

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 TELEPHONE AND TDD (415) 904-5200



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M 14a**STAFF REPORT AND RECOMMENDATION****ON CONSISTENCY CERTIFICATION**

Consistency Certification No.	CC-028-02
Staff:	MPD-SF
File Date:	4/18/2002
3 Months:	7/18/2002
6 Months:	10/18/2002
Commission Meeting:	9/9/2002

APPLICANT: City of San Diego**PROJECT****LOCATION:**

Point Loma Wastewater Treatment Plant (WWTP) and Outfall, City of San Diego and offshore waters (Exhibit 1)

PROJECT**DESCRIPTION:**

Resubmittal of Consistency Certification for Reissuance of Secondary Treatment Waiver

FEDERAL**AGENCY AND****PERMIT:**

EPA (Environmental Protection Agency) Reissuance, under Section 301(h) of the Clean Water Act, of a modified National Pollutant Discharge and Elimination System (NPDES) Permit for Wastewater Treatment Plant Discharges

SUBSTANTIVE**FILE****DOCUMENTS:**

See page 25.

EXECUTIVE SUMMARY

Under the Clean Water Act, wastewater discharges from publicly owned treatment works (POTWs) are required to receive at least secondary treatment. However, Clean Water Act Section 301(h), sometimes referred to as the "ocean waiver" provision of the Clean Water Act,

gives the EPA Administrator (with the concurrence of the Regional Water Quality Control Board (RWQCB)) the authority to grant a waiver from otherwise applicable secondary treatment requirements. Such a waiver would authorize the City to continue to discharge effluent receiving less than full secondary treatment in terms of suspended solids, biochemical oxygen demand, and pH. Secondary treatment waivers are jointly issued by EPA and the RWQCB, and the waivers need to be renewed every five years.

In reviewing past secondary treatment waiver and waiver renewal requests for the Cities of Morro Bay and San Diego, Goleta, and Orange County, the Commission has generally concurred with consistency certifications and found applicable water quality and marine resource policies of the Coastal Act to be met, especially when: (1) adequate monitoring is in place; and (2) when EPA and the appropriate RWQCB have determined that the discharger's effluent complies with the applicable Clean Water Act and Ocean Plan requirements.

On April 8, 2002, the Commission objected to the City of San Diego's consistency certification for the reissuance of its waiver (CC-10-02). This action took place prior to RWQCB action on the waiver, and the Commission noted three areas of concern that it believed needed to be addressed in order for the discharges to be consistent with applicable CCMP standards: (1) reductions in permitted levels of mass emissions; (2) commitments for water reclamation; and (3) additional monitoring provisions.

Two days later, on April 10, 2002, the RWQCB modified its staff-recommended permit conditions and addressed these three areas of Commission concern as follows: The RWQCB: (1) reduced the total permitted mass emission loadings by 6.7%, from 15,000 metric tons per year (MT/yr.) to 13,995 MT/yr. for the first four years (with the fifth year remaining at 13,599 MT/yr.); (2) independent of the NPDES permit, requested annual reports from its staff on the City's progress towards implementing water reclamation (and noted that it could impose future reclamation requirements if adequate progress is not forthcoming); and (3) also independent of the NPDES permit, instructed its staff to review (and prepare for future RWQCB adoption) modifications to the monitoring program, including specific provisions for deep ocean receiving stations, human pathogens, and long term trends.

In separate proceedings the City appealed both the Commission and RWQCB actions. The City also resubmitted its consistency certification to the Commission (CC-28-02). On May 8, 2002, the City appealed the Coastal Commission's consistency certification objection (CC-10-02) to the Secretary of Commerce. On May 9, 2002, the City appealed the RWQCB's NPDES permit action modifying the mass emission limits to the State Water Resources Control Board (SWRCB). The City and the Commission staff agreed to "stay" any further deliberations in the Commission/Secretary of Commerce appeal, pending Commission reconsideration of the matter once the SWRCB acted. On August 15, 2002, the SWRCB ordered the mass emission limits to be returned to the originally-drafted 15,000 MT/yr. (for the first four years). Accordingly, the City has clarified that its resubmitted consistency certification is for the waiver as modified and ordered by the SWRCB.

EPA's independent Technical Evaluation determined that San Diego's discharges meet the applicable Clean Water Act standards for a waiver. The RWQCB's analysis further documents that the discharges would meet California Ocean Plan standards. Monitoring results for the past 5 years support San Diego's claim that the discharges comply with secondary treatment waiver requirements and would not adversely affect marine resources. The stringent monitoring as required under Section 301(h) will be continued. The City has upgraded its facilities since the waiver was originally granted, including adding wastewater reclamation facilities and reducing total mass emission levels. The SWRCB noted:

When the first Section 301(h) waiver was issued in 1995, the Regional Board set a discharge limit of 15,000 metric tons per year of TSS in its waste discharge requirements. At the time, the Plant was discharging a little less than 11,000 tons per year. Since then, the Plant has succeeded in reducing the amount of TSS discharged almost every year, despite considerable growth in its service area. In 1996, the discharge of TSS was 10,622 metric tons per year; in 1997, it was 10,183; in 1998, the number was 10,469; in 1999, the discharge was down to 9,188; and in 2000, the Plant only discharged 8,888 metric tons of TSS. That represents a 16 percent reduction over five years.

The SWRCB also noted that by the end of the 5 year permit, even if discharges increase from the current levels of 175 million gallons/day (MGD) to the projected 195 MGD: "... continued operation at the current rate of efficiency ought to result in a discharge of slightly more than 11,000 tons in that year." Therefore, in ordering the NPDES permit to be returned to the original 15,000 MT/yr. limit, the SWRCB concluded that the RWQCB had "... failed to make findings, either in its order or during its deliberations, that justify reducing the mass emission limits for TSS from 15,000 metric tons per year to 13,995 metric tons per year in the waste discharge requirements."

Given the SWRCB analysis on the mass emission levels and the RWQCB measures to address water reclamation and future monitoring improvements, as well as the available monitoring evidence of the lack of adverse effects of past discharges on the marine environment and the continuation of the stringent monitoring throughout the term of the permit, the City's discharges would be consistent with the water quality, marine resources, commercial and recreational fishing, and public access and recreation policies (Sections 30230, 30231, 30234, 30234.5, 30213, and 30220) of the Coastal Act.

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description. The City of San Diego has requested a waiver under Section 301(h) of the Clean Water Act (the Act), 33 U.S.C. Section 1311(h), from the secondary treatment requirements contained in Section 301(b)(1)(B) of the Act, 33 U.S.C. Section 1311(b)(1)(B). The waiver is being sought for the Point Loma Wastewater Treatment Plant (WWTP) and Outfall, which discharges 4.5 miles from Point Loma. The waiver would allow the discharge of wastewater receiving less-than-secondary treatment into the Pacific Ocean. The applicant has been operating under a waiver under a "special exception" to the 301(h) program, granted when Congress amended the Clean Water Act by adding to it Section 301(j)(5). That section allowed San Diego to apply for a waiver after the deadline for such applications had passed (it also contained substantive requirements, which are discussed below). On December 12, 1995, EPA and the RWQCB granted the initial waiver (NPDES Permit No. CA0107409). In April 2001 the City applied to EPA for a renewal of the waiver.

The Point Loma WWTP, which serves the Metropolitan San Diego area, is located near the southern tip of Point Loma, and discharges wastewater from the City of San Diego through the Point Loma ocean outfall at a distance 4.5 miles from shore, west of Point Loma, in approximately 100 meters of water. Existing wastewater flows in recent years (1999 and 2000) have been around 175 million gallons per day (MGD) (average flows). Projected flows for the year 2006 (the end of the 5-year permit) are estimated at 195 MGD. System capacity are 240 MGD (average) and 432 MGD (peak wet weather flow). (The project service area and facilities are further described in Exhibit 4.)

The City has made a number of upgrades to the treatment system since the previous waiver was granted in 1995, including: 1) the addition of two new sedimentation basins at the Point Loma plant; 2) construction of the Metro Biosolids Center (MBC) a regional solids handling facility; 3) construction of the North City Wastewater Reclamation Plant (NCWRP); and 4) construction of the South Bay Water Reclamation Plant (SBWRP).

Secondary treatment is defined in Clean Water Act implementing regulations (40 CFR Part 133) in terms of effluent quality for suspended solids (SS), biochemical oxygen demand (BOD) and pH. The secondary treatment requirements for SS, BOD and pH are as follows:

SS: (1) The 30-day average shall not exceed 30 mg/l (milligrams per liter). (2) The 7-day average shall not exceed 45 mg/l. (3) The 30-day average percent removal shall not be less than 85%;

BOD: (1) The 30-day average shall not exceed 30 mg/l. (2) The 7-day average shall not exceed 45 mg/l. (3) The 30-day average percent removal shall not be less than 85%;

pH: The effluent limits for pH shall be maintained within the limits of 6.0 to 9.0 pH units.

State water quality standards (i.e., the California Ocean Plan) require removal of 75% of suspended solids. The Ocean Plan does not have an effluent limitation for BOD; the comparable standard is for dissolved oxygen, and the Plan requires that "dissolved oxygen shall not at any time be depressed more than 10% from that which occurs naturally as a result of the discharge of oxygen-demanding waste materials."

The special legislation created for the City's application for a secondary treatment waiver (Ocean Pollution Reduction Act of 1994 (OPRA)/CWA Section 301(j)(5)/Public Law 103-431) requires:

1. 80% removal of TSS (monthly ave.);
2. 58% removal of BOD (annual ave.);
3. 45 MGD of water reclamation capacity by the year 2010; and
4. Reduction of TSS during the 5-year period of permit modification (EPA has interpreted this standard to require reduction of TSS from 15,000 to 13,600 metric tons/yr).

The following table compares the various statutory requirements:

Table 1. Comparison of treatment removal requirements. [Source: EPA Tentative Decision Document]

Requirement	Suspended Solids Removal	Biochemical Oxygen Demand Removal	pH Limitation
Primary	30% as 30-day average	30% as 30-day average	6-9
California Ocean Plan	75% as 30-day average	No Requirement	6-9
OPRA [only applicable to San Diego discharges]	80% as 30-day average	58% as annual average	
Secondary	85% as 30-day average	85% as 30-day average	6-9

The City's advanced primary system currently removes 80% of suspended solids. The City currently removes approximately 58% of BOD. The City is in the process of implementing reclamation: the NCWRP is now on line and handles 30 MGD, and the SBWRP also recently went on line, adding another 15 MGD of reclamation (Exhibit 2). Thus, the City anticipates achieving the "OPRA" requirement of 45 MGD of water reclamation up to eight years ahead of schedule.

The City is requesting a variance from secondary treatment standards for BOD and SS. The City is not requesting a waiver of pH requirements. The City's proposed effluent limits would require the removal of 80% of SS as a monthly average and the removal of 58% of BOD as an annual average. In addition, the upper limits suspended solids loadings to the ocean would be

annual average. In addition, the upper limits suspended solids loadings to the ocean would be reduced to no more than 13,600 metric tons/year by the end of the 5-year permit period. Current suspended solids loadings are less than 10,000 metric tons/yr.

The City has applied to the EPA and the RWQCB for reissuance of the 301(h) waiver. These waivers are independently reviewed but jointly issued by EPA and the RWQCB. EPA's independent Technical Analysis is attached as Exhibit 4. Once EPA performs its technical review it issues a Tentative Decision to grant the 301(h) waiver of secondary requirements, which is then followed by RWQCB hearing (including public comments), and a final EPA decision (including responses to comments). On April 10, 2002, the RWQCB took action on Order No. R9-2002-0025 and modified the allowable mass emission levels. The City appealed this decision to the SWRCB, which ordered the permit modified to reflect what had originally been recommended by the RWQCB staff (before the RWQCB's April 10, 2002, reductions). Therefore, the City's resubmittal to the Commission describes the project as originally submitted as CC-10-02.

II. History. On September 27, 1995, after a Commission public hearing, the Commission staff concurred with a previous submittal from the City of San Diego of a "No effects" letter (in lieu of a consistency certification) for its first EPA-issued secondary treatment waiver (NE-94-95). That matter was reviewed as an administrative item due to unusual circumstances and history surrounding the waiver. The Commission normally reviews secondary treatment waivers and reissuances as consistency certifications, as is the case for the subject reissuance.

On April 8, 2002, the Commission objected to the City's consistency certification for the waiver reissuance (CC-10-02). The Commission determined that the activity was not consistent with the California Coastal Management Program (CCMP), and that in order to bring the activity into conformance with the CCMP, the City would need to modify the activity. The Commission noted three areas of concern that needed to be addressed in order for the discharges that would occur under the proposed waiver to be consistent with applicable CCMP standards: (1) reductions in permitted levels of mass emissions; (2) commitments for water reclamation; and (3) additional monitoring provisions. More specifically, the Commission requested:

1. meaningful reductions in rates of annual mass emissions (i.e., the proposed EPA/RWQCB permit limitations of 15,000 metric tons (MT) per year for the first four years, and 13,599 MT for the fifth year, are set unrealistically high, compared to current discharges of approximately 9,000 MT/yr.);

2. commitments for actual reclamation (as opposed to the requirements under the Ocean Pollution Reduction Act of 1994 (OPRA) to develop 45 MGD of reclamation capacity); and

3. additional monitoring measures, consisting of:

- a. Extending the Coastal Ocean Dynamics Applications Radar (CODAR) monitoring developed at Imperial Beach to the Point Loma area.
- b. Adding a monitoring station in La Jolla Canyon.
- c. Incorporating remote sensing into the monitoring program.

On April 10, 2002, the Regional Water Quality Control Board (RWQCB), San Diego Region, adopted modified permit conditions and addressed these three areas of Commission concern in the following manner:

(1) the RWQCB modified the permit to reduce total allowable mass emission loadings by 6.7%, from 15,000 metric tons per year (MT/yr.) to 13,995 MT/yr. for the first four years (with the fifth year remaining at 13,599 MT/yr.);

(2) the RWQCB requested annual reports from the RWQCB's Executive Officer on the City's progress towards implementing water reclamation, and noted that the RWQCB could impose future reclamation requirements if adequate progress is not forthcoming;

(3) the RWQCB instructed its staff to review and prepare for future RWQCB adoption modifications to the monitoring program, including specific provisions for deep ocean receiving stations, human pathogens, and long term trends.

In separate proceedings the City appealed both the Commission and RWQCB actions. The City also resubmitted its consistency certification to the Commission (CC-28-02). On May 8, 2002, the City appealed the Coastal Commission's consistency certification objection (CC-10-02) to the Secretary of Commerce. On May 9, 2002, the City appealed the RWQCB's NPDES permit action modifying the mass emission limits to the State Water Resources Control Board (SWRCB)¹. The City and the Commission staff agreed to "stay" any further deliberations in the Commission/Secretary of Commerce appeal, pending Commission reconsideration of the matter once the SWRCB acted. On August 15, 2002, the SWRCB ordered the mass emission limits to be returned to the originally-drafted 15,000 MT/yr. (for the first four years). The SWRCB concluded that the RWQCB had "... failed to make findings, either in its order or during its deliberations, that justify reducing the mass emission limits for TSS from 15,000 metric tons per year to 13,995 metric tons per year in the waste discharge requirements" (Exhibit 13). Accordingly, the City has clarified that its resubmitted consistency certification is for the waiver as modified and ordered by the SWRCB.

¹ Only the first of the above RWQCB measures was an actual permit modification (i.e., the second and third measures were outside the scope of the permit).

III. Previous Commission Reviews of Other California Waivers. In 1979, and 1983-1985, the Commission reviewed a number of secondary treatment waiver applications under the federal consistency provisions of the Coastal Zone Management Act, and EPA ultimately granted many of these waivers. During these reviews the Commission expressed concern over the need for treatment meeting the *equivalent* of secondary treatment with respect to removal of toxics. Nevertheless, at that time, the Commission consciously adopted a neutral position on the waivers. Since a position of "neutrality" is not an action that is recognized under CZMA regulations, the Commission's concurrence in the waivers was presumed pursuant to 15 CFR Section 630.63(a).

Section 301(h) waivers are only valid for 5 years, and three of the waivers initially granted subsequently came up for renewal: Morro Bay, Goleta, and Orange County (CSDOC). On January 13, 1999, and January 12, 1993, the Commission concurred with the City of Morro Bay's waiver renewals (CC-123-98 and CC-88-92). On January 8, 1997, and March 10, 1998, respectively, the Commission concurred with Goleta's and Orange County's Section 301(h) waiver renewals (CC-126-96 and CC-3-98). On February 7, 2002, Goleta submitted a consistency certification for its current waiver renewal request, which was initially scheduled for action at the Commission's May 2002 meeting. That hearing was postponed, and the matter is still pending before the Commission (CC-13-02) (see next paragraph for further details).

IV. Other Recent Waiver Events. On July 12, 2002, the Central Coast RWQCB denied the Goleta Sanitary District's current waiver renewal request. On August 12, 2002, Goleta appealed this decision to the SWRCB. On July 17, the Orange County Sanitation District (OCSD) Board of Directors voted to pursue secondary treatment for Orange County, although it acknowledged that upgrading to secondary may take more than a decade. The Board instructed OCSD staff to immediately begin negotiations with EPA on consent decree terms to implement secondary treatment.

V. Status of Local Coastal Program. The standard of review for federal consistency certifications is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If an LCP that the Commission has certified and incorporated into the California Coastal Management Program (CCMP) provides development standards that are applicable to the project site, the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The City of San Diego's LCP has been certified by the Commission and incorporated into the CCMP.

VI. Applicant's Consistency Certification. The City of San Diego certifies the proposed activity complies with the federally approved California Coastal Management Program and will be conducted in a manner consistent with such program.

VII. Staff Recommendation:

The staff recommends that the Commission adopt the following motion:

MOTION. I move that the Commission **concur** with the City of San Diego's consistency certification.

The staff recommends a **YES** vote on this motion. A majority vote in the affirmative will result in adoption of the following resolution:

Concurrence

The Commission hereby **concurs** with the consistency certification made by the City of San Diego for the proposed project, finding that the project is consistent with the California Coastal Management Program.

VIII. Findings and Declarations:

The Commission finds and declares as follows:

A. Water Quality/Marine Resources

1. Regulatory Framework. The Environmental Protection agency (EPA) and the applicable RWQCBs (Regional Water Quality Control Boards) regulate municipal wastewater outfalls discharging into the Pacific Ocean under NPDES permits issued pursuant to the federal Clean Water Act. As enacted in 1972, the Clean Water Act required secondary treatment for all wastewater treatment nationwide. Amendments to the Clean Water Act in 1977 provided for Section 301(h) (33 USC Section 1311(h)) waivers of the otherwise applicable requirements for secondary treatment for discharges from publicly owned treatment works into marine waters.

Section 301(h) of the Clean Water Act provides that an NPDES permit which modifies the secondary treatment requirements may be issued if the applicant: (1) discharges into oceanic or saline, well-mixed estuarine waters; and (2) demonstrates to EPA's satisfaction that the modifications will meet those requirements specified in Section 301(h) (see pp. 7-9), including: (a) that the waiver will not result in any increase in the discharge of toxic pollutants or otherwise impair the integrity of receiving waters; and (b) that the discharger must implement a monitoring program for effluent quality, must assure compliance with pre-treatment requirements for toxic control, must assure compliance with water quality standards, and must measure impacts to indigenous marine biota. In California, the applicable water quality standards are embodied in the California Ocean Plan (see pp. 13-14 and Exhibit 5).

While the State of California (through the SWRCB and RWQCBs) administers the NPDES permit program and issues permits for discharges to waters within State waters, authority to grant a waiver and issue a modified NPDES permit under Section 301(h) of the Act is reserved to the Regional Administrator of EPA. Prior state concurrence with the waiver is also required.

Section 307(f) of the federal CZMA specifically incorporates into the California Coastal Management Program (CCMP) the Clean Water Act and all water quality requirement adopted pursuant to it by either the federal or state government). Commission consistency certification review is required for 301(h) applicants, because EPA NPDES permits are listed in California's program as federal licenses or permits for activities affecting land or water uses in the coastal zone. In reviewing the discharges, the Commission relies on the Clean Water Act and its implementing regulations, the California Ocean Plan, the Coastal Act (Chapter 3 policies), and Water Code Section 13142.5 (incorporated into the CCMP by Section 30412(a) thereof). These requirements, which are further described and summarized below, provide both specific numerical standards for pollutants, as well as general standards for protection of marine biological productivity.

a. Clean Water Act/Section 301(h). Implementation of the Clean Water Act in California, for the most part, has been delegated to the applicable RWQCB for issuance of NPDES permits. Under an MOA between EPA and the State of California, NPDES permits for outfalls beyond 3 miles *and* for secondary treatment waivers (regardless of location) are issued jointly by EPA and the applicable RWQCB. The Clean Water Act divides pollutants into three categories for purposes of regulation, as follows: (1) conventional pollutants, consisting of total suspended solids (TSS or SS); biochemical oxygen demand (BOD, a measure of the amount of oxygen consumed during degradation of waste); pH; fecal coliform bacteria; and oil and grease; (2) toxic pollutants, including heavy metals and organic chemicals; and (3) non-conventional pollutants (a "catch-all" category for other substances needing regulation (e.g., nitrogen and phosphorus, chlorine, fluoride)).

Guidelines adopted under Section 403 of the Clean Water Act (40 CFR Part 125.120-124, Subpart M, "Ocean Discharge Criteria") specify that beyond an initial mixing zone, commonly referred to as the zone of initial dilution (ZID), the applicable water quality standards must be met. The zone of initial dilution is the boundary of the area where the discharge plume achieves neutral buoyancy and first begins to spread horizontally. Discharged sewage is mostly freshwater, so it creates a buoyant plume that moves upward toward the sea surface, entraining ambient seawater in the process. The wastewater/seawater plume rises through the water column until its density is equivalent to that of the surrounding water, at which point it spreads out horizontally.

Section 301(h) of the Clean Water provides for secondary treatment waivers under certain circumstances. The following requirements must be met for EPA to grant a secondary treatment waiver:

- (1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;*
- (2) such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population (BIP) of shellfish, fish and wildlife, and allows recreational activities, in and on the water;*
- (3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of the monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;*
- (4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;*
- (5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;*
- (6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;*
- (7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;*
- (8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;*
- (9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of the Clean*

Water Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into marine estuarine waters which at the time of application do not support a balanced, indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish and wildlife, or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any of the other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and westward of 40 degrees 10 minutes north latitude.

In addition, as discussed on page 3, Section 301(j)(5) of the Clean Water Act provides procedural and substantive requirements enabling the City to apply for a waiver and specifying that discharges must meet the following tests: 80% removal of TSS (monthly ave.); 58% removal of BOD (annual ave.); 45 MGD of water reclamation capacity by the year 2010; and reduction of TSS during the 5-year period of permit modification.

b. California Ocean Plan. The California Ocean Plan was originally adopted by the SWRCB and approved by the EPA in June 1972, and is revised every three years. Among the California Ocean Plan requirements are the following water quality objectives (Chapter II):

A. Bacterial Characteristics, for body-contact recreation and shellfish harvesting;

B. Physical Characteristics, including floatables, visible oil and grease, discoloration of the surface, the reduction of light penetration, and the rate of deposition of solid and inert materials on the bottom;

C. Chemical Characteristics, including dissolved oxygen, pH, dissolved sulfide in and near sediments, concentration of substances in the sediments, organic materials in the sediments, and nutrient levels, and including maintenance of standards such as protecting indigenous biota and marine life;

D. Biological Characteristics, including:

1. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded.

2. The natural taste, odor, and color of fish, shellfish, or other marine resources used for human consumption shall not be altered.

3. The concentrations of organic materials in fish, shellfish or other marine resources used for human consumption shall not bioaccumulate to levels that are harmful to human health.

E. Radioactivity, including maintenance of a standard that marine life shall not be degraded.

General requirements in the Ocean Plan include:

A. Waste management systems that discharge to the ocean must be designed and operated in a manner that will maintain the indigenous marine life and a healthy and diverse marine community.

B. Waste discharged to the ocean must be essentially free of:

1. Material that is floatable or will become floatable upon discharge.

2. *Settleable material or substances that may form sediments which will degrade benthic communities or other aquatic life.*

3. *Substances which will accumulate to toxic levels in marine waters, sediments or biota.*

4. *Substances that significantly decrease the natural light to benthic communities and other marine life.*

5. *Materials that result in aesthetically undesirable discoloration of the ocean surface.*

C. *Waste effluents shall be discharged in a manner which provides sufficient initial dilution to minimize the concentrations of substances not removed in the treatment.*

D. *Location of waste discharges must be determined after a detailed assessment of the oceanographic characteristics and current patterns to assure that: ...*

1. *Pathogenic organisms and viruses are not present in areas where shellfish are harvested for human consumption or in areas used for swimming or other body-contact sports.*

2. *Natural water quality conditions are not altered in areas designated as being of special biological significance.*

3. *Maximum protection is provided to the marine environment.*

In addition, the Ocean Plan contains "Table A" effluent limitations for major wastewater constituents and properties, "Table B" limitations that provide maximum concentrations for toxic materials that may not be exceeded upon completion of initial dilution, and other standards. Table A and B limitations are contained in Exhibit 5.

(c) Coastal Act Policies. The Coastal Act contains policies protecting water quality and marine resources. Section 30230 of the Coastal Act provides:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 provides:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In addition to these resource protection policies, Section 30412 addresses the Commission's relationship with the SWRCB (State Water Resources Control Board and RWQCB); Section 30412 provides:

(a) In addition to the provisions set forth in Section 13142.5 of the Water Code, the provisions of this section shall apply to the commission and the State Water Resources Control Board and the California regional water quality control boards.

(b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate the provisions of this section. Neither the commission nor any regional commission shall, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.

Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, regional commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out the provisions of this division.

Finally, Section 13142.5 of the Water Code, which is referenced in Section 30412 above, provides:

In addition to any other policies established pursuant to this division, the policies of the state with respect to water quality as it relates to the coastal marine environment are that:

(a) Waste water discharges shall be treated to protect present and future beneficial uses, and, where feasible, to restore past beneficial uses of the receiving waters. Highest priority shall be given to improving or eliminating discharges that adversely affect any of the following:

- (1) Wetlands, estuaries, and other biologically sensitive sites.*
- (2) Areas important for water contact sports.*
- (3) Areas that produce shellfish for human consumption.*
- (4) Ocean areas subject to massive waste discharge.*

Ocean chemistry and mixing processes, marine life conditions, other present or proposed outfalls in the vicinity, and relevant aspects of areawide waste treatment management plans and programs, but not of convenience to the discharger, shall for the purposes of this section, be considered in determining the effects of such discharges...

2. EPA Evaluation of the City of San Diego's Discharges. EPA has conducted a technical evaluation analyzing San Diego's compliance with the 301(h) and other criteria discussed above. This tentative evaluation, dated, February 8, 2002 (Exhibit 4), includes the following EPA findings:

SUMMARY OF FINDINGS

Based upon review of the data, references, and empirical evidence furnished in the application and other relevant sources, EPA Region 9 makes the following findings with regard to compliance with the statutory and regulatory criteria:

1. The applicant's proposed discharge complies with the California Ocean Plan water quality standards for dissolved oxygen (DO), suspended solids, and pH. [Section 301(h)(1), 40 CFR 125.61]

2. The applicant's proposed discharge will not adversely impact public water supplies or interfere with the protection and propagation of a balanced, indigenous population (BIP) of fish, shellfish, and wildlife and will allow for recreational activities. [Section 301(h)(2), 40 CFR 125.62]

3. The applicant has a well-established water quality monitoring program and is committing the resources to continue the program. The City has been monitoring the area around the Point Loma discharge since 1991. EPA Region 9 and the San Diego Regional Water Quality Control Board (Regional Board) will review the existing monitoring program and modify as appropriate. These modifications will be included as provisions for monitoring the impact of the dis-

charge in the 301(h) modified NPDES permit. [Section 301(h)(3), 40 CFR 125.63]

4. The applicant's proposed discharge will not result in any additional treatment requirements on any other point or nonpoint source (See letter from Regional Board dated January 24, 2002). [Section 301(h)(4), 40 CFR 125.64]

5. The applicant's existing pretreatment program was approved by EPA on June 29, 1982. [Section 301(h)(5), 40 CFR 125.66 and 125.68]

6. The applicant has complied with the urban area pretreatment requirements by demonstrating that it has an applicable pretreatment requirement in effect for each toxic pollutant introduced by an industrial discharger. The Urban Area Pretreatment Program was submitted to EPA and the Regional Board in August of 1996. This program was approved by the Regional Board on August 13, 1997 and by EPA Region 9 on December 1, 1998. [Section 301(h)(6), 40 CFR 125.65]

7. The City will continue their existing nonindustrial program which has been in effect since 1985. The City will also continue their existing comprehensive public education program to minimize the amount of toxic pollutants that enter the treatment system from nonindustrial sources. [Section 301(h)(7), 40 CFR 125.66]

8. There will be no new or substantially increased discharges from the point source of the pollutants to which the 301(h) variance will apply above those specified in the permit. [Section 301(h)(8), 40 CFR 125.67]

9. The applicant's removal of 80% of SS as a monthly average and 58% of BOD as an annual average is sufficient to demonstrate the federal requirement of at least 30% removal capability and the California Ocean Plan's 75% SS removal requirement. The discharge allows sufficient dilution to attain of State water quality standards and Federal water quality criteria. [Section 301(h)(9), 40 CFR 125.60]

10. The California Coastal Commission issued Consistency Certification for extending the Point Loma outfall on November 12, 1991. The City has requested a determination from the California Coastal Commission that the proposed discharge is consistent with the policies of the California Coastal Zone Management Program ... No permit may be issued that is not consistent with the policies of the California Coastal Management Program. The California Coastal Commission will be hearing this issue at their meeting on March 5-8, 2002. [40 CFR 125.59(b)(3)]

11. *On June 28, 1999, the applicant sent letters to the US Fish and Wildlife Service and the National Marine Fisheries Service requesting concurrence with their conclusion that the discharge will have no impact to threatened or endangered species. The National Marine Fisheries Service concluded that there were no Federally listed species under its jurisdiction that would be affected by the discharge (letter dated August 10, 1999). No response has been received from the U.S. Fish and Wildlife Service. The permit is contingent on a finding from the U.S. Fish and Wildlife Service. There are no designated marine sanctuaries located within the coastal zones of California that could be impacted by the modified discharge. [40 CFR 125.59(b)(3)]*

12. *In its operation of the Pt. Loma WWTP, the applicant will remove 80% of suspended solids from the effluent on an annual basis, remove 58% removal of biological oxygen demand from the effluent on an annual basis, and reduce the mass of solids during the period of modification to 13,599 metric tons per year. In addition, the applicant has constructed two reclamation facilities with a treatment capacity of 45 MGD.*

13. *The applicant sent a letter to the Regional Board requesting a determination that the proposed discharge would comply with the applicable water quality standards on April 4, 2000. The Regional Board confirmed that the City of San Diego's facilities on Point Loma are capable of meeting effluent limitations contained in the California Ocean Plan (see letter dated January 24, 2002). As specified in a Memorandum of Understanding (May 1986) between EPA Region IX and the California State Water Resources Control Board, the joint issuance of an NPDES permit which incorporates both the 301(h) decision and State waste discharge requirements will serve as the State's concurrence. A draft NPDES permit for the discharge has been developed jointly with the Regional Board. [40 CFR 125.59 (i)(2)]*

3. RWQCB/SWRCB Decisions. As noted previously, on April 10, 2002, the RWQCB modified its staff-recommended permit conditions and addressed the three areas that the Commission identified as concerns in its review of CC-10-02 (see pp. 6-7), as follows:

(1) The RWQCB modified the permit by reducing total allowable mass emission loadings by 6.7%, from 15,000 metric tons per year (MT/yr.) to 13,995 MT/yr. for the first four years (with the fifth year remaining at 13,599 MT/yr.);

(2) Independent of the NPDES permit, the RWQCB requested annual reports from its staff on the City's progress towards implementing water reclamation (and noted that it could impose future reclamation requirements if adequate progress is not forthcoming); and

(3) Also independent of the NPDES permit, the RWQCB instructed its staff to review (and prepare for future RWQCB adoption) modifications to the monitoring program, including specific provisions for deep ocean receiving stations, human pathogens, and long term trends.

On May 9, 2002, the City appealed the RWQCB's NPDES permit action modifying the mass emission limits to the SWRCB (the second and third measures above were not part of the permit and not appealed). On August 15, 2002, the SWRCB ordered the mass emission limits to be returned to the originally-drafted 15,000 MT/yr. (for the first four years). The SWRCB concluded that the RWQCB had failed to justify reducing the mass emission limits. The SWRCB found (Exhibit 13):

II. CONTENTION AND FINDING²

Contention: The decision of the Regional Board to reduce the mass emission limits for TSS from 15,000 to 13,995 metric tons per year for the first four years of the permit is not supported by evidence in the record.

Finding: While there is no evidence in the record that the City will, under any reasonable set of circumstances, exceed the limits set by the Regional Board, the record does not contain evidence that the reduction from 15,000 metric tons per year to 13,995 is based on actual water quality considerations.

The City has been operating the Plant since the early 1960s and has been subject to regulation by the Regional Board for essentially that entire time. When the first Section 301(h) waiver was issued in 1995, the Regional Board set a discharge limit of 15,000 metric tons per year of TSS in its waste discharge requirements. At the time, the Plant was discharging a little less than 11,000 tons per year. Since then, the Plant has succeeded in reducing the amount of TSS discharged almost every year, despite considerable growth in its service area. In 1996, the discharge of TSS was 10,622 metric tons per year; in 1997, it was 10,183; in 1998, the number was 10,469; in 1999, the discharge was down to 9,188; and in 2000, the Plant only discharged 8,888 metric tons of TSS. That represents a 16 percent reduction over five years. Nevertheless, the City, in its application to renew the Section 301(h) waiver, told both EPA and the Regional Board that its discharge of TSS from the Plant would be 14,100 metric tons in 2001 going up steadily to 14,600 tons in 2005. The waste discharge requirements provide, and the City has not challenged the provision, that the discharge must be no more than 13,599 tons in 2006. No explanation has been provided for why the City's discharge from the Plant would increase 59 percent between 2000 and 2001 nor is there any explanation of what the City will do between 2005 and 2006 to reduce its discharge by 7 percent.

² The City raises numerous procedural issues in its petition. Because of the disposition of this matter, it is unnecessary to address any of those issues. *People v. Barry* (1987) 194 Cal.App.3d 158 (239 Cal.Rptr. 349.)

The record indicates that the Plant removes more than 85 percent of the TSS in its effluent stream.³ No testimony or evidence was offered to show that this removal rate could not be assumed for the duration of this permit. At that rate of removal, even if the Plant were to operate at its full design capacity of 240 million gallons per day (MGD), the Regional Board has calculated that the mass emissions discharge would be less than 13,900 metric tons. As the City has projected the actual flow for the Plant in the year 2006 to be only 195 MGD, continued operation at the current rate of efficiency ought to result in a discharge of slightly more than 11,000 tons in that year.⁴

Nevertheless, the Regional Board's decision to reduce the limit for TSS mass emissions by 6.7 percent must be supported by evidence in the record. EPA approved the permit with the 15,000 ton limit.⁵ Regional Board staff proposed adoption of the permit with the 15,000 ton limit. No evidence was offered to the Regional Board that a significant water quality impact would occur with a discharge of 15,000 tons per year that would not occur if the discharge were limited to 13,995 tons.

