

California Regional Water Quality Control Board  
San Diego Region

# Response to Comments Report

Tentative Order R9-2019-0008

NPDES No. CAG719001

General Waste Discharge Requirements  
For Discharges from Boatyards and Boat Maintenance and Repair Facilities Adjacent to  
Surface Waters within the San Diego Region

October 9, 2019



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

2375 Northside Drive, Suite 100  
San Diego, California 92108  
Telephone: (619) 516-1990

Documents are available at: <http://www.waterboards.ca.gov/sandiego>

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This report was prepared  
by  
Vicente Rodriguez, *Water Resource Control Engineer*  
Keith Yaeger, *Environmental Scientist*

under the direction of  
David Barker, P.E., *Supervising Water Resource Control Engineer*  
Ben Neill, P.E., *Water Resource Control Engineer*

## INTRODUCTION

This report contains San Diego Water Board responses to written comments received on Tentative Order No. R9 2019-0008, NPDES No. CAG719001, *General Waste Discharge Requirements, for Discharges from Boatyards and Boat Maintenance and Repair Facilities Adjacent to Surface Waters within the San Diego Region* (Tentative Order). The San Diego Water Board provided public notice of the release of the Tentative Order on July 15, 2019 and provided a period of 45 days for public review and comment on the Tentative Order. The public comment period ended on August 29, 2019.

### Comments received by August 29, 2019 from:

Koehler Kraft Company, Inc.  
Shelter Island  
Dana Point  
Nielsen Beaumont  
Oceanside Marine Centre

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### **Comments and Responses**

The summarized written comments and San Diego Water Board responses are set forth in Table 2 below. The responses include a description of any actions taken to revise the Tentative Order in response to the comment. Proposed revisions to the Tentative Order in red-underline for added text and ~~red-strikeout~~ for deleted text.

## COMMENTS AND RESPONSES

Five commenters provided the San Diego Water Board with comments on the Tentative Order. The comments and responses are organized by each commenter. The San Diego Water Board responses are labeled and follow each comment.

1. Liz Karhan, Koehler Kraft Company, Inc.

### Comment

The highlighted verbiage below [the Tentative Order's description of Koehler Kraft facility in Attachment F, section I.C.3] is not accurate. As per our engineer's report, the water collected in the evaporation basin is stored in the pit and evaporates naturally. The verbiage about sprinklers or pumps should be excluded. There is no storm water run off - the pit is capable of containing a 24 hour / 5-year storm. The last sentence about solids being swept up and disposed of is accurate and should stay in the verbiage.

### Response

The San Diego Water Board concurs with the request and has modified the Koehler Kraft facility description in the Tentative Order as follows:

#### Attachment F – Section I.C.3 (page F-7)

The facility is approximately 30,000 square feet (approximately 0.69 acres), the surface of which is impervious. The facility includes a building, parking lot and yard area. Boat repair activities occurring inside the building are not exposed to storm water. Building runoff is directed into a rock lawn between the facility and the sidewalk of Shelter Island Drive for percolation. Parking lot runoff is directed into ~~evaporation the containment~~ basins. Boat repair activities that occur in the yard area are exposed to storm water. Storm water and hydrowash water are collected in ~~an evaporation the containment~~ basin, ~~filtered, and sprinkled onsite over concrete to increase evaporation.~~ The total storm water storage capacity at the facility is 24,300 gallons. Storm water runoff exceeding the capacity of the ~~evaporation-containment~~ basin is discharged to the San Diego Bay at America's Cup Harbor, a water of the United States. Solids from the evaporation basin are swept up and disposed of in the trash.

## **Action Taken**

The Tentative Order is revised as described in the response section above at Attachment F – Section I.C.3.

### 2. Roy Hobbs, CEO, Shelter Island Boatyard

#### **Comment**

Shelter Island Boatyard thanks the San Diego Regional Water Quality Control Board for the opportunity to comment on the subject order. Here are our comments.

