California Regional Water Quality Control Board
San Diego Region

Response to Comments Report

Tentative Order R9-2023-0012

NPDES Permit CAG039001

General Waste Discharge Requirements for Discharges from Shipyards to San Diego Bay

May 10, 2023

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INTRODUCTION

This report contains the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) responses to written comments received on Tentative Order R9-2023-0012, NPDES Permit CAG039001, *General Waste Discharge Requirements for Discharges from Shipyards to San Diego Bay* (Tentative Order).

The San Diego Water Board provided public notice of the release of the Tentative Order on March 8, 2023, and provided a period of 30 days for public review and comment on the Tentative Order. The public comment period ended on April 7, 2023.

Written comments were received from: Page

Comments and Responses

The summarized written comments and San Diego Water Board responses are set forth below. The section of the Tentative Order the comment pertains to is shown in parenthesis in each comment 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 are in red-underline for added text and ~~red strikeout~~ for deleted text.

COMMENTS AND RESPONSES

1. Continental Maritime of San Diego, LLC (Continental Maritime or CMSD)

On April 7, 2023, Continental Maritime submitted comments on the Tentative Order.

1.1. Comment – Regarding Notice of Applicability (NOA) Available for Public Comment (Tentative Order, section 2.3)

It is unclear if any public comments received may require CMSD to provide additional documents to support the application package or require CMSD to conduct compliance monitoring and reporting. Clarification is recommended to understand potential implications of public comments on the [NOA] to applicants. The public comment period should be limited to review of the contents of the Order, and it should be the [San Diego Water Board's] responsibility to confirm that applications meet the requirements of the Order.

Response

The purpose of the public comment period is to provide transparency during the enrollment process and notify the public of the type of coverage requested by each discharger. The public comment period also provides an opportunity for dischargers to verify the enrollment information and review the requirements of the tentative NOA. The tentative NOA will outline the discharger's coverage and monitoring and reporting requirements based on the requirements in the Monitoring and Reporting Program (MRP; Attachment E) of the Tentative Order. The public may submit comments encouraging the San Diego Water Board to request additional information from a discharger and provide feedback regarding the NOA. The San Diego Water Board will review each comment to determine if additional information is needed or if the tentative NOA requires revision. Any additional information received will be used to determine the appropriateness of the requirements included in the NOA.

No changes were made to the Tentative Order in response to this comment.

1.2. Comment – Regarding Continental Maritime (Tentative Order, section 3.7)

Please update "Continental Maritime of San Diego" to "Continental Maritime of San Diego, LLC."

Response

The Tentative Order has been modified as follows:

- *Order R9-2015-0009, NPDES Permit CA0109142, as amended by R9-2019-0020, an individual NPDES permit that regulates discharges from Continental Maritime of San Diego, LLC (Continental);*

Section 1.2 of the Fact Sheet (Attachment F) has also been modified as follows:

In 2015, the San Diego Water Board issued Order R9-2015-0009 (as amended by R9-2019-0020), an individual order, to Continental Maritime of San Diego, LLC (Continental Maritime) for discharges of industrial stormwater.

1.3. Comment – Regarding Requirement to Develop a Toxicity Reduction Evaluation (TRE) Work Plan (Attachment E, section 3.3.1.9)

A [TRE] should only be required to be developed if chronic toxicity results indicate a failure in a chronic toxicity test result. Please revise the Tentative Order accordingly.

Response

Section 3.3.1.9 of the Tentative Order requires the discharger to perform a Toxicity Reduction Evaluation (TRE) in certain circumstances. The TRE is a study meant to identify the causative agents of effluent or ambient toxicity, isolate the sources of toxicity, evaluate the effectiveness of toxicity control options, and then confirm the reduction in toxicity. Section 3.3.1.9.1 of the Tentative Order requires the discharger to submit to the San Diego Water Board an Initial Investigation TRE Work Plan. The Initial Investigation TRE Work Plan is an investigative process which describes the steps that the discharger intends to follow if toxicity is detected and shall include the information required by section 3.3.1.9.1 of the Tentative Order:

- A description of the investigation and evaluation techniques that will be used to identify potential causes and sources of toxicity, effluent variability, and treatment system efficiency;
- A description of the discharger's methods of maximizing in-house treatment efficiency and good housekeeping practices, and a list of all chemicals used in the operation of the Facility; and
- If a TIE is necessary, an indication of the person who would conduct the TIEs (i.e., an in-house expert or an outside contractor).

Further toxicity evaluation shall be required, as described in section 3.3.1.9.2 of the Tentative Order, when:

- For Industrial Stormwater - If the follow-up toxicity sampling event for Industrial High-Risk Areas results in a "Fail."
- For Deflooding Water from Graving Docks and Building Ways - If the subsequent sampling event following a chronic toxicity test that results "Fail" and a Percent Effect greater or equal to 50 percent, also results in a "Fail."
- For Ion Exchange Treatment Discharges - If there are 2 or more maximum daily and/or maximum monthly effluent limitation violations within a single calendar month or within two successive calendar months. or if other information indicates toxicity, such as fish kills.

If a TRE is triggered, section 3.3.1.9.4 of the Tentative Order requires the discharger to initiate a TRE and submit to the San Diego Water Board a Detailed TRE Work Plan. The Detailed TRE Work Plan shall follow the Initial Investigation TRE Work Pan and be revised as appropriate for the toxicity event. Thus, a TRE is only required if the chronic toxicity sampling indicates toxicity. The Initial

Investigation TRE Work Plan will provide a framework for the discharger to promptly investigate toxicity if, and when, toxicity is detected.