*California law requires that an administrative agency "build a bridge" between the decisions it makes and the record that supports the decision. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. It is difficult to find such a bridge in this case. The absence of a real-world controversy makes the entire issue seem academic at best. As we pointed out in our discussion above, unless the City fails to comply with its obligation to remove 80 percent or more of the TSS from its effluent, neither the 15,000 ton limit nor the 13,995 ton limit is actually at issue. If it continues to remove TSS at the current 85 percent rate, the Plant will not even approach those limits until it is operating at near design capacity, many years from now. Any concern about the short-term performance of the City in this regard would seem not to be addressed by the reduction and any long-term concerns ought to be resolved by the requirement that the discharge be no greater than 13,599 metric tons per year beginning in 2006. Clearly, the discharge from the Plant in 2006 is more relevant to its performance ten or fifteen years from now than its discharge in 2001.*

³ *In its submittal to EPA in support of its Section 301(h) waiver application, the City assumes a mass emission removal rate of "at least 80 percent." Removal of less than 80 percent would be a violation of the permit. The City has not challenged that requirement.*

⁴ *The discharge resulting from an 80 percent removal rate would be about 6 percent higher. If the Plant operated at an 80 percent removal rate, the figure for 2006 based on the City's projected discharge would be slightly less than 12,000 tons.*

⁵ *EPA indicated in its February 11, 2002 response to comments that "the proposed discharge would meet the nine 301(h) requirements and is in full compliance with the CWA [Clean Water Act]." EPA also stated that the discharge of mass emissions at the proposed 15,000 metric ton level was "entirely consistent with the language and purpose of the OPRA [Ocean Pollution Reduction Act of 1994]."*

The Regional Board discussed the reduction at its April 10 meeting. No clear reason was given for reducing the limit from 15,000 to 14,000 metric tons, although most of the Board members indicated on the record that they believed the 15,000 ton figure was not based on any legitimate environmental standards and that the reduction was an important statement of policy for the Regional Board to make. When asked by the Regional Board's counsel to articulate the findings in support of the reduction, the Chair responded:

"I think the record supports a ratcheting down of the limit, and that this is our effort to ensure that the public health, welfare, and safety is protected beyond that which is proposed by the permit. I also offer the observation that the 15,000 limit was simply selected based on the old permit so that we are entitled to adopt a permit that is more protective of the public health than is proposed."

At no time does either the Chair or any other member of the Board point to evidence in the record that leaving the mass emission limit at 15,000 tons will cause a water quality or public health consequence that reducing it to 13,995 tons will avoid⁶.

In its response to the petition, the Regional Board submitted a justification for the decision that is slightly more specific:

There are many facts in the administrative record considered by the Regional Board in reaching its decision. These include, but are not limited to, the disparity between Petitioner's actual TSS emission rates and those proposed in their application, the ability of the PLMWTP [the Plant] to achieve much lower mass emissions than those proposed, the need to encourage water reclamation, the uncertainty of long-term impacts of the discharge, the lack of deep ocean monitoring, and the lack of monitoring for many human pathogens including viruses. [Response, page 9.]

Most of those issues have already been discussed above. The issues involving reclamation and the lack of monitoring are certainly very legitimate concerns. However, the question must be repeated with regard to those issues: how does a reduction from 15,000 tons to 14,000 tons in the order, when the actual discharge cannot exceed 12,000 tons during the life of the permit, improve reclamation prospects or lessen the need for more monitoring?

⁶ There is little or no evidence in the record that the Regional Board considered reducing the mass emission limit for technology-based reasons, anti-degradation principles, the need to prevent nuisance conditions, or other statutory or regulatory bases.

III. CONCLUSION

For the reasons stated above, the State Board concludes that the Regional Board failed to make findings, either in its order or during its deliberations, that justify reducing the mass emission limits for TSS from 15,000 metric tons per year to 13,995 metric tons per year in the waste discharge requirements. The order should be amended.

4. Commission Conclusion. The information submitted by the City of San Diego, along with the supporting analysis and information from EPA, the RWQCB, and the SWRCB, taken together, support the City's request for a continued secondary treatment waiver.

EPA's independent Technical Evaluation determined that San Diego's discharges meet the applicable Clean Water Act standards for a waiver. Based on EPA's analysis including a review of plant performance and modeling efforts performed since 1995, the discharges from the outfall do not appear to be resulting in any significant reduction in light transmissivity, any biologically significant changes in benthic community structure in the vicinity of the outfall (beyond the zone of initial dilution), or any significant changes in fish populations or fish diseases in the area. The RWQCB staff's analysis further documents that the discharges would meet California Ocean Plan standards. Moreover, the stringent monitoring as required under Section 301(h) will be continued, and in fact improved, as EPA has indicated its intent to update the monitoring plan, and the RWQCB has instructed its staff to review (and prepare for future RWQCB adoption) modifications to the monitoring program, "including specific provisions for deep ocean receiving stations, human pathogens, and long term trends." In addition, the City has upgraded its facilities since the waiver was originally granted, including adding wastewater reclamation facilities and reducing total mass emission levels. As the SWRCB noted:

When the first Section 301(h) waiver was issued in 1995, the Regional Board set a discharge limit of 15,000 metric tons per year of TSS in its waste discharge requirements. At the time, the Plant was discharging a little less than 11,000 tons per year. Since then, the Plant has succeeded in reducing the amount of TSS discharged almost every year, despite considerable growth in its service area. In 1996, the discharge of TSS was 10,622 metric tons per year; in 1997, it was 10,183; in 1998, the number was 10,469; in 1999, the discharge was down to 9,188; and in 2000, the Plant only discharged 8,888 metric tons of TSS. That represents a 16 percent reduction over five years.

The SWRCB also noted:

As the City has projected the actual flow for the Plant in the year 2006 to be only 195 MGD, continued operation at the current rate of efficiency ought to result in a discharge of slightly more than 11,000 tons in that year.

In ordering the NPDES permit to be returned to the original 15,000 MT/yr. limit, the SWRCB concluded (Exhibit 13) that the RWQCB had "... failed to make findings, either in its order or during its deliberations, that justify reducing the mass emission limits for TSS from 15,000 metric tons per year to 13,995 metric tons per year in the waste discharge requirements."

In conclusion, based on the available monitoring evidence of the lack of adverse effects of past discharges on the marine environment at current and projected levels (for the life of the NPDES permit) discharge levels), with the continuation of the stringent monitoring throughout the term of the permit, as conditioned by the RWQCB and with the additional RWQCB assurances for water reclamation and monitoring improvements, and as modified and ordered by the SWRCB, the Commission finds that the City's discharges would be consistent with the water quality and marine resources policies (Sections 30230 and 30231) of the Coastal Act.

B. Commercial Fishing/Recreation

Section 30230 of the Coastal Act, quoted in full on page 14, includes a requirement that:

Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

The Coastal Act also contains more specific policies protecting commercial and recreational fishing; Section 30234 provides:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30234.5 provides:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

The Coastal Act also protects public recreation (such as surfing and other water-contact recreation). Section 30213 provides, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided..

Section 30220 provides:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

For similar reasons as discussed in the water quality/marine resource section above, the City's monitoring efforts over the past five years are sufficient to enable a determination that commercial/recreational fishing and other recreational concerns are met. Most recreational activities are centered around the Point Loma kelp beds and in nearshore waters. SCUBA diving is very popular in the offshore kelp beds. Only limited diving occurs outside the area of the kelp beds. EPA's analysis of the City's plume modeling and monitoring data show that while there have been shoreline and kelp bed water quality standard exceedances, they are unlikely to be related to the City's outfall discharges (Exhibits 3-4). EPA states:

There are numerous exceedances of the single sample thresholds for Total Coliform, Fecal coliform and enterococcus (Fig. 53 [Exhibit 3]). However, these do not appear to be related to the Point Loma outfall. A high percentage of these are related to storm events. There also seems to be a spatial pattern which suggests a southern source. For perspective, these data can be compared to comparable data collected as part of the IWTP shoreline monitoring program (See Fig. 54 [Exhibit 3]). There is some overlap between the two program (i.e., San Diego's Stations D1 and D2 overlap with IWTP's Stations S8 and S9). There is a clear south-north gradient in the frequency of exceedances with a peak at the Tijuana River for all three bacterial indicators.

Exceedances are generally attributed to surface runoff (e.g. from the Tijuana River) rather than the outfall plume. This is supported by the lack of high concentrations in nearshore stations. This conclusion is also supported by modelling and monitoring efforts, which indicate that the outfall plume remains submerged in the offshore area.

Summary of bacteria data. *EPA's review of the bacterial monitoring data suggests that the outfall plume is trapped at depth offshore and that the plume surfaces infrequently. Elevated concentrations of bacteria in the kelp beds were observed on rare occasion (less than 0.5% of the time). Although bacterial concentrations along the shoreline frequently exceed the standards, there is no evidence to suggest that this is related to the outfall. Based on these data, along with the results of physical oceanographic modeling performed by the applicant in 1994, EPA concludes that the Point Loma modified discharge will meet the COP bacterial compliance standards at the shoreline, recreational areas and at kelp beds.*

Therefore, for the same reasons as discussed above with respect to marine resources, and with continued monitoring, the Commission concludes that the discharges would be consistent with

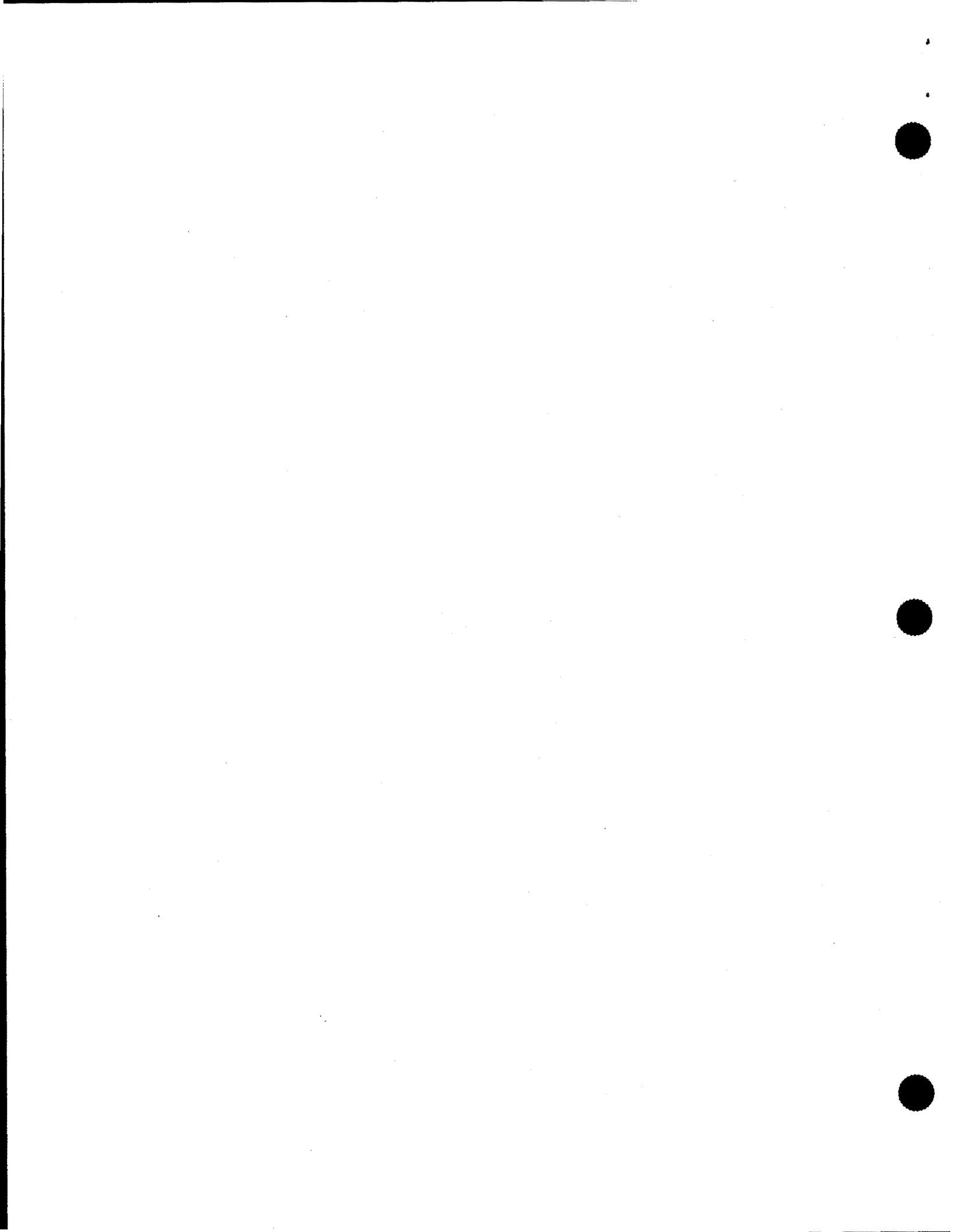
the applicable commercial and recreational fishing and general recreation policies (Sections 30230, 30234, 30234.5, 30213, and 30220) of the Coastal Act.

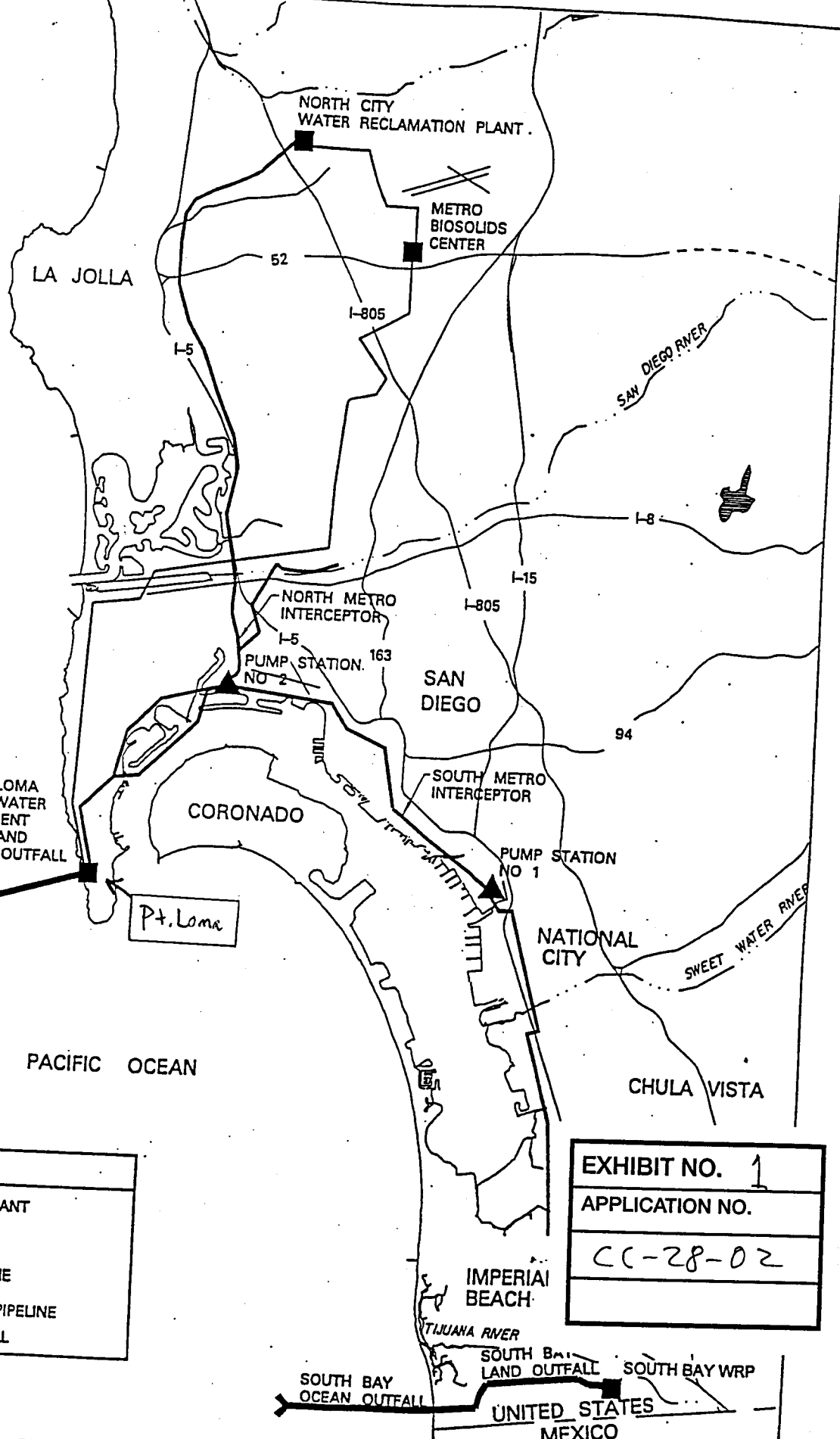
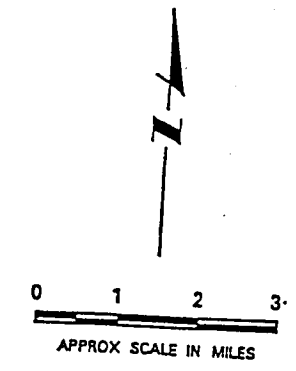
IX. SUBSTANTIVE FILE DOCUMENTS:

1. Consistency Certification No. CC-10-02 (City of San Diego, secondary treatment waiver).
2. Consistency Certification No. CC-62-91/Coastal Development Permit No. 6-91-217 (City of San Diego, Point Loma outfall extension).
3. No Effects Determination NE-94-95 (City of San Diego, secondary treatment waiver).
4. SWRCB Order WQO-2002-0013 (SWRCB/OCC FILE A-1477).
5. RWQCB Tentative Order No. R9-2002-0025 and draft NPDES Permit No. CA0107409, City of San Diego.
6. RWQCB Order No. 95-106 and NPDES Permit No. CA0107409, City of San Diego.
7. Consistency Certifications for secondary treatment waiver renewals, CC-88-92 and CC-123-98 (City of Morro Bay), CC-13-02 and CC-126-96 (Goleta Sanitary District), and CC-3-98 (County Sanitation Districts of Orange County (CSDOC)).
8. Consistency Determination No. CD-137-96 (IBWC) International Boundary and Water Commission International Wastewater Treatment Plant Interim Operation.

X. EXHIBITS (Attached)

1. Location Map
2. February 8, 2002, letter concerning reclamation capacity
3. Water quality exceedances charts
4. EPA Technical Evaluation
5. California Ocean Plan excerpts
6. April 10, 2002, CCC letter to City
7. April 16, 2002, RWQCB Order No. R9-2002-0025
8. April 17, 2002, City letter to CCC
9. August 16, 2002, City cover letter clarification of resubmitted consistency certification
10. April 9, 2002, SWRCB memo concerning CCC jurisdiction
11. April 16, 2002, California Resources Agency letter concerning CCC jurisdiction
12. April 30, 2002, CCC legal memo to CCC concerning CCC jurisdiction
13. SWRCB August 15, 2002, SWRCB Order No. WQO 2002-0013





PROJECT SITE

Pt. Loma

LEGEND	
■	TREATMENT PLANT
▲	PUMP STATION
—	SLUDGE PIPELINE
—	WASTEWATER PIPELINE
—	OCEAN OUTFALL

EXHIBIT NO. 1
APPLICATION NO.
CC-28-02

METRO FACILITIES LOCATION MAP

Figure 1

WWW.LEANMATTER.COM WATERWAYS.COM



THE CITY OF SAN DIEGO

February 8, 2002

Mr. Mark Delaplaine
California Coastal Commission
45 Fremont Street, 20th Floor
San Francisco, CA. 94105-2221

RECEIVED
FEB 13 2002
CALIFORNIA
COASTAL COMMISSION

Dear Mr. Delaplaine:

The purpose of this letter is to document actions by the City of San Diego to comply with the requirement to construct 45 MGD of water reclamation capacity by the year 2010. This was a condition of the Ocean Pollution Reduction Act that allowed the City to re-enter the 301(h) (Waiver) process.

The North City Water Reclamation Plant (NCWRP) was completed and put on-line in 1997. This is a 30 MGD facility. The South Bay Water Reclamation Plant (SBWRP) is in the final stages of completion. It is currently scheduled to go on-line in the spring of 2002. This is a 15 MGD facility.

With the completion of the SBWRP the City will have fulfilled its obligation to have 45 MGD of reclamation capacity nearly eight years ahead of the 2010 requirement.

If you need additional information please contact me at (619) 758-2300.

Sincerely,

Alan C. Langworthy
Deputy Metropolitan Wastewater Director

cc: Scott Tulloch
Ted Bromfield

EXHIBIT NO. 2
APPLICATION NO.
CC-28-02



Environmental Monitoring and Technical Services Division • Metropolitan Wastewater

4918 North Harbor Drive, Suite 201 • San Diego, CA 92106-2359
Tel (619) 758-2300 Fax (619) 758-2309

Figure 53. Summary of single sample exceedances for San Diego Shoreline Stations (1995-2000)

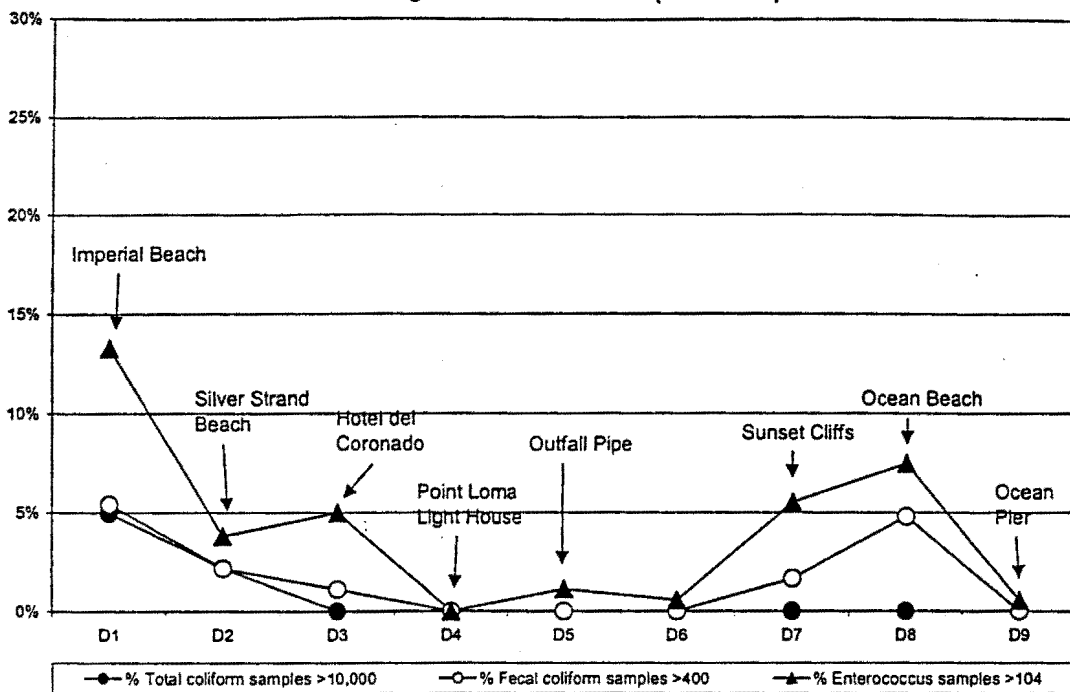


Figure 54. Summary of single sample exceedances for ITP Shoreline Stations (1995-2000)

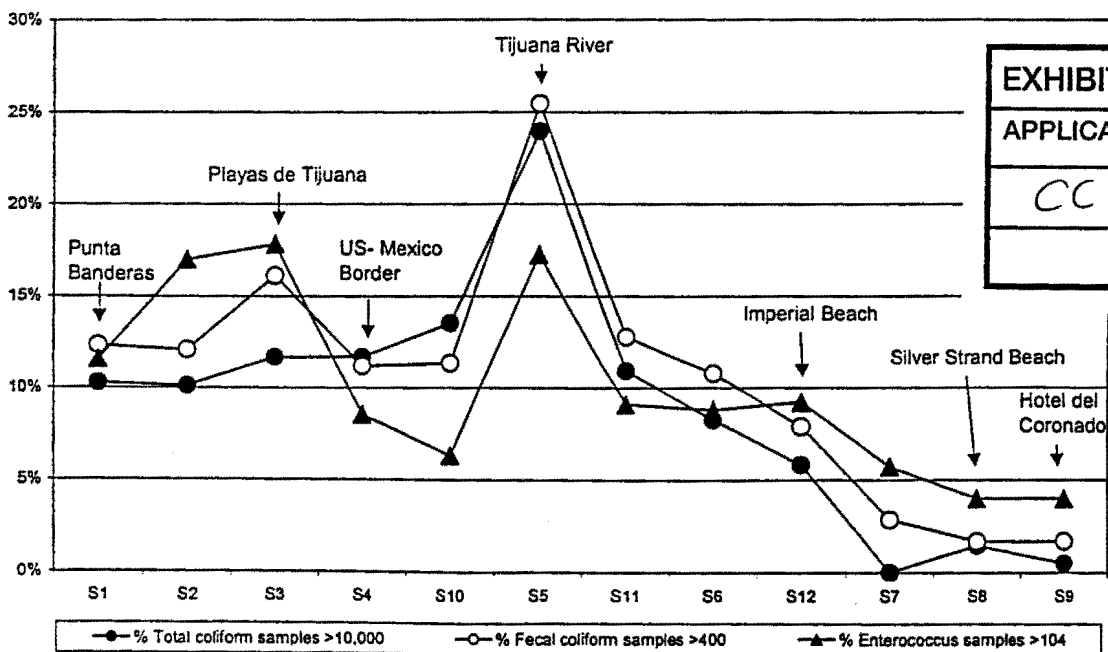
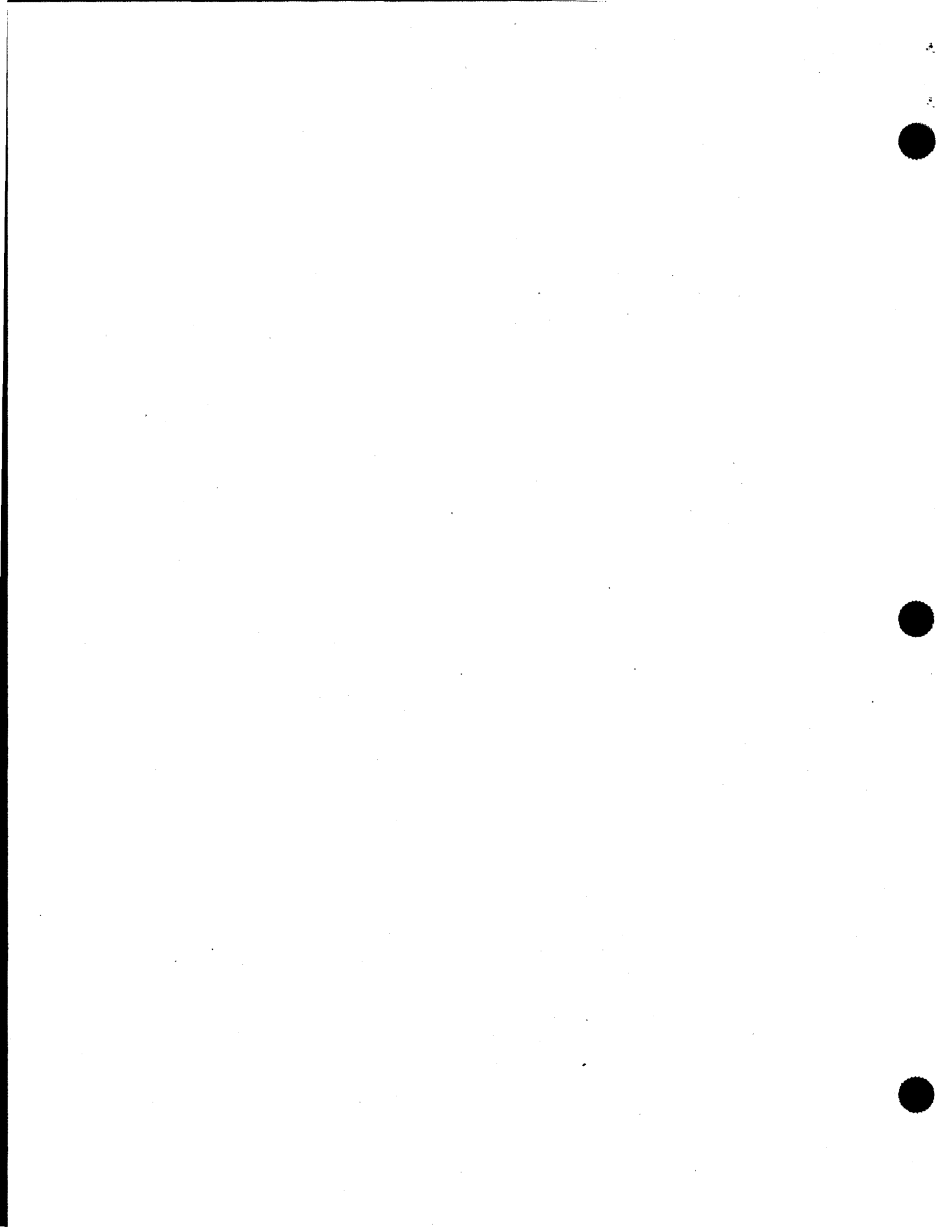


EXHIBIT NO. 3
APPLICATION NO.
CC-28-02





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION IX
 75 Hawthorne Street
 San Francisco, CA 94105-3901

OFFICE OF THE
 REGIONAL ADMINISTRATOR

In Re:

CITY OF SAN DIEGO'S POINT LOMA
 WASTEWATER TREATMENT PLANT,
 APPLICATION FOR A MODIFIED
 NPDES PERMIT UNDER SECTION
 301(h) OF THE CLEAN WATER ACT

TENTATIVE
 DECISION OF THE
 REGIONAL ADMINISTRATOR
 PURSUANT TO 40 CFR PART 125,
 SUBPART G

I have reviewed the attached evaluation analyzing the merits of the application of the City of San Diego for the Point Loma Wastewater Treatment Plant and Ocean Outfall requesting a modification from secondary treatment requirements of the Clean Water Act (the Act). It is my tentative decision that the Point Loma Wastewater Treatment Plant and Ocean Outfall be granted a modification in accordance with the terms, conditions and limitations of the attached evaluation, subject to concurrence by the State of California with the granting of a modification as required by section 301(h) of the Act. USEPA Region 9 will prepare a draft modified National Pollutant Discharge Elimination System (NPDES) permit in accordance with this decision.

Because my decision is based on available evidence specific to this particular discharge, it is not intended to assess the need for secondary treatment in general, nor does it reflect on the necessity for secondary treatment by other publicly owned treatment works discharging to the marine environment. This decision and the NPDES permit implementing this decision are subject to revision on the basis of subsequently acquired information relating to the impacts of the less-than-secondary discharge on the marine environment.

Under the procedures of the Permit Regulations, 40 CFR Part 124 (45 Fed. Reg. 33848 *et seq.*) public notice, comment and administrative appeals regarding this decision and accompanying draft NPDES permit will be made available to interested persons.

Dated: 08 FEBRUARY 2002

Wayne Natri
 Regional Administrator

RECEIVED

FEB 14 2002

CALIFORNIA
 COASTAL COMMISSION

EXHIBIT NO. 4
APPLICATION NO.
CC-28-02

TABLE OF CONTENTS

INTRODUCTION 1

DECISION CRITERIA 1

SUMMARY OF FINDINGS 4

CONCLUSION 5

RECOMMENDATION 6

DESCRIPTION OF TREATMENT FACILITY 6

APPLICATION OF STATUTORY AND REGULATORY CRITERIA 7

 1. Compliance with the California State Water Quality Standards 7

 A. Suspended Solids 8

 1. Solids Removal 8

 2. Turbidity 10

 3. Light Transmittance 11

 B. Biochemical Oxygen Demand and Dissolved Oxygen 11

 1. BOD. 12

 2. Dissolved Oxygen Concentrations. 12

 C. pH Compliance. 14

 D. Conclusions on Compliance with Applicable Water Quality Standards. ... 14

 2. Protection and propagation of a balanced, indigenous population of fish, shellfish, and wildlife, recreational activities or public water supplies. 14

 A. Physical Characteristics of the Discharge. 14

 1. Outfall/Diffuser and Initial Dilution. 14

 2. USEPA Water Quality Criteria and State Water Quality Standards. 15

 3. Dilution Water Recirculation. 18

 4. Transport and Dispersion of Diluted Wastewater and Particulates, Physical and Chemical Effects. 19

 B. Impact of Discharge on Public Water Supplies. 25

 C. Biological Impact of Discharge. 25

 1. Phytoplankton. 25

 2. Benthic Infauna. 27

 3. Fish and Epibenthic Macroinvertebrates. 32

 4. Bioaccumulation and Toxic Pollutants. 33

 5. Incidences of lesions and parasites. 39

 D. Impact of Discharge on Recreational Activities. 39

 E. Summary of Conclusions. 42

 3. Establishment of a Monitoring Program. 42

 4. Impact of Modified Discharge on Other Point and Nonpoint Sources. 43

5. Toxics Control Program.....	43
A. Chemical Analysis.....	43
B. Toxic Pollutant Source Identification.....	43
C. Industrial Pretreatment Requirements.....	43
6. Urban Area Pretreatment Program.....	44
7. Nonindustrial Source Control Program.....	46
8. Increase in Effluent Volume or Amount of Pollutants Discharged.....	46
9. Compliance with Primary Treatment and Federal Water Quality Criteria.....	47
COMPLIANCE WITH OTHER APPLICABLE LAWS.....	48
1. State Coastal Zone Management Program.....	48
2. Marine Sanctuaries.....	48
3. Endangered or Threatened Species.....	49
STATE CONCURRENCE IN MODIFICATION.....	50
REFERENCES.....	51
FIGURES	
APPENDIX A. Summary of water quality data	
APPENDIX B. Summary of sediment chemistry data from regional surveys	

LIST OF FIGURES

- Figure 1. Facilities map
- Figure 2. Ambient monitoring station locations
- Figure 3. Trends in arsenic concentrations in effluent (1995-1999)
- Figure 4. Trends in copper concentrations in effluent (1995-1999)
- Figure 5. Trends in dioxin measurements in effluent (1995-1999)
- Figure 6. Trends in phenol concentrations in effluent (1995-1999)
- Figure 7. Trends in cyanide concentrations in effluent (1995-1999)
- Figure 8. Trends in zinc concentrations in effluent (1995-1999)
- Figure 9. Regional monitoring stations
- Figure 10. Trends in TVS concentrations in sediments (1991-2000)
- Figure 11. Trends in TOC concentrations in sediments (1991-2000)
- Figure 12. Trends in BOD concentrations in sediments (1991-2000)
- Figure 13. Trends in sulfide concentrations in sediments (1991-2000)
- Figure 14. Trends in arsenic concentrations in sediments (1991-2000)
- Figure 15. Trends in cadmium concentrations in sediments (1991-2000)
- Figure 16. Trends in chromium concentrations in sediments (1991-2000)
- Figure 17. Trends in copper concentrations in sediments (1991-2000)
- Figure 18. Trends in lead concentrations in sediments (1991-2000)
- Figure 19. Trends in mercury concentrations in sediments (1991-2000)
- Figure 20. Trends in nickel concentrations in sediments (1991-2000)
- Figure 21. Trends in zinc concentrations in sediments (1991-2000)
- Figure 22. Trends in species richness in sediments (1991-2000)
- Figure 23. Species richness from regional surveys (1994-1999)
- Figure 24. Trends in benthic abundances in sediments (1991-1999)
- Figure 25. Benthic abundances from regional surveys (1994-1999)
- Figure 26. Trends in *Amphiodia urtica* abundances in sediments (1991-1999)
- Figure 27. Abundances of *Amphiodia urtica* from regional surveys (1994-1999)
- Figure 28. Trends in abundances of *Parvilucina tenuisculpta* in sediments (1991-1999)
- Figure 29. Abundances of *Parvilucina tenuisculpta* from regional surveys (1994-1999)
- Figure 30. Trends in abundances of *Euphilomedes cacharodonta* in sediments (1991-1999)
- Figure 31. Abundances of *Euphilomedes cacharodonta* from regional surveys (1994-1999)
- Figure 32. Trends in abundances of *Capitella* spp. in sediments (1991-1999)
- Figure 33. Abundances of *Capitella* spp. from regional surveys (1994-1999)
- Figure 34. Trends in infaunal trophic index in sediments (1991-1999)
- Figure 35. Infaunal trophic index values from regional surveys (1994-1999)
- Figure 36. Trends in benthic response index in sediments (1991-1999)
- Figure 37. Benthic response index values from regional surveys (1994-1999)
- Figure 38. Map of fish trawl stations
- Figure 39. Trends in number of fish species (1991-2000)
- Figure 40. Trends in fish abundances (1991-2000)
- Figure 41. Trends in fish biomass (1991-2000)
- Figure 42. Trends in arsenic in longfin sanddab muscle (1991-2000)
- Figure 43. Trends in arsenic in California scorpionfish muscle (1991-2000)
- Figure 44. Trends in mercury in longfin sanddab muscle (1991-2000)
- Figure 45. Trends in mercury in California scorpionfish muscle (1991-2000)
- Figure 46. Trends in total DDT in longfin sanddab liver (1991-2000)
- Figure 47. Trends in total DDT in Pacific sanddab liver (1991-2000)
- Figure 48. Trends in total PCBs in longfin sanddab liver (1991-2000)
- Figure 49. Trends in total PCBs in Pacific sanddab liver (1991-2000)
- Figure 50. Trends in total coliforms at shoreline stations (1996-2000)
- Figure 51. Trends in fecal coliforms at shoreline stations (1996-2000)
- Figure 52. Trends in enterococcus at shoreline stations (1996-2000)
- Figure 53. Single sample exceedance rates at San Diego shoreline stations (1996-2000)
- Figure 54. Single sample exceedance rates at ITWP shoreline stations (1996-2000)

INTRODUCTION

The City of San Diego, California, (the applicant) is requesting the renewal of a modification under section 301(h) of the Clean Water Act (the Act), 33 U.S.C. section 1311(h), from the secondary treatment requirements contained in section 301(b)(1)(B) of the Act, 33 U.S.C. section 1311(b)(1)(B). The applicant was given the opportunity to apply for a 301(h) waiver under the Ocean Pollution Reduction Act of 1994, 33 U.S.C. § 301(j)(5) (OPRA). The applicant submitted the application on April 26, 1995. The USEPA issued a tentative decision to grant the waiver on August 14, 1995. The final decision and permit were issued on November 9, 1995. This became effective December 12, 1995. The applicant submitted its application for renewal on April 10, 2001.