We respectfully ask that the Board rescind its new requirement that we collect storm water discharge samples after normal operating hours. We believe that we will be unable to effectively collect such samples if we face an unexpected and catastrophic downpour late at night. Please note that discharges are rare and extremely unlikely given our history. We haven't discharged since approximately 1987.

We are a small business with limited resources. We really don't know how to cost-effectively collect samples off the clock. Even if we carefully plan out a rainfall event, we are subject to failure during nonoperating hours due to a surprise and immediate rainfall deluge. We simply lack personnel who, after a hard day's work, are reasonably able to be here at 3 a.m. to either prevent or sample a fugitive discharge.

During operating hours, we can muster regular crew to avoid discharge. We can engage additional pumps and storage. If there is an electrical outage, we can set out gasoline power portable pumps, and/or rig a generator. If there is a discharge, we will be able to observe its location and take a sample. Those and other alternatives are not reliable options after hours and in the dark.

We looked at the feasibility of installing automatic sampling equipment. The engineering would be extremely challenging given the number of potential sampling points and unknown areas where discharge might occur. The equipment, maintenance and equipment-exercising effort would be extremely costly. We know from the experience of large facilities that this equipment requires significant attention and has been unreliable.

Please note that our current permit requires only operating-hours sampling. We also note that the current NPDES General Permit for Storm Water Discharge Associated with Industrial Activities only requires sampling during scheduled facility operating hours.

We believe that we and other boatyards, when faced with such an event, will find it almost impossible to meet this requirement. Unfortunately, we may face severe penalties for noncompliance, yet we will still be without an after-hours sample.

If your objective is to obtain samples from boatyard stormwater runoff, we suggest you focus on boatyard facilities which are likely to experience stormwater discharge during the rainy months. Our boatyard is designed to contain all rainwater. We are extremely unlikely to discharge. We are not structurally set up to collect samples after operating hours.

To summarize, we believe that after-hours sampling is impracticable in the circumstances we have outlined. We believe there is little or nothing to be gained by such a requirement. We believe you should only require sampling during scheduled facility operating hours.

Thank you again for allowing us to comment on this Tentative Order.

## **Response**

The San Diego Water Board does not agree with the request to remove the Tentative Order's requirement to collect samples during a discharge at any time of day, including hours that the facility is not operating.

Clean Water Act (CWA) section 308 and 40 CFR sections 122.41(h), (j)-(l), 122.44(i), and 122.48 require that all NPDES permits specify monitoring and reporting requirements. Water Code sections 13267 and 13383 also authorize the San Diego Water Board to establish monitoring. Effluent monitoring is required to determine compliance with the conditions of this General Order, identify operational problems, improve treatment performance, and conduct reasonable potential analyses for subsequent Orders. Effluent monitoring also provides information on industrial storm water characteristics for use in interpreting water quality and biological data. Ecosystem beneficial uses exist in perpetuity and would still receive storm water discharges outside of a Boatyard's business hours that could contribute to an excursion of water quality objectives. Therefore, monitoring should include all discharges with a potential to contribute pollutants that may impact beneficial uses.

Attachment E section V.D.5 of the Tentative Order requires Dischargers to sample industrial storm water at any time of the day that industrial storm water discharges to receiving waters. However, not every industrial storm water discharge requires monitoring. The Tentative Order specifies the minimum frequency of sampling in Attachment E section III.A.1, Table E-3 as once or twice a year based on the type of pollutant being sampled. Once the minimum

sampling frequency is satisfied the Discharger is no longer required to continue discharge sampling for that year.

Sampling the industrial storm water discharge at any time of the day at the specified frequency allows for sufficient data to be collected to identify pollutants and assess the water quality of the discharge, identify operational problems, evaluate the effectiveness of Best Management Practices (BMPs), and evaluate compliance with the Tentative Order. Sampling the industrial storm water discharge at any time of the day at the specified frequency will also provide data to conduct a reasonable potential analysis as needed to determine what pollutants may require water quality-based effluent limitations in future permits.

