.</p> |

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**F. Comments submitted by Patti Krebs, Executive Director, Industrial Environmental Association
on June 13, 2008**

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| <p>Recital No. 1</p> <p>On behalf of the Industrial Environmental Association (IEA), we would respectfully request that Tentative Order No. R9-2008-0049 be postponed and considered for adoption in concurrence with the Navy and other shipyard (NASSCO and BAE) Tentative Orders. Major issues, particularly with regard to the acute toxicity requirements and testing, are similar, and we believe they should all be addressed on a comprehensive, not piecemeal, basis.</p> | <p>See Response to Comment E. Recital 1.</p> |

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G. Comments submitted by Gabriel Solmer, Legal Director and Mary Kate Oehrlein, Legal Intern, San Diego Coastkeeper on June 18, 2008

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| <p>Recital No. 1</p> <p>In reviewing the tentative CMSD permit, we are appreciative of the Regional Board's implementation of a new, more stringent acute toxicity standard. The current standard is ambiguous, and has never been satisfactorily defined as to when and where it applies. The tentative permit however, contains a new acute toxicity standard which appears to be more protective of water quality than the current standard and also provides a clear, definitive test that can be more easily applied and enforced.</p> | <p>Comment noted.</p> |

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| <p>Recital No. 2</p> <p>Unfortunately, our review also revealed a deficiency so serious that we urge the Regional Board to promptly correct, or reject the proposed permit.</p> <p>The tentative CMSD’s permit contains an apparent exemption from the well-recognized requirement that storm water discharges comply with the California Toxics Rule (CTR). The proposed permit states: “The CTR and NTR criteria implemented are only applicable to non-storm water discharges.” As a legal matter, however, the CTR does apply to storm water discharges and so any exemption from compliance with the CTR would be unlawful. On that basis, the permit should be revised or rejected.</p> | <p>See Response to Comment C. Recital 2.</p> |

H. Comments submitted by Robyn Stuber, US Environmental Protection Agency on June 19, 2008

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| <p>Recital No. 1</p> <p>We strongly support the proposed acute toxicity permit language used in the draft Maratime permit. It is wholly consistent with the Basin Plan narrative objective for toxicity and we view it as model acute toxicity language for other RB9 issued permits which discharge to inland waters and estuaries.</p> | <p>Comment noted.</p> |

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| <p>Recital No. 2</p> <p>Page 13 -- Acute toxicity effluent limit (Paragraph IV. A) fully consistent with Basin Plan narrative objective. We support this approach.</p> | <p>Comment noted.</p> |
| <p>Recital No. 3</p> <p>Page 23 -- Compliance determination language (Paragraph VII.A.1) is fully consistent with acute toxicity effluent limit and Basin Plan narrative objective. We support this approach.</p> | <p>Comment noted.</p> |
| <p>Recital No. 4</p> <p>Page 21 -- Recommend revising the last sentence to "... applicable to acute or chronic toxicity." This is more fully protective of basin plan water quality objectives, where new policies/requirements for both acute and chronic toxicity may developed by the State Board during the 5-year term of this permit.</p> | <p>The Regional Board staff will implement this recommendation.</p> <p>The tentative Order will be revised see Provisions, Section VI.C.1.f.</p> |

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| <p>Recital No. 5</p> <p>Page E-9 -- Recommend adding the following sentence, as the second sentence, to the first paragraph under Section B: "In a 96-hour static renewal test, the renewal shall be made at 48-hours using the original effluent sample." This is recommended because the required test duration is 96-hours and sampled storm events may not last long enough to collect a new effluent sample for the renewal at 48 hours.</p> | <p>The Regional Board staff will implement this recommendation.</p> <p>The tentative Order will be revised see Attachment E-Monitoring and Reporting Program, Section V.B.</p> |
| <p>Recital No. 6</p> <p>Page E-9 -- In Table E-3, recommend revising units for acute toxicity from "% survival" to "Pass-Fail", consistent with the expression of the proposed acute toxicity effluent limit.</p> | <p>The Regional Board staff will implement this recommendation.</p> <p>The tentative Order will be revised see Attachment E-Monitoring and Reporting Program, Section IX.A.3.c. Table E-3.</p> |

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| <p>Recital No. 7</p> <p>Page E-9 -- In Table E-3, recommend that the minimum frequency for acute toxicity monitoring be revised from 1 storm per year to 2 storms per year, consistent with that for other monitored parameters. We are making this recommendation because the likelihood of detecting at least one acutely toxic event remains quite low with only 5 samples, but increases with more samples. See also, p. E-3, last sentence in Paragraph V.A. (See attached file: Table 3-1 from EPA R9 and 10 TTT (Nov 2007).doc)</p> | <p>The Regional Board staff will implement this recommendation.</p> <p>The tentative Order will be revised see Attachment E-Monitoring and Reporting Program, Section V.A. and see Attachment E-Monitoring and Reporting Program, Section IX.A.3.c. Table E-3.</p> |
| <p>Recital No. 8</p> <p>Page E-4 -- Under Section B, first bullet, replace "(i.e., 96-hour LC50, etc.)" with "(i.e., 96-hour Pass-Fail test)", consistent with acute toxicity permit limit.</p> | <p>The Regional Board staff will implement this recommendation.</p> <p>The tentative Order will be revised see Attachment E-Monitoring and Reporting Program, Section V.B.</p> |
| <p>Recital No. 9</p> <p>Page E-4 -- Recommend striking second and third bullets under Section B. The test species in these paragraphs are East Coast species and are not a priority for testing the acute toxicity of discharges to west coast marine waters; rather we support that topsmelt, a west coast species, be the sole fish tested for acute toxicity.</p> | <p>The Regional Board staff will implement this recommendation.</p> <p>The tentative Order will be revised see Attachment E-Monitoring and Reporting Program, Section V.B.</p> |

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

| COMMENTS | REGIONAL BOARD RESPONSES |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Recital No. 10</p> <p>Page E-4 -- Recommend adding the phrase ", only if <i>Holmesimysis costata</i> is not available.", to the fifth bullet under Section B</p> | <p>The Regional Board staff will implement this recommendation.</p> <p>The tentative Order will be revised see Attachment E-Monitoring and Reporting Program, Section V.B.</p> |