The modification is being sought for the Point Loma Wastewater Treatment Plant (WWTP), a publicly owned treatment works (POTW). The applicant is seeking a 301(h) modification to discharge wastewater receiving less-than-secondary treatment to the Pacific Ocean. Secondary treatment is defined in regulations (40 CFR Part 133) in terms of effluent quality for suspended solids (SS), biochemical oxygen demand (BOD) and pH. The secondary treatment requirements for SS, BOD and pH are listed below:

SS: (1) The 30-day average shall not exceed 30 mg/l. (2) The 7-day average shall not exceed 45 mg/l. (3) The 30-day average percent removal shall not be less than 85%

BOD: (1) The 30-day average shall not exceed 30 mg/l. (2) The 7-day average shall not exceed 45 mg/l. (3) The 30-day average percent removal shall not be less than 85%.

pH: The effluent limits for pH shall be maintained within the limits of 6.0 to 9.0 pH units

The application is based on an improved discharge, as defined by 40 CFR 125.58(g) and qualifies as a large discharge as defined in 40 CFR 125.58(c). The applicant is requesting a modification for BOD and SS. The proposed effluent limits would require the removal of 80% of SS as a monthly average and the removal of 58% of BOD as an annual average. In addition suspended solids loadings to the ocean would be less than 13,600 metric tons/year. These limits satisfy sections 301(h) and (j)(5) of the CWA.¹

This document presents findings, conclusions and recommendations of the Environmental Protection Agency (USEPA) Region 9 regarding the compliance of the applicant's proposed discharge with the criteria set forth in section 301(h) of the Act as implemented by regulations contained in 40 CFR Part 125, Subpart G (47 Fed. Reg. 53666, November 26, 1982) and other appropriate guidance.

¹This decision is issued without prejudice to the rights of any party to address the legal issue of the applicability of 33 U.S.C. § 1311(j)(5) to the City's future NPDES permits.

DECISION CRITERIA

Under section 301(b)(1)(B) of the Act, 33 U.S.C. section 1311(b)(1)(B), POTWs in existence on July 1, 1977, were required to meet effluent limitations based upon secondary treatment as defined by the Administrator of EPA (the Administrator). Secondary treatment has been defined by the Administrator in terms of three parameters: biochemical oxygen demand (BOD), suspended solids (SS), and pH. Uniform national effluent limitations for these pollutants were promulgated and included in National Pollutant Discharge Elimination System (NPDES) permits for POTWs issued under section 402 of the Act. POTWs were required to comply with these limitations by July 1, 1977.

Congress subsequently amended the Act, adding section 301(h) which authorizes the Administrator, with State concurrence, to issue NPDES permits which modify the secondary treatment requirements of the Act. P.L. 95-217, 91 Stat. 1566, as amended by, P.L. 97-117, 95 Stat. 1623; and section 303 of the Water Quality Act (WQA) of 1987. Section 301(h) provides that:

The Administrator, with the concurrence of the State, may issue a permit under section 402 [of the Act] which modifies the requirements of subsection (b)(1)(B) of this section [the secondary treatment requirements] with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that:

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population (BIP) of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of the monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for

which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of the Clean Water Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into marine estuarine waters which at the time of application do not support a balanced, indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish and wildlife, or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall

apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any of the other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and westward of 40 degrees 10 minutes north latitude.

EPA regulations implementing section 301(h) provide that a 301(h) modified NPDES permit may not be issued in violation of 40 CFR 125.59 (b), which requires among other things, compliance with the provisions of the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Marine Protection Research and Sanctuaries Act (16 U.S.C. 1431 *et seq.*), and any other applicable provision of State or Federal law or Executive Order. In the discussion which follows, the data submitted by the applicant is analyzed in the context of the statutory and regulatory criteria.

SUMMARY OF FINDINGS

Based upon review of the data, references, and empirical evidence furnished in the application and other relevant sources, EPA Region 9 makes the following findings with regard to compliance with the statutory and regulatory criteria:

1. The applicant's proposed discharge complies with the California Ocean Plan water quality standards for dissolved oxygen (DO), suspended solids, and pH. [Section 301(h)(1), 40 CFR 125.61]
2. The applicant's proposed discharge will not adversely impact public water supplies or interfere with the protection and propagation of a balanced, indigenous population (BIP) of fish, shellfish, and wildlife and will allow for recreational activities. [Section 301(h)(2), 40 CFR 125.62]
3. The applicant has a well-established water quality monitoring program and is committing the resources to continue the program. The City has been monitoring the area around the Point Loma discharge since 1991. USEPA Region 9 and the San Diego Regional Water Quality Control Board (Regional Board) will review the existing monitoring program and modify as appropriate. These modifications will be included as provisions for monitoring the impact of the discharge in the 301(h) modified NPDES permit. [Section 301(h)(3), 40 CFR 125.63]
4. The applicant's proposed discharge will not result in any additional treatment requirements on any other point or nonpoint source (See letter from Regional Board dated January 24, 2002). [Section 301(h)(4), 40 CFR 125.64]
5. The applicant's existing pretreatment program was approved by EPA on June 29, 1982. [Section 301(h)(5), 40 CFR 125.66 and 125.68]
6. The applicant has complied with the urban area pretreatment requirements by

demonstrating that it has an applicable pretreatment requirement in effect for each toxic pollutant introduced by an industrial discharger. The Urban Area Pretreatment Program was submitted to EPA and the Regional Board in August of 1996. This program was approved by the Regional Board on August 13, 1997 and by EPA Region 9 on December 1, 1998. [Section 301(h)(6), 40 CFR 125.65]

7. The City will continue their existing nonindustrial program which has been in effect since 1985. The City will also continue their existing comprehensive public education program to minimize the amount of toxic pollutants that enter the treatment system from nonindustrial sources. [Section 301(h)(7), 40 CFR 125.66]

8. There will be no new or substantially increased discharges from the point source of the pollutants to which the 301(h) modification will apply above those specified in the permit. [Section 301(h)(8), 40 CFR 125.67]

9. The applicant's removal of 80% of SS as a monthly average and 58% of BOD as an annual average is sufficient to demonstrate the federal requirement of at least 30% removal capability and the California Ocean Plan's 75% SS removal requirement. The discharge allows sufficient dilution to attain of State water quality standards and Federal water quality criteria. [Section 301(h)(9), 40 CFR 125.60]

10. The California Coastal Commission issued Consistency Certification for extending the Point Loma outfall on November 12, 1991. The applicant has requested a determination from the California Coastal Commission that the proposed discharge is consistent with the policies of the California Coastal Zone Management Program (letter dated July 13, 2000). No permit may be issued that is not consistent with the policies of the California Coastal Management Program. The California Coastal Commission will be hearing this issue at their meeting on March 5-8, 2002. [40 CFR 125.59(b)(3)]

11. On June 28, 1999, the applicant sent letters to the US Fish and Wildlife Service and the National Marine Fisheries Service requesting concurrence with their conclusion that the discharge will have no impact to threatened or endangered species. The National Marine Fisheries Service concluded that there were no Federally listed species under its jurisdiction that would be affected by the discharge (letter dated August 10, 1999). No response has been received from the U.S. Fish and Wildlife Service. The permit is contingent on a finding from the U.S. Fish and Wildlife. There are no designated marine sanctuaries located within the coastal zones of California that could be impacted by the modified discharge. [40 CFR 125.59(b)(3)]

12. In its operation of the Pt. Loma WWTP, the applicant will remove 80% of suspended solids from the effluent on an annual basis, remove 58% of biological oxygen demand from the effluent on an annual basis, and reduce the mass of solids during the period of modification to 13,599 metric tons per year. In addition, the applicant has constructed two reclamation facilities with a treatment capacity of 45 MGD.

13. The applicant sent a letter to the Regional Board requesting a determination that the

proposed discharge would comply with the applicable water quality standards on April 4, 2000. The Regional Board confirmed that the City of San Diego's facilities on Point Loma is capable of meeting effluent limitations contained in the California Ocean Plan (see letter dated January 24, 2002). As specified in a Memorandum of Understanding (May 1986) between EPA Region 9 and the California State Water Resources Control Board, the joint issuance of an NPDES permit which incorporates both the 301(h) decision and State waste discharge requirements will serve as the State's concurrence. A draft NPDES permit for the discharge has been developed jointly with the Regional Board. [40 CFR 125.59 (i)(2)]

CONCLUSION

It is concluded that the applicant's proposed discharge will satisfy CWA sections 301(h) and (j)(5) and 40 CFR 125, Subpart G.

RECOMMENDATION

It is recommended that the applicant be granted a section 301(h) modification in accordance with the above findings, contingent upon the satisfaction of the following conditions, and that a draft NPDES permit be prepared in accordance with the applicable provisions of 40 CFR Parts 122-125.

The applicant's receipt of a section 301(h) modification is contingent upon concurrence from the Regional Board.

The draft NPDES permit includes, in addition to all applicable terms and conditions required by 40 CFR Part 122, the following terms and conditions specific to section 301(h):

1. Effluent limitations in accordance with the terms and conditions of this document in accordance with 40 CFR 125.68(a).
2. Monitoring program requirements in accordance with 40 CFR 125.68(c).
3. Reporting requirements that include the results of monitoring programs in accordance with 40 CFR 125.68(d).

DESCRIPTION OF TREATMENT FACILITY

There have been a number of upgrades to the treatment system since 1995. These include: 1) the addition of two new sedimentation basins at the Point Loma plant, 2) construction of the Metro Biosolids Center (MBC) a regional solids handling facility, 3) construction of the North City Water Reclamation Plant (NCWRP) and 4) construction of the South Bay Water Reclamation Plant (SBWRP) and associated outfall. These facilities make up the wastewater treatment system (Fig. 1).

Preliminary treatment consists of screening at pump station No. 2 (coarse screens) and at the

treatment plant (fine screens). The wastewater is then distributed to six aerated grit removal chambers. Ferric chloride is added prior to grit chamber removal to enhance solids removal. Wastewater exiting the grit chamber is then treated with anionic polymers to aid coagulation of solids and distributed to what is now twelve sedimentation tanks. Sludge generated by the advanced primary treatment is digested anaerobically. The Fiesta Island processing facility was closed down and digested sludge from Point Loma is now pumped to the MBC for dewatering. The centrate from this dewatering is returned to sewer system upstream of pump station No.2. The treated advanced primary effluent is discharged through the Point Loma ocean outfall. The ocean outfall extends approximately 7.1 Km (about 4.5 miles) offshore to an approximate depth of 100 meters (about 310 ft). Two diffuser legs branch from the end of the outfall in a "Y"-configuration. Each leg of the diffuser is 760 m (2,946 ft) in length and contains 208 diffuser ports.

The 30-MGD NCWRP began operation shortly after the 1995 permit was issued. The water reclamation plant consists of preliminary screening, grit removal, primary treatment, secondary treatment with provisions for nitrification and partial denitrification, tertiary filtration, and chlorination. Based on demand, a portion of the waste water stream will receive tertiary treatment and be reclaimed. Excess secondary treated water is released back into the sewer system and routed through pump station No. 2 to the Point Loma plant. The waste solids (sludge) are pumped to the MBC where it is thickened, digested in anaerobic digesters, and dewatered. The centrate from the NCWRP is released back into the sewer system upstream of pump station No. 2.

The MBC receives waste solids from the NCWRP and digested solids from the Point Loma plant. NCWRP solids are thickened, digested and dewatered at the MBC plant. The Point Loma solids are dewatered at the MBC. The centrate from these processes is released back into the sewer system upstream of pump station No. 2.

The SBWRP is a 15-MGD plant which is expected to go on line in 2002. Solids removed from the treatment process are released back into the sewer system upstream of pump station No. 2 for treatment at Point Loma. Water for reclamation receives full tertiary treatment. Excess secondary treated effluent will be discharged 3.5 miles offshore through the South Bay Ocean Outfall (SBOO), which is shared with the International Wastewater Treatment Plant (IWTP).

The IWTP is currently operating as a 25-MGD advanced primary plant that was constructed to handle waste from Mexico. While not considered part of the Wastewater System, the plant removes a significant portion of flow from Mexico that was previously discharged to the Metro Wastewater System.

The original application was based on an end of permit flow of 205 MGD. Since then the rating capacity of the plant has been increased to 240 MGD (See addendum 2 to Board Order No. 95-106). The actual flows have been lower than projected. In the years 1999 and 2000 annual flows were around 175 MGD. The projected annual flow for the year 2006 (end of next permit period) is projected to be 195 MGD.

APPLICATION OF STATUTORY AND REGULATORY CRITERIA

1. Compliance with the California State Water Quality Standards [Section 301(h)(1), 40 CFR 125.61].

Under 40 CFR 125.61 which implements section 301(h)(1), there must be a water quality standard applicable to the pollutants for which the modification is requested and the applicant must demonstrate that the proposed modified discharge will comply with these standards. The applicant must obtain a favorable State determination that the proposed modified discharge will comply with applicable provisions of State law including water quality standards.

The applicant is requesting a waiver from the secondary treatment requirement for suspended solids and BOD requirements. The applicant must demonstrate that it meets (and will continue to meet through the end-of-permit period) all effluent limits for suspended solids and turbidity and meets ambient standards for turbidity, light transmittance and dissolved oxygen.

A. Suspended Solids.

1. Solids Removal. The California Ocean Plan (COP) calls for at least 75% removal of suspended solids (30-day average). In this permit, 80% removal of suspended solids as a system-wide monthly average is set as a limit as requested by the City in its application. The percent removal computation is based on a system-wide calculation which accounts for solids removal from the NCWRP and the return of solids associated with the centrate from the MBC.

Table 1. Comparison of treatment removal requirements.

Requirement	Suspended Solids Removal	Biochemical Oxygen Demand Removal	pH Limitation
Primary	30% as 30-day average	30% as 30-day average	6-9
California Ocean Plan	75% as 30-day average	No Requirement	6-9
CWA § 301(h) and (j)(5)	80% as 30-day average	58% as annual average	
Secondary	85% as 30-day average	85% as 30-day average	6-9

The applicant has demonstrated through past performance the ability to meet on a monthly basis both the 75% and 80% removal requirements. In 1999, the average monthly percent removal ranged from 82% to 88%. In 2000, the average monthly removals ranged from 85% to 89%. These percentages are adjusted for system-wide removal. The difference between straight removal (Point Loma only) and system-wide removal (Point Loma plus NCWRP) is only a small percentage (Table 2). The NPDES permit issued to the City will require compliance with the COP objective of 75% removal on a monthly basis and the CWA's 80% removal on a monthly average.

Table 2. Plant performance at Point Loma expressed as percent removal (2000)

	TSS	TSS _{System-wide}	BOD	BOD _{System-wide}
January	88	89	63	66
February	87	88	56	61
March	87	88	60	64
April	87	88	62	66
May	86	87	59	63
June	87	88	63	67
July	86	87	58	62
August	87	88	59	63
September	85	86	59	63
October	85	87	59	64
November	84	85	59	63
December	88	88	64	66

Suspended solids concentrations. The suspended solids concentration in the effluent has remained relatively consistent over the course of the existing permit (1995-2000). The average monthly suspended solids concentrations are generally around 40 mg/l (Table 3).

Table 3. Average monthly effluent concentration of suspended solids (mg/l) from Point Loma (1995-2000).

Month	1995	1996	1997	1998	1999	2000	Average 1995-2000
January	36	44	41	38	38	35	38
February	41	42	42	62	38	34	43
March	39	44	42	63	36	34	43
April	45	48	38	43	39	35	41
May	40	42	39	33	40	39	39
June	42	44	42	32	41	36	40
July	39	40	44	31	43	38	39
August	46	40	40	33	37	36	39
September	43	46	34	28	37	39	38
October	44	42	33	27	40	38	37
November	48	42	42	32	33	47	40
December	45	44	35	39	30	38	38
Annual Average	42	43	39	38	38	37	40

In 1994, USEPA predicted a maximum increase in suspended solids concentrations of 0.5 mg/l in the immediate area of the outfall based on a worst-case minimum initial dilution of 99:1 and an effluent concentration of 53 mg/l. Applying this worst-case minimum initial dilution to the range

of values in Table 3, the maximum increases in suspended solids concentrations should be on the order of 0.3 to 0.6 mg/l.

To further evaluate the effect of the outfall on ambient suspended solids concentrations, USEPA looked at data from the City's water quality monitoring program. The City has been measuring water quality parameters (e.g., suspended solids, turbidity, dissolved oxygen, bacteria) in the waters around the current outfall locations since 1991 (Fig. 2). The data for the time period between 1995 and 2000 are summarized in the appendix (Table A1). These data indicate that background concentrations in these waters are typically on the order of 2 to 6 mg/l and that there were no substantial differences between suspended solids concentrations measured at stations near the outfall (Stations E10, E16, E14, E8, E12, E18) and those measured at far field reference stations (Stations B9, B12, B1, B5). The minor increases in suspended solids concentrations within the zone of initial dilution predicted by the simple dilution model (0.3 to 0.6 mg/l) are not considered substantial given the range of natural variability in suspended solids concentrations of the receiving water.

Suspended solids loadings. The original permit called for reductions in permitted loadings from 15,000 MT/yr to 13,600 MT/yr by January 1, 2001. The actual loadings during this time period were much smaller due to lower than projected flows and lower suspended solids concentrations than assumed (Table 4). In 1999 and 2000 solids loadings were less than 10,000 MT/yr. The applicant is requesting the same permit limits for the new permit cycle (2001 to 2006), with a limit of 13,599 MT/yr for the last year of the permit term, satisfying section 301(j)(5)(B)(ii).

Year	Loadings (Actual/Projected)	Permit limits (Existing/Proposed)
1994	12,021	
1995	11,174	
1996	10,622	15,000
1997	10,183	15,000
1998	10,469	15,000
1999	9,188	15,000
2000	8,888	13,600
2001	14,100	15,000
2002	14,200	15,000
2003	14,300	15,000
2004	14,500	15,000
2005	14,600	15,000
2006	13,599	13,599

2. Turbidity. Turbidity is a surrogate measure for the effects of suspended solids on light transmittance. The COP has an effluent limitation for turbidity and an ambient limitation for light transmittance. These effluent limits are listed below:

	30-day Ave	Weekly Ave	Maximum
Turbidity	75 NTU	100 NTU	225 NTU

To evaluate compliance with the turbidity standard, USEPA evaluated the daily effluent data from 1995 to 2000 (summarized in Table 5).

Table 5. Average monthly concentration for effluent turbidity (NTU) from Point Loma (1995-2000).

Month	1995	1996	1997	1998	1999	2000
January	31	36	38	26	33	37
February	35	37	40	32	30	34
March	34	38	40	37	31	33
April	38	41	37	32	31	37
May	37	46	37	31	38	40
June	37	46	42	34	40	36
July	36	43	40	33	41	41
August	40	41	40	31	37	39
September	39	44	38	30	39	39
October	38	41	34	31	41	38
November	42	38	32	32	37	46
December	37	42	29	37	35	40
Annual Average	37	41	37	32	36	38

The average NTU concentration was 37 NTU. The highest 30-day running average, the highest 7-day running average, and the highest daily maximum concentrations over this five-year period are as listed below:

	30-day Ave	Weekly Ave	Maximum
Turbidity	46 NTU	52 NTU	60 NTU

The effluent turbidity concentrations are well within ocean plan limits. To ensure continued compliance with the COP, effluent limits for turbidity will be included in the NPDES permit.

3. Light Transmittance. The COP states that "*natural light shall not be significantly reduced at any point outside the initial dilution zone as the result of the discharge.*" In 1994, USEPA found that the effect of outfall-related solids on light transmittance was minimal and well within the range of variability measured at the other stations.

To re-evaluate this conclusion USEPA evaluated the results of the City's ambient water quality monitoring program. The results support the conclusion that the outfall is not having a major effect on light transmittance (Table A.2). The percent transmissivity measured at stations near the outfall (Stations E10, E16, E14, E8, E12, E18) were similar to those at far field reference stations (Stations B1, B5, B9, B12). Percent transmissivity was generally greater than 85%. Values tended to be slightly lower and slightly more variable at nearshore stations (as a result of shoreline influences) and at samples taken near the bottom depth (as a result of resuspension).

The outfall does not appear to be resulting in any significant reduction in transmissivity.

B. Biochemical Oxygen Demand and Dissolved Oxygen.

The secondary treatment removal requirement for BOD is 85% removal and 30 mg/l as a 30-day average. The permit calls for 58% removal of BOD computed as an annual average. The COP does not have an effluent limitation for BOD. However, the COP water quality standard for dissolved oxygen is applicable. The COP states that "*dissolved oxygen shall not at any time be depressed more than 10% from that which occurs naturally as a result of the discharge of oxygen-demanding waste materials.*"

1. BOD. USEPA reviewed five-years of effluent BOD data from the Point Loma Plant (summarized in Table 6). The existing permit allows BOD removal to be calculated as a system-wide basis to eliminate double counting of BOD returned to the Point Loma WWTP from the Metro Biosolids Center and the North City Water Reclamation Plant (NCWRP). The plant is currently being operated in a manner which meets the 58% removal requirement. Based on daily averages from 1994, the plant operated at better than 58% removal sixty percent of the time. Since that time the applicant has made improvements including new sedimentation basins and solids handling facilities to ensure that they continue to meet the 58% removal on a system-wide basis.

Table 6. Summary of effluent BOD from Point Loma outfall (1995-2000).

Month	1995	1996	1997	1998	1999	2000
January	88	112	104	95	106	91
February	106	119	112	98	108	91
March	96	116	118	126	105	90
April	108	121	107	103	109	90
May	115	125	108	97	115	93
June	113	124	114	110	110	82
July	105	121	105	106	101	96
August	105	116	102	106	96	97
September	107	119	99	100	102	95
October	114	112	97	105	96	94
November	117	116	95	109	89	106
December	114	124	100	114	88	98
Annual Average Effluent BOD	107	119	105	106	102	94
Annual system-wide percent removal	60%	58%	59%	56%	61%	64%

According to the applicant, the percent removal in 1998 was 56% as a result of complications associated with bringing the new solids handling facility (MBC) on line. In 1999 the monthly average system wide percent removals ranged from 53% to 63%, the annual average was 61%. In 2000 the average ranged from 61% to 67%, the average for the year was 64%. The NPDES permit issued to the City will require compliance with the 58% removal requirement.

2. Dissolved Oxygen Concentrations. In 1995, the applicant used a modeling approach to

predict the effect of the discharge on ambient dissolved oxygen concentrations. In its review USEPA (1995) evaluated these efforts and conducted a similar modeling effort to verify the model predictions. These results were slightly higher but comparable to the applicant's. USEPA believes that the results of these models are still valid for use in this review as the initial assumptions about flow (240 MGD), TSS (48 mg/l) and BOD (121 mg/l) concentrations used in the model are conservative with respect to existing conditions (compare to Tables 5 and 6). The results of the applicant's modeling effort and USEPA's review are summarized below.

As recommended in USEPA's 1994 Amended Section 301(h) Technical Support Document (ATSD), modeling efforts were directed toward evaluating the potential for (1) DO depressions following initial dilution during the period of maximum stratification (or other critical period), (2) farfield DO depressions associated with BOD exertion in the wastefield, (3) DO depressions associated with steady-state sediment oxygen demand and (4) DO depressions associated with the resuspension of sediments (Table 7).

Table 7. Predicted worst-case dissolved oxygen depressions (mg/l) from San Diego (1994) and USEPA (1995)

Sources of potential oxygen demand	San Diego	USEPA
Dissolved oxygen depression upon initial dilution	0.05	0.05
Dissolved oxygen depression due to BOD exertion in the farfield	0.14	0.23
Dissolved oxygen depression due to steady-state sediment oxygen demand	0.07	0.16
Dissolved oxygen depression due to abrupt sediment resuspension	0.07	0.12

These model predictions have been compared to the most recent ambient water quality data (Table 8) to assess the potential for reductions in DO concentrations greater than 10% as a result of the outfall. The dissolved oxygen depressions after initial dilution (0.5 mg/l) and due to BOD exertion in the farfield (0.14 to 0.23 mg/l) were compared to ambient dissolved oxygen concentrations at mid-depths which correspond to the trapping depth of the plume.

Concentrations at these depths are generally greater than 5 and never less than 3 mg/l. The DO depressions associated with sediment demand (0.7 to 0.16 mg/l) should be compared to bottom waters at the outfall depth. Most of the time these waters are well above 3 (lowest value was 2.5 mg/l). Based on the predictions of the models and the ambient dissolved oxygen concentrations in the water column, it is unlikely that the outfall could reduce dissolved oxygen concentrations in the water column by 10%.

USEPA also looked at the ambient data to determine if there were any depressions in DO that might be attributable to the outfall (Table A-3). Dissolved oxygen concentrations in surface waters were generally around 8 mg/l. DO decreased with depth, largely as a result of low DO associated with bottom water. There are no real differences between nearfield stations (Stations E8, E10, E12, E16, E18) and farfield stations (Stations B9, B12, B1, B5).

Table 8. Depth distribution of dissolved oxygen concentration in waters offshore of Point Loma (1995-2000).

Depth (feet)	# of samples	% of samples DO > 5 mg/l	% of samples DO < 5 mg/l	% of samples DO < 4 mg/l	% of samples DO < 3 mg/l
5	1621	99%	1%		
10	180	100%			
20	180	100%			
40	359	99%	1%		
60	355	94%	6%		
140	1080	85%	15%	2%	
200	898	69%	31%	7%	
260	610	50%	50%	16%	
290	120	33%	67%	29%	3%
320	468	25%	75%	31%	3%
380	94	17%	83%	44%	6%

USEPA concludes that the applicant will be able to meet the 58% removal requirement, and that the discharge is not likely to cause dissolved oxygen depressions greater than 10%. USEPA's conclusion on ambient effects is based on a review of plant performance, modeling efforts performed in 1995 and more recent ambient monitoring data. Permit limits for suspended solids and BOD will be established to ensure that the plant continues to operate at a comparable level of performance through the permit period.

C. pH Compliance.

The COP states that receiving water pH shall "*not be changed at any time more than 0.2 pH units from that which occurs naturally.*" In addition, the COP requires that effluent pH be within 6.0 to 9.0 pH units at all times. This is the same as the secondary treatment requirement for pH. The applicant is not seeking a waiver from the pH requirement.

D. Conclusions on Compliance with Applicable Water Quality Standards.

Based on the information provided by the applicant, the outfall will be operated in a manner which ensures compliance with the State water quality standards relevant to suspended solids, BOD and pH. A review of past performance indicates that the discharge can be operated in a manner that will meet the effluent limits specified in the COP for suspended solids (75% removal), turbidity (75 NTU) and pH (6.0 to 9.0). Based on the review of effluent data, ambient water quality data (1995 to 2000), and model projections USEPA finds that the discharge will have minimal effects on ambient suspended solids concentrations, light transmittance, dissolved oxygen or pH.

Effluent limits for suspended solids and BOD will be established in the NPDES permit to ensure continued compliance with State standards for effluent (suspended solids, turbidity and pH) and receiving water (suspended solids, light transmittance, dissolved oxygen and pH).

2. Protection and propagation of a balanced, indigenous population of fish, shellfish, and wildlife, recreational activities or public water supplies. [Section 301(h)(2), 40 CFR 125.62].

A. Physical Characteristics of the Discharge.

1. Outfall/Diffuser and Initial Dilution. 40 CFR 125.62(a) provides that the proposed outfall and diffuser must be located and designed to provide adequate initial dilution, dispersion, and transport of wastewater to meet all applicable water quality standards at and beyond the boundary of the zone of initial dilution (ZID). This evaluation is based on conditions occurring during periods of maximum stratification, and during other periods when discharge characteristics, water quality, biological seasons, or oceanographic conditions indicate more critical situations may exist.

The COP specifies that "*waste effluents shall be discharged in a manner which provides sufficient initial dilution to minimize the concentrations of substances not removed in the treatment.*" In the COP, minimum initial dilution is defined as the "*lowest average initial dilution within any single month of the year.*" Dilution estimates are "*based on observed waste flow characteristics, observed receiving water density structure and the assumption that no current, of sufficient strength to influence the initial dilution process, flow across the discharge structure.*"

In the 1995 application, the City offered an estimate of initial dilution of 204:1 based on a modified version of the RSB model (USEPA, 1994; Roberts *et al.*, 1989 a,b,c,) and a projected flow of 205 MGD. Additional physical oceanographic modeling performed by the applicant indicated that the lowest 5th percentile initial dilution was 215:1 and that the median dilution was 365:1. Using a slightly different set of assumptions, USEPA (1995) predicted minimum monthly-average initial dilutions ranging from 169:1 to 205:1 and predicted a long-term effective dilution of 328:1 in the area around the outfall. USEPA's estimates for the worst-case initial dilutions ranged from 99:1 to 143:1.

Based on the information provided, the diffuser is well designed and achieves a high degree of dilution. The USEPA's and the City's numbers are comparable given the uncertainties associated with physical oceanographic models. USEPA finds that the value of 204:1 provides a conservative estimate of initial dilution and uses this value for evaluating compliance with water quality standards. USEPA uses a value of 99:1 in this review to assess worst-case conditions.

2. USEPA Water Quality Criteria and State Water Quality Standards. Under section 303(d)(1) of the WQA, a discharger must be in compliance with the criteria established under section 304(a)(1) of the Clean Water Act at the time their 301(h) permit becomes effective.

State standards for a variety of toxic materials are established in the COP. The receiving water standards for the protection of marine aquatic life and human health are listed in Table B of the COP. USEPA uses an initial dilution of 204 for establishing compliance with the State standards and USEPA water quality criteria related to the protection of aquatic life. USEPA uses the long-term average initial dilution of 328:1 for evaluating compliance with federal water quality criteria for the protection of human health. This is appropriate since these criteria are based on

consumption of fish experiencing long-term exposure to chemical concentrations above the criteria.

USEPA reviewed five-years (January 1995 through December 1999) of effluent data provided by the applicant in electronic format. The data were screened to identify those chemicals that have the potential to exceed either state standards or federal criteria after allowing for dilution. To accomplish this, the statistical distribution of each chemical parameter was evaluated to define a chemical-specific coefficient of variability. This was then used along with the maximum detected value (or maximum detection limit) to estimate the projected upper bound of the distribution based on a 99th percentile confidence limits. In effect, we calculated the effluent concentration that we can say with 99% certainty will not be exceeded during the course of the permit. This procedure known as reasonable potential analysis is documented in the Technical Support Document for Water Quality-Based Toxics Control (USEPA/505/2-90-001, March 1991). The results from this analysis are summarized in Table 9. For perspective, the results from previous reasonable potential analysis performed in 1995 are also provided.

Table 9. Comparison of Reasonable Potential Analyses. Bolded figures are based on detected values, all others are based on detection limits.

1990-1994	1995-1999
	Arsenic
Beryllium	
Copper	Copper
<i>Aldrin</i>	<i>Aldrin</i>
<i>Dieldrin</i>	<i>Dieldrin</i>
Chlordane	<i>Chlordane</i>
<i>Toxaphene</i>	<i>Toxaphene</i>
<i>Guthion</i>	<i>Guthion</i>
DDT	
<i>PCBs</i>	<i>PCBs</i>
<i>Acrylonitrile</i>	
<i>Benzidene</i>	<i>Benzidene</i>
<i>3,3-dichlorobenzene</i>	<i>3,3-dichlorobenzene</i>
<i>Hexachlorobenzene</i>	<i>Hexachlorobenzene</i>
<i>Heptachlor</i>	
<i>Heptachlor epoxide</i>	
	Dioxin
<i>Total PAHs</i>	<i>Total PAHs</i>

In the 1995 Tentative Decision Document (USEPA, 1995), sixteen chemical parameters were identified with the potential to exceed water quality standards. Of these sixteen, four were based on actual detected values (beryllium, copper, chlordane, DDT). The remaining twelve compounds on the list were based on detection limits only. The results of the new reasonable potential analysis identified thirteen parameters. Three are based on actual detected concentrations (arsenic, copper and dioxin) and ten are based on detection limits only. The difference between the two lists in part reflects improvements in either the effluent quality (i.e., beryllium, DDT, chlordane are no longer detected in the effluent) or detection limits achieved by the laboratory (i.e., for acrylonitrile, heptachlor and heptachlor epoxide). The effluent data for arsenic, copper and dioxin are discussed in more detail below.