The requirement to sample a discharge at any time of day is not expected to be overly burdensome since all currently regulated Boatyards have the ability to capture the first flush (the surface runoff resulting from the initial 0.25 inches of rainfall) from industrial portions of the facilities, and most regulated Boatyards capture the storm water from storms smaller than a 5-year, 24-hour frequency storm event as required by the Tentative Order for Category 2 facilities. If a Boatyard does not discharge, then the Boatyard is not required to sample. For those few Boatyards that are currently unable to capture storm water from storms less than a 5-year, 24-hour frequency, an analysis of historic precipitation records from Lindbergh Field in the City of San Diego indicates that those Boatyards would have only been required to sample industrial storm water discharges on three occasions during the term of General NPDES Permit Order No. R9-2013-0026 (Current Order) between the years 2013 to 2019. During the permit term of the Current Order, only one Boatyard sampled one qualifying storm event that discharged storm water during operating hours. One sampling event does not provide sufficient data for the San Diego Water Board to adequately assess the potential for the discharge to cause or contribute to an excursion of water quality objectives. Furthermore, limiting monitoring only during business hours does not provide data regarding all storm water discharges that could impact beneficial uses.

The San Diego Water Board has not modified the Tentative Order.

### **Action Taken**

None.

### **3. Catherine Cope, Vice President, CFO, Dana Point Shipyard**

#### **3.1. Comment**

Attachment G, Page 6, Application Requirements, A.1 "filing Fee". The language is confusing, and we feel should be clarified throughout the entire tentative



permit. All references to NOI [Notice of Intent] and fee language should reflect "New NOI applications only" and NOI fee will not apply to existing permit holders.

## **Response**

The San Diego Water Board agrees with modifying the text to reflect that a filing fee is only required for new enrollment applications. The filing fee does not apply to Dischargers already covered under the Current Order because those Dischargers are already paying an annual fee. The San Diego Water Board has modified the Tentative Order as follows:

### Section II.A.1. (page 6)

Any person proposing to discharge industrial storm water runoff from a boatyard or a boat maintenance and repair facility located adjacent to a surface water in the San Diego Region shall submit a completed Notice of Intent (NOI) Form (Attachment G), with filing fee for coverage under this General Order and obtain authorization from the San Diego Water Board prior to discharging industrial storm water runoff. The filing fee only applies to new Dischargers. Existing Dischargers will continue to be invoiced annually.

### Section II.A.2. (page 6)

Any person proposing to discharge ballast or flood water from floating drydocks to San Diego Bay shall submit a completed NOI Form (Attachment G) with filing fee for coverage under this General Order and obtain authorization from the San Diego Water Board prior to discharging ballast or flood water from floating drydocks. The filing fee only applies to new Dischargers. Existing Dischargers will continue to be invoiced annually.

### Attachment F, Section II.B. (page F-12)

Boatyards enrolled under General Order No. R9-2013-0026 and listed in Table F-1 shall ~~to~~ submit an NOI to enroll under this General Order and do not need to submit a filing fee. Existing Dischargers will continue to be invoiced annually.

### Attachment G – Section II. (page G-1)

Application Fee in accordance with California Code of Regulations Title 23. Division 3. Chapter 9. Waste Discharge Reports and Requirements Article 1. section 2200 (b)(3) Annual Fee Schedules.

Make checks payable to the State Water Resources Control Board. The fee regulations can be accessed at

<http://www.waterboards.ca.gov/resources/fees/#npdes>.

The filing fee only applies to new Dischargers. Existing Dischargers will continue to be invoiced annually.