No changes were made to the Tentative Order in response to this comment.

1.4. Comment – Regarding Monitoring Coalitions (Attachment E, section 4.2)

Participation in a monitoring coalition, such as the Bight Program (organized by the Southern California Coastal Water Research Project [SCCWRP]), does not guarantee that a sediment sampling station will be located within the shipyard property due to the Bight Program's stratified random sampling design. Although these regional programs provide value to understanding the conditions of the San Diego Bay as a shole, Bight Program results located outside the shipyard property cannot infer responsibility unless appropriate stressor investigation and source tracking is completed. The Bight Program does not conduct stressor investigation and source tracking. Please confirm that participation in a monitoring coalition, such as the Bight Program, is sufficient to meet the requirements of the permit.

Does participation in a monitoring coalition, such as the Bight Program, require permittees to also support fish trawling and fish community assessments that are routinely conducted as a subset of the Bight Program stations?

Historically, sample analysis (specifically that for benthic infauna community analysis), conducted by agencies supporting the Bight Program, has taken as long as 3 to 4 years to complete. Please confirm if a shipyard participates in a monitoring coalition, such as the Bight Program, and uses resources recommended by SCCWRP, reporting of final results 3 to 4 years after sample collection will be acceptable to meet the requirements of the permit. The shipyard will provide any available results received during each reporting year. It is assumed that the shipyard will only report results on the station assigned to the shipyard by SCCWRP during the planning stages of the program, regardless of its location within the San Diego Bay.

Please confirm if participation in a monitoring coalition satisfies the requirement to complete the Wildlife and Resident Fish Assessment. The Bight Program does not always conduct chemical analysis on fish or invertebrate tissue, nor does it conduct ecological risk assessments.

Response

The San Diego Water Board revised section 4 of the MRP (Attachment E) of the Tentative Order for clarity. Section 4.3 of the MRP (Attachment E) requires the discharger to prepare and submit a Receiving Water Monitoring Plan to assess compliance with applicable receiving water limitations, and, if required to do so in the NOA, section 4.4 of the MRP (Attachment E) of the Tentative Order requires the discharger to prepare and submit a Sediment Monitoring Plan to assess compliance with applicable sediment quality objectives. As described in section 4 of the MRP, the San Diego Water Board encourages dischargers required to conduct receiving water quality and/or sediment monitoring to establish or join a

water body-monitoring coalition to achieve maximum efficiency and resource economics. Such regional monitoring coalitions enable the sharing of technical resources, trained personnel, and associated costs and create an integrated water and/or sediment monitoring program within each water body. Focusing resources on water body issues and developing a broader understanding of pollutants effects in these water bodies enables the development of more rapid and efficient response strategies and facilitates better management of water and/or sediment quality.

Pursuant to section 5 of the MRP, the San Diego Water Board may modify the receiving waters and sediment monitoring and reporting requirements as appropriate to develop, refine, implement, and/or coordinate a regional monitoring program. Dischargers participating in a regional monitoring coalition may submit a request to the San Diego Water Board to modify the receiving waters and sediment monitoring and reporting requirements. The San Diego Water Board will consider such requests on a case-by-case basis and may amend the NOA to reflect modified receiving waters and sediment monitoring and reporting requirements consistent with the MRP.

No changes were made to the Tentative Order in response to this comment.

1.5. Comment – Regarding Analysis of Emerging Contaminants, Specifically for Per- and Polyfluoroalkyl Substances (PFAS) (Attachment E, section 4.3.4)

How does the [San Diego Water Board] intend to interpret results for PFAS in sediments? The presence of PFAS does not necessarily indicate a localized source of PFAS. PFAS can be transported very long distances through surface water, groundwater, and the atmosphere. In addition, PFAS are ubiquitous throughout the environment, are being detected at extremely low levels, and cross-contamination during sampling and analysis is a very likely concern due to their presence in a multitude of end-user products. PFAS is a local, regional, national, and global concern, and will likely need to be addressed through regulating its use in products, rather than at the point of discharge. It is recommended [the San Diego Water Board] acknowledge these fundamental concerns and not include PFAS as a monitoring requirement in this section and elsewhere throughout the Order, or, if PFAS is still required to be monitored, include constraints in the use of results and interpretation to be limited to understanding spatial and temporal distribution of PFAS in the environment, unless results suggest that localized sediments are statistically greater than regional PFAS levels and source investigations suggest PFAS products, specifically Aqueous Film Forming Foam (AFFF), are stored and discharged at the facility.

Response

The San Diego Water Boards is responsible for the protection of the beneficial uses of water in California. PFAS is mobile, persistent, and bioaccumulative, and has the potential to enter the waste stream from many different sources. San Diego Water Board will use PFAS monitoring data to further understand PFAS

exposures and toxicities, and human health and ecological effects. The PFAS monitoring data will help the San Diego Water Board to make informed and judicious decisions in implementing future regulatory actions.

No changes were made to the Tentative Order in response to this comment.

1.6. Comment – Regarding Wildlife and Resident Fish Assessment (Attachment E, section 4.3.4.4)

The Wildlife and Resident Fish Assessment is duplicative of ongoing work associated with [Investigative Order R9-2022-0041].

The Wildlife and Resident Fish Assessment should not be applied to small property sites. It is intended to assess larger waterbody areas.