Arsenic. The average weekly effluent arsenic concentration was 1.2 ug/l with a standard deviation of 0.4 ug/l (Fig. 3). The maximum arsenic concentration measured in the effluent was 2.7 ug/l. This is lower than the assumed background concentration for seawater of 3.0 (COP, 2001). The predicted maximum arsenic concentration after mixing with ambient seawater is 3.7 ug/l. This is below the USEPA criteria for protection of aquatic life of 36 ug/l and below the COP criteria of 8 ug/l, but above the USEPA human health water quality criteria of 0.14 ug/l. The toxicity of arsenic in marine systems was reviewed by Neff (1997). This review (and references therein) documents that concentrations of total arsenic in clean coastal waters range from 1 to 3 ug/l with an average of 1.7 ug/l. The review also suggested that USEPA's human health water quality criterion is inappropriate for marine waters and that arsenic concentrations typically found in clean coastal waters represent a low risk to human consumers of fish. The effluent is consistently below the COP standard of 8 ug/l. Effluent concentrations have not exceeded the permit limits for arsenic.

Copper. The mean effluent concentration was 55 ug/l with a standard deviation of 37 ug/l (Fig. 4). The maximum measured concentration of copper was 292 ug/l. The COP assumes that background copper concentrations in the ocean are 2 ug/l. After dilution the predicted maximum concentration is 3.4 ug/l. This is higher than the COP standard of 3.0 ug/l and the USEPA criteria of 2.9 ug/l. The assumption in the COP about background concentrations may be overly conservative. Flegal *et al.*, (1991) reported that background copper concentrations California coastal waters were around 0.1 ug/l. Using this number, the expected concentration after dilution would be 1.5 ug/l, which is below the COP standard. Effluent concentrations have not exceeded the permit limits for copper.

Dioxin. Dioxin was measured above the detection limit in 6 of 72 samples collected between 1995 and 2000 (Fig. 5). This is related to improved detection limits from the laboratory. The City uses a high resolution method (USEPA Method 1613) that can detect dioxins in the range of 1 to 10 pg/l. This is low but still several orders of magnitude higher than the COP standard for total dioxins of 0.0039 pg/l. The detection limits achieved by the applicant are close to the permit limit of 0.8 pg/l. For most chemicals the COP defines minimum levels that "*represent the lowest concentration that can be quantitatively measured in a sample given the current state of performance in analytical chemistry methods in California*". The COP also states that "*Dischargers are out of compliance with the effluent limitation if the concentration of the pollutant is greater than the permit limit and greater than or equal to the reported minimum level.*" The COP does not, however, identify a minimum level for dioxins. The applicant points

out that their detection limits for dioxin are three to six orders of magnitude lower than measured at other comparable treatment plants (SCCWRP, In Prep) and that detection of dioxins at these levels can be complicated by false positives associated with working at or near the level of detection, matrix interferences and low-level laboratory contamination. Given the uncertainties associated with the low-level analysis of dioxins, we do not consider the values reported by the applicant to represent water quality exceedances. We believe this is consistent with the intent of COP. The applicant is working to improve the methodology for dioxin analyses and will be submitting this to USEPA for approval under the alternative test procedures.

Based on this review of the effluent data, EPA concludes that the effluent quality of the plant is sufficient to meet water quality standards. In a letter dated January 24, 2002 the Regional Board stated that the wastewater discharge "will comply with the applicable water quality standards for waters of the Pacific Ocean included in the 2001 California Ocean Plan and the Water Quality Control Plan for the San Diego Basin (Basin Plan)."

In the 1995 permit, USEPA and the Regional Board established mass-based performance goals based on the effluent data (1990 - April 1995). For most parameters these performance-based goals are set below the effluent limits established in the permit. They were designed to provide an early measure of changes in effluent quality which might substantially increase the mass of pollutants to the ocean. Consistent with the State Board's anti degradation policy, these performance goals were intended to serve as a trigger for anti degradation analyses during permit renewal. Three parameters (phenols, zinc, cyanide) were observed to exceed the annual mass-based performance goals in at least one year. San Diego prepared an anti degradation analyses in their renewal application to evaluate the reasons for these increases and the effects of these increases on the marine environment (See Volume 1, Part 3). USEPA reviewed the weekly effluent data for these three parameters (Figs. 6, 7, and 8). As discussed by the applicant, the concentrations of these three parameters are well below the permitted limits. The exceedances of the annual mass-based performance goal for zinc (in 1996) and cyanide (in 1997) appear to be related to episodic events and do not appear to represent any long-term trend of increased loadings. Phenols exceeded the performance goal all five years. The applicant noted that effluent concentrations in phenols were higher in the 1995 to 2000 time frame than in the previous time period (1990 to 1995) on which the benchmarks were established and suggested that this reflected increases in influent concentrations. We do not see any trends in the effluent data which would suggest that phenol concentrations increased since 1995 (Fig. 6). The existing performance goals will remain in the permit as a baseline for measuring future changes in effluent quality and mass loadings.

In summary, the applicant's discharge will be operated in a manner that ensures compliance with state standards and federal marine water quality criteria. Effluent limits have been established for all COP chemicals and for those USEPA criteria where an analysis of past effluent data indicates a reasonable potential to exceed the standards or criteria. Effluent concentrations will continue to be monitored for all COP constituents and remaining priority pollutants on a regular basis. The results of the effluent monitoring program will be evaluated against performance goals established in the permit.

3. Dilution Water Recirculation. Under section 303(e) of the WQA, before a 301(h) permit may be issued for discharge of a pollutant into marine water, such marine waters must exhibit characteristics assuring that the water providing dilution does not contain significant amounts of previously discharged effluent from the treatment works.

This issue was addressed by City in the 1994 application. To estimate the potential for re-entrainment effects on the 30-day average concentration, the applicant made the assumption that receiving water around the outfall contains all the wastewater effluent discharged during a 30-day period. This is an extremely conservative assumption, as physical oceanographic models indicate that the residence time for wastewater within a 30 Km by 12 Km area around the outfall is about 4.5 days and that 95% of the wastewater is advected out of the area within two weeks. A background effluent concentration was estimated by dividing the volume of wastewater discharged over thirty days by an estimate of the volume of ambient water providing dilution over the 30-day period. Overall, the effect of re-entrainment was to reduce initial dilutions by 8.4 to 8.7%. The minimum monthly-average initial dilution was reduced by around 10%.

USEPA believes that the 10% reduction predicted by the applicant provides a conservative estimate of the effect of re-entrainment on initial dilution. Based on our review of effluent data (above), a 10% difference in initial dilution would not affect the ability of the discharge to comply with State standards or USEPA water quality criteria.

4. Transport and Dispersion of Diluted Wastewater and Particulates, Physical and Chemical Effects. Accumulation of suspended (settleable) solids in and beyond the vicinity of the discharge can have adverse effects on water usage and biological communities. 40 CFR 125.62(a) requires that following initial dilution, the diluted wastewater and particulates must be transported and dispersed so that water use areas and areas of biological sensitivity are not adversely affected.

Solids and Organic matter. The COP states that "*the rate of deposition of inert solids shall not be changed such that benthic communities are degraded*" and that "*the concentration of organic material in marine sediments shall not be increased to levels which would degrade marine life.*"

In 1994, the City used a sediment deposition model (SEDPXY) to predict the rates of solids deposition around the outfall. The model was run under two flow scenarios assuming flow rates of 205 MGD and 240 MGD assuming solids mass emission rates of 14,073 MT/yr and 16,476 MT/yr, respectively. USEPA (1995) estimated sediment deposition using a modified version of the ASTD sediment deposition model. This model was run assuming a flow of 205 MGD flow rate assuming a solids loading of 13,600 MT/yr. The results from these efforts are summarized in Table 10. The results from this USEPA's ASTD model have been adjusted in this review to evaluate deposition associated with loadings for the 15,000 MT/yr scenario.

The predictions generated using USEPA's model are likely to be different from the applicant's for a number of reasons, including differences in the use of current meter data, bathymetry, trapping depth distributions, the size and resolution of the model grid, and different assumptions regarding the rate with which effluent particles settle (e.g., the settling velocities used by USEPA were about two times higher than those used by the applicant). As a result of these differences

USEPA's model predicts a greater number of particles settling over a smaller area and thus are more conservative in nature.

Table 10. Results of sediment deposition modeling performed by the City (1994) and USEPA (1995).

	San Diego	USEPA
Mass of particles (Mt/yr)	14,073 - 16,476	13,600 - 15,000
Area modeled (km ²)	360	200
Percent of particles settling in area modeled	8%	12%
Area around the diffuser modeled (Km ²)	0.01	0.25
Solids deposition rates (g/m ² /yr)	152 - 174	254 - 280
Organic deposition rates (g/m ² /yr)	122 - 139	203 - 224
Peak a 90-day solids deposition rates (g/m ² /90-days)	45 - 51	72 - 79
Peak 90-day organic deposition rates (g/m ² /90-days)	37 - 57	58 - 64
Steady-state organic accumulation (g/m ²)	18 - 38	56 - 62

Estimates of solid deposition rates range from 152 to 280 g/m²/yr. This can be compared to an estimate of 625 g/m²/yr from sediment trap data for the San Diego area (Hendricks and Eganhouse, 1992). Assuming that effluent solids are 80% organic matter, the estimates of organic deposition rates in the area around the outfall range from 122 to 224 g/m²/yr. Although not strictly comparable, our best estimates of the organic carbon flux from the water column associated with primary and secondary production in Southern California are 26 to 62 g C/m²/yr (Nelson et al., 1987).

The models predict a range of organic accumulation in the sediments from 18 to 62 g/m². The steady-state accumulation of organic matter in the sediment is a function of the rate with which organic matter is deposited in the sediments and the rate with which it decays. Both USEPA and the City used a default decay rate of 0.01/day and the conservative assumptions of the sediment deposition models used by USEPA and the City is that there is no resuspension and transport of solids outside the area. This tends to overestimate actual accumulation of outfall deposits in the sediments. For instance, Hendricks and Eganhouse estimated a background accumulation rate for solids of 103 g/m²/yr, one sixth of their estimate for solids deposition. Applying this ratio to the model results in Table 10 yields organic accumulation rates of 20 to 37 g/m² and steady-state accumulation rates of 5 to 10 g/m². Empirical evidence suggests that steady-state organic accumulations less than 50 g/m² have minimal effects on benthic communities (USEPA, 1982).

To evaluate whether significant accumulation is actually occurring in the field, USEPA looked at trends in sediment monitoring data that occurred in the years from 1991 to 2000 (see Fig. 2 for station locations). We compared the results of pre-discharge monitoring surveys (1991 to 1993) and discharge monitoring surveys (1994 to 2000). High rates of organic accumulation in sediments should be associated with elevated sediment concentrations of total volatile solids (TVS), total organic carbon (TOC), biochemical oxygen demand (BOD), and sulfides. To

put these values in perspective we also compared the data from around the outfall to the results from regional surveys conducted in the offshore areas of San Diego (SCBPP, 1994, San Diego, 1995, 1996, 1997; SCCWRP, 1998, San Diego, 1999).

Total Volatile Solids (TVS). TVS is one measure of organic matter in the sediments. The average pre-discharge concentrations from these stations ranged from 2.1 to 2.3% and the average concentrations since 1994 have ranged from 2.4 to 2.7%. Although there appears to be a slight increase during the discharge period (Fig. 10), there does not appear to be any spatial pattern which would suggest that this is an outfall-related effect. The average concentration from the regional surveys was 2.4% with a standard deviation of 1.1%.

Total Organic Carbon (TOC). TOC is a direct measure of organic carbon in the sediments. There does not appear to be any spatial or temporal trends in TOC which might suggest an outfall-related effect (Fig. 11). The concentrations at the outfall depth averaged around 0.5% in both the pre-discharge and discharge time periods. The one exception is at Station B12 (12.7 Km north of the outfall) where TOC values ranged from 0.5% to 3.0%. Background TOC concentrations in the San Diego region ranged from 0 to 3.8%. The average concentration from the regional surveys was 0.5%.

Biochemical Oxygen Demand (BOD). Sediment BOD is an indirect measure of organic enrichment. Although there is some variability in the data (Fig. 12), sediment concentrations were generally in the 200 to 400 ug/g range. There was no apparent increase during the period of the discharge. These values are typical of background concentrations from regional reference surveys in the San Diego Region.

Sediment sulfides. Sulfides are a by-product of anaerobic digestion of organic matter by sulfur bacteria. Sulfide concentrations increased during the discharge period at most stations (Fig. 13). The highest concentrations were seen at station E14 (as high as 30 ug/g). Elevated concentrations were also seen on occasion upcoast of the outfall but the pattern does not appear to be consistent over time. Sulfide concentrations from regional surveys in the San Diego region ranged from 0.1 to 272 ug/g, but were generally less than 5 ug/g. The average concentration from the regional surveys was 8.1 ug/g with a standard deviation of 26.9 ug/g.

Both model predictions and monitoring results indicated that deposition and accumulation rates associated with the outfall are not likely to have negative effects on benthic communities outside the ZID. Sediment parameters associated with organic accumulation (such as total volatile solids, biochemical oxygen demand, total organic carbon and dissolved sulfides) do not appear to show any outfall-related effects. The one exception is dissolved sulfide which does indicate an outfall-related pattern. All these parameters are within the range of natural variability in other surveys and not likely to have significant effects on benthic communities.

Sediment Contamination. The COP states that "*the concentrations of toxic substances in marine sediments shall not be increased to levels which would degrade indigenous biota or degrade marine life.*"

The concentrations of nine metals (arsenic, cadmium, chromium, copper, lead, mercury, nickel,

silver, and zinc), total PCBs and total DDTs were evaluated in this review. Trends in sediment contaminant concentrations at stations along the 98-m depth contour (diffuser depth) were evaluated. The data from stations around the outfall were compared to data from the regional reference surveys. To assess the potential impacts to biological communities, the data were compared to sediment guidelines in the literature (as summarized Table 11). Although these guidelines are not regulatory in nature, they do provide some information on the concentrations where the potential for biological effects are likely to occur. The TELs and ERLs are thought to reflect concentrations which pose little risk of toxicity. When sediment concentrations are higher than PEL and ERM values there may be potential for sediment toxicity and further investigation is warranted (Long *et al.*, 1998).

Table 11. Overview of numeric sediment quality guidelines (from Buchman, 1999).

Pollutant	TEL	ERL	PEL	ERM	AET
Arsenic (ug/g)	7.24	8.2	41.6	70	35
Cadmium (ug/g)	0.67	1.2	4.2	9.6	3.0
Chromium-total (ug/g)	52.3	81	160.4	370	260
Copper (ug/g)	18.7	34	108	270	390
Lead (ug/g)	30.2	46.7	112	218	400
Mercury (ug/g)	0.13	0.15	0.696	0.71	0.41
Nickel (ug/g)	15.9	20.9	42.8	51.6	110
Silver (ug/g)	0.73	1	1.77	3.7	3.1
Zinc (ug/g)	124	150	271	410	410
DDT-total (ug/kg)	3.89	1.58	51.7	46.1	11

TEL = threshold effects level; PEL = probable effects level; ERL = effects range low; ERM = effects range median; AET = apparent effects threshold

Arsenic. The average arsenic concentration ranged from 2.2 to 2.5 ug/g during the pre-discharge period and from 3.1 to 3.8 ug/g during the discharge period. This suggests that arsenic concentrations in the sediments have increased by about 1 ug/g during discharge period (Fig. 14). The highest increases were at E14 (near the outfall) and B12 (located 12.7 Km north of the outfall). The average arsenic concentration from the regional surveys was 3.4 ug/g, with a standard deviation of 1.4 ug/g. Arsenic concentrations around the outfall are low relative to ER-L (8.2) and TEL (7.2) thresholds.

Cadmium. Cadmium concentrations greater than the detection limit (0.5 ug/g) were not observed in any of the discharge period samples collected along the 98-m contour (Fig. 15). Cadmium concentrations from the regional surveys were also generally low, being measured in only 25 out of 184 of the measurements collected for the regional surveys between 1995 and 1999. The average measured cadmium concentration was 0.6 ug/g with a standard deviation of 0.3 ug/g. These values are similar to background concentrations for the Bight reported by NOAA (Mearns *et al.*, 1991). Cadmium concentrations near the outfall are similar to background and low relative to threshold values (TEL = 0.67 ug/g, ERL = 1.2 ug/g).

Chromium. The average chromium concentration during the discharge period (17.7 ug/g) was slightly higher than in the pre-discharge period (15.8 ug/g). This suggests that chromium concentrations have increased by about 2 ug/g since the plant started discharging (Fig. 16). The average value from the regional surveys was 16.0 ug/g with a standard deviation of 6.7 ug/g. The

numbers around the outfall are similar to background numbers and well below the lowest effects thresholds (TEL = 52 ug/g, ERL = 81 ug/g).

Copper. Copper values ranged from 3.1 to 20 ug/g, with a single outlier of 80.4 ug/g in June 1994 at station B9 located 10.5 Km north of the outfall (Fig. 17). If we remove the outlier, we find that the average concentrations appear to have increased from an average of 7.3 ug/g in the pre-discharge period to 8.8 ug/g for the discharge period. The average value from the regional reference surveys was 8.6 ug/g with a standard deviation of 5.4 ug/g. The copper values are generally low relative to sediment quality thresholds (TEL = 18.7 ug/g, ERL = 34 ug/g).

Lead. Lead concentrations in the sediments were generally below the detection limit of 5 ug/g, being detected in less than 25% of the samples (27 out of 120 measurements). Concentrations in the discharge period for the summer 98-m stations ranged from detection limits to 15.5 ug/g (Fig. 18). Lead was also rarely detected above 5 ug/g in the regional surveys (33 out of 184 samples). The average measured concentration from the regional surveys was 6.9 ug/g with a standard deviation of 1.6 ug/g. This is consistent with data from previous reference surveys (Thompson *et al.*, 1987, 1992) where background concentrations for the Bight were around 2 to 12 ug/g. Concentrations around the outfall are similar to those reported in the regional surveys and well below any of the sediment quality thresholds (ERL = 46.7 ug/g, TEL = 30.2 ug/g).

Mercury (Hg). Comparison of concentrations from the pre-discharge and discharge periods (Fig. 19) is complicated by differences in detection limits (which ranged from 0.025 to 0.047 ug/g) between years and the limited number of detected values in any given year. Mercury was only detected in about 25% of the samples. The maximum detected value was 0.11 ug/g. In the regional surveys, mercury was detected in about 65% of the samples (119/184 or 65% of the samples). The average measured concentration from the regional surveys was 0.05 ug/g with a standard deviation of 0.02 ug/g. Eganhouse *et al.*, (1976) suggested that background concentrations in the Bight were around 0.05 ug/g. The mercury concentrations in sediments near the outfall appear to be similar to background values and below the lower sediment quality threshold values for mercury (TEL = 0.13 ug/g, ERL = 0.15 ug/g).

Nickel (Ni). There does appear to be an outfall-related pattern in the data (Fig. 20). This pattern is driven largely by a single sample at E14 in 1994. This value of 29 ug/g is questionable as duplicate analysis of this sample yielded a value of 11 ug/g. For perspective, the average differences in nickel concentrations between duplicate samples is around 1 ug/g. Averaging the two duplicates from E14, yields a value of 20 ug/g. While this value is still high, it is more in line with other values. On average, nickel concentrations have increased from 6.6 to 7.8 ug/g. The average nickel concentration from the regional reference surveys was 8.3 ug/g with a standard deviation of 3.3 ug/g. The maximum value was 21 ug/g. With the exception of the one outlier at E14, the concentrations near the outfall are below the lower sediment quality thresholds (ERL = 20.9 ug/l, TEL = 15.9 ug/l).

Silver (Ag). Almost all samples were below detection limits of 3 ug/g (Fig. 21). Silver was also detected very infrequently in regional surveys (172/188 or less than 10% of the samples). The maximum concentration in the regional surveys was 6.2 ug/g. NOAA's suggested background concentration for silver is 0.01 to 0.1 ug/g. Although silver has been suggested as a useful

indicator of sewage effluent (Mearns *et al.*, 1991; Sanudo-Wilhelmy and Flegal, 1992), it is impossible to make conclusions about silver concentrations at the Point Loma outfall because the detection limits of 3 ug/g are high relative to background concentrations. These detection limits are also high relative to threshold values for silver (TEL = 0.73 ug/l, ERL = 3.7 ug/l).

Zinc (Zn). There is no apparent outfall-related pattern in zinc concentrations. Zinc concentrations are generally around 20 to 40 ug/g. The one notable exception was in 1997 at station B9 (10.5 Km north of the outfall) where the concentration was 140 ug/g (Fig. 22). The average pre-discharge concentration was 29 ug/g. The average concentration from the discharge period data (excluding the outlier) was 31 ug/g. The average concentration from the regional surveys was 27.4 ug/g with a standard deviation of 13.9 ug/g. The maximum value from the regional survey was 94 ug/g. These values are lower than the average concentrations at the 60- and 150-m stations from 1985 and 1990 SCCWRP reference surveys which ranged from 45 to 55 ug/g. Most values are low relative to threshold values (TEL = 124 ug/l, ERL = 150 ug/g) and within the range of background concentrations.

DDT. *p,p*-DDT was detected in 3 out of 120 samples. Its degradation product *p,p*-DDE was detected in 53 out of 116 samples. The other four DDT isomers (*p,p*-DDD, *o,p*-DDT, *o,p*-DDD and *o,p*-DDE) were not detected at the 100-m stations. Analysis of trends in the DDT data is complicated by differences in detection limits among years (Table 12). Detection limits were 1 ng/g in the pre-discharge time period (1991 to 1993). The detection limits have improved since then. During the 1994-1999 time period, the detection limits ranged from 0.37 to 0.55 ng/g. The three detected values for *p,p*-DDT were 1.2 ng/g, 2.9 ng/g and an anomalously high 40 ng/g (at Station E2, located 4.6 Km south of the outfall). Trends in *p,p*-DDE can be assessed by comparing the number of detected values greater than 1.0 ng/g in the pre-discharge and discharge periods. In the pre-discharge period, *p,p*-DDE values greater than 1.0 ng/g were detected in 18 out of 36 measurements. In the discharge period data, only 11 out of 84 measurements were greater than 1.0 ng/g. The highest values were for 1993 where all 12 stations were higher than 1.0 ppb (max concentration was 4.4 ppb). It is unclear why the *p,p*-DDE concentrations would be greater in sediments from the pre-discharge period. With the exception of 1993, the values from the pre-discharge and discharge periods are similar.

Table 12. DDT detection limits in sediments from San Diego (concentrations in ng/g)

DDT Isomer	91	92	93	94	95	96	97	98	99	00
<i>p,p</i> -DDT	1.00	1.00	1.00	0.44	0.44	0.94	0.94	0.94	0.94	0.41
<i>p,p</i> -DDD	1.00	1.00	1.00	0.32	0.32	0.91	0.91	0.91	0.91	0.59
<i>p,p</i> -DDE	1.00	1.00	1.00	0.37	0.47	0.44	0.44	0.44	0.44	0.55
<i>o,p</i> -DDT	1.00	1.00	1.00	0.51	0.51	0.39	0.39	0.39	0.39	0.57
<i>o,p</i> -DDD				0.36	0.36	0.26	0.26	0.26	0.26	0.32
<i>o,p</i> -DDE				0.54	0.54	0.39	0.39	0.39	0.39	0.48

Similar findings were observed in the regional surveys. The parent compound *p,p*-DDT was detected rarely (2 out of 184 samples), the degradation product *p,p*-DDE was detected more

frequently (59 out of 184 samples), and the isomers *p,p*-DDD, *o,p*-DDT, *o,p*-DDD, and *o,p*-DDE were not detected at all. The maximum concentrations of *p,p*-DDT and *p,p*-DDE in the regional surveys were 3.3 and 3.4 ng/g respectively. The DDT concentrations near the outfall are similar to background concentrations. These values are generally low relative to sediment quality thresholds for total DDT (ERL = 1.58 ng/g, TEL = 3.89 ng/g).

PCBs. The applicant reported that PCBs were not detected in the sediments at the outfall depth. Detection limits for PCB Arochlors 1248, 1254, 1260 and 1262 ranged between 10 and 13 ng/g. The applicant has also been measuring PCB congeners since 1998. PCB congeners were only detected on two occasions at the 100-meter stations (E25, January 2000; E2, April 2000). The detection limits for the various congeners ranged from 1 to 8 ng/g.

Summary of sediment contaminant data. The sediment chemistry data presented by the applicant does not indicate any substantial increase in sediment contaminant concentrations. There appear to be minor increases in the concentrations of certain metals (arsenic, chromium, copper and nickel). Concentrations of metals and organics are within the range of natural variability. The concentrations measured near the outfall were generally below the lowest sediment quality thresholds (such as TELs or ERLs) suggesting that the probability of sediment toxicity is low.

Therefore, USEPA concludes that the discharge will not increase the concentrations of toxic substances in marine sediments to levels that degrade indigenous biota or marine life. The monitoring program being developed as part of the NPDES permit will be designed to continue tracking sediment conditions over time.

B. Impact of Discharge on Public Water Supplies. The applicant's proposed modified discharge will have no effect on the protection of public water supplies and will not interfere with the use of planned or existing public water supplies.

C. Biological Impact of Discharge. The proposed modified discharge must allow for attainment or maintenance of water quality to protect and propagate a balanced, indigenous population (BIP) of shellfish, fish, and wildlife. The applicant must demonstrate that a BIP of shellfish, fish, and wildlife will exist in all areas beyond the ZID that may be affected by the proposed modified discharge.

A BIP is generally defined in the section 301(h) regulations [40 CFR 125.58(f)] as an *ecological community* which exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions. Consequently, for the purpose of 301(h) the term *population* should be interpreted to mean biological communities and the terms *shellfish, fish and wildlife* should be interpreted to include any or all biological communities that might be adversely affected by the discharge.

The ZID describes an area adjacent to the outfall system in which inhabitants, including the benthos, may be chronically exposed to concentrations of pollutants in violation of water quality standards and criteria. In general, the ZID boundary is operationally defined by the depth of the outfall. For the Point Loma outfall, the ZID boundary is 93.5 m (320 feet) from the outfall and diffuser.

In this evaluation, the effect of the outfall on the BIP is evaluated with respect to potential effects on phytoplankton, effects on benthic and fish community structure, and the potential for bioaccumulation of toxic substances in fish tissue.

1. Phytoplankton. The two following COP standards are applicable to plankton:

Marine communities, including vertebrate, invertebrate, and plant species shall not be degraded.

Nutrient material shall not cause objectionable aquatic growths or degrade indigenous biota.

Planktonic populations were not measured as part of the applicant's monitoring program. Therefore, this review focuses on variables measured as part of the monitoring program which may relate to phytoplankton, such as ammonia, transmissivity and total suspended solids.

Effluent suspended solids may affect phytoplankton by attenuating light penetration and thus reducing primary productivity. As discussed previously (See Section 1.A), an outfall-related increase in suspended solids of 0.3 to 0.6 mg/l in the area of the ZID is well within the range of natural variability (typically 2 to 5 mg/l). The monitoring data indicates that the effect of the discharge on light transmittance is minimal. These analyses indicate that the outfall-related effects on light penetration are not likely to have a significant effect on phytoplankton productivity.

Effluent ammonia concentrations may also affect phytoplankton productivity because ammonia tends to be a limiting nutrient in coastal waters. Natural background ammonia concentrations within the euphotic zone of the Southern California Bight generally range from below detection limits to 0.02 mg/l (Eppley *et al.*, 1979a). Concentrations in the offshore area are typically lower than 0.01 mg/l. The average ammonia concentrations in the effluent from 1995 to 2000 was 26 mg/l (Table 13).

Table 13. Average monthly effluent concentration for ammonia (mg/l) from Point Loma (1995-2000).

Month	1995	1996	1997	1998	1999	2000	Average 1995-2000
January	19	27	25	24	27	27	25
February	23	26	28	20	25	28	25
March	23	26	30	26	26	28	26
April	24	28	30	26	27	28	27
May	23	27	29	27	26	28	27
June	22	27	28	27	27	28	26
July	23	27	27	26	28	28	27
August	24	26	25	25	26	27	25
September	26	25	22	23	28	28	25
October	26	26	23	23	27	27	25
November	26	28	24	26	29	27	27
December	29	29	25	26	28	29	28
Annual Average	24	27	26	25	27	28	26

The highest monthly average concentration during this time period was 34 mg/l. This equates to a worst-case concentration of 0.34 mg/l (based on 99:1) and a long-term average of 0.09 mg/l (based on a long-term average dilution of 365:1). If these concentrations were to occur in the euphotic zone they could potentially stimulate phytoplankton productivity around the outfall. However, since the wastefield is generally trapped below the euphotic zone, the influence of the wastefield ammonia concentrations on phytoplankton should be minimal.

The applicant measured chlorophyll *a* concentrations (a measure of phytoplankton abundance) in offshore waters since January 1996 as part of their monthly water quality monitoring effort. Although the data is limited, there is no sign of any increase in chlorophyll *a* concentrations near the outfall.

Summary of effects on phytoplankton. The potential effects of the outfall on phytoplankton productivity were evaluated using the results of the existing monitoring program and model projections provided by the applicant for end-of-permit conditions. Decreases in light transmittance associated with the plume are minimal compared to the range of natural variability. Ammonia concentrations within the plume are likely to be elevated relative to background and could enhance phytoplankton productivity in the vicinity of the outfall. Any substantial increase in phytoplankton productivity would be unlikely however, because the plume trapping depth is generally below the euphotic zone. No increases in chlorophyll *a* concentrations near the outfall were observed in the monitoring data. Therefore it is concluded that the outfall will not result in phytoplankton blooms or other degraded conditions.

2. Benthic Infauna. The COP standards appropriate to evaluating benthic infauna are:

Marine communities, including vertebrate, invertebrate, and plant species shall not be degraded.

The rate of deposition of inert solids shall not be changed such that benthic communities are degraded.

The concentrations of toxic substances in marine sediments shall not be increased to levels which would degrade indigenous biota or degrade marine life.

The potential effects of solids deposition and concentrations of toxic substances in marine sediments on benthic communities were addressed previously (See Section 2.A.4). To evaluate whether benthic communities are degraded we evaluated benthic data from the grid of stations near the outfall since 1991 (Fig. 2) and data collected as part of regional reference surveys conducted every summer since 1994 (Fig. 9). In this review we look for differences in the abundances, number of species, as well as differences in the distribution of pollution sensitive and pollution tolerant species. We also looked at the response of two benthic indices designed to evaluate pollutant effects on benthic communities. These were the infaunal trophic index (Word, 1978, 1980) and the Benthic Response Index (Smith *et al.*, 2001). As recommended in the ATSD (USEPA, 1994), outfall-related effects on benthic communities should be evaluated in the context of (1) an evaluation of the range of natural variability in the reference conditions (2) an estimate of the magnitude and areal extent of the effect and (3) the potential for adverse effects.

To evaluate the magnitude and effect of the outfall, we focus on data from the outfall depth (100-meters) and compare values from ZID and nearfield stations to values from farfield and control stations. Station E-14 is located approximately 119 meters from the "Y" of the diffuser and should be considered the ZID boundary station. Stations E11 and E17 are the closest nearfield stations located approximately 204 meters from the south end of the diffuser and 278 meters from the north end of the diffuser, respectively. The remaining E stations are considered farfield stations. The B stations are considered control stations.

The data from the regional reference surveys are used to evaluate the range of natural variability. Since depth is important we focus the review on the benthic data from the 75 to 125 meter depth interval. These data provide a regional perspective on background conditions on the distribution of benthic organisms offshore of San Diego at depths comparable to the outfall.

Within the context of the COP, adverse effects to benthic communities are described in terms of degradation and degradation is defined in terms of statistical significance. We used two distinct but complementary statistical approaches to evaluate benthic degradation (Smith, 2001b). The first statistical approach uses an analysis of variance approach where conditions at control and impact sites are evaluated before and after the outfall went on line. This is known as a BACI (Before-After-Control-Impact) design. In the BACI design, effects at Station E14 were compared to all other 100-m stations (Table 14). In addition, the two nearfield stations (E11 and E17) were compared to Stations B9 and E26 representing the reference and most upcoast farfield station. The second statistical approach uses the regional reference data to develop a reference envelope for key benthic parameters. Tolerance intervals were then defined to establish bounds around the reference envelope. Data from the outfall were then evaluated against the upper and/or lower bounds of the reference envelope. In the BACI design outfall impacts are evaluated against fixed control site(s). In the reference envelope approach impacts are evaluated against multiple sites which are intended to reflect background or reference conditions. The results of the BACI analyses are summarized in Table 14. The tolerance intervals are presented in Table 15 along with summary statistics from the regional surveys.

Table 14. Summary results of BACI analysis. (Values in table refer to alpha value, NS means not statistically significant).

	E14 vs. all stations	E17 vs. E26&B9	E14 vs. E26&B9	E11 vs. E26&B9
Number of species	0.05	0.05	0.05	0.05
Total abundance	0.05	NS	0.1	0.05
Amphiodia	0.05	NS	0.05	NS
Parvilucina tenuisculpta	0.05	0.05	0.05	0.05
Euphilomedes carcharodonta	0.05	NS	0.05	0.1
Capitella spp.	0.1	NS	0.1	NS
Infaunal Trophic Index	0.05	0.05	0.05	0.05
Benthic Response Index	0.05	0.05	0.05	0.05

Number of species. One potential indicator of environmental degradation would be a reduction in the number of species around the outfall. The data from the 98-m stations suggests that number of species generally increased after 1993 when the discharge at the current deepwater site began (Fig. 22). The number of species ranged from 93 to 128 per grab in the discharge period. Although there is a lot of variability between years, the BACI analysis indicates that the number of species at Station E14 is statistically higher than at the other stations. The two closest nearfield stations (Stations E11, E17) were also statistically elevated when compared to upcoast reference (Station B9) and farfield (Station E26) stations. This suggests that there may be an outfall-related enhancement in the number of species near the outfall. The fact that increases in species number were also seen at most other stations suggests that some other region-wide factors may also be influencing species number. In the regional surveys the number of species ranged from 50 to 149 per grab (Fig. 23). The number of species at stations near the outfall were within the bounds of the reference envelope (51 to 134) and not likely to be environmentally significant.

Abundance. Benthic abundances are generally predicted to increase in response to organic enrichment. Increased abundances associated with moderate levels of organic enrichment are generally not considered to be adverse unless accompanied by a reduction in the number of species. However as the level of organic enrichment increases the number of species may begin to decline and extremely high abundances associated with reduced number of species would be considered an indication of an adverse outfall-related effect. Benthic abundances would be expected to decline when levels of organic enrichment result in anoxic sediment conditions. In this case, decreased abundances would be indicative of a degraded condition.

Benthic invertebrate abundances at the 100-m stations ranged from 223 to 662 per grab in the discharge period (Fig. 24). Although the inter-annual variability is high, benthic abundances appear to have increased during the discharge period at all stations. BACI analysis indicates that the higher abundances at Stations E14 and E11 are statistically significant. In the regional surveys, average benthic abundances ranges from 173 to 1,072 per grab (Fig. 25). Abundance values at the outfall depth were generally within the tolerance limits for the reference envelope (140 to 616).