Amount Submitted: \$ \_\_\_\_\_

Attachment G – Section XIII. (page G-5)

Submit the NOI, first annual fee (Only applies to new Dischargers. Existing Dischargers will continue to be invoiced annually.), map, and other attachments to the following address

**Action Taken**

The Tentative Order is revised as described in the response section above at Section II.A.1. (page 6), Section II.A.2. (page 6), Attachment F, Section II.B. (page F-12), Attachment G – Section II. (page G-1), and, Attachment G – Section XIII. (page G-5)

**3.2. Comment**

Attachment D, Page D-2, F.2,3,4. The Board should consider changing language "at reasonable times" to "during Business hours."

**Response**

The San Diego Water Board does not agree with modifying the text because "reasonable times" may include times that are not during business hours. Please see the response to Comment No. 2.

**Action Taken**

None.

**3.3. Comment**

Attachment E, Page E-6 thru E-11, Core Monitoring Requirements A.1, Table E-3. The additional 6 pages of constituents/tests etc. that are being proposed, may already be monitored and tested by other State and Local agencies, different coalitions, third parties etc. and to now ask Boatyards to also monitor and sample for these additional constituents if a discharge occurs (equipment failure, power outage) may be causing double data collection and would be very cost prohibitive for most small boatyards.

**Response**

Attachment E section III.A.1, Table E-3 of the Tentative Order lists the parameters and frequency of monitoring for industrial storm water discharges. The list includes a scan for priority pollutants from one Qualifying Storm Event per year. The priority pollutant scans will enable the Boatyards to identify additional pollutants and assess the water quality of the discharge, identify

operational problems, evaluate the effectiveness of BMPs, and evaluate compliance with the Tentative Order. The required priority pollutant scans will also provide data to conduct a reasonable potential analysis as needed to determine what pollutants may require water quality-based effluent limitations in future permits. If the industrial storm water discharge is monitored for other purposes, the Discharger may use the results for compliance with the Tentative Order as long as appropriate test methods are used as specified in Attachment E, section I.C on page E-3. However, the San Diego Water Board is not aware of any other state and local agencies that are monitoring the industrial storm water discharges from Boatyards.

### **Action Taken**

None.

### **3.4. Comment**

BMP Inspections, Page E-33, D.1.A. "BMP inspections should be conducted on a weekly basis." While our facility has diligently tried to perform BMP inspections on a weekly basis during this last permit cycle, it is sometimes difficult to actually execute, especially during busy summer months. Would the Board consider Bi-weekly inspections for the new permit?

### **Response**

BMPs are a pre-emptive form of treatment or control to reduce or prevent discharges. A weekly inspection frequency provides the Discharger feedback on the conditions and effectiveness of the BMPs. While implementing BMPs is a continuous process, conducting inspections on a weekly basis provides a timely feedback mechanism so the Boatyard and the San Diego Water Board can determine if the BMPs are achieving their purpose(s), and whether additional or improved BMPs, or other actions are required to prevent or control discharges.

### **Action Taken**

None.

### **3.5. Comment**

Forms, Attachment G, Page G.1. The first box. There is no box to check for "Renew existing boatyard permit" or other language the Board may want to use for existing permit holders. When I read this first question for the NOI application, there was no box to check for existing permit holders other than "Other."

### **Response**

The San Diego Water Board agrees with modifying the text to add a check box for existing Dischargers. The San Diego Water Board has modified the Tentative Order as follows:

#### Attachment G – Section II. (page G-1)

A new enrollment for a boatyard and/or boat maintenance and repair facility located adjacent to a surface water.

[A renewal of an existing enrollment for a boatyard and/or boat maintenance and repair facility located adjacent to a surface water.](#)

Change of information or circumstances including but not limited to: ...

**Action Taken**

The Tentative Order is revised as described in the response section above at Attachment G, Section II (page G-1).

**3.6. Comment**

Storm Water Monitoring Requirements: This change in monitoring /sampling has changed from "during business hours" (Sample collection if discharge occurs, which has been in effect for the last 30 years) to "anytime of the day". This was explained to us as meaning "24 hrs a day". We feel this requirement would be overly burdensome. We believe this may require us to install very costly equipment and to also have a person on site during the night in case there was an accidental discharge during a storm event due to possible power outage or equipment failure. We would like to see the proposed language changed back to "during Business hours" if possible.