The [Sediment Quality Provisions] (SQP) does not specify a requirement to collect sediment, fish, or invertebrate tissue; rather, it indicates that "the narrative wildlife and resident finfish objective in Chapter III.A.2.c [of the SQP] shall be implemented on a case-by-case base, based upon an ecological risk assessment." In the Existing Order, an Aquatic-Dependent Wildlife and Human Health Risk Assessment (i.e., Tier I screening-level risk assessment) was required based on the exposure of clams (*Macoma nasuta)* to site sediments via a 28-day bioaccumulation test and using draft tissue concentration screening values for the protection of wildlife in San Diego Bay developed by Zeeman (2016) of the [United States (U.S.)] Fish and Wildlife Service. Please clarify if the wildlife (i.e., ecological) assessment methodology from this previous assessment approach may still be used, and if so, whether fish and invertebrate tissue still need to be collected for chemical analysis.

A previous comment asked for clarifications as to whether participation in a monitoring coalition, such as the Bight Program, would satisfy the requirement of conducting a Wildlife and Resident Fish Assessment. If it does, please confirm that the requirement to provide chemical analysis of fish and invertebrate tissue is also met.

The collection of fish and invertebrate tissue is dependent on the following: 1) that those species are available at the site; and 2) there is sufficient tissue mass obtained from species collected for analysis. If fish and tissue sampling is required, pending comments above, and the shipyard shows a reasonable effort to collect samples from their property but are unsuccessful to collect any or enough to meet laboratory volume requirements, please confirm that the permit requirement has been met.

Does the [San Diego Water Board] require specific target fish and invertebrate species? If so, please provide, and provide appropriate alternative species for analysis.

Response

The Tentative Order has been modified to 1) add a requirement to perform a Human Health Risk assessment in section 4.4.1.2.4. of the MRP (Attachment E),

consistent with the sediment quality objectives (SQOs) in the *Water Quality Control Plan for Enclosed Bays and Estuaries of California, Sediment Quality Provisions* (Sediment Quality Provisions or SQPs); 2) clarify that the Wildlife and Resident Finfish assessment is to be performed for finfish in section 4.4.1.2.5. of the MRP (Attachment E), consistent with the SQPs; 3) separate the water column monitoring and the sediment monitoring requirements in section 4 of the MRP (Attachment E); and 4) clarify that SQOs, and the associated monitoring and reporting requirements, apply only to dischargers discharging a toxic or bioaccumulative pollutant(s) to San Diego Bay and that have the reasonable potential to cause or contribute to an exceedance of the SQOs. Dischargers not discharging a toxic or bioaccumulative pollutant(s) to San Diego Bay or that do not have the reasonable potential to cause or contribute to an exceedance of the SQOs are not required to conduct the sediment quality monitoring. The NOA will specify: 1) any finding(s) regarding the reasonable potential for a discharge of toxic or bioaccumulative pollutant(s) to cause or contribute to an exceedance of the SQOs, 2) any applicable receiving water limitations based on the narrative SQOs in the SQPs, and 3) any applicable sediment monitoring and reporting requirements consistent with the SQPs. The San Diego Water Board also added sections 7.4.2.1. through 7.4.2.3. to the Fact Sheet (Attachment F) to discuss the basis for the sediment monitoring, Human Health Risk, and Wildlife and Resident Finfish assessments.

The Tentative Order replaces the previous requirement to perform an Aquatic Dependent Wildlife and Human Health Risk Assessment with sections 4.4.1.2.4. and 4.4.1.2.5. of the MRP (Attachment E), which require a Human Health Risk Assessment and a Wildlife and a Resident Finfish Assessment, respectively, consistent with the SQPs and the *Strategic Water Quality Assessment Approach for San Diego Bay*. The Tentative Order does not specify the methodology or specific species that will need to be collected for the Wildlife and Resident Finfish Assessment. Instead, the Tentative Order requires that if the NOA specifies the assessment is required, the assessment should be performed consistent with the provisions of the SQPs. Monitoring and reporting performed for other purposes may be submitted to the extent that it is consistent with the requirements of the Tentative Order and the SQPs.

Please see the response to comment 1.4 regarding participation in monitoring coalitions and modifications to the NOA. Any modifications to the receiving waters and/or sediment monitoring and reporting requirements in the NOA for participation in a regional monitoring program shall only apply to requirements in the Tentative Order and shall not affect a discharger's obligations under any of the Investigative Orders. Revisions were made throughout the Tentative Order, including the MRP (Attachment E) and the Fact Sheet (Attachment F), in response to this comment.

1.7. Comment – Regarding Development of an Aquatic Life Analysis (Attachment E, section 4.6.1)

Attachment E, Section 4.6.1 indicates a benthic triad station assessment in accordance with the methodology in section V.I of the SQP. Please clarify. There is no Section V.I of the SQP. Did the [San Diego Water Board] intend Section IV.A.1?

Response

Section 4.6.1 of the MRP (Attachment E) has been modified as follows:

> ***~~4.4.3.1.~~4.6.1.*** ***Aquatic Life Analysis.*** *The data, analyses, interpretation, and integration of the multiple lines of evidence (MLOE), and station assessment shall be performed using the MLOE approach as prescribed in the ~~Sediment Quality Provisions~~SQPs. Compliance with receiving water limitations for sediment quality shall be determined for each station by integrating the sediment chemistry, toxicity, and benthic community lines of evidence to derive a benthic triad station assessment in accordance with the methodology in section IV.A.1~~V.I~~ of the ~~Sediment Quality Provisions~~SQPs.*

1.8. Comment – Regarding Development of an Aquatic-Dependent Wildlife and Human Health Risk Assessment (Attachment E, section 4.6.2)

Attachment E, Section 4.6.2 indicates screening-level risk assessments for aquatic-dependent wildlife and human health shall be performed in accordance with section VI of the [SQPs]. Please clarify. There is no Section VI of the SQP[s]. Did the [San Diego Water Board] intend IV.A.3?