Indicator species. We looked at the presence of four key benthic species known to respond to outfall related effects: a brittle star (*Amphiodia urtica*), a bivalve (*Parvilucina tenuisculpta*), a crustacean (*Euphilomedes carcarodonta*) and a polychaete (*Capitella spp.*)

Amphiodia urtica has been suggested as a key indicator species, because it is one of the most abundant species on the shelf and because its abundances are very much reduced near sewage treatment outfalls (Thompson, *et al.*, In Prep). *Amphiodia* abundances from the regional survey ranged from 0 to 175 per grab. They tend to be more abundant at midshelf depths (Fig. 26). The 100-meter outfall depth is at one edge of the depth distribution for *Amphiodia*. The values at the 100-m stations ranged from 5 to 97 per grab. However, there is a clear outfall related pattern in their distribution (Fig. 27). *Amphiodia* abundances appear to have increased at all stations except in the "Y" of the outfall (Station E14) where numbers remain lower than pre-discharge. BACI analysis indicates that this decrease at Station E14 is statistically significant. The effect on *Amphiodia* abundances does not appear to extend beyond the ZID boundary.

The bivalve, *Parvilucina tenuisculpta*, has been suggested as an indicator species because it is found in high abundances in areas of moderate organic enrichment. Abundances from the 100-m stations ranged from 0 to 14 per grab. There is a distinct pattern of increased abundance nearby (Stations E17, E14, E11) which suggests that the outfall is having an enhancement effect near the outfall (Fig. 28). The BACI analysis indicates that abundances at Station E14 are statistically significant as were the abundances at Stations E11 and E17. The range in abundances at these stations near the outfall is also similar to that observed in the regional reference surveys (Fig. 29), where the number ranged from 0 to 13 per grab and the upper bound for the tolerance interval is 14 per grab.

The crustacean, *E. carcharodata* is of interest as indicator species because the abundances of this ostracod species are generally higher near outfalls. At the 100-m stations, *E. carcharodata* abundances ranged from 0 to 28 per grab in the pre-discharge period and from 0 to 31 per grab in the discharge period (Fig. 30). The pattern of increased abundances near the outfall (Stations E14 and E11) and decreased abundances upcoast of the outfall (Stations E17, E20, E23) is similar to that observed with *Parvilucina*. BACI analysis indicates that the increase at Station E14 is statistically significant at the 0.05 alpha level; the increase at Station E11 was statistically significant at the 0.10 alpha level (Table 14). *E. carcharodata* abundances from the regional surveys ranged from 0 to 18 per grab (Fig. 31). Abundances at the outfall depth were generally below the upper limit of the tolerance interval (17 per grab).

Capitella capitata abundances are generally indicative of organic enrichment. Abundances in the regional surveys are fairly low, ranging from 0 to 4 individuals per grab (Fig. 32). A comparison *Capitella* abundances during the pre-discharge and discharge periods clearly indicates enhanced numbers near the outfall (Stations E14 and E17). However, these differences were not statistically significant at the 0.05 level using the BACI model (Table 14). *Capitella* abundances around the ZID boundary (Stations E14 and E17) are higher than the upper reference envelope limit of 3 (Fig. 33). This indicates localized enhancement in the immediate vicinity of the outfall.

Benthic Indices. The ITI is a numerical index which incorporates the relative abundance of over 500 invertebrate species into a single number. The ITI is largely driven by the abundance of many of the species listed above (e.g. *Amphiodia spp.*, *Euphilomedes spp.*, *Parvilucina tenuisculpta*; *Capitella spp.*) and so will reflect and amplify many of the patterns previously discussed.

ITI values from the regional surveys ranged from 73 to 95 ITI units (Fig. 34). At the 100-m stations they ranged from 74-92 over this same time period. There appears to be a long-term temporal pattern in the ITI values (Fig. 35). Values increased from 1991 to 1993, decreased in 1994, remained relatively low until 1997, and then increased again in 1998 and 1999. The range of variability in the ITI values is roughly the same for the pre-discharge and discharge periods. There does appear to be an outfall-related spatial pattern, with values near the outfall (Stations E14, E17, E11) being generally lower than nearfield and farfield stations by 3 to 5 units. The decrease at Station E14 is statistically significant. Although the ITI values at E17 and E11 are higher during the discharge period than they were during the pre-discharge period, the depression relative to other stations (i.e., Stations B9, E26) was statistically significant (Table 14). The ITI

values at stations near the outfall were generally higher than 74, the lower limit of the reference envelope.

The BRI is a benthic response index developed by SCCWRP as part of the Southern California Bight Pilot Project (Smith *et al.*, 2001a) which incorporates information on over 700 benthic species. Values lower than 25 are generally considered to be un-impacted. BRI values from the regional surveys ranged from -4 to 15 (Fig. 36). BRI values from the 100-m stations ranged from -2 to 16. BRI values were generally higher at Stations E14, E11, and E17 (Fig. 37). These were statistically significant based on the BACI analysis. The upper bound for the reference envelope was 11. BRI values higher than this were only observed at Station E14 indicating that the effect is localized.

Table 15. Summary of benthic data from regional reference surveys (1994-1999)

	1994	1995	1996	1997	1998	1999	Tolerance Intervals	
							Lower	Upper
Number of species								
Min	57	67	71	59	37	50	51	134
Ave	77	101	92	84	98	87		
Max	104	149	121	123	172	130		
Total Abundance								
Min	173	261	226	233	187	240	140	616
Ave	353	439	324	340	520	390		
Max	602	587	457	500	1072	574		
Amphiodia spp.								
Min	5	1	23	20	0	17	0	NA
Ave	50	66	66	76	45	90		
Max	106	175	138	151	149	203		
Parvalucina tenuisculpta								
Min	0	0	0	0	0	0	NA	14
Ave	1	1	1	1	3	0		
Max	5	7	4	2	13	1		
Euphilomedes cacharodata								
Min	0	0	0	0	0	0	NA	17
Ave	1	3	2	4	3	1		
Max	8	18	5	17	13	3		
Capitella spp.								
Min	0	0	0	0	0	0	NA	3
Ave	0	0	0	0	1	0		
Max	0	1	3	0	4	1		
ITI								
Min	75	76	80	78	73	85	74	NA
Ave	81	83	85	85	83	90		
Max	85	88	89	90	91	95		
BRI								
Min	0	0	2	-1	-1	-4	NA	11
Ave	1	4	5	3	9	0		
Max	5	6	9	8	15	3		

Summary of effects on benthic community structure. The monitoring program is able to pickup shifts in biological communities responding to the presence of the outfall. There are statistically significant changes at the ZID boundary (Station E14) for almost all parameters evaluated in this review. For certain parameters such as number of species, the BRI, and possibly the ITI, these extend to the nearfield stations (Stations E17 and E11). Conditions beyond the zone of initial dilution were generally similar to background conditions as defined by the reference envelope. The outfall does not appear to be causing any biologically significant changes in benthic community structure in the vicinity of the outfall which might be construed as degradation. USEPA concludes that the discharge is not having significant effects on benthic populations beyond the zone of initial dilution

3. Fish and Epibenthic Macroinvertebrates. The COP states that 'marine communities, including vertebrate, invertebrate, and plant species shall not be degraded'.

This review of fish populations focuses on community parameters such as number of species, total abundances and changes in the abundances of common species. For the purpose of analyses, trawl stations SD9, SD10, SD11 and SD12 are considered nearfield stations (see Fig. 38 for station locations). Stations SD07 and SD08 are the southern farfield stations and Stations SD13 and SD14 are the northern farfield stations. Spatial and temporal trends were evaluated by comparing three years of pre-discharge monitoring to the seven years of monitoring that has occurred since the discharge began at the deep ocean outfall.

Table 16. Summary of fish trawl data

	Nearfield stations 1990-1993	Farfield stations 1990-1993	Nearfield stations 1994-2000	Farfield stations 1994-2000
Number of species	12	13	13	15
Total abundance	174	200	327	302
Biomass (kg)	3.5	4.0	6.2	4.7

The average number of species collected per trawl over the ten-year monitoring period ranged from 6 to 23 (Fig. 39). The average number of species at the nearfield increased from 12 to 13 and the average number of species in the farfield stations increased from 13 to 15. These apparent increases are well within the range of natural variability and there were no spatial patterns or temporal trends in the number of species which might suggest an outfall-related trend.

Fish abundances were more variable with values ranging from 22 to 807 fish per trawl (Fig. 40). Abundances appear to have increased during the period since the discharge began. At the nearfield stations, abundances increased from 174 to 327; at the farfield stations the numbers increased from 200 to 302. Abundances tended to be lower at all stations in 1992 and 1998 and higher at all stations in 1999 and 2000. The southern stations (SD7 and SD8) tended to have lower abundances than the more northern stations.

The fish biomass data also tended to be highly variable, with values ranging from 0.6 to 24.2 kilograms of fish per trawl (Fig. 41). At the nearfield stations, biomass appears to have increased from 3.5 to 6.2 Kg. At the farfield stations average biomass increased from 4.0 to 4.7 Kg. Most of the increase in biomass at the nearfield stations is due to two trawls at SD11 in 1994 (high abundance and high species richness) and SD12 in 1997 (moderate abundances and high species

richness). When these two data points are removed, the differences in fish biomass between pre- and post-discharge are minor. As with abundance data, the biomass data tended to be lower at the southern-most stations.

The same species were abundant in both pre-discharge and discharge period. These numerically dominant species and their relative abundance (expressed as percent) are listed in Table 17.

Table 17. Dominant fish species across all stations for the pre-discharge and discharge periods.

Common Name	Percentage (1990-1993)	Percentage (1994-2000)
Pacific sanddab	64.2%	58.0%
Plainfin midshipman	10.0%	8.3%
Dover sole	5.9%	6.9%
Yellowchin sculpin	2.3%	5.0%
Stripetail rockfish	5.4%	5.0%
Longfin sanddab	2.1%	4.8%
Longspine combfish	0.4%	2.6%
Pink seaperch	0.9%	1.5%
Halfbanded rockfish	0.7%	1.1%
Bay goby	1.2%	1.1%
	93.2%	94.1%

These ten fish species represented more than 90% of the total abundance. Pacific sanddab was the most abundant fish in both the pre-discharge and discharge periods, representing around 60% of the total catch (all surveys combined). There were about 19 more fish species in the trawl data from the discharge period. This is probably related to the fact that we have an additional 4 years of trawl data from the discharge period. There were four species that were present in relatively low abundances in the pre-discharge period trawls were not seen in the discharge period trawls. These were speckled sanddab, blackeye goby, big skate, and jack mackerel. These four species were represented by a total of 12 individual fish. The outfall does not appear to be having any major effects on fish species in the area.

Summary of effects on fish community structure. Analyses of temporal and spatial patterns in the fish trawl data did not reveal any outfall-related patterns. There are no meaningful differences in species composition, abundance or biomass between trawls from the pre-discharge and discharge periods that can be attributed to the outfall.

4. Bioaccumulation and Toxic Pollutants. The COP states that "*The concentration of organic materials in fish, shellfish or other marine resource used for human consumption shall not bioaccumulate to levels that are harmful to human health*". The COP does not define tissue concentration levels that would be harmful to human health or the health of the organism.

The applicant's bioaccumulation monitoring program consists of chemical analysis of both muscle and liver tissue from selected fish species from eight trawl stations. Chemical analyses for priority pollutants in fish tissue are performed on a semi-annual basis (from spring and fall trawls). The applicant also performs chemical analyses on rig-caught fish from two sites (RF1 is near the outfall and RF2 is an area 7 miles upcoast of the outfall). USEPA reviewed the data for the time period from July 1991 through October 2000.

Chemical concentrations in muscle tissue. The muscle tissue data is summarized in Table 18. Tissue concentrations were compared with results from other studies of fish bioaccumulation in the Southern California Bight (as summarized in Mearns *et al.* 1991). Where applicable, the data were also compared to Food and Drug Administration (FDA) action levels and risk-based numbers for tissue concentrations (USEPA, 2000). These are summarized in Table 19.

Arsenic. Arsenic levels in the muscle tissue of fish caught off Point Loma ranged from 0.6 to 28.8 ug/g, with a mean of 6.8 ug/g. Longfin sanddab arsenic concentrations ranged from 0.05 to 28.8 ug/g. The mean concentration prior to the discharge was 9.6 and the mean concentration after the discharge went on line was 11.8 ug/g. Pacific sanddabs off Point Loma had arsenic concentrations ranging from 1.0 to 10.7 ug/g, with a mean of 3.5 ug/g (n = 57). Literature values for Pacific sanddab in the Bight range from 3.1 to 11.6 ug/g. California scorpionfish caught off Point Loma had concentrations ranging from 0.5 to 16.0 ug/g, with a mean of 4.6 ug/g (n = 126). Literature values for California scorpionfish from the Bight range from 0.7 to 1.7 ug/g.

The mean arsenic concentration in fish from the Point Loma area are greater than the USEPA risk-based thresholds of 1.2 ug/g (for non-carcinogenic risk) and 0.026 ug/g (for carcinogenic risks). However, it is unlikely that the Point Loma discharge is a significant source of arsenic. The maximum arsenic concentration measured in the effluent (2.7 ug/l) is less than the background concentration (3 ug/l). The applicant also points out the presence of a significant natural source in submarine hot springs near Punta Banda where concentrations can be as high as 420,500 ug/l. There is no spatial or temporal pattern in the tissue concentrations of longfin sanddab or California Scorpionfish which would suggest that the outfall is having an affect on the fish tissue (Figs. 42 and 43).

Cadmium. Cadmium was rarely detected in fish muscle tissue (in about 8% of the samples). Cadmium concentrations ranged from below detection limits (0.1 to 0.34 ug/g) to a maximum detected value of 1.9 ug/g (n = 359). Concentrations in longfin sanddab values ranged from 0.1 to 0.6 ug/g with an average of 0.32 ug/g (n=114). Cadmium was detected only once in longfin sanddab during in the discharge period. Concentrations in Pacific sanddabs ranged from 0.2 to 0.34 with an average of 0.33 ug/g (n =29). It was not detected Pacific sanddab samples from the discharge period. Concentrations in California scorpionfish values were at the detection limit of 0.34 ug/g (n=116). It was detected only once in the California scorpionfish during the discharge period. Literature values for the Bight (from Mearns *et al.*, 1991) range from <0.001 to 0.200 ug/g. The applicant's data on cadmium in fish tissue can not be compared to these data because of differences in detection limits.

Chromium. Chromium was detected in about 19% of the fish samples. Concentrations ranged from below detection limits (0.2 ug/g to 0.33 ug/g) to a maximum detected value of 54 ug/g. The concentrations in longfin sanddabs ranged from 0.2 to 7.8 ug/g with an average of 0.5 ug/g (n = 119). The concentration in Pacific sanddabs ranged from 0.20 to 0.96 ug/g with and average of 0.39 ug/g (n=30). The concentrations in California Scorpionfish ranged from 0.3 to 1.2 with an average of 0.34 ug/g (n = 116). The two highest measurements (7.8 ug/g in longfin sanddab and 54 ug/g in English sole), were measured in April of 1993 before the discharge went on line. The detection limits associated with the Point Loma data are generally higher than background measurements for the Bight from the literature which ranged from 0.004 to 0.123 ug/g (from

Mearns *et al.*, 1991). There does not appear to be any spatial or temporal trend to suggest that chromium concentrations are increasing as a result of the outfall.

Copper. Copper was measured in concentrations above the detection limit in about half (45%) of the samples. Concentrations in muscle tissue ranged from below detection limits (0.2 to 0.76 ug/g) to a maximum concentration of 9 ug/g. Concentrations in the muscle tissue of longfin sanddab ranged from 0.2 to 7.7 ug/g, with an average of 1.0 ug/g (n = 147). Concentrations in the tissue of Pacific sanddab ranged from 0.2 to 4.1 ug/g, with an average of 1.0 ug/g (n=35). This can be compared to literature values for Pacific sanddab for the Bight which ranged from 0.1 to 0.6 ug/g. Copper concentrations in the muscle tissue of California scorpionfish ranged from 0.5 to 9 ug/g, with a mean of 1.2 ug/g (n = 120). These values are higher than reported literature values for California scorpionfish from other areas in the Bight which ranged from 0.1 to 0.2 ug/g.

Lead. Lead was detected in about 13% of the fish tissue samples. Concentrations in the muscle tissue of fish off Point Loma ranged from 0.2 to 14 ug/g (n = 376). Our review of the lead data is complicated by relatively high detection limits (2.5 ug/g) for most of the samples (i.e., 328 of samples). For the forty-eight samples where detection limits were lower (0.2 to 0.5 ug/g) the range of values was 0.2 to 14 ug/g. There were 19 samples with concentrations greater than 1 ug/g. These were all collected before 1994. We have no independent estimate of lead concentrations in fish tissue for the Bight, but there does not appear to be any trend toward increased concentrations or increased number of detects.

Mercury. Mercury was detected in almost all (94%) of the fish sampled. Concentrations ranged from 0.01 to 0.99 ug/g, with an average of 0.088 ug/g. Concentrations in longfin sanddab ranged from 0.01 to 0.36, with an average of 0.07 ug/l (n=209). Concentrations in Pacific sanddab ranged from 0.01 to 0.11 ug/g with an average of 0.04 ug/l (n=50). Literature values for Pacific sanddab from the Bight ranged from 0.053 to 0.16 ug/g, with a mean of 0.04 ug/g (n = 23). Concentrations in the California scorpionfish ranged from 0.01 to 0.59 ug/g with an average of 0.13 ug/g (n=123). Literature values for this species in the Bight ranged from 0.03 to 5.49 ug/g. There were no spatial or temporal patterns were observed in longfin sanddab or California scorpionfish to suggest that the outfall is having an affect on mercury concentrations (Figs. 44 and 45). The average mercury concentration was lower in the discharge period data than in the data from pre-discharge period.

The FDA limit for total mercury in 0.5 ug/g. USEPA has established a health risk value of 0.4 ug/g based on methyl mercury. Concentrations of total mercury greater than 0.4 ug/g was measured in muscle tissue in 4 out of 524 measurements (Greenblotched rockfish, 0.99 ug/g; California scorpionfish, 0.59 ug/g; Greenspotted rockfish, 0.49 ug/g, and Speckled rockfish, 0.46 ug/g). Based on these results less than 1% of the fish in the San Diego area have tissue concentrations greater than the USEPA risk screening threshold value.

Selenium. Selenium concentrations were measured in detectable concentrations in most (96%) of the samples (detection limits ranged form 0.1 to 1.0 ug/l). Selenium concentrations ranged from 0.13 to 4.3 ug/g. Concentrations in longfin sanddab ranged from 0.18 to 4.3 ug/g, with an average of 0.98 ug/l (n=129). Concentrations in Pacific sanddab ranged from 0.13 to 3.3 ug/g,

with an average of 0.49 ug/g (n=32). Literature values for Pacific sanddab from the Bight ranged from 0.47 to 0.94 ug/g. Selenium concentrations in California scorpion fish ranged from 0.13 to 0.80 ug/g, with a mean of 0.26 ug/g (n = 116). Literature values for the Bight ranged from 0.44 to 1.26 ug/g for California scorpionfish.

Silver. The applicant detected silver in muscle tissue in only five instances. Silver was detected three times in longfin sanddab samples at concentrations ranging from 0.01 to 0.05 ug/g, once in Pacific sanddab at a concentration of 0.28 ug/g and once in California scorpionfish at a concentration of 2.68 ug/g. Literature values for Pacific sanddab from the Bight range from 0.001 to 0.014 ug/g.

Zinc. Zinc was detected in all fish samples (n=503). Concentrations in longfin Sanddab ranged from 1.52 to 65 ug/g, with an average of 3.54 (n=197). Concentrations in Pacific sanddab ranged from 1.8 to 10.0 ug/g, with an average of 3.54 ug/g (n = 47). Zinc concentrations in California scorpionfish ranged from 2.12 to 16.8 ug/g, with a mean of 4.53 ug/g (n = 125). Literature values for California scorpion fish from the Bight ranged from 0.6 to 6.5 ug/g. Thus, zinc concentrations in muscle tissue measured by the applicant are similar to background concentrations for the Bight.

PCBs. PCBs were only detected in reportable concentrations in about 7% of the fish sampled (19 out of 274 measurements). There was only one detected value prior to 1995 (0.34 ug/g in longfin sanddab). There have been more detected values since 1995, largely as a result of better detection limits associated with measuring specific congeners (as opposed to arochlor mixtures). The next highest concentration was 0.089 ug/g (unidentified rockfish, April 1999). All other values were below the 0.08 ug/g threshold for non-carcinogenic risk. Eight samples were above the 0.02 ug/g threshold for carcinogenic risk. This represents about 3% of the fish. The minimum value reported in the literature for the Bight for total PCBs in fish muscle tissue is 0.001 ug/g.

DDT. Most of the DDT compounds were below detection limits. Out of 331 fish tissue samples p,p DDT was detected only twice; o,p-DDT only once; p,p,-DDD was detected three times, o,p-DDD was not detected in measurable quantities; and o,p-DDE was detected only once. The compound p,p-DDE was measured in low but detectable concentrations in almost all fish samples (510 out of 551 samples). The concentration of p,p-DDE ranged from 0.001 ug/g to 0.53 ug/g (n = 510). No values were greater than the 2.0 ug/g non-carcinogenic threshold. Five samples were greater than the carcinogenic risk threshold. This represents less than 1% of the fish sampled. The minimum value for total DDT in fish tissue from the Bight reported in the literature is 0.02 ug/g.

Table 18. Summary of metals data in fish muscle tissue from the Point Loma area (1990-2000)

All Fish				Longfin Sanddab		
Metals	# of Detects # of Samples	Range	Avg.	# of Detects # of Samples	Range	Avg.
Arsenic	454/545	0.06-28.8	5.9	208/225	0.0-28.8	8.8
Cadmium	30/359	0.1-1.9	0.3	17/114	0.1-0.6	0.32
Chromium	67/357	0.2-54	.056	33/119	0.2-7.8	0.5
Copper	185/415	0.2-9	1.1	71/147	0.2-7.7	1.0
Lead	48/376	0.2-14	2.4	37/135	0.2-7.7	2.1
Nickel	48/366	0.4-50	1.2	33/123	0.4-38	1.2
Mercury	491/521	0.01-0.99	0.088	199/209	0.01-0.36	0.070
Selenium	363/378	0.13-4.3	0.057	129/129	0.18-4.3	0.98
Silver	5/332	0.1-2.68	0.62	3/101	0.5-0.62	
Zinc	503/503	1.52-65	3.84	197/197	1.52-65	3.54

California Scorpionfish				Pacific Sanddab		
Metals	# of Detects # of Samples	Range	Avg.	# of Detects # of Samples	Range	Avg.
Arsenic	108/126	0.05-16	4.6	50/57	0.05-10.7	3.5
Cadmium	1/116	0.34-0.34	0.34	2/29	0.2-0.34	0.04
Chromium	10/116	.03-1.2	0.34	6/30	0.2-0.96	0.39
Copper	55/120	0.5-9	1.2	12/35	0.2-4.1	0.96
Lead	0/113	2.5-2.5	2.5	9/36	0.3-14	2.5
Nickel	2/118	0.5-0.95	0.78	5/30	0.79-27	1.04
Mercury	117/123	0.01-0.59	0.13	49/50	0.01-0.11	0.04
Selenium	113/116	0.13-0.8	0.26	24/32	0.13-3.3	0.49
Silver	1/113	0.63-2.68	0.13	1/28	0.2-.62	0.61
Zinc	125/125	2.12-16.8	4.53	47/47	1.84-10	3.47

Table 19. Comparison of maximum contaminant concentrations in muscle tissue from fish collected in the vicinity of the San Diego Point Loma outfall with recommended screening values for recreational fishers:

Analyte	Maximum observed concentration level	Health risk screening level	
		Non Carcinogenic	Carcinogenic
Arsenic (inorganic)	28.8 (total)	1.2	0.026
Cadmium	1.9	4.0	
Methyl mercury	0.99 (total)	0.4	
Selenium	4.3	20	
Total Chlordane	0.0012	2.0	0.114
Total DDT	1.08	2.0	0.117
Dieldrin	ND	0.2	0.0025
Endosulfan	0.0033	24	
Endrin	ND	1.2	
Heptachlor epoxide	0.0035	0.052	0.00439
Hexachorobenzene	0.0047	3.2	0.025
Lindane	ND	1.2	.0307
Mirex	ND	0.8	
Toxaphene	ND	1.0	0.0363
PAHs	ND		0.00547
PCBs	0.34	0.08	0.02
Dioxins/Furans	NA		0.000000256

Liver tissue. Spatial and temporal trends in contaminant concentrations were evaluated using liver tissue data from the longfin sanddab, Pacific sanddab, and the California scorpionfish because these species provide the most complete data set for assessing temporal trends. We looked at total PCB and DDTs because these have the potential to accumulate in fish tissue. These values were also compared to fish tissue data from the 1994 Southern California Bight Pilot Project (SCBPP).

According to the applicant DDT in longfin sanddab ranged from 0.48 ug/g to 3.80 ug/g, with an average of 1.66 ug/g (Fig. 46). The average DDT concentrations in liver from the SCBPP were 0.22 ug/g for longfin sanddab. Pacific sanddab ranged from 0.29 to 1.76 ug/g with an average of 0.67 ug/g (Fig. 47). DDT concentrations in liver from the SCBPP were 0.15 ug/g for Pacific sanddab. Concentrations in California scorpionfish ranged from 0.31 to 2.31 ug/g with an average of 2.26 ug/g. For all three species the high values (>1 ug/g) were only observed on samples collected in October of 1993, before the outfall went online. With the exception of one

other fish sample (Pacific Sanddab, April 1997, 12.7 ug/g) all other samples were below 0.1 ug/g. DDT concentrations in fish around the outfall from the discharge period are low relative to background values for the Bight.

The applicant reported that Total PCB concentrations in longfin sanddab ranged from 0.11 ug/g to 5.64 ug/g with an average of 0.90 ug/g (Fig. 48). According to the applicant, PCB concentrations in longfin sanddab have decreased from 2.13 ug/g during the pre-discharge period to 0.90 ug/g during the discharge period. Concentrations in Pacific sanddab ranged from 0.12 ug/g to 1.45 ug/g with an average of 0.44 ug/g (Fig. 49). Data from the SCBPP indicates average concentration in longfin sanddab is around 0.07 ug/g and the average for Pacific sanddab is around 0.02 ug/g. These numbers are higher than reported for background in the Bight. However, there does not appear to be any spatial or temporal patterns to suggest that the outfall is having an effect on bioaccumulation in fish tissue. PCBs were detected at very low concentrations in the effluent and not detected in sediments.

Summary of fish bioaccumulation. USEPA's review of the fish bioaccumulation data provided by the applicant does not indicate that the outfall is having a significant effect on the contaminant concentrations in fish tissue (muscle or liver).

5. Incidences of lesions and parasites. All trawled fish caught during the monitoring program were visually examined by the City for gross morphological evidence of diseases and ectoparasites. No fin erosion or tumors were found on trawl-caught fish in the discharge area. The overall abundance of external parasites was minimal. The overall incidence of parasitism in the first year of the post-discharge monitoring was determined to be 0.006%.

Mearns and Sherwood (1977) examined approximately 290,000 fishes from more than 900 trawl samples throughout the Bight (including the Palos Verdes Shelf) from 1969 to 1976. These specimens included 151 species and 48 families of sharks, rays and bony fishes. Over the entire Bight, approximately 5% of the specimens were found to be affected with external disease symptoms, including fin and tail erosion, tumors, abnormal coloration, and attached macroparasites. A more recent assessment of fish assemblages in close to 300 trawls (SCBPP, 1994) indicates that the prevalence of anomalies was down to about 1%. It appears, from the limited data available, that the incidence of fish disease around the Point Loma outfall is negligible compared to the historical data and current background conditions.

D. Impact of Discharge on Recreational Activities. Under section 125.62(d), the applicant's proposed modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities at and beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing, picnicking and sports activities along shorelines and beaches.

The ocean shoreline along the southern portion of Point Loma is predominantly on a military reservation (Fort Rosencrans) and the extreme southern portion of the peninsula is within the Cabrillo National Monument. As a result, access is limited to several designated tide pooling areas within the boundaries of the national monument. Consequently, most recreational activities are centered around the Point Loma kelp beds and in nearshore waters. SCUBA diving is very

popular in the offshore kelp beds. Only limited diving occurs outside the area of the kelp beds.

The COP applies the following bacterial standards for shoreline and body contact sports area (including kelp beds):

Total Coliform bacteria: Greater than 80% of samples in an 30-day period shall be less than 1,000 per 100 ml at each sampling station. No single sample, when verified by a repeat sample within 48 hours, shall be greater than 10,000 per 100 ml

Fecal Coliform bacteria: The geometric mean shall not exceed 200 per 100 ml based on at least 5 samples in any 30-day period and not more than 10% of the total samples during any 60-day period shall exceed 400 per 100 ml.

The applicant monitors total coliform, fecal coliform, and enterococcus concentrations at a number of stations in the area subject to water contact standards. These monitoring stations include nine shoreline stations (D-1 - D9), eight kelp bed stations (A1, A6, A7, C4 - C8) and at seventeen offshore stations located upcoast and downcoast from the ZID (Fig. 2). We evaluated the bacterial monitoring data collected by the applicant from 1996 to 2000.

Offshore. The seventeen offshore water quality stations were sampled on a monthly basis at a minimum of three depths (near-surface, mid-depth, near-bottom). These data are summarized in Tables A-4, A-5, and A-6. These samples were not collected for compliance purposes but rather to provide information about the location of the plume to help interpret the results of kelp station and shoreline monitoring results. The higher concentrations of total coliforms were generally seen offshore at depths ranging from 140 to 380 feet, indicating that the outfall is generally trapped at depth. At these depths concentrations of total coliforms can be in the tens of thousands and the concentrations of fecal coliforms in the thousands. In the surface waters, the average concentrations of total coliforms ranged from 2 to 50 CFU/100 ml (Table A-4). High total concentrations were seen in the offshore surface waters in two isolated instances. One was in July of 1998 at station A5 (2800 CFU/100 ml), and the other was in January 2000 at station E8 (2400 CFU/100 ml). This indicates that the plume does surface on occasion, albeit infrequently. The fecal coliform concentrations at the offshore surface waters ranged from 2 to 11 CFU/100 ml (Table A-5). The maximum concentration measured at the surface was 300 CFU/100 ml (at station B1 in June 1997 and at station E16 in December 1997). The average enterococcus concentrations in surface water from the offshore stations ranged from 2 to 10 CFU/100 ml (Table A-6). The maximum observed enterococcus value of 200 CFU/100 ml was observed in ten instances (at Stations A2, A10, A14, B2, B9, E18).

Kelp beds. There were no violations of the total coliform standards in the kelp beds (Table 20). Total coliform values greater than 1000 were seen in 9 occasions out of 7172 samples (around 0.1%). Fecal coliform concentrations were below the geometric mean standard of 200 per 100 ml. Fecal coliform concentrations greater than 400 per 100 ml were observed on rare occasion (6 out of 6585 measurements). The enterococcus data can be compared to USEPA water quality criteria for bacteria (USEPA, 1986). There were two occasions (February and March of 1998) where the 30-day geometric mean was for enterococcus was greater than 35 per 100 ml. Enterococcus concentrations greater than 104 per 100 ml were observed about 0.5% of the time

(35 out of 6581 measurements). These were generally seen at depth suggesting an association with the outfall plume. The rarity of these events is consistent with the applicant's modeling results which suggested that the plume is not likely to reach the kelp beds for the following reasons:

1. Density stratification traps the plume below the depth of the kelp beds.
2. The shelf slope as a barrier between the submerged plume and the shallow kelp beds.
3. The predominant surface flows are longshore and mainly downcoast away from the kelp beds.

Table 20. Summary of bacterial concentrations (CFU/100 ml) at kelp stations (1995-2000)

Long-term average concentrations of total coliforms (and standard deviation) from Kelp Stations					
60-foot kelp stations	A1	A7	A6	C7	C8
5	57 (625)	8 (22)	6 (20)	7 (33)	17 (106)
40	21 (73)	22 (81)	20 (44)	11 (29)	10 (26)
60	79 (472)	44 (159)	46 (120)	19 (45)	21 (41)
30-foot kelp stations	C4	C5	C6		
5	11 (55)	12 (111)	5 (11)		
10	11 (50)	8 (23)	8 (41)		
20	10 (26)	9 (49)	11 (61)		
Long-term average concentrations of fecal coliforms (and standard deviation) from Kelp Stations					
60-foot kelp stations	A1	A7	A6	C7	C8
5	3 (6)	3 (12)	3 (12)	3 (12)	4 (8)
40	9 (39)	7 (34)	6 (12)	4 (7)	4 (13)
60	36 (355)	13 (57)	11 (3)	6 (10)	7 (16)
30-foot kelp stations	C4	C5	C6		
5	3 (4)	3 (10)	3 (5)		
10	4 (13)	3 (4)	3 (10)		
20	3 (12)	3 (7)	4 (19)		
Long-term average concentrations of enterococcus (and standard deviation) from Kelp Stations					
60-foot kelp stations	A1	A7	A6	C7	C8
5	3 (8)	4 (27)	3 (13)	3 (5)	4 (14)
40	4 (14)	4 (14)	5 (26)	3 (13)	3 (8)
60	7 (26)	7 (32)	4 (13)	5 (14)	13 (145)
30-meter kelp stations	C4	C5	C6		
5	6 (38)	4 (18)	3 (12)		
10	4 (18)	4 (18)	3 (4)		
20	3 (13)	4 (18)	3 (4)		

Shoreline. The data from the applicant's shoreline monitoring program is presented in Figs. 50-52. There are numerous exceedances of the single sample thresholds for total coliform, fecal coliform and enterococcus (Fig. 53). However, these do not appear to be related to the Point Loma outfall. A high percentage of these are related to storm events. There also seems to be a spatial pattern which suggests a southern source. For perspective, these data can be compared to comparable data collected as part of the IWTP shoreline monitoring program (See Fig. 54). There is some overlap between the two programs (i.e., San Diego's Stations D1, D2 and D3 overlap with IWTP's Stations S12, S8 and S9). There is a clear south-north gradient in the frequency of exceedances with a peak at the Tijuana River for all three bacterial indicators.

Exceedances are generally attributed to surface runoff (e.g. from the Tijuana River) rather than

the outfall plume. This is supported by the lack of high concentrations in nearshore stations. This conclusion is also supported by modeling and monitoring efforts, which indicate that the outfall plume remains submerged in the offshore area.

Summary of bacteria data. USEPA's review of the bacterial monitoring data suggests that the outfall plume is trapped at depth offshore and that the plume surfaces infrequently. Elevated concentrations of bacteria in the kelp beds were observed on only rare occasion (less than 0.5% of the time). Although bacterial concentrations along the shoreline frequently exceed the standards, there is no evidence to suggest that this is related to the outfall. Based on these data, along with the results of physical oceanographic modeling performed by the applicant in 1994, USEPA concludes that the Point Loma modified discharge will meet the COP bacterial compliance standards at the shoreline, recreational areas and at kelp beds.