**Response**

See Response to Comment No. 2.

**Action Taken**

None.

4. Thomas A. Nielsen, Chief Operations Officer, Nielsen Beaumont Marine, Inc.

**4.1. Comment**

I would like an explanation as to why Nielsen Beaumont Marine which has a No Exposure Certification (NEC) is required to get an NPDES permit. The Clean Water Act authorizes EPA and states, which are delegated the authority by EPA, to regulate point sources that discharge pollutants into waters of the United States through the National Pollutant Discharge Elimination System (NPDES) permit program. Since we don't discharge, it seems to me that we would not require an NPDES Permit.

**Response**

Nielsen Beaumont Marine has chosen to comply with the requirements of the Current Order by registering for No Exposure Certification (NEC) coverage. Complying with the Current Order's requirements for NEC coverage does not eliminate the regulatory need to obtain coverage under an NPDES permit that implements NEC coverage.

The Tentative Order has several requirements carried over from the Current Order including the option for a Discharger to register for NEC coverage by certifying their Boatyard has no industrial activities or materials exposed to storm water, in accordance with the requirements set forth in section IX of the Tentative Order. Under the terms of section IX.F of the Tentative Order, Dischargers which have been previously registered for NEC coverage under the Current Order must continue to annually submit and certify an NEC Annual Certification Report demonstrating that the facility has been evaluated, and that no industrial materials or activities as described in section IX are, or will be in the foreseeable future, exposed to precipitation and have the potential to be discharged in storm water, aurally, or by other means.

### **Action Taken**

None.

### **4.2. Comment**

I would also like to suggest that the Water Board could provide incentives for other boatyards or similar facilities to accomplish the level of environmental stewardship that Nielsen Beaumont has achieved and if they were able to get an NEC. One way to do that would to eliminate the need for the NPDES permit. There may be other ways as well.

### **Response**

The Tentative Order includes several incentives to encourage environmental stewardship. For example, the Tentative Order eliminates most of the monitoring requirements if registration for NEC coverage is accepted by the San Diego Water Board. Reduction of monitoring requirements provides an incentive for Dischargers to make the necessary facility modifications that can satisfy the requirements for NEC coverage. Under the terms of the monitoring and reporting program of the Tentative Order in Attachment E section IV.B, Boatyards that only discharge industrial storm water to surface waters from a 5-year frequency, 24-hour storm event or larger are not required to conduct sediment monitoring under most circumstances. Reduced requirements such as these provide incentives for Dischargers to make the necessary facility modifications to satisfy NEC requirements or to retain industrial storm water from a 5-year frequency, 24-hour storm event or larger.

See also the Response to Comment 4.1

### **Action Taken**

None.

#### 4.3. Comment

As for the other yards that are at a Category 2 level or below; if they were to discharge in the middle of the night, how can the RWQCB require them to sample at all hours. The weather is the weather, how could they possibly accurately predict a storm that would overwhelm their designed system without many false guesses. That seems to be an overly burdensome requirement.

#### Response

See Response to Comment No. 2.

#### Action Taken

None.

#### 4.4. Comment

If a facility were to discharge, there is a work plan update requirement. How will that requirement be designed? Will a facility that already meets the Cat 2 level, but experiences a 50-year storm event be required to increase their capacity of stormwater holding for an event that may not occur again in their lifetime? If so, they may not be able to meet such a requirement. Is there any room for compromise or discussion?