Response

The San Diego Water Board revised the Tentative Order to require a Human Health Risk Assessment in section 4.4.1.2.4 of the MRP (Attachment E) to be conducted consistent with Chapter IV.A.2 of the SQPs and to require a Wildlife and Resident Finfish Assessment in section 4.4.1.2.5 of the MRP (Attachment E) to be conducted consistent with Chapter IV.A.3 of the SQPs.

1.9. Comment – Regarding Development of an Aquatic-Dependent Wildlife and Human Health Risk Assessment (Attachment E, section 4.6.2)

Attachment E, Section 4.3 specifies requirements for receiving water monitoring, sediment monitoring (consisting of triad sampling in accordance with Chapter IV.A.1 of the SQP, and a Wildlife and Resident Fish Assessment in accordance with Chapter IV.A.3 of the SQP). There are no requirements to conduct sampling in accordance with Chapter IV.A.2 of the SQP (Implementation for Assessing Human Health). Therefore, in Attachment E, Section 4.6.2, it is unclear how a shipyard is expected to report on a screening-level risk assessment for human health. Please see the earlier comment regarding approaches presented in the Existing Order for conducting Aquatic-Dependent Wildlife and Human Health Risk Assessments. Does the [San Diego Water Board] intend for shipyards to conduct a human health risk assessment in accordance with these previously conducted methods" Otherwise, if the [San Diego Water Board] intends for a Human Health

Sediment Quality Objective Assessment to be conducted, then clarity needs to be included regarding the following: 1) monitoring expectations; and 2) how the [San Diego Water Board] intended to define waterbodies, applicable monitoring locations, and interpretation of results considering that fish movement ranges may be much greater than shipyard property boundaries. Furthermore, an understanding that recreational and commercial fishing is restricted on shipyard property should be made.

Response

The San Diego Water Board revised section 4.4 of the MRP (Attachment E) and section 7.4 of the Fact Sheet (Attachment F) to clarify the receiving water and sediment monitoring and reporting requirements.

1.10. Comment – Regarding Development of a Climate Change Action Plan (CCAP) (Attachment E, section 6.1)

CMSD recognizes the importance of climate change and its effects on our environment and our communities, and all stakeholders have a responsibility to consider the potential risks of climate change on their facilities as well as the understanding of how their facility's operations may contribute to climate change. However, CMSD does not support the required Special Study (Attachment E, Section 6.1: Climate Change Action Plan) in the Tentative Order. An NPDES Permit regulates discharges to waters of the United States. The requirement to include development of a CCAP is not consistent with the intent of the NPDES Permit process. Furthermore, this requirement poses an unacceptable financial obligation to develop, monitor, and manage a long-term CCAP.

Response

Section 6.1 of the MRP (Attachment E) requires the discharger to prepare and submit a CCAP to the San Diego Water Board. As explained in section 7.8 of the Fact Sheet (Attachment F), changing climate conditions may fundamentally alter the way facilities are designed and operated. Changes to the design and operation of a facility may be necessary to ensure the facility is more resilient against climate change affects (e.g., sea level rise, erratic and intense weather patterns). Additionally, changes to water temperature and pH may affect how the receiving waters reacts to the discharges. Title 40 of the Code of Federal Regulations (CFR) section 122.41, subdivision (e), requires the discharger to properly operate and maintain their facilities and systems of treatment and control. The CCAP is required to ensure that the facility will be properly operated and maintained given the effects of climate change. The CCAP is intended to discuss the proactive efforts the dischargers are taking to address the effects of climate change on their facilities to minimize or avoid water quality-related impacts on the environment (i.e., being prepared for more frequent and more severe flooding and changes to receiving waters react the discharges).

No changes were made to the Tentative Order in response to this comment.

2. Anchor QEA, LLC

On April 7, 2023, Anchor QEA, LLC, submitted comments on the Tentative Order on behalf of Continental Maritime.

2.1. Comment – Regarding Notice of Applicability (NOA) Available for Public Comment (Tentative Order, section 2.3)

See comment and response in section 1.1.

2.2. Comment – Regarding Continental Maritime (Tentative Order, section 3.7)

See comment and response in section 1.2.

2.3. Comment – Sediment Monitoring (Attachment E, section 4.3.4)

Continental is requesting to be exempt from sediment monitoring due to the on-going monitoring activities required from Investigative Order R9-2022-0041.

Response

See comment and response in section 1.6.

No changes were made to the Tentative Order in response to this comment.

2.4. Comment – Regarding Requirement to Develop a Toxicity Reduction Evaluation (TRE) Work Plan (Attachment E, section 3.3.1.9)

See comment and response in section 1.3.

2.5. Comment – Regarding Monitoring Coalitions (Attachment E, section 4.2)

See comment and response in section 1.4.

2.6. Comment – Regarding Analysis of Emerging Contaminants, Specifically for PFAS (Attachment E, section 4.3.4)

See comment and response in section 1.5.

2.7. Comment – Regarding Wildlife and Resident Fish Assessment (Attachment E, section 4.3.4.4)

See comment and response in section 1.6.