E. Summary of Conclusions. In this review of the data provide by the applicant, it appears that a balanced indigenous population is being maintained in the vicinity of the outfall. This conclusion is based on the following considerations:

1. The ability of the discharger to meet state standards and federal criteria for water quality
2. The lack of any substantial increase in suspended solids deposition or accumulation of organic matter in the sediments as predicted by sediment models
3. Observations from the monitoring program do not indicate any major changes in chemical contaminant concentrations in sediments from around the outfall
4. Observations from the monitoring program indicate only minor changes in benthic community assemblages around the outfall and the lack of any observable changes in fish community structure
5. Observations from the monitoring program do not indicate any increases in the tissue contaminant burdens of selected fish species
6. Observations from the monitoring program indicate that recreational standards are being attained
7. Physical oceanographic measurements and plume modeling efforts performed by the applicant suggest that these standards will continue to be maintained throughout the permit period.

3. Establishment of a Monitoring Program. [Section 301(h)(3), 40 CFR 125.62]

Under 40 CFR 125.62, which implements section 301(h)(3), the applicant must have a monitoring program designed to evaluate the impact of the modified discharge on the marine biota, demonstrate compliance with applicable water quality standards, measure toxic substances in the discharge, and have the capability to implement these programs upon issuance of a

301(h)-modified NPDES permit. The frequency and extent of the monitoring program are to be determined by taking into consideration the applicant's rate of discharge, quantities of toxic pollutants discharged, and potentially significant impacts on receiving water, marine biota, and designated water uses.

The City's current monitoring program was developed jointly with the City, USEPA and the Regional Board. This is described in Volume IV, Appendix D. The monitoring program may be modified during the development of the permit.

4. Impact of Modified Discharge on Other Point and Nonpoint Sources. [Section 301(h)(4), 40 CFR 125.63]

Under 40 CFR 125.63, which implements section 301(h)(4), the applicant's proposed modified discharge must not result in the imposition of additional treatment requirements on any other point or nonpoint source.

The Regional Board has determined that the Point Loma discharge will not have any effect on any existing or planned point or non-point source discharges (letter dated March 21, 1995).

5. Toxics Control Program. [Section 301(h)(5), 40 CFR 125.66(a)-(c)]

A. Chemical Analysis.

A 301(h) large applicant is required to provide a chemical analysis of its effluent under both wet and dry conditions for toxic pollutants and pesticides. The City of San Diego routinely conducts influent and effluent sampling. Effluent samples are collected and analyzed weekly for metals, cyanide, ammonia, chlorinated pesticides, phenolic compounds and PCBs. Other pesticides, volatile organics, and other pollutants are analyzed on a monthly basis. The results of influent and effluent data are provided in monthly, quarterly and annual reports submitted to the Regional Board and USEPA Region 9. The City also submitted effluent data from 1995 to 2000 to USEPA in electronic format as part of the renewal process (see section 2A for review of effluent data). Based on data from 1999, the applicant indicates that there is no significant differences in effluent quality between wet and dry conditions (Volume II, Table III.H.1c-3).

B. Toxic Pollutant Source Identification.

Under 40 CFR 125.66(b) the large applicant must submit an analysis of the sources of toxic pollutants identified in section 125.66(a) and, to the extent practicable, categorize the sources according to industrial and nonindustrial types. As part of the City's Industrial Waste Source Control Program, the City surveys industries which may contribute toxics to the sewer system, establishes discharge permits where necessary, and monitors the permitted industrial discharges. In addition the City monitors also performs an annual system-wide non-industrial toxics survey program to identify other potential sources of toxics. The known and suspected sources of metals, cyanide and organic constituents detected in the effluent are summarized in Volume II of the application (Table III.H.1d-1 and Table III.H.1.d-2).

C. Industrial Pretreatment Requirements.

Under 40 CFR 125.66(c) an applicant that has known or suspected industrial sources of toxic pollutants must have an approved pretreatment program under 40 CFR Part 403. USEPA approved the City of San Diego's industrial pretreatment program on June 29, 1982.

6. Urban Area Pretreatment Program. [Section 301(h)(6), Section 303(c) of the Water Quality Act of 1987]

Large applicants for a modified NPDES permit under section 301(h) of the Act that receive one or more toxic pollutants from an industrial source are required to comply with the urban area pretreatment requirements. A POTW subject to these requirements must demonstrate, for each toxic pollutant known or suspected to be introduced by an industrial source, that it either has an applicable pretreatment requirement in effect, or that it has a program that achieves secondary removal equivalency. In addition, an applicant must demonstrate that industrial sources are in compliance with applicable pretreatment requirements. The City of San Diego is subject to these requirements.

In the the 1994 application, the City indicated that it will comply with the urban area pretreatment requirements by demonstrating that it has applicable pretreatment requirements in effect. The City submitted their Urban Area Pretreatment Program to USEPA in 1996. This UAPP was approved by the Regional Board on August 13, 1997 and by USEPA Region 9 on December 1, 1998.

Under 40 CFR 125.65(b)(2), the City must demonstrate that industrial sources introducing waste into the applicant's treatment works are in compliance with all applicable pretreatment requirements, including numerical standards set by local limits, and that it will enforce those requirements.

As explained in the preamble to the revised 301(h) regulations (FR 40656, August 9, 1994), *"EPA intends to determine a POTW's continuing eligibility for a 301(h) waiver under section 301(h)(6) by measuring industrial user compliance and POTW enforcement activities against existing criteria in the Agency's National Pretreatment Program. ... In 1989, EPA established criteria for determining POTW compliance with pretreatment implementation obligations. One element of these criteria is the level of significant noncompliance of the POTW's industrial users. The General Pretreatment Regulations (part 403) identify the circumstances when industrial user noncompliance is significant. The industrial user significant noncompliance (SNC) criteria are set out in 40 CFR 403.8(f)(2)(vii) and address both effluent and reporting violations. ... For pretreatment purposes, a POTW's enforcement program is considered adequate if no more than 15 percent of its industrial users meet the SNC criteria in a single year. ... In addition, a POTW is also considered in SNC if it fails to take formal appropriate and timely enforcement action against any industrial user, the wastewater from which passes through the POTW or interferes with the POTW operations."*

"In enforcing the pretreatment programs, POTWs are expected to respond to industrial user noncompliance using local enforcement authorities in accordance with an approved enforcement

response plan (ERP) which is required of all approved pretreatment programs (see 40 CFR 403.5). POTWs including 301(h) POTWs, with greater than 15 percent of their users in SNC, or which fail to enforce appropriately against any single industrial user causing pass through or interference, are deemed to be failing to enforce their pretreatment program. ...EPA believes that the combination of industrial user compliance and POTW enforcement provides an appropriate measurement of the POTW's eligibility for the 301(h) waiver under section 301(h)(6)."

The 1989 criteria discussed in the preamble is a September 27, 1989, memorandum from James R. Elder to USEPA Regional Water Management Division Directors titled: FY 1990 Guidance for Reporting and Evaluating POTW Noncompliance with Pretreatment Implementation Requirements.

Although the preamble for the urban area pretreatment requirements refers to "industrial users" when discussing the 15% noncompliance criteria, the 1989 criteria apply to "significant industrial users." This term is defined at 40 CFR 403.3(t) and includes all industrial users subject to categorical standards and other industrial users designated by the POTW. In addition, the Agency has issued clarifying guidance explaining that the significant noncompliance criteria at 40 CFR 403.8(f)(2)(vii) apply only to significant industrial users rather than to all industrial users. Consequently, the Agency views the 15% noncompliance criteria in the urban area pretreatment requirements as applying only to significant industrial users rather than to all industrial users.

Under the 1989 measures, violating industries are not included in the 15% noncompliance criteria when the POTW has issued a formal enforcement action or penalties. Consequently, the Agency views the 15% noncompliance in the urban area pretreatment requirements as including only significant industrial users that are in significant noncompliance and which have not received at least a formal enforcement action from the POTW.

USEPA believes that the combination of industrial user compliance and POTW enforcement provides an appropriate measurement of the POTW's eligibility for the 301(h) waiver under section 301(h)(6). The City's enforcement plan is described in Appendix K (attachment K2) of the application

The City's Enforcement Response Plan is included in Technical Appendix K-3 of its section 301(h) application. The second level of formal enforcement is an Administrative Notice and Order which may be issued when:

- An industrial user fails to take any significant action to establish compliance within 30 days of receiving a Notice of Violation
- An industrial user fails to establish full compliance, beginning on the 91st day after the industrial user received a Notice of Violation;
- An industrial user is in significant noncompliance status; or
- An industrial user violates a Compliance Findings of Violation and Order.

The Agency recognizes that specific enforcement response to a violation must be decided on a case-by-case basis. We believe, however, that in most cases an Administrative Notice and Order

as described in the City's Enforcement Response Plan are appropriate when a significant industrial user is in significant noncompliance.

The local limits approved by USEPA as part of the UAPP were included in all industrial discharge permits by December 1997. As a consequence of the new local limits, some significant industrial users may need time to come into compliance with those local limits. In any such cases, the Agency expects the City to issue a Compliance Findings of Violation and Order which is the first level of formal enforcement in the City's Enforcement Response Plan. The Order shall contain a schedule for achieving compliance with the new local limits. Significant industrial users receiving such Orders will not be included in the 15% noncompliance criteria.

Table 21. Summary of compliance status for significant industrial users (modified from Table 4.2.1, appendix K of the application. The numbers for SNC have been adjusted based on discussions with Pretreatment Program Manager.

Year	1993	1994	1995	1996	1997	1998	1999
Number of Significant Industrial users	118	139	130	130	133	131	139
Number in Significant Noncompliance (SNC)	25	27	12	16	25	16	14
Number SNC adjusted for enforcement			9	15	20	13	13
Percent SNC	21%	19%	9%	12%	19%	12%	10%
Percent SNC adjusted			7%	12%	15%	10%	9%

USEPA finds that the information in the City's application regarding the urban area pretreatment requirements is acceptable for the purpose of issuing this tentative decision. The permit will require the City to maintain an annual rate of significant noncompliance for significant industrial users of no more than 15 percent of the total number of significant industrial users.

7. Nonindustrial Source Control Program. [Section 301(h)(7), 40 CFR 125.64(d)]

Under 40 CFR 125.64(d), which implements section 301 (h)(7), the applicant must have a proposed public education program designed to minimize the entrance of nonindustrial toxic pollutants and pesticides into their treatment facility, and develop and implement additional nonindustrial source control programs in the earliest possible schedule.

The City proposes to continue their existing nonindustrial program and public education program that have been in effect since 1985. The nonindustrial program will be supplemented with an updated survey of industrial and nonindustrial contaminant sources. These programs are described in Appendix K of the application.

8. Increase in Effluent Volume or Amount of Pollutants Discharged. [Section 301(h)(8), 40 CFR 125.65]

Under 40 CFR 125.65, which implements section 301(h)(7), the applicant's proposed modified discharge may not increase above the amount specified in the 301(h) modified NPDES permit. CWA § 301(j)(5)(C) specifies 80% removal of suspended solids on a monthly average and 58% removal of BOD on an annual average. In addition to these conditions. The NPDES permit establishes the following limits based on an annual average flow of 205 MGD. The flows for the projected end of permit (2006) are 195 MGD.

Table 22. Proposed effluent limitations for Point Loma Permit

Effluent Parameter	Annual Removal	Monthly Removal	Annual Mass Emission	Monthly Average
TSS	80%	80%	13,599 mt/yr	75 mg/l
BOD	58%	--	--	--

Table 23. Proposed and projected mass emission rates (MT/yr) for TSS and BOD

Year	Proposed MER	Projected MER
2001	15000	14100
2002	15000	14200
2003	15000	14300
2004	15000	14500
2005	15000	14600
2006	13599	13599

9. Compliance with Primary Treatment and Federal Water Quality Criteria. [Section 301(h)(9), Section 303(d)(1) and (2) of the Water Quality Act of 1987]

Under section 303(d)(1) of the WQA the applicant's wastewater effluent must be receiving at least primary treatment at the time their section 301(h) permit becomes effective. Section 303(d)(2) of the WQA states that, "Primary or equivalent treatment means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and other suspended solids in the treatment works influent, and disinfection, where appropriate."

The Point Loma discharge is subject to State and Federal requirements which are much stricter than the primary treatment standard. The COP requires that "Dischargers shall, as a 30-day average, remove 75% of suspended solids from the influent stream before discharging wastewater to the ocean, except that the effluent limitation to be met shall not be lower than 60 mg/l."

The average monthly removals for suspended solids in 1999 and 2000 ranged from 82% to 87%.

The average monthly removals for BOD in 1999 and 2000 ranged from 53% to 67%. The applicant meets the primary treatment standard of at least 30% removal for suspended solids and biological oxygen demand. The draft NPDES permit will include effluent limits of 80% removal for suspended solids on an monthly average basis and 58% removal of BOD on an annual average basis.

COMPLIANCE WITH OTHER APPLICABLE LAWS

40 CFR 125.59(b)(3) provides that a 301(h) modified NPDES permit may not be issued if such issuance would conflict with applicable provisions of local, State, or other Federal laws or existing Executive Orders.

1. State Coastal Zone Management Program. [40 CFR 125.59(b)(3)]

40 CFR 125.59(b)(3) provides that issuance of a 301(h) modified NPDES permit must comply with the Coastal Zone Management Act, 16 USC 1451 *et seq.* In accordance with 16 USC 1456(c)(3)(A), a 301(h) modified NPDES permit may not be issued unless the proposed discharge is certified by the State to comply with applicable State coastal zone management program(s) approved under the Coastal Zone Management Act, or the State waives such certification.

In 1991, the California Coastal Commission issued Consistency Certification No. CC-62-91 for extending the Point Loma outfall to 4.5 miles. In 1995, the California Coastal Commission issued Consistency Certification the City's Waiver Application. As part of this permit renewal cycle, the City of San Diego requested the Commission to provide a determination that the existing and proposed discharge is consistent with applicable coastal zone management requirements (See Letter dated July 13, 2000). No permit may be issued that is inconsistent with the policies of the California Coastal Management Program. The California Coastal Commission will be hearing this issue at their meeting on March 5-8, 2002.

2. Marine Sanctuaries. [40 CFR 125.59(b)(3)]

40 CFR 125.59(b)(3) provides that issuance of a 301(h) modified NPDES permit must comply with Title III of the Marine Protection, Research and Sanctuaries Act, 16 USC 1431 *et seq.* In accordance with 16 USC 1432(f)(2) a 301(h) modified NPDES permit may not be issued for a discharge located in a marine sanctuary designated pursuant to Title III if the regulations applicable to the sanctuary prohibit issuance of such a permit.

The Point Loma ocean outfall discharge is not located in a marine sanctuary. Two zones (San Diego-La Jolla Ecological Reserve and San Diego Marine Life Reserve) approximately 21-22 km (13-14 mi) north of the discharge point have been designated by the California Water Resources Control Board as "*Areas of Special Biological Significance.*" Discharges of wastewater to these zones are prohibited by the Water Quality Control Plan for Ocean Waters of California. The Point Loma outfall discharges wastewater at a location and distance that would not have a significant impact on these zones.

The applicant also listed several protected areas in the San Diego region. We believe that significant dilution of any pollutant discharged through the Point Loma outfall would occur and concentrations would be at background level by the time the wastefield approaches any of these protected areas.

3. Endangered or Threatened Species. [40 CFR 125.59(b)(3)]

40 CFR 125.59(b)(3) provides that issuance of a 301(h) modified NPDES permit must comply with the Endangered Species Act, 16 USC 1531 *et seq.* In accordance with 16 USC 1536(a)(2) a 301(h) modified NPDES permit may not be issued if the proposed discharge will adversely impact threatened or endangered species or critical habitat listed pursuant to the Endangered Species Act.

As part of the California Environmental Quality Act requirements, the City prepared an Environmental Impact Report (EIR) to address impacts from the outfall extension project. The National Marine Fisheries Service (NMFS) requested an informal consultation to assess impacts to the gray whale, and established mitigation to minimize construction-related impacts to the whale. The U.S. Fish and Wildlife Service (USFWS) did not comment on the EIR.

More recently, the City of San Diego initiated an informal consultation on endangered species with both the USFWS and NMFS through correspondence to both agencies, inviting comments specifically on the existing discharge and proposed 301(h) modification request. Responses were provided by both agencies. In a letter dated May 8, 1995, the USFWS stated that they have determined that the San Diego project "will have no effect on any listed species or any designated critical habitat." NMFS in their March 27, 1995 letter confirmed the list prepared by the City of San Diego of potentially impacted species under the jurisdiction of NMFS, with one exception, the gray whale, which is no longer a listed species. NMFS also stated that "available information indicates that no Federally listed species under the jurisdiction of the NMFS are likely to be affected by the modified discharges at the Point Loma outfall."

The City sent letters to USFWS and NMFS on June 28, 1999. NMFS concluded that there were no Federally listed species under its jurisdiction that are likely to be affected by the modified discharges at the Point Loma outfall. No response from has been received from USFWS. The permit is contingent on a finding from the U.S. Fish and Wildlife.

In regards to State law, the Point Loma outfall discharges beyond the three-mile limit for waters controlled by the State of California. Therefore, the discharge is into waters governed by Federal laws. Within the three-mile limit, the State of California Endangered Species Act applies. The State Endangered Species Act has provisions similar to the Federal Endangered Species Act. See the discussion above for compliance with the Federal Endangered Species Act.

STATE CONCURRENCE IN MODIFICATION

Section 301(h) and 40 CFR 125.59(i)(2) provide that a 301(h) modification may not be granted until the appropriate State certification/concurrence is granted or waived pursuant to 40 CFR 124.54. In accordance with the procedures of 40 CFR 124.53(a), before USEPA may issue the

applicant a 301(h) modified NPDES permit, the State must either grant certification pursuant to section 401 of the Act or waive certification. Such action by the State will serve as State concurrence in the modification.

USEPA Region 9 and the California State Water Resources Control Board have developed a Memorandum of Understanding (MOU; May 1984) outlining the procedures that each agency will follow to coordinate the implementation of section 301(h) and State waste discharge requirements. The MOU specifies that the joint issuance of an NPDES permit which incorporates both 301(h) decision and State waste discharge requirements will serve as the State's concurrence. USEPA and the Regional Board will jointly issue the NPDES permit for the City of San Diego.

II. WATER QUALITY OBJECTIVES

A. General Provisions

1. This chapter sets forth limits or levels of water quality characteristics for ocean* waters to ensure the reasonable protection of beneficial uses and the prevention of nuisance. The discharge of waste* shall not cause violation of these objectives.
2. The Water Quality Objectives and Effluent Limitations are defined by a statistical distribution when appropriate. This method recognizes the normally occurring variations in treatment efficiency and sampling and analytical techniques and does not condone poor operating practices.
3. Compliance with the water quality objectives of this chapter shall be determined from samples collected at stations representative of the area within the waste field where initial* dilution is completed.

B. Bacterial Characteristics

1. Water-Contact Standards

- a. Within a zone bounded by the shoreline and a distance of 1,000 feet from the shoreline or the 30-foot depth contour, whichever is further from the shoreline, and in areas outside this zone used for water contact sports, as determined by the Regional Board, but including all kelp* beds, the following bacterial objectives shall be maintained throughout the water column:
 - (1) Samples of water from each sampling station shall have a density of total coliform organisms less than 1,000 per 100 ml (10 per ml); provided that not more than 20 percent of the samples at any sampling station, in any 30-day period, may exceed 1,000 per 100 ml (10 per ml), and provided further that no single sample when verified by a repeat sample taken within 48 hours shall exceed 10,000 per 100 ml (100 per ml).
 - (2) The fecal coliform density based on a minimum of not less than five samples for any 30-day period, shall not exceed a geometric mean of 200 per 100 ml nor shall more than 10 percent of the total samples during any 60-day period exceed 400 per 100 ml.
- b. The "Initial* Dilution Zone" of wastewater outfalls shall be excluded from designation as "kelp* beds" for purposes of bacterial standards, and Regional Boards should recommend extension of such exclusion zone where warranted to the SWRCB (for consideration under Chapter III.H.). Adventitious assemblages of kelp plants on waste discharge structures (e.g., outfall pipes and diffusers) do not constitute kelp* beds for purposes of bacterial standards.

* See Appendix I for definition of terms.

EXHIBIT NO. 5
APPLICATION NO.
CC-28-02

2. Shellfish* Harvesting Standards

- a. At all areas where shellfish* may be harvested for human consumption, as determined by the Regional Board, the following bacterial objectives shall be maintained throughout the water column:

(1) The median total coliform density shall not exceed 70 per 100 ml, and not more than 10 percent of the samples shall exceed 230 per 100 ml.

C. Physical Characteristics

1. Floating particulates and grease and oil shall not be visible.
2. The discharge of waste* shall not cause aesthetically undesirable discoloration of the ocean* surface.
3. Natural* light shall not be significantly* reduced at any point outside the initial* dilution zone as the result of the discharge of waste*.
4. The rate of deposition of inert solids and the characteristics of inert solids in ocean* sediments shall not be changed such that benthic communities are degraded*.

D. Chemical Characteristics

1. The dissolved oxygen concentration shall not at any time be depressed more than 10 percent from that which occurs naturally, as the result of the discharge of oxygen demanding waste* materials.
2. The pH shall not be changed at any time more than 0.2 units from that which occurs naturally.
3. The dissolved sulfide concentration of waters in and near sediments shall not be significantly* increased above that present under natural conditions.
4. The concentration of substances set forth in Chapter II, Table B, in marine sediments shall not be increased to levels which would degrade* indigenous biota.
5. The concentration of organic materials in marine sediments shall not be increased to levels that would degrade* marine life.
6. Nutrient materials shall not cause objectionable aquatic growths or degrade* indigenous biota.
7. Numerical Water Quality Objectives
 - a. Table B water quality objectives apply to all discharges within the jurisdiction of this Plan.
 - b. Table B Water Quality Objectives

* See Appendix I for definition of terms.

**TABLE B
WATER QUALITY OBJECTIVES**

	Units of Measurement	Limiting Concentrations		
		6-Month Median	Daily Maximum	Instantaneous Maximum
OBJECTIVES FOR PROTECTION OF MARINE AQUATIC LIFE				
Arsenic	ug/l	8.	32.	80.
Cadmium	ug/l	1.	4.	10.
Chromium (Hexavalent) (see below, a)	ug/l	2.	8.	20.
Copper	ug/l	3.	12.	30.
Lead	ug/l	2.	8.	20.
Mercury	ug/l	0.04	0.16	0.4
Nickel	ug/l	5.	20.	50.
Selenium	ug/l	15.	60.	150.
Silver	ug/l	0.7	2.8	7.
Zinc	ug/l	20.	80.	200.
Cyanide (see below, b)	ug/l	1.	4.	10.
Total Chlorine Residual (For intermittent chlorine sources see below, c)	ug/l	2.	8.	60.
Ammonia (expressed as nitrogen)	ug/l	600.	2400.	6000.
Acute* Toxicity	TUa	N/A	0.3	N/A
Chronic* Toxicity	TUc	N/A	1.	N/A
Phenolic Compounds (non-chlorinated)	ug/l	30.	120.	300.
Chlorinated Phenolics	ug/l	1.	4.	10.
Endosulfan	ug/l	0.009	0.018	0.027
Endrin	ug/l	0.002	0.004	0.006
HCH*	ug/l	0.004	0.008	0.012
Radioactivity	Not to exceed limits specified in Title 17, Division 1, Chapter 5, Subchapter 4, Group 3, Article 3, Section 30253 of the California Code of Regulations. Reference to Section 30253 is prospective, including future changes to any incorporated provisions of federal law, as the changes take effect.			

* See Appendix I for definition of terms.

Table B Continued

Chemical	30-day Average (ug/l)	
	Decimal Notation	Scientific Notation
OBJECTIVES FOR PROTECTION OF HUMAN HEALTH – NONCARCINOGENS		
acrolein	220.	2.2×10^2
antimony	1,200.	1.2×10^3
bis(2-chloroethoxy) methane	4.4	4.4×10^0
bis(2-chloroisopropyl) ether	1,200.	1.2×10^3
chlorobenzene	570.	5.7×10^2
chromium (III)	190,000.	1.9×10^5
di-n-butyl phthalate	3,500.	3.5×10^3
dichlorobenzenes*	5,100.	5.1×10^3
diethyl phthalate	33,000.	3.3×10^4
dimethyl phthalate	820,000.	8.2×10^5
4,6-dinitro-2-methylphenol	220.	2.2×10^2
2,4-dinitrophenol	4.0	4.0×10^0
ethylbenzene	4,100.	4.1×10^3
fluoranthene	15.	1.5×10^1
hexachlorocyclopentadiene	58.	5.8×10^1
nitrobenzene	4.9	4.9×10^0
thallium	2.	$2. \times 10^0$
toluene	85,000.	8.5×10^4
tributyltin	0.0014	1.4×10^{-3}
1,1,1-trichloroethane	540,000.	5.4×10^5
OBJECTIVES FOR PROTECTION OF HUMAN HEALTH – CARCINOGENS		
acrylonitrile	0.10	1.0×10^{-1}
aldrin	0.000022	2.2×10^{-5}
benzene	5.9	5.9×10^0
benzidine	0.000069	6.9×10^{-5}
beryllium	0.033	3.3×10^{-2}
bis(2-chloroethyl) ether	0.045	4.5×10^{-2}
bis(2-ethylhexyl) phthalate	3.5	3.5×10^0
carbon tetrachloride	0.90	9.0×10^{-1}
chlordane*	0.000023	2.3×10^{-5}
chlorodibromomethane	8.6	8.6×10^0

* See Appendix I for definition of terms.

Table B Continued

<u>Chemical</u>	<u>30-day Average (ug/l)</u>	
	<u>Decimal Notation</u>	<u>Scientific Notation</u>
OBJECTIVES FOR PROTECTION OF HUMAN HEALTH – CARCINOGENS		
chloroform	130.	1.3×10^2
DDT*	0.00017	1.7×10^{-4}
1,4-dichlorobenzene	18.	1.8×10^1
3,3'-dichlorobenzidine	0.0081	8.1×10^{-3}
1,2-dichloroethane	28.	2.8×10^1
1,1-dichloroethylene	0.9	9×10^{-1}
dichlorobromomethane	6.2	6.2×10^0
dichloromethane	450.	4.5×10^2
1,3-dichloropropene	8.9	8.9×10^0
dieldrin	0.00004	4.0×10^{-5}
2,4-dinitrotoluene	2.6	2.6×10^0
1,2-diphenylhydrazine	0.16	1.6×10^{-1}
halomethanes*	130.	1.3×10^2
heptachlor	0.00005	5×10^{-5}
heptachlor epoxide	0.00002	2×10^{-5}
hexachlorobenzene	0.00021	2.1×10^{-4}
hexachlorobutadiene	14.	1.4×10^1
hexachloroethane	2.5	2.5×10^0
isophorone	730.	7.3×10^2
N-nitrosodimethylamine	7.3	7.3×10^0
N-nitrosodi-N-propylamine	0.38	3.8×10^{-1}
N-nitrosodiphenylamine	2.5	2.5×10^0
PAHs*	0.0088	8.8×10^{-3}
PCBs*	0.000019	1.9×10^{-5}
TCDD equivalents*	0.0000000039	3.9×10^{-9}
1,1,2,2-tetrachloroethane	2.3	2.3×10^0
tetrachloroethylene	2.0	2.0×10^0
toxaphene	0.00021	2.1×10^{-4}
trichloroethylene	27.	2.7×10^1
1,1,2-trichloroethane	9.4	9.4×10^0
2,4,6-trichlorophenol	0.29	2.9×10^{-1}
vinyl chloride	36.	3.6×10^1

* See Appendix I for definition of terms.

Table B Notes:

- a) Dischargers may at their option meet this objective as a total chromium objective.
- b) If a discharger can demonstrate to the satisfaction of the Regional Board (subject to EPA approval) that an analytical method is available to reliably distinguish between strongly and weakly complexed cyanide, effluent limitations for cyanide may be met by the combined measurement of free cyanide, simple alkali metal cyanides, and weakly complexed organometallic cyanide complexes. In order for the analytical method to be acceptable, the recovery of free cyanide from metal complexes must be comparable to that achieved by the approved method in 40 CFR PART 136, as revised May 14, 1999.
- c) Water quality objectives for total chlorine residual applying to intermittent discharges not exceeding two hours, shall be determined through the use of the following equation:

$$\log y = -0.43 (\log x) + 1.8$$

where: y = the water quality objective (in ug/l) to apply when chlorine is being discharged;
x = the duration of uninterrupted chlorine discharge in minutes.

E. Biological Characteristics

1. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded*.
2. The natural taste, odor, and color of fish, shellfish*, or other marine resources used for human consumption shall not be altered.
3. The concentration of organic materials in fish, shellfish* or other marine resources used for human consumption shall not bioaccumulate to levels that are harmful to human health.

F. Radioactivity

1. Discharge of radioactive waste* shall not degrade* marine life.

* See Appendix I for definition of terms.

III. PROGRAM OF IMPLEMENTATION

A. General Provisions

1. Effective Date

- a. The *Water Quality Control Plan, Ocean Waters of California, California Ocean Plan* was adopted and has been effective since 1972. There have been multiple amendments of the Ocean Plan since its adoption.

This document includes the most recent amendments of the Ocean Plan as approved by the SWRCB on November 16, 2000. However, amendments in this version of the Ocean Plan do not become effective until approved by the US EPA. Persons using the Ocean Plan prior to US EPA approval of this version should reference the 1997 Ocean Plan. Once approved by the US EPA, this document (the 2001 Ocean Plan) will supercede the 1997 Ocean Plan.

2. General Requirements For Management Of Waste Discharge To The Ocean*

- a. Waste* management systems that discharge to the ocean* must be designed and operated in a manner that will maintain the indigenous marine life and a healthy and diverse marine community.
- b. Waste discharged* to the ocean* must be essentially free of:
 - (1) Material that is floatable or will become floatable upon discharge.
 - (2) Settleable material or substances that may form sediments which will degrade* benthic communities or other aquatic life.
 - (3) Substances which will accumulate to toxic levels in marine waters, sediments or biota.
 - (4) Substances that significantly* decrease the natural* light to benthic communities and other marine life.
 - (5) Materials that result in aesthetically undesirable discoloration of the ocean* surface.
- c. Waste* effluents shall be discharged in a manner which provides sufficient initial* dilution to minimize the concentrations of substances not removed in the treatment.
- d. Location of waste* discharges must be determined after a detailed assessment of the oceanographic characteristics and current patterns to assure that:
 - (1) Pathogenic organisms and viruses are not present in areas where shellfish* are harvested for human consumption or in areas used for swimming or other body-contact sports.
 - (2) Natural water quality conditions are not altered in areas designated as being of special biological significance or areas that existing marine laboratories use as a source of seawater.
 - (3) Maximum protection is provided to the marine environment.

* See Appendix I for definition of terms.

- e. Waste* that contains pathogenic organisms or viruses should be discharged a sufficient distance from shellfishing* and water-contact sports areas to maintain applicable bacterial standards without disinfection. Where conditions are such that an adequate distance cannot be attained, reliable disinfection in conjunction with a reasonable separation of the discharge point from the area of use must be provided. Disinfection procedures that do not increase effluent toxicity and that constitute the least environmental and human hazard should be used.

3. Areas of Special Biological Significance

- a. ASBS* shall be designated by the SWRCB following the procedures provided in Appendix IV. A list of ASBS* is available in Appendix V.

- 4. Combined Sewer Overflow: Notwithstanding any other provisions in this plan, discharges from the City of San Francisco's combined sewer system are subject to the US EPA's Combined Sewer Overflow Policy.

B. Table A Effluent Limitations

TABLE A
EFFLUENT LIMITATIONS

	Unit of Measurement	Limiting Concentrations		
		Monthly (30-day Average)	Weekly (7-day Average)	Maximum at any time
Grease and Oil	mg/l	25.	40.	75.
Suspended Solids			See below +	
Settleable Solids	MI/l	1.0	1.5	3.0
Turbidity	NTU	75.	100.	225.
PH	Units		Within limit of 6.0 to 9.0 at all times	

Table A Notes:

- + Suspended Solids: Dischargers shall, as a 30-day average, remove 75% of suspended solids from the influent stream before discharging wastewaters to the ocean*, except that the effluent limitation to be met shall not be lower than 60 mg/l. Regional Boards may recommend that the SWRCB (Chapter IIIJ), with the concurrence of the Environmental Protection Agency, adjust the lower effluent concentration limit (the 60 mg/l above) to suit the environmental and effluent characteristics of the discharge. As a further consideration in making such recommendation for adjustment, Regional Boards should evaluate effects on existing and potential water* reclamation projects.

If the lower effluent concentration limit is adjusted, the discharger shall remove 75% of suspended solids from the influent stream at any time the influent concentration exceeds four times such adjusted effluent limit.

- 1. Table A effluent limitations apply only to publicly owned treatment works and industrial discharges for which Effluent Limitations Guidelines have not been established pursuant to Sections 301, 302, 304, or 306 of the Federal Clean Water Act.

* See Appendix I for definition of terms.

2. Table A effluent limitations shall apply to a discharger's total effluent, of whatever origin (i.e., gross, not net, discharge), except where otherwise specified in this Plan.
3. The SWRCB is authorized to administer and enforce effluent limitations established pursuant to the Federal Clean Water Act. Effluent limitations established under Sections 301, 302, 306, 307, 316, 403, and 405 of the aforementioned Federal Act and administrative procedures pertaining thereto are included in this plan by reference. Compliance with Table A effluent limitations, or Environmental Protection Agency Effluent Limitations Guidelines for industrial discharges, based on Best Practicable Control Technology, shall be the minimum level of treatment acceptable under this plan, and shall define reasonable treatment and waste control technology.

C. Implementation Provisions for Table B

1. Effluent concentrations calculated from Table B water quality objectives shall apply to a discharger's total effluent, of whatever origin (i.e., gross, not net, discharge), except where otherwise specified in this Plan.
2. Effluent limitations shall be imposed in a manner prescribed by the SWRCB such that the concentrations set forth below as water quality objectives shall not be exceeded in the receiving water upon completion of initial* dilution, except that objectives indicated for radioactivity shall apply directly to the undiluted waste* effluent.
3. Calculation of Effluent Limitations
 - a. Effluent limitations for water quality objectives listed in Table B, with the exception of acute* toxicity and radioactivity, shall be determined through the use of the following equation:

Equation 1: $C_e = C_o + D_m (C_o - C_s)$

where:

C_e = the effluent concentration limit, ug/l

C_o = the concentration (water quality objective) to be met at the completion of initial* dilution, ug/l

C_s = background seawater concentration (see Table C below), ug/l

D_m = minimum probable initial* dilution expressed as parts seawater per part wastewater.

TABLE C	
BACKGROUND SEAWATER CONCENTRATIONS (C_s)	
Waste Constituent	C_s (ug/l)
Arsenic	3.
Copper	2.
Mercury	0.0005
Silver	0.16
Zinc	8.
For all other Table B parameters, $C_s = 0$.	

* See Appendix I for definition of terms.

b. Determining a Mixing Zone for the Acute* Toxicity Objective

The mixing zone for the acute* toxicity objective shall be ten percent (10%) of the distance from the edge of the outfall structure to the edge of the chronic mixing zone (zone of initial dilution). There is no vertical limitation on this zone. The effluent limitation for the acute* toxicity objective listed in Table B shall be determined through the use of the following equation:

$$\text{Equation 2: } C_e = C_a + (0.1) D_m (C_a)$$

where:

C_a = the concentration (water quality objective) to be met at the edge of the acute mixing zone.