#### Response

The Tentative Order includes a requirement for the Discharger to prepare and submit a Toxicity Reduction Evaluation (TRE) Work Plan. If toxicity is detected in the discharge monitoring results, the TRE Work Plan describes the steps that a Discharger will take to reduce the toxicity and/or identify the source of toxicity. The Tentative Order provides a reference to the USEPA manual Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations (EPA/600-2-88/070) that provides guidance on how to prepare a TRE Work Plan. The Tentative Order does not require an increase in a facility's capacity to capture and hold storm water. The Tentative Order does require the Discharger to capture the first flush (the surface runoff resulting from the initial 0.25 inches of rainfall from each storm as defined by the Tentative Order) and monitoring of the storm water discharge for Category 1 and 2 facilities.

The Tentative Order states in section II.E that Dischargers that certify their facility for NEC coverage are not required to comply with the monitoring requirements of the Tentative Order. This is also restated in section IX of the Tentative Order. The TRE is part of the MRP which specifies the monitoring requirements. These requirements provide a basis for not requiring a TRE workplan for NEC facilities.

The San Diego Water Board has modified the Tentative Order as follows:

Attachment E – Section III.B.6 (page E-18)

The Discharger shall prepare and submit a copy of the Discharger's Initial Investigation TRE Work Plan to the San Diego Water Board ~~for approval~~ within 90 days of the effective date of this General Order. ~~If the San Diego Water Board does not disapprove the work plan within 60 days, the work plan shall become effective. The work plan shall become effective 60 days following submittal unless the San Diego Water Board provides written notification that the plan is not accepted.~~ The Discharger shall use USEPA manual Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations (EPA/600-2-88/070) or the most current version, as guidance.

The Initial Investigation TRE Work Plan shall not be required for facilities that have NEC coverage. When a facility ceases NEC coverage, the Discharger shall prepare and submit a copy of the Discharger's Initial Investigation TRE Work Plan to the San Diego Water Board within 90 days of the facility ceasing NEC coverage. The work plan shall become effective 60 days following submittal unless the San Diego Water Board provides written notification that the plan is not accepted. The Discharger shall use USEPA manual Generalized Methodology for Conducting Industrial Toxicity Reduction Evaluations (EPA/600-2-88/070) or the most current version, as guidance.

The TRE Work Plan shall describe the steps that the Discharger intends to follow if toxicity is detected, and shall include, at a minimum:

**Action Taken**

The Tentative Order is revised as described in the response section above at Attachment E – Section III.B.6.

5. John Tyrell, Oceanside Marine Centre, Inc.

5.1. **Comment**

Test Species

MRP Section III.B.3. Chronic Toxicity Marine Species Methods (page E-16). For the marine invertebrate test, the Permit only includes the egg fertilization test method using purple sea urchins and sand dollars, and the embryo-larval development static test using the red abalone. Although the egg fertilization test can be a good screening-level test, a number of flaws have been identified using this test for routine compliance test purposes (see Attachment A). It is suggested to also include the embryo-larval development test endpoints for the purple sea urchin and sand dollar. Both species have well-established EPA test methods, have been used in Whole Effluent Toxicity tests for decades, and are



included in many NPDES permits, which include local facilities such as the Scripps Institution of Oceanography (SIO), NPDES No. CA0107239.

## Response

The San Diego Water Board agrees that the larval development endpoint for purple sea urchin, *Strongylocentrotus purpuratus*, and sand dollar, *Dendraster excentricus* is an acceptable endpoint found in Short-Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Waters to West Coast Marine Estuarine Organisms (EPA/600/R-95/136, 1995).

The Tentative Order is clarified to require that only one invertebrate species needs to be sampled.

The San Diego Water Board has modified the Tentative Order as follows:

### Attachment E – Section III.B.3:

If effluent samples are collected from outfalls discharging to receiving waters with salinity greater than one parts per thousand (ppt), the Discharger shall conduct the following chronic toxicity tests on effluent samples, at the in-stream waste concentration for the discharge, in accordance with species and test methods in Short-Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Waters to West Coast Marine Estuarine Organisms (EPA/600/R-95/136, 1995). Artificial sea salts or hypersaline brine shall be used to increase sample salinity if needed. In no case shall these species be substituted with another test species unless written authorization from the San Diego Water Board is received.