2.8. Comment – Regarding Development of an Aquatic Life Analysis (Attachment E, section 4.6)

See comment and response in section 1.7.

2.9. Comment – Regarding Development of an Aquatic-Dependent Wildlife and Human Health Risk Assessment (Attachment E, section 4.6.2)

See comment and response in section 1.8.

2.10. Comment – Regarding Development of an Aquatic-Dependent Wildlife and Human Health Risk Assessment (Attachment E, section 4.6.2)

See comment and response in section 1.9.

2.11. Comment – Attachment E, section 4.3.3.2

CMSD is a no discharge facility. This includes investments in retention to avoid bypass events even during historic rainfall. There have not been any documented discharges from the Facility in 20 years [CMSD TO CONFIRM PERIOD], including the 2022/23 wet weather season that has seen numerous and unprecedented atmospheric river rain events impact the region. CMSD also understands, that by definition under Order R9-2023-0012, they are a Discharger (i.e., they are an owner or operator of a shipyard or ship construction, modification, repair, and/or maintenance facility adjacent to San Diego Bay). As such CMSD understands they must apply for coverage and comply with the waste discharge requirements of the Order. However, as a no discharge facility, CMSD requests confirmation of Attachment E, Section 4.3.3.2, that no receiving water monitoring is required in reporting years that no discharge of stormwater occurs. It is important to note that prior to CMSD, LLC, the prior occupant started in 1987. Prior, the facility had no history of being used as a shipyard and PCBs were not in use, and indeed, banned, during this period. Further, CMSD LLC did not assume any liability for past operations.

Response

Section 4.3.3.2 of the MRP (Attachment E) states that if there is no discharge of stormwater, no receiving water sample is required. This is reiterated in footnote 2 of Table E-5, which states, "If there is no discharge of stormwater, no sample is required," with regards to Receiving Water Column Monitoring Requirements for dischargers without Graving Docks, Building Ways, and an Ion Exchange Treatment System.

Section 4.3.3.2 of the MRP has been modified to further clarify this as follows:

> *4.3.1.2.2.~~4.3.3.2.~~* ***Pollutants:*** *The Sampling and Analysis Plan must propose what pollutants will be monitored. Dischargers that do not have coverage for discharges from graving docks, building ways, or an ion exchange system, shall at minimum, monitor for the pollutants listed in Table E-5 at least once a year when there is a stormwater discharge. If there is no discharge of stormwater, no receiving water column sample is required.*

2.12. Comment – Regarding Development of a Climate Change Action Plan (CCAP) (Attachment E, section 6.1)

See comment and response in section 1.10.

3. San Diego United Port District (District)

On April 7, 2023, the District submitted comments on the Tentative Order.

3.1. Comment – Opening Comment

The District supports the adoption of a general permit to regulate industrial stormwater and wastewater discharges from shipyards. This approach ensures consistency among the shipyards in their use of Best Management Practices, standardizes expectations for monitoring and reporting, and encourages

collaboration on regional efforts, as well as serves top protect the Bay's beneficial uses. To this end, the District respectfully submits the following comments on the [Tentative Order].

Response

Comment is noted.

3.2. Comment – Clarification is requested for the monitoring expectations and requirements for industrial stormwater discharges beyond the first inch of rainfall from storm events

While it is understood that a shipyard is to capture the first inch of precipitation during a storm, it is unclear what the monitoring expectations are when a storm event exceeds the one-inch capture volume and as such all stormwater may not be diverted. In addition, the expectations are not clear for removing the captured/diverted water from the facility. Section 3.2 of the Monitoring and Reporting Program (Attachment E of the [Tentative Order]) suggests sampling of effluent is required after treatment. However, if a storm event has a volume greater than the capacity of the shipyard's stormwater diversion system:

- Is monitoring required for any discharges that overflow the diversion system, the captured water or both?
- Is the captured water able to be discharged to the Receiving Water? If so, does it need to meet the effluent limitations prior to discharge?
- While feasible disposal options may currently be available, what would happen if disposal options change due to increases in storm intensity, frequency and/or duration?

The District recommends that specific language be added to Attachment E to clarify these points.

Response

Section 3.2 of the MRP (Attachment E) contains monitoring requirements for various wastewater effluent, including deflooding water and wastewater treated by an ion exchange treatment system. Section 7.3 of the MRP (Attachment E) contains monitoring requirements for industrial stormwater.

All dischargers are required to capture the first flush (at least the first inch) of rainfall from storm events to prevent a majority of stormwater pollutants from discharging to San Diego Bay. The discharger is allowed to discharge industrial stormwater, excluding the first flush, to San Diego Bay. However, all industrial stormwater discharged to San Diego Bay is subject to the effluent limitations and the numeric action levels in the Tentative Order. All stormwater, whether it is treated or not, that is discharged to San Diego Bay, is subjected to the monitoring requirements in section 7.3.1 of the MRP (Attachment E) and shall be monitored at a frequency of two qualifying storm events (QSEs) per each semi-annual period.