D_m = minimum probable initial* dilution expressed as parts seawater per part wastewater (This equation applies only when $D_m > 24$).

c. Toxicity Testing Requirements based on the Minimum Initial* Dilution Factor for Ocean Waste Discharges

- (1) Dischargers shall conduct acute* toxicity testing if the minimum initial* dilution of the effluent is greater than 1,000:1 at the edge of the mixing zone.
- (2) Dischargers shall conduct either acute* or chronic* toxicity testing if the minimum initial* dilution ranges from 350:1 to 1,000:1 depending on the specific discharge conditions. The RWQCB shall make this determination.
- (3) Dischargers shall conduct chronic* toxicity testing for ocean waste discharges with minimum initial* dilution factors ranging from 100:1 to 350:1. The RWQCBs may require that acute toxicity testing be conducted in addition to chronic as necessary for the protection of beneficial uses of ocean waters.
- (4) Dischargers shall conduct chronic toxicity testing if the minimum initial* dilution of the effluent falls below 100:1 at the edge of the mixing zone.

d. For the purpose of this Plan, minimum initial* dilution is the lowest average initial* dilution within any single month of the year. Dilution estimates shall be based on observed waste flow characteristics, observed receiving water density structure, and the assumption that no currents, of sufficient strength to influence the initial* dilution process, flow across the discharge structure.

e. The Executive Director of the SWRCB shall identify standard dilution models for use in determining D_m , and shall assist the Regional Board in evaluating D_m for specific waste discharges. Dischargers may propose alternative methods of calculating D_m , and the Regional Board may accept such methods upon verification of its accuracy and applicability.

* See Appendix I for definition of terms.

- f. The six-month median shall apply as a moving median of daily values for any 180-day period in which daily values represent flow weighted average concentrations within a 24-hour period. For intermittent discharges, the daily value shall be considered to equal zero for days on which no discharge occurred.
- g. The daily maximum shall apply to flow weighted 24 hour composite samples.
- h. The instantaneous maximum shall apply to grab sample determinations.
- i. If only one sample is collected during the time period associated with the water quality objective (e.g., 30-day average or 6-month median), the single measurement shall be used to determine compliance with the effluent limitation for the entire time period.
- j. Discharge requirements shall also specify effluent limitations in terms of mass emission rate limits utilizing the general formula:

$$\text{Equation 3: lbs/day} = 0.00834 \times C_e \times Q$$

where:

C_e = the effluent concentration limit, ug/l

Q = flow rate, million gallons per day (MGD)

- k. The six-month median limit on daily mass emissions shall be determined using the six-month median effluent concentration as C_e and the observed flow rate Q in millions of gallons per day. The daily maximum mass emission shall be determined using the daily maximum effluent concentration limit as C_e and the observed flow rate Q in millions of gallons per day.
 - l. Any significant change in waste* flow shall be cause for reevaluating effluent limitations.
4. Minimum* Levels

For each numeric effluent limitation, the Regional Board must select one or more Minimum* Levels (and their associated analytical methods) for inclusion in the permit. The "reported" Minimum* Level is the Minimum* Level (and its associated analytical method) chosen by the discharger for reporting and compliance determination from the Minimum* Levels included in their permit.

a. Selection of Minimum* Levels from Appendix II

The Regional Board must select all Minimum* Levels from Appendix II that are below the effluent limitation. If the effluent limitation is lower than all the Minimum* Levels in Appendix II, the Regional Board must select the lowest Minimum* Level from Appendix II.

* See Appendix I for definition of terms.

b. Deviations from Minimum* Levels in Appendix II

The Regional Board, in consultation with the State Water Board's Quality Assurance Program, must establish a Minimum* Level to be included in the permit in any of the following situations:

1. A pollutant is not listed in Appendix II.
2. The discharger agrees to use a test method that is more sensitive than those described in 40 CFR 136 (revised May 14, 1999).
3. The discharger agrees to use a Minimum* Level lower than those listed in Appendix II.
4. The discharger demonstrates that their calibration standard matrix is sufficiently different from that used to establish the Minimum* Level in Appendix II and proposes an appropriate Minimum* Level for their matrix.
5. A discharger uses an analytical method having a quantification practice that is not consistent with the definition of Minimum* Level (e.g., US EPA methods 1613, 1624, 1625).

5. Use of Minimum* Levels

- a. Minimum* Levels in Appendix II represent the lowest quantifiable concentration in a sample based on the proper application of method-specific analytical procedures and the absence of matrix interferences. Minimum* Levels also represent the lowest standard concentration in the calibration curve for a specific analytical technique after the application of appropriate method-specific factors.

Common analytical practices may require different treatment of the sample relative to the calibration standard. Some examples are given below:

<u>Substance or Grouping</u>	<u>Method-Specific Treatment</u>	<u>Most Common Factor</u>
Volatile Organics	No differential treatment	1
Semi-Volatile Organics	Samples concentrated by extraction	1000
Metals	Samples diluted or concentrated	½, 2, and 4
Pesticides	Samples concentrated by extraction	100

- b. Other factors may be applied to the Minimum* Level depending on the specific sample preparation steps employed. For example, the treatment typically applied when there are matrix effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied during the computation of the reporting limit. Application of such factors will alter the reported Minimum* Level.
- c. Dischargers are to instruct their laboratories to establish calibration standards so that the Minimum* Level (or its equivalent if there is differential treatment of samples relative to calibration standards) is the lowest calibration standard. At no time is the discharger to use analytical data derived from *extrapolation* beyond the lowest point of the calibration curve. In accordance with Section 4b, above, the discharger's laboratory may employ a calibration standard lower than the Minimum* Level in Appendix II.

* See Appendix I for definition of terms.

6. Sample Reporting Protocols

- a. Dischargers must report with each sample result the reported Minimum* Level (selected in accordance with Section 4, above) and the laboratory's current MDL*.
- b. Dischargers must also report the results of analytical determinations for the presence of chemical constituents in a sample using the following reporting protocols:
 - (1) Sample results greater than or equal to the reported Minimum* Level must be reported "as measured" by the laboratory (i.e., the measured chemical concentration in the sample).
 - (2) Sample results less than the reported Minimum* Level, but greater than or equal to the laboratory's MDL*, must be reported as "Detected, but Not Quantified", or DNQ. The laboratory must write the estimated chemical concentration of the sample next to DNQ as well as the words "Estimated Concentration" (may be shortened to "Est. Conc.").
 - (3) Sample results less than the laboratory's MDL* must be reported as "Not Detected", or ND.

7. Compliance Determination

Sufficient sampling and analysis shall be required to determine compliance with the effluent limitation.

a. Compliance with Single-Constituent Effluent Limitations

Dischargers are out of compliance with the effluent limitation if the concentration of the pollutant (see Section 7c, below) in the monitoring sample is greater than the effluent limitation and greater than or equal to the reported Minimum* Level.

b. Compliance with Effluent Limitations expressed as a Sum of Several Constituents

Dischargers are out of compliance with an effluent limitation which applies to the sum of a group of chemicals (e.g., PCB's) if the sum of the individual pollutant concentrations is greater than the effluent limitation. Individual pollutants of the group will be considered to have a concentration of zero if the constituent is reported as ND or DNQ.

c. Multiple Sample Data Reduction

The concentration of the pollutant in the effluent may be estimated from the result of a single sample analysis or by a measure of central tendency (arithmetic mean, geometric mean, median, etc.) of multiple sample analyses when all sample results are quantifiable (i.e., greater than or equal to the reported Minimum* Level). When one or more sample results are reported as ND or DNQ, the central tendency concentration of the pollutant shall be the median (middle) value of the multiple samples. If, in an even number of samples, one or both of the middle values is ND or DNQ, the median will be the lower of the two middle values.

* See Appendix I for definition of terms.

d. Powerplants and Heat Exchange Dischargers

Due to the large total volume of powerplant and other heat exchange discharges, special procedures must be applied for determining compliance with Table B objectives on a routine basis. Effluent concentration values (C_e) shall be determined through the use of equation 1 considering the minimal probable initial* dilution of the combined effluent (in-plant waste streams plus cooling water flow). These concentration values shall then be converted to mass emission limitations as indicated in equation 3. The mass emission limits will then serve as requirements applied to all inplant waste* streams taken together which discharge into the cooling water flow, except that limits for total chlorine residual, acute* (if applicable per Section (3)(c)) and chronic* toxicity and instantaneous maximum concentrations in Table B shall apply to, and be measured in, the combined final effluent, as adjusted for dilution with ocean water. The Table B objective for radioactivity shall apply to the undiluted combined final effluent.

8. Pollutant Minimization Program

a. Pollutant Minimization Program Goal

The goal of the Pollutant Minimization Program is to reduce all potential sources of a pollutant through pollutant minimization (control) strategies, including pollution prevention measures, in order to maintain the effluent concentration at or below the effluent limitation.

Pollution prevention measures may be particularly appropriate for persistent bioaccumulative priority pollutants where there is evidence that beneficial uses are being impacted. The completion and implementation of a Pollution Prevention Plan, required in accordance with CA Water Code Section 13263.3 (d) will fulfill the Pollution Minimization Program requirements in this section.

b. Determining the need for a Pollutant Minimization Program

1. The discharger must develop and conduct a Pollutant Minimization Program if all of the following conditions are true:

- (a) The calculated effluent limitation is less than the reported Minimum* Level
- (b) The concentration of the pollutant is reported as DNQ
- (c) There is evidence showing that the pollutant is present in the effluent above the calculated effluent limitation.

2. Alternatively, the discharger must develop and conduct a Pollutant Minimization Program if all of the following conditions are true:

- (a) The calculated effluent limitation is less than the Method Detection Limit*.
- (b) The concentration of the pollutant is reported as ND.
- (c) There is evidence showing that the pollutant is present in the effluent above the calculated effluent limitation.

* See Appendix I for definition of terms.

c. Regional Boards may include special provisions in the discharge requirements to require the gathering of evidence to determine whether the pollutant is present in the effluent at levels above the calculated effluent limitation. Examples of evidence may include:

1. health advisories for fish consumption,
2. presence of whole effluent toxicity,
3. results of benthic or aquatic organism tissue sampling,
4. sample results from analytical methods more sensitive than methods included in the permit (in accordance with Section 4b, above).
5. the concentration of the pollutant is reported as DNQ and the effluent limitation is less than the MDL

d. Elements of a Pollutant Minimization Program

The Regional Board may consider cost-effectiveness when establishing the requirements of a Pollutant Minimization Program. The program shall include actions and submittals acceptable to the Regional Board including, but not limited to, the following:

1. An annual review and semi-annual monitoring of potential sources of the reportable pollutant, which may include fish tissue monitoring and other bio-uptake sampling;
2. Quarterly monitoring for the reportable pollutant in the influent to the wastewater treatment system;
3. Submittal of a control strategy designed to proceed toward the goal of maintaining concentrations of the reportable pollutant in the effluent at or below the calculated effluent limitation;
4. Implementation of appropriate cost-effective control measures for the pollutant, consistent with the control strategy; and,
5. An annual status report that shall be sent to the Regional Board including:
 - (a) All Pollutant Minimization Program monitoring results for the previous year;
 - (b) A list of potential sources of the reportable pollutant;
 - (c) A summary of all action taken in accordance with the control strategy; and,
 - (d) A description of actions to be taken in the following year.

9. Toxicity Reduction Requirements

a. If a discharge consistently exceeds an effluent limitation based on a toxicity objective in Table B, a toxicity reduction evaluation (TRE) is required. The TRE shall include all reasonable steps to identify the source of toxicity. Once the source(s) of toxicity is identified, the discharger shall take all reasonable steps necessary to reduce toxicity to the required level.

* See Appendix I for definition of terms.

- b. The following shall be incorporated into waste discharge requirements: (1) a requirement to conduct a TRE if the discharge consistently exceeds its toxicity effluent limitation, and (2) a provision requiring a discharger to take all reasonable steps to reduce toxicity once the source of toxicity is identified.

D. Implementation Provisions for Bacterial Assessment and Remedial Action Requirements

1. The requirements listed below shall be used to determine the occurrence and extent of any impairment of a beneficial use due to bacterial contamination, generate information which can be used in the development of an enterococcus standard, and provide the basis for remedial actions necessary to minimize or eliminate any impairment of a beneficial use.
 - a. Measurement of enterococcus density shall be conducted at all stations where measurement of total and fecal coliforms are required. In addition to the requirements of Chapter II.B.I, if a shore station consistently exceeds a coliform objective or exceeds a geometric mean enterococcus density of 24 organisms per 100 ml for a 30-day period or 12 organisms per 100 ml for a six-month period, the Regional Board shall require the appropriate agency to conduct a survey to determine if that agency's discharge is the source of the contamination. The geometric mean shall be a moving average based on no less than five samples per month, spaced evenly over the time interval. When a sanitary survey identifies a controllable source of indicator organisms associated with a discharge of sewage, the Regional Board shall take action to control the source.
 - b. Waste discharge requirements shall require the discharger to conduct sanitary surveys when so directed by the Regional Board. Waste discharge requirements shall contain provisions requiring the discharger to control any controllable discharges identified in a sanitary survey.

E. Implementation Provisions For Areas* of Special Biological Significance (ASBS)

1. Waste* shall not be discharged to areas designated as being of special biological significance. Discharges shall be located a sufficient distance from such designated areas to assure maintenance of natural water quality conditions in these areas.
2. Regional Boards may approve waste discharge requirements or recommend certification for limited-term (i.e. weeks or months) activities in ASBS*. Limited-term activities include, but are not limited to, activities such as maintenance/repair of existing boat facilities, restoration of sea walls, repair of existing storm water pipes, and replacement/repair of existing bridges. Limited-term activities may result in temporary and short-term changes in existing water quality. Water quality degradation shall be limited to the shortest possible time. The activities must not permanently degrade water quality or result in water quality lower than that necessary to protect existing uses, and all practical means of minimizing such degradation shall be implemented.

* See Appendix I for definition of terms.

F. Revision of Waste* Discharge Requirements

1. The Regional Board shall revise the waste* discharge requirements for existing* discharges as necessary to achieve compliance with this Plan and shall also establish a time schedule for such compliance.
2. The Regional Boards may establish more restrictive water quality objectives and effluent limitations than those set forth in this Plan as necessary for the protection of beneficial uses of ocean* waters.
3. Regional Boards may impose alternative less restrictive provisions than those contained within Table B of the Plan, provided an applicant can demonstrate that:
 - a. Reasonable control technologies (including source control, material substitution, treatment and dispersion) will not provide for complete compliance; or
 - b. Any less stringent provisions would encourage water* reclamation;
4. Provided further that:
 - a. Any alternative water quality objectives shall be below the conservative estimate of chronic* toxicity, as given in Table D, and such alternative will provide for adequate protection of the marine environment;
 - b. A receiving water quality toxicity objective of 1 TUc is not exceeded; and
 - c. The State Board grants an exception (Chapter III. I.) to the Table B limits as established in the Regional Board findings and alternative limits.

**TABLE D
CONSERVATIVE ESTIMATES OF CHRONIC TOXICITY**

Constituent	Estimate of Chronic Toxicity (ug/l)
Arsenic	19.
Cadmium	8.
Hexavalent Chromium	18.
Copper	5.
Lead	22.
Mercury	0.4
Nickel	48.
Silver	3.
Zinc	51.
Cyanide	10.
Total Chlorine Residual	10.0
Ammonia	4000.0
Phenolic Compounds (non-chlorinated)	a) (see below)
Chlorinated Phenolics	a)
Chlorinated Pesticides and PCB's	b)

* See Appendix I for definition of terms.

Table D Notes:

- a) There are insufficient data for phenolics to estimate chronic toxicity levels. Requests for modification of water quality objectives for these waste* constituents must be supported by chronic toxicity data for representative sensitive species. In such cases, applicants seeking modification of water quality objectives should consult the Regional Water Quality Control Board to determine the species and test conditions necessary to evaluate chronic effects.
 - b) Limitations on chlorinated pesticides and PCB's shall not be modified so that the total of these compounds is increased above the objectives in Table B.
-

G. Monitoring Program

1. The Regional Boards shall require dischargers to conduct self-monitoring programs and submit reports necessary to determine compliance with the waste* discharge requirements, and may require dischargers to contract with agencies or persons acceptable to the Regional Board to provide monitoring reports. Monitoring provisions contained in waste discharge requirements shall be in accordance with the Monitoring Procedures provided in Appendix III.
2. Where the Regional Board is satisfied that any substance(s) of Table B will not significantly occur in a discharger's effluent, the Regional Board may elect not to require monitoring for such substance(s), provided the discharger submits periodic certification that such substance(s) is not added to the waste* stream, and that no change has occurred in activities that could cause such substance(s) to be present in the waste* stream. Such election does not relieve the discharger from the requirement to meet the objectives of Table B.
3. The Regional Board may require monitoring of bioaccumulation of toxicants in the discharge zone. Organisms and techniques for such monitoring shall be chosen by the Regional Board on the basis of demonstrated value in waste* discharge monitoring.

H. Discharge Prohibitions

1. Hazardous Substances

- a. The discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste* into the ocean* is prohibited.

2. Areas Designated for Special Water Quality Protection

- a. Waste* shall not be discharged to designated Areas* of Special Biological Significance except as provided in Chapter III E. Implementation Provisions For Areas of Special Biological Significance.

3. Sludge

- a. Pipeline discharge of sludge to the ocean* is prohibited by federal law; the discharge of municipal and industrial waste* sludge directly to the ocean*, or into

* See Appendix I for definition of terms.

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
V. AND TDD (415) 904-5200



April 10, 2002

Alan Langworthy
Deputy Metropolitan Wastewater Director
City of San Diego
4918 North Harbor Drive, Suite 201
San Diego, CA 92106-2359

Re: **CC-10-02** City of San Diego, Secondary Treatment Waiver Renewal

Dear Mr. Langworthy:

On April 8, 2002, by a vote of one in favor, six opposed, the California Coastal Commission objected to the above-referenced consistency certification for the reissuance of a Secondary Treatment Waiver for the Point Loma Wastewater Treatment Plant (WWTP) and Outfall. The Commission found that the activity was not consistent with the California Coastal Management Program (CCMP).

In order to bring the activity into conformance with the CCMP, the City needs to modify the activity to include the following provisions:

1. Meaningful reductions in rates of annual mass emissions (i.e., the proposed EPA/RWQCB permit limitations of 15,000 metric tons (MT) per year for the first four years, and 13,599 MT for the fifth year, are set unrealistically high, compared to current discharges of approximately 9,000 MT/yr.).
2. Commitments for actual reclamation (as opposed to the requirements under the Ocean Pollution Reduction Act of 1994 (OPRA) to develop 45 MGD of reclamation *capacity*).
3. Additional monitoring measures, consisting of:
 - a. Extending the Coastal Ocean Dynamics Applications Radar (CODAR) monitoring developed at Imperial Beach to the Point Loma area.

EXHIBIT NO. 6
APPLICATION NO.
CC-28-02

- b. Adding a monitoring station in La Jolla Canyon.
- c. Incorporating remote sensing into the monitoring program.

Pursuant to 15 CFR Part 930, Subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the California Coastal Commission and the Environmental Protection Agency. The Secretary may collect fees from you for administering and processing your request.

The Commission's objection was based on the enforceable policies found in the marine resource and water quality policies (Sections 30230 and 30231) of the Coastal Act. A more specific discussion of the analytical basis for the Commission's objection will be contained in "Revised Findings," to be adopted at a future hearing. We will schedule the findings for a public hearing at the next (May 7-10, 2001) Commission meeting in Santa Rosa. Please feel free to contact me if you have any questions about the Commission's objection or the above request for additional measures. I can be reached at (415) 904-5289.

Sincerely,



Mark Delaplaine
Federal Consistency Supervisor

cc: San Diego Office
NOAA Assistant Administrator
OCRM
Department of Water Resources
Governor's Washington D.C. Office
EPA, Region IX (Janet Hashimoto, Terry Fleming)
RWQCB, San Diego Region (David Hansen)



Anton H. Hickox
Secretary for
Environmental
Protection

California Regional Water Quality Control Board San Diego Region



Gray Davis
Governor

Internet Address: <http://www.swrcb.ca.gov/rwqcb9/>
9174 Sky Park Court, Suite 100, San Diego, California 92123
Phone (858) 467-2952 ♦ FAX (858) 571-6972

April 16, 2002

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Douglas:

ADOPTION OF ORDER NO. R9-2002-0025, NPDES PERMIT NO. CA0107409, FOR THE CITY OF SAN DIEGO, E. W. BLOM POINT LOMA METROPOLITAN WASTEWATER TREATMENT PLANT DISCHARGE TO THE PACIFIC OCEAN THROUGH THE POINT LOMA OCEAN OUTFALL, SAN DIEGO COUNTY

On March 13, 2002, the Regional Water Quality Control Board, San Diego Region (Regional Board) and U.S. Environmental Protection Agency (USEPA) held a joint hearing to accept oral and written public comments regarding the subject Order. Ms. Alexis Strauss acted as hearing officer for the USEPA during the public hearing. The Regional Board and USEPA closed the public comment period at the end of the March 13 hearing. I have checked the record for this item and discovered that the California Coastal Commission (CCC) did not provide any written or oral comments on this matter. Furthermore, I understand that no representative from the CCC was present at the March 13, 2002 joint public hearing.

At its April 10, 2002 meeting, the Board deliberated on the matter for several hours, without further comments from the public, and moved to adopt Tentative Order No. R9-2002-0025 and Draft NPDES Permit No. CA0107409 with amendments. The following is a list of issues considered by the Board and the actions taken:

1. Total Suspended Solids (TSS) Mass Emissions - The Board adopted a motion to reduce the TSS mass emission limit of 15,000 metric tons per year (mt/yr), as specified in the Tentative Order during the five years of the permit term, by 6.7%. The reduction results in a TSS mass emission limit of 13,995 mt/yr for those years that were previously 15,000 mt/yr. The TSS mass emission for the final year of the permit term will remain at 13,599 mt/yr.
Permit Modifications: Mass emission effluent limits for TSS are changed as described.
2. Reclamation - The Board instructed me to report to them annually regarding the City's progress towards reuse of treated wastewater. The Board did not amend the permit to

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy costs. Simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>



EXHIBIT NO.	7
APPLICATION NO.	
CC-28-02	

specifically require reuse, but did state their intent to do so in the future if they are not satisfied with the City's progress. The Board also adopted a motion to strike language from Finding 33 of the Tentative Order stating "...it is not the intent of the Regional Board to require specific volumes of water to be reclaimed or to require specific water reclamation projects to be implemented."

Permit Modifications: The permit findings are modified as described.

3. Monitoring Program - The Board adopted the Tentative Monitoring and Reporting Program but instructed me to review the program and prepare modifications for future adoption. In addition to a general review of the adequacy of the program design, the Board requested specific monitoring provisions for deep ocean receiving water stations, human pathogens, and long term trends. The Board also expressed an interest in an independent review of the monitoring program but did not make any specific directives regarding the matter.

Permit Modifications: None at this time, but the Regional Board reserves the right to make changes to the monitoring and reporting program in the future depending on staff's review of the program.

4. Monitoring Data Access - The Board directed me to require the City to make electronic monitoring data available to the public. The Tentative Order contains language that requires the City to submit electronic monitoring data to USEPA in an electronic format. I will require that the City make the data available for download by the public through an internet site.

Permit Modifications: None at this time. I will instruct the City by letter to make the data available electronically.


5. Tijuana Sewage - The Board expressed concern about language in the Tentative Order exempting the City from TSS mass emission limits during the acceptance of wastewater generated in Mexico. The Board adopted a motion to amend the language so that it was clear that the City was only exempt from the mass emission limits when wastewater was accepted from Mexico "as a result of shutdown or upset."

Permit Modifications: The language regarding the acceptance of sewage from Mexico is changed as described.

I will send out the final copy of the Order in the near future. I will also send the City a letter to address the additional items described above, as directed by the Regional Board.

If you have any questions, please call me at (858) 467-2987.

Respectfully,


JOHN H. ROBERTUS
Executive Officer

Mr. Douglas

- 3 -

April 16, 2001

cc: Michael P. Sweeney
Undersecretary of the Resources Agency
1416 9th Street, Suite 1311
Sacramento, CA 95814

Beth Jines
Assistant Secretary for Water Programs
California Environmental Protection Agency
Office of the Secretary
1001 I Street
Sacramento, CA 95814

Arthur G. Baggett Jr., Chairman
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Scott Tulloch, Director
City of San Diego, Metropolitan Wastewater Dept.
9192 Topaz Way
San Diego, CA 92123

Alexis Strauss
WTR-1
USEPA Region 9
75 Hawthorne St.
San Francisco, CA 94105



DICK MURPHY
MAYOR

RECEIVED

APR 18 2002

CALIFORNIA
COASTAL COMMISSION

April 17, 2002

Chairwoman Sara Wan,
and Coastal Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Subject: City of San Diego
Point Loma Wastewater Treatment Plant

Dear Chairwoman Wan and Commissioners:

We respectfully request the California Coastal Commission review the attached resubmittal application for a Coastal Management Program consistency certification. We also request that our application be docketed at your May 9, 2002, Coastal Commission hearing in Santa Rosa. The basis for our request is detailed in the attached letter of comment on the Commission's decision of April 8, 2002.

The City of San Diego appreciates the difficult issues that you and each Commissioner must address each month. We share your legitimate desires to make efficient use of reclaimed water, and for a scientifically sound monitoring program for our Point Loma Wastewater Treatment Plant.

We want to assure you of our commitment to protecting our coastal waters, particularly if there were scientific evidence that discharges from the Treatment Plant threaten the ocean environment. Based upon the recommendations of City, Coastal Commission, and EPA staff, we urge you to approve our application without modification.

Sincerely,

Dick Murphy
Mayor
City of San Diego

Scott Peters
Council member District 1
City of San Diego

Enclosures
DM/rb

EXHIBIT NO. 8
APPLICATION NO.

LESLIE E. DEVANEY
VITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

FREDERICK M. ORTLIEB
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

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APR 18 2002

CALIFORNIA
COASTAL COMMISSION

April 17, 2002

VIA FEDERAL EXPRESS

Chairwoman Sara Wan
And Coastal Commissioners
California Coastal Commission
Headquarters Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: City of San Diego Point Loma Wastewater Treatment Plant

Dear Chairwoman Wan and Commissioners:

I am writing on behalf of the City of San Diego ("City") to comment on the decision by the California Coastal Commission ("Commission") to deny a certification of consistency for the United States Environmental Protection Agency's ("EPA") tentative decision, issued on February 11, 2002, to grant the City a waiver from secondary treatment, pursuant to Section 301(h) of the Clean Water Act, 33 U.S.C. § 1311(h) ("301(h) Waiver"). By copy of this letter to Ms. Sherilyn Sarb, San Diego Coast District Manager, the City is also submitting this letter as the City's formal comments. The City hereby requests that the Commission: (1) reconsider or reopen its decision not to grant the consistency certification, in recognition of the fact that the City was not provided due process; and (2) incorporate the following comments into the record on this matter. Subject to applicable laws, the City would also appreciate the opportunity to meet with the Commission to discuss these matters at the earliest convenience.

Point Loma's 301(h) Waiver is a matter of crucial importance to the City. The Point Loma treatment plant and ocean outfall represent over one billion dollars of investment by the citizens of the City. If the City is forced into substantial upgrades, billions more will be spent. Before your Commission makes a decision that imposes such enormous costs on ratepayers, you should allow the City the fair notice and opportunity to comment that are its constitutional due. Further, the Commission's decision should be procedurally sound, grounded in the law, and based on good science. It appears that,

date, the decision is not. This letter briefly addresses each of these points, and requests that the Commission reconsider its initial decision, and allow an opportunity for formal comment and consideration. The City requests such reconsideration at the next available Commission meeting.

I. Factual Background

On February 11, 2002, EPA and the San Diego Regional Water Quality Control Board ("Regional Board") jointly proposed reissuance of the City's tentative National Pollutant Discharge and Elimination System Permit No. CA0107409 ("Permit") and 301(h) Waiver for the City's Point Loma Wastewater Treatment Plant ("WWTP") and Outfall No. CC-010-02 ("Outfall").

In order to prepare its tentative decision to reissue the City's 301(h) Waiver, EPA conducted an extensive technical evaluation to analyze whether the City's proposed discharge would comply with Section 301(h) and the regulations hereunder (40 C.F.R. Part 125, Subpart G ("301(h) regulations"), which, in turn, require, among other things, consistency with the California Coastal Management Plan ("CCMP"). See 40 C.F.R. § 125.59(b) (requiring compliance with the federal Coastal Zone Management Act, 16 U.S.C. § 1531, *et seq.*); *In Re: City of San Diego's Point Loma Wastewater Treatment Plant, Application for a Modified NPDES Permit Under Section 301(h) of the Clean Water Act*, "Tentative Decision of the Regional Administrator Pursuant to 40 CFR Part 125, Subpart G (Feb. 8, 2002) ("Tentative Decision"). In its technical report, EPA found that the proposed discharge complied with the water quality standards for dissolved oxygen, suspended solids, and pH in the California Ocean Plan. See Tentative Decision at 4. EPA also determined that the discharge would not adversely impact public water supplies or interferes with the protection and propagation of a balanced, indigenous population of fish, shellfish and wildlife. See *id.* Based on its technical evaluation of the City's proposed discharge limits and its expertise, EPA concluded that the City's proposed reduction in mass emission rates from 15,000 to 13,599 metric tons ("MT") per year in the final year was sufficient to protect the environment and comply with applicable federal and state law. See *id.* at 4-6, 46-48.

Taking into consideration EPA's and the Regional Board's analysis, set forth in the tentative 301(h) Waiver decision and Permit, the staff of the Commission concurrently issued a report, on March 22, 2002, that recommended the Commission find that the project is consistent with the CCMP. California Coastal Commission, Staff Report and Recommendations on Consistency Certification (March 22, 2002) ("Staff Report") at 5-6. This recommendation was based on the following findings, among others: (1) the City's comprehensive ocean monitoring program already protected the ocean environment; (2) EPA's conclusion, in its Tentative Decision, that the City's past discharge had not harmed the ocean environment; and (3) EPA's conclusion, in its Tentative Decision, that the proposed discharge would not threaten the ocean environment. *Id.* at 13-16. In the Staff Report, the Commission staff concluded, "the City's discharges would be consistent with the applicable marine resource and water quality provisions (Section 30230 and 30231 [of the California Public Resources Code]) of the Coastal Act." See *id.* at 17.

On April 8, 2002, at the Commission's hearing, the Commission roundly rejected both the EPA's conclusions and the analysis of the Commission's own staff. The Commission denied the City's application for a consistency determination.

On April 10, 2002, the Commission issued a letter to the City, notifying it that the Commission objected to EPA's issuance of a 301(h) Waiver and listing the following three "conditions" which must be met in order to bring the City into conformance with the CCMP:

1. Meaningful reductions in rates of annual mass emissions. The Commission stated that the proposed EPA/RWQCB permit limitations of 15,000 metric tons per year for the first four years and 13,599 metric tons for the fifth year were unrealistically high compared to the current discharges of approximately 9,000 metric tons per year.
2. Commitments for actual reclamation to develop 45 million gallons per day ("MGD") of reclamation capacity.
3. Additional monitoring that consists of:
 - a. Extending the Coastal Ocean Dynamics Application Radar monitoring developed at Imperial Beach to the Point Loma Area.
 - b. Adding a monitoring station in La Jolla Canyon.
 - c. Incorporating remote sensing into the monitoring program.

Letter from Mark Delaplaine, Federal Consistency Supervisor at the Commission, regarding "CC-10-02 City of San Diego, Secondary Treatment Waiver Renewal" (Apr. 10, 2002) ("April 10, 2002 Letter") at 1-2. The Commission fails to include any findings or basis of support for its denial in the letter, essentially admitting that no adequate findings have yet been made and that it intends to make post-hoc findings to justify its April 10, 2002 decision: "A more specific discussion of the analytical basis for the Commission's objections will be contained in 'Revised Findings,' to be adopted at a future hearing. We will schedule the finding for a public hearing at the next (May 7-10, 2001 [sic]) Commission meeting in Santa Rosa." *Id.* at 2 (emphasis added).

II. Applicable Procedural Law

As is standard for any administrative body, the Coastal Commission must give the City notice and a meaningful opportunity to comment on its consistency decision. This right includes the right to comment on any "substantially different" changes to its staff's recommendations. See 14 C.C.R. §§ 13066(d), 13090(d), and 13096(b). If the commission makes a decision that is "substantially different" from the recommendation of its staff report, it must provide the basis for its action and give the applicant an opportunity to comment, as set forth expressly in the applicable regulations:

Where the commission moves to vote on an application with terms *different from those proposed* by the applicant in the application or conditions *different than those proposed* by the staff in the staff recommendation, *the applicant*, appellant, and the executive director *shall have an opportunity to state briefly and specifically their views on the conditions.*

14 C.C.R. § 13090(d)(emphasis added).

Additionally, if the Commission issues a “substantially different” decision, it must make findings and state the basis of these findings:

[I] F the commission action is *substantially different* than that recommended in the staff report, the prevailing commissioners *shall state the basis for their action in sufficient detail* to allow staff to prepare a revised staff report with *proposed revised findings* that reflect the action of the commission.

14 C.C.R. §13096(b)(emphasis added).

The regulatory requirement of notice and comment is a codification of a constitutional right. Both the state and federal constitutions require government agencies to provide fair notice of government action that affects any entity, and a fair opportunity to respond. *See* U.S. Constitution Amendments X and XIV; California Constitution Art. I Sec. 7; *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (right to notice and opportunity to be heard “must be granted at a meaningful time and in a meaningful manner”). This is nothing more than due process. It is well established that the greater the matter at stake, the more substantial the required process; *e.g.*, a more substantial hearing is required to support a multi-billion dollar development decision than a one-hundred dollar speeding ticket. *Id.*; see also *Boddie v Conneticut*, 401 U.S. 371, 378 (1971) (the relative weight of liberty or property interests is relevant to the form of notice and hearing required by due process).

At the hearing on April 8, 2002 the staff presentations of the USEPA and the City: (1) followed the presentation of the Commission’s own staff, which recommended a consistency determination after the Commission’s staff had reviewed the comments and responses submitted in the joint permit process of the USEPA and Regional Water Quality Control Board; (2) were limited in time by the Commission and unduly abbreviated; and (3) required to be presented before there was any reasonable indication given by the Commission of its intended departure from the staff report. The City was not given a reasonable opportunity to present the case for consistency, and it was virtually misled and deprived of response with respect to the Commission’s proposed actions.

Most importantly, principles of equity and fairness require adequate hearings before an agency makes a decision. Parties must be given an opportunity to examine an agency's decision, to test whether it is well grounded in facts and law, and to provide comments to the agency. This is only fair to the party affected, and it is absolutely essential to the efficient functioning of the agency. If an agency does not adequately allow for comments, it will make its decisions without the best available information. This will reduce the accuracy of the agency's decisions, degrade the agency's reputation, and result in successful appeals of agency decisions.

III. Argument

The Commission's decision to deny the City's consistency certification application was inappropriate for at least four reasons. First, the Commission failed to provide the City with fair notice of its decision, or any meaningful opportunity to comment on its decision. Second, the Commission's decision was not supported by adequate evidence, either of fact or of law. Third, the Commission's action was outside its authority under the law. Fourth and finally, the available evidence actually supports the contrary decision: the City's application for a certification of consistency should be granted.