- a. A static renewal toxicity test with the topsmelt, *Atherinops affinis* (Larval Survival and Growth Test Method 1006.01).
- b. A static non-renewal toxicity test with the purple sea urchin, *Strongylocentrotus purpuratus* ~~and~~ or sand dollar, *Dendraster excentricus* (Fertilization Test Method 1008.0 or Larval Development Test Method); or a static non-renewal toxicity test with the red abalone, *Haliotis rufescens* (Larval Shell Development Test Method).
- c. A static non-renewal toxicity test with the giant kelp, *Macrocystis pyrifera* (Germination and Growth Test Method 1009.0).

## Action Taken

The Tentative Order is revised as described in the response section above at Attachment E section III.B.3 (page E-16).

### 5.2. Comment

#### Sample Holding Time

MRP Section III.B.2. Sample Volume and Holding Time (page E-16). The current language states a maximum holding time of 36-hours. Due to the logistics and safety issues that arise during storm water sampling it is recommended that a not-to-exceed 72-hour holding time be allowed for toxicity test initiations with the protocol goal still 36-hours. This extended holding time is also consistent with a number of other existing NPDES Permits (e.g., NPDES No. CA0107239 and CA0109185). Consistent with the SIO Permit (R9-2015-0070) and Naval Base Coronado Permit (R9-2015-0117), suggest the following language: "All toxicity tests shall be conducted as soon as possible following sample collection. The 36-hour sample holding time for test initiation shall be targeted. However, no more than 72 hours shall elapse before the conclusion of sample collection and test initiation."

#### Response

A 36-hour holding time for chronic toxicity samples is recommended by Short-Term Methods for Estimating the Chronic Toxicity of Effluent and Receiving Waters to West Coast Marine Estuarine Organisms (EPA/600/R-95/136, 1995). However, the test methods allow up to a 72-hour holding time. While the San Diego Water Board prefers that chronic toxicity samples are analyzed within 36-hours, the San Diego Water Board acknowledges that logistical and safety issues may arise for obtaining chronic toxicity test organisms during storm events.

The San Diego Water Board has modified Tentative Order as follows:

#### Attachment E – Section III.B.2

The total sample volume shall be determined by the specific toxicity test method used. Sufficient sample volume of the effluent shall be collected to perform the required toxicity test. Sufficient sample volume shall also be collected during accelerated monitoring for subsequent Toxicity Identification Evaluation (TIE) studies, if necessary, at each sampling event. All toxicity tests shall be conducted as soon as possible following sample collection. The 36-hour sample holding time for test initiation shall be targeted. However, ~~No~~ no more than ~~36~~72 hours shall elapse between the conclusion of sample collection and test initiation.

### **Action Taken**

The Tentative Order is revised as described in the response section above at Attachment E section III.B.2 (page E-16).

### **5.3. Comment**

#### Sample Collection Timing

MRP Section V.D.3 – Sampling and Analysis (page E-11). The Permit states that sample collections shall occur within 4-hours of runoff if conditions are safe. Due to safety issues, especially regarding sampling of the receiving water, we suggest including a clause similar to that included in the Industrial General Permit Order (NPDES No. CAS000001). Consistent with the Industrial General Permit (NPDES No. CAS000001), suggest the following language: Samples from each discharge location shall be collected within four (4) hours of: (a) the start of the discharge, or (b) the start of facility operations if the QSE occurs within the previous 12-hour period (e.g., for storms with discharges that begin during the night for facilities with day-time operating hours). Sample collection is required during scheduled facility operating hours and when sampling conditions are safe in accordance with Section XI.C.6.a.ii.

### **Response**

Attachment E section V.D.3 of the Tentative Order requires sampling any time of the day within 4-hours of a discharge of industrial storm water to waters of the United States if conditions are safe. If conditions are unsafe, the Discharger is not required to sample. See response to Comment No. 2.

### **Action Taken**

None.