Section 7.3.1 of the MRP (Attachment E) has been modified to further clarify this as follows:

> *The Discharger shall monitor industrial stormwater discharge at the monitoring location(s) specified in the NOA and Table E-1 as described in Table E-7 of this section. Industrial stormwater monitoring is ~~only~~ required ~~if~~ when there is discharge to the receiving water. Samples shall be collected within four hours of the start of the discharge if conditions are safe to sample.*

Table E-7. Industrial Stormwater Discharge Monitoring Requirements

Parameter	Units	Sample Type	Minimum Sampling Frequency [1]	Required Analytical Test Method [2]
Volume of Discharge	gallons	Estimate	1/ Day	Estimate
pH	Standard Units	Grab	2 QSEs/6 Months	Field test with calibrated portable instrument
Total Suspended Solids	mg/L	Grab	2 QSEs/6 Months	SM 2540-D
Oil and Grease	mg/L	Grab	2 QSEs/6 Months	EPA 1664A
Aluminum, Total Recoverable	mg/L	Grab or Composite	2 QSEs/6 Months	EPA 200.8
Copper, Total Recoverable	mg/L	Grab or Composite	2 QSEs/6 Months	EPA 200.8
Lead, Total Recoverable	mg/L	Grab or Composite	2 QSEs/6 Months	EPA 200.8
Iron, Total Recoverable	mg/L	Grab or Composite	2 QSEs/6 Months	EPA 200.7
Nitrate + Nitrite Nitrogen	mg/L as N	Grab or Composite	2 QSEs/6 Months	SM 4500
Magnesium, Total Recoverable	mg/L	Grab or Composite	2 QSEs/6 Months	EPA 200.7
Zinc, Total Recoverable	mg/L	Grab or Composite	2 QSEs/6 Months	EPA 200.8
Chronic Toxicity	"Pass/Fail" and % Effect	Grab or Composite	2 QSEs/6 Months	[3]
Other Pollutants [4]	µg/L	Grab or Composite	2 QSEs/6 Months	[2]

Footnotes:

[1] A QSE ~~occurs when sufficient~~ is a precipitation event that generates runoff for at least one drainage area into the receiving water and is preceded by at least 48 hours with no discharge. Sampling shall occur during QSEs, or if collected, prior to release to receiving water.

[2] Analytical test methods specified in 40 CFR section 136.3 may be used. For priority pollutants the methods must meet the lowest minimum levels (MLs) specified in Attachment 4 of the SIP, or where no methods are specified for a given pollutant, by methods approved by the San Diego Water Board or the State Water Board.
[3] Chronic toxicity shall be determined as specified in section 3.3.1 of this MRP.
[4] Pollutants that are likely to be present in stormwater discharges in significant quantities shall be sampled. The pollutants shall be selected based upon the pollutant source assessment required in section 7 of the SWPPP requirements in Attachment G of this Order, visual observations, and inspection records. If these pollutants are not detected in significant quantities after two consecutive sampling events, the Dischargers may eliminate the pollutant from future analysis until the pollutant is likely to be present again. The Dischargers shall select appropriate analytical test methods that indicate the presence of pollutants in stormwater discharges in significant quantities.

3.3. Comment – Clarification is requested regarding the expectations and requirements for sampling intake water that may be used to attain an intake water credit.

The [Tentative Order] proposes the allowance of intake water credits for discharges of flood water from graving docks or building ways. Clarification is needed regarding the testing location of the source water prior to consideration of a water quality credit. The sampling location should be representative of ambient conditions in the Bay. Therefore, monitoring for this purpose should be performed away from the immediate intake area of the graving dock or building way and also away from areas that may have known localized exceedances of constituents of concern due to the industrial work being performed in the shipyard, as these do not represent ambient concentrations. To better understand what ambient conditions in the Bay look like, the Regional Harbor Monitoring Program provides a water quality dataset that shows representative bay-wide conditions for copper, mercury, nickel, and zinc.

Response

When applying for intake water credits, the discharger is required to provide receiving water monitoring data demonstrating that the observed maximum ambient background concentration exceeds the water quality objective(s) in Table 3-1 of the Tentative Order. The discharger may submit their own monitoring data and/or monitoring data from other sources to meet this condition, as long as they provide justification on how the data is representative of ambient background concentrations. Section 2.2.11 of the Tentative Order has been modified to further clarify this as follows:

> **Request for Intake Water Credits (if applicable).** *The Discharger may apply for intake water credits for discharges of flood water from graving docks, building ways, if monitoring data of the source water indicates that the concentration for copper, mercury, nickel, and/or zinc exceeds the water quality objective listed in Table 3-1. The Discharger shall submit a request for intake water credits and include analytical results of the source water. The Discharger may submit a request for intake water credits if the following conditions are met:*
>
> - *Receiving water monitoring data demonstrates the observed maximum ambient background concentration, outside the influence of all waste*

discharges, exceeds the water quality objective(s) in Table 3-1 of this Order;

- *The flood water from graving docks and/or building ways is not altered physically or chemically; and*
- *The timing and location of the discharge does not cause adverse effects on water quality and beneficial uses that would not occur if the flood water had been left in the receiving water body.*

3.4. Comment – The District supports the inclusion of climate change as a special studies requirement in the Monitoring and Reporting Program (Attachment E, section 6.1)

Given the current year of rainfall greatly exceeding annual norms, it is not clear how climate change will impact a shipyard's ability to comply with the [Tentative Order's] requirements for diversion system capacity, water discharge options, flooding, and managing sea-level rise. The development of a special study with a focus on climate resiliency, especially coastal flooding should provide additional understanding for how the Shipyards will adapt to changing environmental conditions at their facilities and meet permit expectations.

The proposed language is very broad and identifies greenhouse gas emissions, as well as flooding and sea level rise all as components to the special study requirement; however, as it relates to this permit, the focus should be on climate adaptation and coastal resilience, since other state and local agencies are focused on emissions reductions. To clarify the approach to this special study, the District encourages Regional Board staff to reach out to other agencies involved in climate planning to ensure consistency in the use of climate-related nomenclature and approaches. For example, "climate action planning" typically refers to emissions reduction plans and strategies, while "climate adaptation planning" or "coastal resiliency" refer to dealing with effects of climate change like sea level rise or coastal flooding.

Additionally, to avoid redundancy, the following proposed language that shipyards "…may rely on existing climate-change-related plans to comply with this requirement," is helpful and an important tool to allow the special study requirement to align with ongoing climate efforts.

Response

The San Diego Water Board agrees with the District and has revised Section 6.1 of the MRP (Attachment E) to focus more on coastal resiliency as follows:

Climate Change Action Plan

The Discharger shall prepare and submit a climate change action plan (CCAP) no later than three years following the effective date of this Order. The CCAP shall identify projected regional impacts on the Discharger's Facilities and operations due to climate change if current trends continue. The CCAP shall also identify steps being taken or planned to address ~~greenhouse gas~~

~~emissions attributable to the Facilities regulated under this Order;~~ flooding and sea level rise risks; volatile rain period impacts (both dry and wet weather); impacts on quality of the discharge; the potential need to adjust permit conditions and the Discharger's pollution control program; the financing needed to pay for planned actions; schedules to update the CCAP as more information on climate change and its effect become available; and any other factors as appropriate. Any impacts or risks projected to jeopardize permit compliance must be addressed by a plan that includes scheduled risk assessments and mitigation measures as needed to maintain compliance.

Dischargers may rely on existing climate-change-related plans to comply with this requirement. The Discharger shall reference the applicable sections in the existing plans that are required in the CCAP.

3.5. Comment – The District supports a Shipyard Regional Monitoring Coalition

The [Tentative Order] suggests that the shipyards may participate in a Regional Monitoring Coalition in place of certain individual monitoring requirements. Regional monitoring coalitions help alleviate costs and collect meaningful data that can be used by dischargers and regulators to better understand the efficacy of best management practices. The District currently participates in a regional monitoring coalition and would encourage the shipyards to do the same.

Response

Comment is noted.

3.6. Comment – The District supports the public process of a 30-day public comment period for draft Notice of Applicability (NOA) packages

The District is committed to participating in public processes related to San Diego Bay and supporting programs that assist in achieving our agencies' shared goals of protecting beneficial uses and improving water quality in San Diego Bay.

Response

Comment is noted.

4. San Diego Coastkeeper

On April 7, 2023, San Diego Coastkeeper (SDCK) submitted comments on the Tentative Order.

4.1. Comment

In general, SDCK supports the [Tentative Order's] requirements for discharges of industrial stormwater and wastewater into surface waters, given the incorporation of stormwater discharge and monitoring conditions from the regional Industrial General Permit [Order 2014-0057-DWQ] (IGP).

Response

Comment is noted.

4.2. Comment

SDCK also supports the requirement for each permittee to develop a Sediment Monitoring Plan, which includes monitoring for PFAS compounds, metals, and other pollutants.

Response

Comment is noted.

4.3. Comment

The Sediment Monitoring Plan should be consistent with, and complementary to, the Board's Sediment Cleanup and Abatement Order, R9-2012-0024, 2012 ("Abatement Order"). The Abatement Order should be specifically referenced in the [Tentative Order], in order to ensure that its requirements are integrated into and enforceable under the terms of the [Tentative order], when applicable.

Response

The Cleanup and Abatement Order is an active enforcement action that is separate from the Tentative Order. No changes were made to the Tentative Order in response to this comment.

4.4. Comment

In general, the compliance history of any facility seeking coverage under the [Tentative Order] should be closely evaluated, and facilities found to be out of compliance with their existing individual NPDES permits should not be granted coverage under the [Tentative order] until compliance is achieved.

Response

The San Diego Water Board will consider the compliance history of each shipyard when processing their Notice of Intent (NOI) application. The San Diego Water Board may or may not proceed with enrollment under the Tentative Order depending on the findings provided in the NOI. No changes were made to the Tentative Order in response to this comment.

4.5. Comment

SDCK is concerned that the [Tentative Order] does not require any monitoring for PFAS compounds in industrial wastewater discharges from the ion exchange system, or discharges of deflooding water from drydocks, building ways and graving docks. PFAS compounds are found in a very wide range of industrial operations and products, including chrome plating, paints and wax coatings, hydraulic fluid and lubricants, and of course certain types of firefighting foam ("AFFF"). EPA issues a Memorandum ("EPA Memo") in December 2022 to states, outlining steps that could be taken under existing regulatory authority to determine the presence of extent of PFAS in discharges governed by NPDES permits. The EPA Memo recommends that states require monitoring for PFAS in wastewater and stormwater discharges when PFAS containing processes and products have

been identified at particular facilities, or are typically found in certain types of industries, referenced through SAIC codes. The EPA Memo also recommends NPDES stormwater permits contain requirements to implement BMPs to address PFAS-containing firefighting foams.

SDCK urges the Board to require any facility seeking coverage under the [Tentative Order] to disclose whether PFAS containing products or processes are present or in use at their facility, including the use of AFFF firefighting foam. If they are, prospective permittees should be required to monitor for PFAS in their stormwater and industrial wastewater discharges, both to surface water and to the sanitary sewer, and to implement BMPs to address the use of PFAS containing firefighting foams.

Response

The San Diego Water Board agrees that PFAS is mobile, persistent, bioaccumulative, and has the potential to enter the waste stream from many different sources and has included PFAS monitoring as a requirement in the Tentative Order to begin collecting information about the presence of PFAS in the vicinity of each regulated facility. As discussed in the response to comment 1.5, the San Diego Water Board will use the PFAS monitoring data to further understand PFAS exposures and toxicities, and human health and ecological effects, in order to make informed decisions in implementing future regulatory actions.

No changes were made to the Tentative Order in response to this comment.

4.6. Comment

SDCK also supports the inclusion of a requirement for permittees to develop a Climate Change Action Plan, but does not agree with the three-year timeframe proposed for permittees to develop the Plan. Given that this is a five-year NPDES permit, facilities seeking coverage under the [Tentative Order] should be required to submit these Plans for review and approval to the Board in no less than two years, and the [Tentative Order] should require permittees to review and update the Plans during each subsequent permit term. The Climate Change Action Plan should include an assessment of whether the permittee's current stormwater storage/retention capacity is sufficient to manage future precipitation events, if regional climate predictions project more frequent, severe storms that result in higher amounts of precipitation in shorter time periods. If the Action Plan's analysis concludes that changes to the facility's SWPPP or industrial pretreatment permit are necessary to prevent discharges of stormwater to surface water that could result in exceedances of permit limits, then the [Tentative Order] should require implementation of those changes as a condition of continued permit coverage. For the Action Plan to be meaningful there needs to be a mechanism for timely implementation of site or facility improvements to manage future stormwater conditions in compliance with the [Tentative Order].

Response

The San Diego Water Board has incorporated a requirement to development a CCAP in most recently adopted NPDES permits in the region. Based on the feedback it has received, three years is a reasonable amount of time to develop meaningful plans. Future iterations of the permit may include a requirement to periodically update the CCAP and respond to changes at facilities as a result of climate change impacts.

No changes were made to the Tentative Order in response to this comment.

5. BAE Systems San Diego Repair Incorporated (BAE or SDSR)

On April 9, 2023, BAE submitted comments on the Tentative Order. The San Diego Water Board used its discretion to accept these comments.

5.1. Comment – Toxicity Reduction Evaluation (TRE) (Attachment E, section 3.3.1.9)

The [Tentative Order] requires the preparation and submission of a "Initial Investigation TRE Work Plan within 90 days of the effective date of this order.["]

The requirements include providing minimum details that would not be available or known, such as details [that] would be associated with the offending discharge, activities of the site, staffing, and other variables.

Response

See response to comment 1.3.

5.2. Comment – Sediment Chemistry (Attachment E, section 4.3.4.3.1)

As PFAS compounds are new to sediment (and receiving water) monitoring, and given the uncertainty and ubiquitous nature of these compounds in the environment, it is unclear if/how the Water Board will evaluate the detection of these substances as it relates to the operation of the facility/site.

It is requested that the Water Board provide clarification on the approach to be taken regarding the evaluation of PFAS compounds and revise the [Tentative Order] to identify that these compounds are new/emerging in sediment (and receiving water quality) monitoring programs and as such will be evaluated with these considerations in mind.

Response

See response to comment 1.5.

5.3. Comment – Wildlife and Resident Fish Assessment

The existing SDSR NPDES Permit requires the conduct of an Aquatic-Dependent Wildlife and Human Health Risk Assessment (Tier I screening-level risk assessment). It is unclear why the Water Board has modified this requirement and/or whether the existing risk assessment methodology may still be utilized.

It is also unclear if the Water Board expects the field collection of fish and invertebrates. Such field collection can introduce significant difficulty in addressing

potential association of results to site sediments given the small size of the site and depending on whether species with localized site fidelity can be obtained. Site collection of sample specimens is extremely costly and should not be required and the [Tentative Order] should restate the existing requirement.

Response

See response to comment 1.6.

5.4. Comment – Climate Change Action Plan

The [Tentative Order] regulates discharges of industrial wastewater and industrial stormwater from shipyards to San Diego Bay. While SDSR recognizes the importance of climate change, such a requirement is duplicative of existing regulatory programs and should not be included in this water quality permit.

Response

See response to comment 1.10.

5.5. Comment – Attachment E, section 8.4.1, Table E-10

Deleted (sic) the redundant text "…within 30 days of…" on line regarding Detailed TRE Work Plan.

Response

Table E-10 of the MRP has been modified as follows:

Table E-10. ~~Monitoring Periods and~~ Reporting Schedule for Special Reports

Report Name	MRP Section	Due Date
Initial Investigation TRE Work Plan	3.3.1.9.1	Within 90 days of the effective date of this Order
Detailed TRE Work Plan	3.3.1.9.4	Within 30 days of ~~within 30 days of~~ receiving the validated results for a TRE trigger
TIE Work Plan	3.3.1.9.5	As required by the San Diego Water Board
TRE/TIE Progress Reports	3.3.1.9.6	February 1 and August 1 each year following the TRE trigger
TRE/TIE Final Report	3.3.1.9.8	As described in the Detail TRE Work Plan

Report Name	MRP Section	Due Date
CCAP	6.1	Within three years of the effective date of the Order
Receiving Water Monitoring Plan	4.3	Within 12 months of the effective date of this Order
~~Receiving Water and~~ Sediment Monitoring Plan	4.~~43~~	Within 12 months of the effective date of this Order

6. Other Revisions to the Tentative Order

The San Diego Water Board made other revisions to the Tentative Order to correct minor typographical errors and for consistency.