A. The Commission Failed to Provide the City with Fair Notice of its Decision Denying Consistency Certification of the City's 301(h) Waiver, and Did Not Make Any Findings to Support this Decision

As discussed above, the Commission is required by its own regulations to give the City fair notice and a meaningful opportunity to comment on its decision on a consistency determination. *See* 14 C.C.R. §§ 13066(d), 13090(d), and 13096(b). This includes an opportunity to comment on any decision that is substantially different from the Commission's staff report. This Commission has thus far failed to provide any such opportunity to the City.

The Commission's April 8, 2002 decision was "substantially different" from the recommendation in the Staff Report. This decision was contrary to the staff's recommendation to certify the City's 301(h) Waiver, and contained permit conditions that were not in the staff report or anywhere else in the record. These novel "conditions" were created at the hearing, without any scientific or technical testimony or evidence of which the City is aware. Since the hearing was less than two hours long, the City had exactly that amount of time to review and comment on conditions that affect a multi-billion dollar decision. The City was therefore deprived of an adequate opportunity to provide meaningful testimony prior the Commission's vote.

B. The Commission's Decision Was Not Adequately Supported by the Law or by Science

The Commission's denial was issued at the hearing without making any specific findings or stating any basis for its departure from the staff report. At a minimum, the Commission should cite the law on which it relies in reaching its decision, and the scientific basis that demonstrates that the 301(h) waiver violates that law. *See* 14 C.C.R. § 13096(b).

The Commission's role is to determine the consistency of the 301(h) Waiver with the law, but the Commission has made no adequate finding indicating what law the 301(h) Waiver allegedly violates. The one authority cited by the Commission is the California Coastal Management Program ("CCMP"). *See* Letter, Commission to Mr. Alan Langworthy, City of San Diego (April 10, 2002), at 1. Assuming for the moment that this program is actually a law (and the City reserves the right to dispute this point), the Commission has not indicated a single requirement in this program which the 301(h) Waiver violates.

Further, the Commission failed to provide findings demonstrating that the 301(h) Waiver is in violation of the CCMP. There is no indication in the Commission's April 10 letter of how the City's mass emissions or reclamation plan violate the CCMP, nor any indication of how that plan requires an extension of the Coastal Ocean Dynamics Application Radar project, nor any support for any other condition imposed by the Commission. The Commission's conditions are simply imposed without authority or support, and the City is left to contest the conditions without even adequate notice as to their basis. This is in violation of the Commission's regulations, of the Commission's constitutional obligations, and of principles of equity and fairness. *See* 14 C.C.R. §§ 13066(d), 13090(d), 13096(b), and the discussion above.

C. The Commission Does Not Have Authority to Impose Permit Conditions on the City

The Commission's decision to deny certification of the existing draft of the 301(h) Waiver, and to premise certification on the City's adoption of baseless permit conditions, over-stepped its authority. In fact, the Commission is simply authorized to vote "yes" or "no" when deciding a consistency certification application. *See* 14 C.C.R. § 13094. It has no authority to impose permit conditions on the City or any other applicant. As such, the Commission's decision was unauthorized and should be reconsidered.

D. The Commission's Decision Has No Scientific or Technical Basis, and Directly Conflicts with EPA's Finding that the City is complying with the Ocean Plan

As discussed above, the Commission did not support its decision with legal or scientific findings, but even if it had, there could be no scientific or technical basis for the Commission's decision. The City has developed a very substantial body of scientific data

demonstrating that there is no harm to the environment from the Point Loma outfall, and that Point Loma is well within the law.

This issue has a long history. In 1988, EPA filed suit against the City in order to force the City to achieve secondary treatment standards at the Point Loma WWTP. See *United States of America, et al. v. City of San Diego*, Case No. CV-88-1101-B. The City presented months of extensive expert testimony by leading experts in oceanography and marine biology, such as Dr. Norm Brooks of Caltech University and Dr. Paul Dayton of the Scripps Institute. This testimony demonstrated that discharges of solids, such as those discharged from the Point Loma WWTP, did no harm in the unique conditions that exist around the location of San Diego's discharge.

Among this evidence is an exhaustive independent study by the National Research Council, an independent body, of the effects of deep ocean outfall discharges on benthic communities. See *City of San Diego*, 1994 WL 521216 at *1-*4; Nat'l Research Council, *Managing Wastewater in Coastal Urban Areas* (1993) at 3, 6-11. In 1993, the National Research Council's study, *Managing Wastewater in Coastal Urban Areas*, at 7, 10, concluded (1) Biological Oxygen Demand ("BOD") is generally not an ecological concern in the ocean or in open coastal waters (like the City's) and (2) chemically-enhanced primary treatment (like the City's) is a successful method of TSS removal for discharges to the ocean or open coastal waters. This study specifically included a thorough analysis of the conditions, which exist off the coast of San Diego.

Upon consideration of this evidence, the United States District Court for the Southern District of California in San Diego made unequivocal findings that the discharge of wastewater from the deep ocean outfall at Point Loma did not adversely impair the marine environment, and that, if the City were forced to implement secondary treatment standards at Point Loma, it would be a matter of "wasteful over-treatment." *United States of America, et al. v. City of San Diego*, 1994 WL 521216, slip op. at *5-*6 (S.D. Cal. March 31, 1994); see also *United States of America, et al. v. City of San Diego*, 1991 WL 163747 (S.D. Cal. Apr. 18, 1991). In fact, the court ruled that there was "undisputed evidence that the expected slight change in the outfall environment will be beneficial to the benthic community, not harmful." *Id.* at 5. The court's final conclusion was that requiring secondary treatment "in the name of protecting the ocean environment is not scientifically correct." *Id.* In other words, secondary treatment at Point Loma would be a monumental waste of ratepayer money and would not further protect the environment.

It is important to note that, at the time of the Court's decision in 1994 the actual discharge from the Point Loma WWTP over the preceding ten years had averaged more than 16,000 metric tons per year, which is considerably more volume than the current discharge. Even with the larger discharge at that time, the Court found, based on expert testimony, that the City's discharge did not pose any harm to the environment. See *id.* Thus, as the Court concluded in the *City of San Diego* case, the overwhelming weight of scientific and technical evidence does not support further reductions in the City's proposed mass emissions limit, and thus the Commission's denial is merit less.

The evidence today still supports an affirmative determination by the Commission. In its February 11, 2002 joint issuance of the City's tentative permit and 301(h) Waiver, both EPA and the Regional Board staffs concluded, after an exhaustive technical and scientific evaluation, and after thorough consideration of comments by numerous parties, that the proposed effluent limits would protect the environment and comply with applicable federal and state law. *See* Tentative Decision at 4-6, 46-48.

As discussed above, the Commission did not inform the City or the public of the legal basis, if any, for its objection. If its objection was based on the Clean Water Act, its interpretation directly conflicts with EPA's, and, thus, is subject to preemption. *See, e.g., Gade v. Nat'l Solid Wastes Mgmt. Assoc.*, 505 U.S. 88, 96-104 (1992) (state regulation of occupational safety and health issues which has not been approved by Secretary of Labor, and for which federal standard is in effect, is impliedly preempted as in conflict with full purposes and objectives of Occupational Safety and Health Act).

Finally, the Commission's own staff concurred in this conclusion, stating in its Staff Report: "[T]he City's discharges would be consistent with the applicable marine resource and water quality provisions (Section 30230 and 30231 [of the California Public Resources Code]) of the Coastal Act." *See* Staff Report at 17. To date, the Commission has provided no data or evidence that supports its proposed permit conditions. Nor has the Commission provided any explanation from its departure from its staff recommendation.

IV. Conclusion

In sum, the Commission's decision to deny the City's consistency certification application was inappropriate and ill considered. This is true for at least four reasons. First, the City was denied fair notice of the Commission's decision, and was denied a meaningful opportunity to comment. Second, the Commission's decision was unsupported by adequate findings of fact or law. Third, the Commission's action was outside its authority under the law. Finally, the available evidence actually supports the City's application for a certification of consistency. I therefore urge the Commission to reconsider its decision. I would also request that the Commission allow representatives of the City to meet with the Commission. In any case, I hope that the Commission will consider this letter as an additional comment, on the City's behalf, on the Commission's decision.

The City understands the notice contained in the April 10, 2002 objection letter issued by your Commission that it has a right to appeal the objection to the United States Secretary of Commerce. At this juncture it should be anticipated that the City would

April 17, 2001.

pursue this course. It is requested by this letter that in parallel the Commission will reconsider its objection. In the interim all rights of appeal to the Commerce Secretary are hereby reserved.

We look forward to hearing from you regarding the City's requests.

Sincerely yours,

CASEY GWINN, City Attorney

By



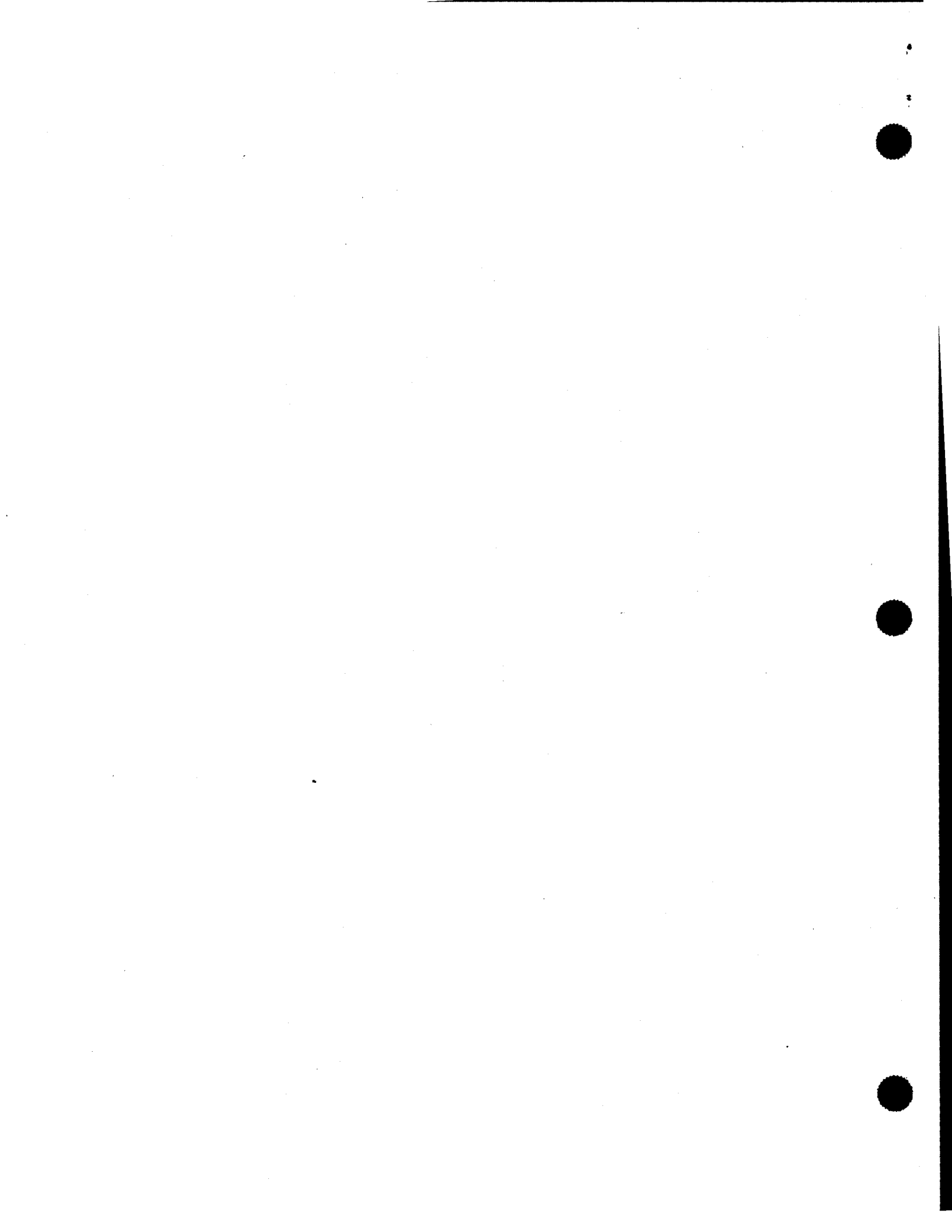
Frederick M. Ortlieb
Deputy City Attorney

FMO: jc

cc Ms. Sherilyn Sarb
District Manager
California Coastal Commission
San Diego Coast
7575 Metropolitan Drive
Suite 103
San Diego, CA 92108-4402

Mr. John Robertus
Executive Director
Regional Water Control Board
9174 Sky Park Court
San Diego, CA 92123

Ms. Janet Hashimoto
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105



OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

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ASSISTANT CITY ATTORNEYS

TED BROMFIELD
SENIOR DEPUTY CITY ATTORNEY

August 16, 2002

Via Federal Express

Mr. Mark Delaplaine
Federal Consistency Supervisor
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA. 94105-2219

RECEIVED
AUG 19 2002
CALIFORNIA
COASTAL COMMISSION

Dear Mr. Delaplaine:

*CC-028-02, City of San Diego Consistency Certification
Commission Item #4a, Docket of May 9, 2002
Request for Resubmittal*

By mutual consent, the above item was postponed from the above referenced docket due to a pending appeal by the City to the State Water Resources Control Board from permit conditions imposed by the San Diego Regional Water Quality Control Board that were inconsistent with the renewal application submitted by the City and tentatively approved by the U.S. Environmental Protection Agency. That pending appeal has now been resolved by the State Water Resources Control Board at its meeting on August 15, 2002, where it granted the City's petition and amended the Waste Discharge Order as hereinafter provided. Therefore, the City requests a resubmittal of its request for a consistency certification pursuant to the Coastal Zone Management Act, 16 U.S.C. § 1456.

Attached for your reference and inclusion in the record is State Water Resources Control Board Order WQO 2002-0013 amending Waste Discharge Order No. R9-2002-025 to read:

The discharge shall achieve a mass emission of TSS of no greater than ~~13,995~~ 15,000 mt/yr; this requirement shall be effective through December 31, 2005. Effective January 1, 2006, the discharger shall achieve a mass emission of TSS of no greater than 13,599 mt/yr.
[The remainder of the paragraph is unchanged.]

Order at page 6.

To complete the record, a true copy of both the certified State Board Order and the prior Regional Board Order referenced above are hereby attached as Exhibits A and B, respectively.

EXHIBIT NO.	9
APPLICATION NO.	CC-28-02

August 16, 2002

Inasmuch as the Regional Water Quality Control Board and the State Water Resources Control Board have determined that the City's application complies with all applicable state and federal water quality criteria (Exhibit B, pp. 3-13), the City respectfully requests that the record reflect the legal standard provided in California Public Resources Code section 30412:

§ 30412. State water resources control board and regional water quality control boards

(a) In addition to Section 13142.5 of the Water Code, this section shall apply to the commission and the State Water Resources Control Board and the California regional water quality control boards.

(b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate this section. *The commission shall not, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.* [emphasis added]

Such primary responsibility has been previously recognized by you in your letter of June 21, 2002; by the State Board Deputy Director on April 9, 2002; and by the State of California Secretaries for Resources and Environmental Protection on April 16, 2002. Each is attached as Exhibits C, D and E, respectively.

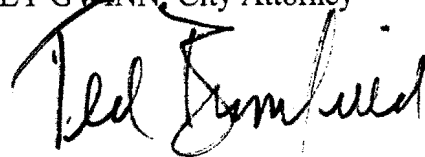
Please notice this request for resubmittal for your September 12, 2002 meeting if possible and send me a copy of your proposed Findings on Consistency Certification.

I appreciate your continued cooperation and remain available for any questions or required supplemental information.

Sincerely yours,

CASEY GWINN, City Attorney

By



Ted Bromfield
Senior Deputy City Attorney

TB:mb

Attachments:

Exhibits A-E

Vincent H. Hickox
Secretary for
Environmental
Protection

Executive Office

1001 I Street • Sacramento, California 95814 • (916) 341-5611
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
FAX (916) 341-5621 • Web Site Address: <http://www.swrcb.ca.gov>



The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web site at <http://www.swrcb.ca.gov>

TO: Arthur G. Baggett, Jr.
Chair

ORIGINAL SIGNED
BY THOMAS HOWARD

FROM: Thomas Howard
Deputy Director
EXECUTIVE OFFICE

DATE: April 9, 2002

SUBJECT: CITY OF SAN DIEGO NPDES PERMIT AND CALIFORNIA COASTAL
COMMISSION CONSISTENCY DETERMINATION

On April 11, 2001, the City of San Diego submitted its National Pollutant Discharge Elimination System (NPDES) permit application for the Point Loma Wastewater Treatment Plant. On February 11, 2002, San Diego Regional Water Quality Control Board (RWQCB) and Region 9 of the U.S. Environmental Protection Agency (USEPA) staff issued a joint tentative permit. A joint permit process is required because the City is requesting a continuation of its waiver, pursuant to Clean Water Act section 301(h), from secondary treatment requirements. After a 30-day comment period, the USEPA and RWQCB held a joint public hearing on March 13, 2002. At the end of the hearing, the public comment period was closed.

The RWQCB will consider approval of the tentative permit at its meeting on April 10, 2002. The USEPA will likely issue its final permit shortly thereafter.

The tentative permit has a provision that requires that the permit be consistent with the California Coastal Zone Management Act. The City of San Diego sent the California Coastal Commission a request for a consistency determination. The Coastal Commission held a public hearing on this request on March 5, 2002. The Coastal Commission staff took the position that the permit is consistent with the Coastal Zone Management Act, as did the USEPA. However, the Commission voted to postpone their decision in order to review the testimony from the joint USEPA and RWQCB hearing scheduled for March 13, 2002.

The Commission reopened the hearing on the consistency determination on April 8, 2002. City of San Diego, Coastal Commission and EPA staff all took the position that the permit is

California Environmental Protection Agency

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EXHIBIT NO. 10

APPLICATION NO.

CC-28-02

Arthur G. Baggett, Jr.

- 2 -

April 9, 2002

consistent with the Coastal Zone Management Act. A number of the commissioners expressed concern that the City of San Diego was not planning to modify the Point Loma Wastewater Treatment Plant to provide secondary treatment. By a vote of six to one, with five members absent, the Commission voted against the Coastal Commission staff recommendation of consistency. In conjunction with the vote, the commissioners identified three conditions which, if agreed to by the City, could result in a favorable vote. The three conditions were: (1) that the permit mass emission limits be substantially reduced, (2) that the monitoring program be modified and that the monitoring be done by an independent group, and (3) that the City commit to specific reclaimed water reuse quantities.

It appears that this action is inconsistent with the statutory division of responsibility between the Regional Water Board and the Coastal Commission. Public Resources Code section 30412(a) provides that "[t]he commission shall not, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the [State Board or a regional board] in matters relating to water quality..." Subdivision (c) limits the commission's review to siting and visual appearances of the treatment plant, the geographic limits of the treatment plant's service area, and development projections that determine the sizing of the treatment plant. None of the issues identified by the commission relate to these limited areas of authority.

**California Environmental
Protection Agency**

1001 I Street, 25th Floor
Sacramento, CA 95814
PHONE (916) 445-3846
FAX (916) 445-6401



**Gray Davis
GOVERNOR**

Resources Agency

1416 Ninth Street, Suite 1311
Sacramento, CA 95814
PHONE (916) 653-5656
FAX (916) 653-8102

April 16, 2002

Chairwoman Sara Wan
and Coastal Commissioners
California Coastal Commission
Headquarters Office
45 Fremont Street, Suite 2000
San Francisco, California 94105-2219

RE: Consistency Certification by City of San Diego for Secondary Treatment Waiver
renewal, offshore of Point Loma, San Diego

Dear Chairwoman Wan and Commissioners:

We wish to call to your attention a serious error committed by the Coastal Commission at its April 8, 2002, meeting in Santa Barbara. Specifically, by denying the consistency determination of the City of San Diego based on water quality conditions—an area over which it has no jurisdiction—the Commission overstepped its authority and disrupted the orderly processing of San Diego's "ocean waiver."

The California Coastal Act at Public Resources Code (PRC) § 30412 and Water Code §§ 13001 and 13160 clearly establish the State Water Resources Control Board and the California Regional Water Quality Control Boards as the state agencies with primary responsibility for the coordination and control of water quality. Indeed, the California Coastal Act makes this responsibility explicit by specifically noting that the Commission "shall not...modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality..." [PRC § 30412 (emphasis added).] The Act goes on to greatly limit the Commission's authority over treatment works. Authority is limited to siting and visual appearance of treatment works, geographical limits of service areas, and sizing of treatment works. (PRC § 30412(c).) Thus the Commission has no jurisdiction over the discharge limitations of a treatment works.

The three additional conditions imposed by the Commissioners—increased monitoring, increased use of reclaimed water, and a commitment to reduce mass emissions—are thus clearly beyond the scope of the Commission's authority, and without any legal basis under the Coastal Zone Management Act (CZMA) or the California Coastal Act.

EXHIBIT NO.	11
APPLICATION NO.	

CC-28-02

Chairwoman Sara Wan
and Coastal Commissioners
April 16, 2002
Page 2

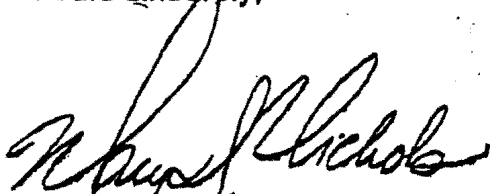
The CZMA requires any applicant for Federal permits affecting the coastal zone to certify that the proposed activity complies with the enforceable policies of California's approved Coastal Management Program (CCMP). (16 U.S.C. § 1456(c)(3)(A).) The enforceable policies of the CCMP which are codified in Chapter 3 of the California Coastal Act of 1976 comprise the standards applied in the Commission's review of consistency certifications. After reviewing this certification, the Commission may either concur or object to the applicant's certification. (16 U.S.C. § 1456(c)(3)(A).) As indicated above, the California Coastal Act clearly prohibits the Commission from interfering with decisions of the regional board to protect water quality. In other words, the CZMA does not give the Commission any authority to condition permit approval by the regional board.

Given the clearly articulated limits of the Commission's authority, not to mention the existence of the regional board's tentative order and the scheduled meeting on April 10, 2002, to adopt the permit on this very issue, the Commission acted prematurely and in excess of its jurisdiction. Its hasty rejection of this consistency certification was clearly aimed at influencing the regional board's permit decision rather than assuring that renewal of the waiver is consistent with the CCMP. Instead of attempting to condition or amend the permit under the guise of consistency review, the Commission should have waited until the regional board had an opportunity to address the water quality issues.

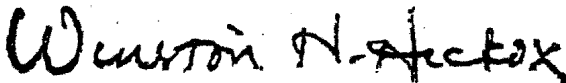
In light of the regional board's April 11, 2002, decision, we strongly urge you to encourage the City of San Diego to resubmit their application for the Commission's consideration in the most expeditious manner.

Should you have any questions, please do not hesitate to contact us. Thank you for your cooperation.

Yours sincerely,



Mary D. Nichols
Secretary for Resources



Winston H. Hickox
Secretary for Environmental Protection

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

MEMORANDUM

April 30, 2002

TO: Coastal Commissioners

FROM: Ralph Faust, Chief Counsel

RE: Coastal Commission Authority: Water Quality and Public Resources
Code section 30412

On April 16, 2002, Mary D. Nichols, the Secretary for Resources, and Winston H. Hickox, the Secretary for Environmental Protection sent a letter to Chairwoman Sara Wan and Coastal Commissioners concerning the Consistency Certification by the City of San Diego for the renewal of its Secondary Treatment Waiver for the City's discharge offshore of Point Loma, San Diego (copy attached). This letter asserted that by objecting to the City's consistency certification on April 8, 2002, the Commission "overstepped its authority and disrupted the orderly processing of San Diego's 'ocean waiver'." The purpose of this memorandum is to discuss solely the legal assertions made in that letter with respect to the Commission's authority in matters relating to water quality.

The April 16th letter makes several legal assertions regarding limitations on the Commission's authority with respect to water quality, all of which are ultimately grounded in Public Resources Code section 30412. Section 30412 provides:

(a) In addition to Section 13142.5 of the Water Code, this section shall apply to the commission and the State Water Resources Control Board and the California regional water quality control boards.

(b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate this section. The commission shall not, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.

EXHIBIT NO.	12
APPLICATION NO.	
	CC-28-0

Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out this division.

(c) Any development within the coastal zone or outside the coastal zone which provides service to any area within the coastal zone that constitutes a treatment work shall be reviewed by the commission and any permit it issues, if any, shall be determinative only with respect to the following aspects of the development:

(1) The siting and visual appearance of treatment works within the coastal zone.

(2) The geographic limits of service areas within the coastal zone which are to be served by particular treatment works and the timing of the use of capacity of treatment works for those service areas to allow for phasing of development and use of facilities consistent with this division.

(3) Development projections which determine the sizing of treatment works for providing service within the coastal zone.

The commission shall make these determinations in accordance with the policies of this division and shall make its final determination on a permit application for a treatment work prior to the final approval by the State Water Resources Control Board for the funding of such treatment works. Except as specifically provided in this subdivision, the decisions of the State Water Resources Control Board relative to the construction of treatment works shall be final and binding upon the commission.

(d) The commission shall provide or require reservations of sites for the construction of treatment works and points of discharge within the coastal zone adequate for the protection of coastal resources consistent with the provisions of this division.

(e) Nothing in this section shall require the State Water Resources Control Board to fund or certify for funding, any specific treatment works within the coastal zone or to prohibit the State Water Resources Control Board or any California regional water quality control board from requiring a higher degree of treatment at any existing treatment works.

The April 16th letter asserts that the State Water Resources Control Board and the California regional water quality control boards are "the state agencies with primary responsibility for the coordination and control of water quality". There is no question that this is correct. The purpose of section 30412, from which the quoted language is taken, is to provide meaning and guidance to that general legislative direction. This section both limits Commission authority in several specific ways, and circumscribes that limitation of Commission authority. The circumscription of that "primary responsibility" language is contained in the paragraph that follows it in section 30412, which provides that:

Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out this division.

In its review of proposed development pursuant to the Coastal Act, the Commission applies several policies that govern water quality, including Public Resources Code sections 30230 and 30231. Section 30230 provides:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 provides:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

These sections provide significant authority for the Commission's review of proposed development that has water quality impacts. In addition, section 30412 makes applicable to the Commission section 13142.5 of the Water Code, which pertains to "the policies of the state with respect to water quality as it relates to the coastal marine environment."

Although the Commission has the authority to deal with water quality impacts, and has dealt with them on numerous occasions in the past (e.g., EPA's NPDES permit with respect to the disposal of drilling muds) the exercise of this jurisdiction does not in any sense detract from the roles of the State and regional water boards. They retain primary responsibility for the coordination and control of water quality.

However, as noted earlier, the fact that the water boards have primary responsibility does not mean that they have exclusive responsibility. The allocation of this responsibility among these agencies is contained in the last sentence of the first paragraph of section 30412 (b). This sentence provides that:

The Commission shall not, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.

From this we can conclude that the Commission may apply the policies of the Coastal Act, such as sections 30230 and 30231, that pertain to matters of water quality in its implementation of the Act provided that it does not take an action that conflicts with a specific determination of one of the water boards. For the purpose of the City of San Diego matter we need not explore the boundaries of this statutory limitation, because there is no question that the San Diego regional water quality control board had not acted on the secondary treatment waiver at the time of the Commission's April 8th objection to the consistency certification. Since no determination of any sort had been made, no Commission action objecting to the consistency certification could be in conflict within the meaning of section 30412 (b).

Finally, the April 16th letter asserts that the Commission has no jurisdiction over the discharge limitation of a treatment work based upon the language of section 30412(c). This subsection limits the Commission's determinations on "a permit application for a treatment work" to three specified aspects of the development within the coastal zone: siting and visual appearance of the treatment work; geographic limits of service areas and the timing of use of capacity; and, development projections which determine the sizing of the treatment work. The language of this subsection indicates, in several places, that it was intended to apply to the construction of treatment works, and does not apply to such extrinsic matters as consistency certifications for secondary treatment waivers. First, the subsection applies to "Any development...that constitutes a treatment work." Second, the subsection directs the Commission to "make its final determination [on the three aspects regarding which its review is determinative] on a permit application for a treatment work prior to the final approval by the State Water Resources Control Board for the funding of such treatment works." Finally, the subdivision's last sentence provides that: "Except as specifically provided in this subdivision, the decisions of the State Water Resources

Control Board relative to the construction of treatment works shall be final and binding upon the Commission.” All of these references within this subsection are internally consistent in referring to the construction of treatment works. There is no suggestion that they refer to anything else, and nothing whatsoever to countermand the specific language in subsection (b) that preserves the jurisdiction of the Commission “except as provided in this section” to exercise “regulatory controls over development pursuant to this division in a manner necessary to carry out this division” (emphasis added). Therefore, subsection 30412 (c) does not limit the Commission’s jurisdiction over consistency certifications for secondary treatment waivers.

In conclusion, there can be no question that the Commission has significant authority to review the water quality impacts of proposed development within its jurisdiction. The exercise of this jurisdiction is limited by the specific terms of section 30412, which give the water boards primary responsibility for the control of water quality, and which prohibit the Commission from taking an action in conflict with specific determinations of the water boards. However, the Commission did not exceed these limitations when it objected to the City of San Diego’s Consistency Certification for its proposed renewal of its secondary treatment waiver at the Commission’s April, 2002 meeting.

Attachment

cc: Peter M. Douglas, Executive Director

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQO 2002 - 0013

In the Matter of the Petition of
City Of San Diego
(Waste Discharge Requirements Order No. R9-2002-0025 [NPDES No. CA0107409]
for E.W. Blom Point Loma Wastewater Treatment Plant

Issued by the
California Regional Water Quality Control Board,
San Diego Region

SWRCB/OCC FILE A-1477

BY THE BOARD:

The California Regional Water Quality Control Board, San Diego Region (Regional Board), adopted waste discharge requirements for the E.W. Blom Point Loma Metropolitan Wastewater Treatment Plant (Plant), owned and operated by the City of San Diego (City). Those requirements were adopted in conjunction with the renewal of the NPDES permit issued by the United States Environmental Protection Agency (EPA) for discharge to the Pacific Ocean pursuant to a process set forth in the Clean Water Act, title 33 of the United States Code Annotated Section 1311(h), and generally referred to as Section 301(h). Pursuant to Section 301(h), EPA may issue a permit for discharge to marine waters from a publicly owned treatment works (POTW) that is given less than full secondary treatment.¹ The federal permit may only be issued with the concurrence of the state in which the discharge takes place. In

¹ In 1972, Congress passed the Federal Water Pollution Control Act Amendments, which required publicly owned treatment works to achieve secondary treatment capability by 1977. After passage, some municipalities with POTWs that discharged into marine waters, argued that this requirement might be unnecessary on the grounds that marine POTWs usually discharge into deeper waters with large tides and substantial currents, which allow for greater dilution and dispersion than their freshwater counterparts. As a result, Congress added Section 301(h) to the Clean Water Act in 1977, allowing for a case-by-case review of treatment requirements for marine dischargers that applied by September 13, 1979. Although it was filed after the deadline, the City's application was accepted.

EXHIBIT NO. 13
APPLICATION NO.
CC-28-02

California, that concurrence takes the form of state-issued waste discharge requirements, a separate permit that ensures compliance with state water quality standards.

I. BACKGROUND

The City has operated the Plant for nearly forty years. A waiver pursuant to Section 301(h) was issued in December 1995. An application to renew the waiver was submitted to EPA by the City in April 2001. On March 13, 2002, the Regional Board conducted a joint hearing with a representative of EPA to take testimony concerning the Section 301(h) waiver and the waste discharge requirements. On April 10, 2002, the Regional Board reconvened to discuss the evidence and testimony and to vote on the adoption of the waste discharge requirements. No further public testimony was permitted. After a lengthy discussion, the Regional Board adopted the waste discharge requirements as proposed but made three changes to the order, only one of which is the subject of the City's petition.

The City filed a timely petition objecting to the procedure used by the Regional Board in adopting the order and to the reduction in the mass emission limits for total suspended solids (TSS) in the final order. Those limits were set at 15,000 metric tons per year in the 1995 permit but were reduced to just under 14,000 tons in the final order.

II. CONTENTION AND FINDING²

Contention: The decision of the Regional Board to reduce the mass emission limits for TSS from 15,000 to 13,995 metric tons per year for the first four years of the permit is not supported by evidence in the record.

Finding: While there is no evidence in the record that the City will, under any reasonable set of circumstances, exceed the limits set by the Regional Board, the record does not contain evidence that the reduction from 15,000 metric tons per year to 13,995 is based on actual water quality considerations.

The City has been operating the Plant since the early 1960s and has been subject to regulation by the Regional Board for essentially that entire time. When the first Section 301(h) waiver was issued in 1995, the Regional Board set a discharge limit of 15,000 metric tons per year of TSS in its waste discharge requirements. At the time, the Plant was discharging a

² The City raises numerous procedural issues in its petition. Because of the disposition of this matter, it is unnecessary to address any of those issues. *People v. Barry* (1987) 194 Cal.App.3d 158 (239 Cal.Rptr. 349.)

little less than 11,000 tons per year. Since then, the Plant has succeeded in reducing the amount of TSS discharged almost every year, despite considerable growth in its service area. In 1996, the discharge of TSS was 10,622 metric tons per year; in 1997, it was 10,183; in 1998, the number was 10,469; in 1999, the discharge was down to 9,188; and in 2000, the Plant only discharged 8,888 metric tons of TSS. That represents a 16 percent reduction over five years. Nevertheless, the City, in its application to renew the Section 301(h) waiver, told both EPA and the Regional Board that its discharge of TSS from the Plant would be 14,100 metric tons in 2001 going up steadily to 14,600 tons in 2005. The waste discharge requirements provide, and the City has not challenged the provision, that the discharge must be no more than 13,599 tons in 2006. No explanation has been provided for why the City's discharge from the Plant would increase 59 percent between 2000 and 2001 nor is there any explanation of what the City will do between 2005 and 2006 to reduce its discharge by 7 percent.

The record indicates that the Plant removes more than 85 percent of the TSS in its effluent stream.³ No testimony or evidence was offered to show that this removal rate could not be assumed for the duration of this permit. At that rate of removal, even if the Plant were to operate at its full design capacity of 240 million gallons per day (MGD), the Regional Board has calculated that the mass emissions discharge would be less than 13,900 metric tons. As the City has projected the actual flow for the Plant in the year 2006 to be only 195 MGD, continued operation at the current rate of efficiency ought to result in a discharge of slightly more than 11,000 tons in that year.⁴

Nevertheless, the Regional Board's decision to reduce the limit for TSS mass emissions by 6.7 percent must be supported by evidence in the record. EPA approved the permit with the 15,000 ton limit.⁵ Regional Board staff proposed adoption of the permit with the 15,000 ton limit. No evidence was offered to the Regional Board that a significant water quality impact

³ In its submittal to EPA in support of its Section 301(h) waiver application, the City assumes a mass emission removal rate of "at least 80 percent." Removal of less than 80 percent would be a violation of the permit. The City has not challenged that requirement.

⁴ The discharge resulting from an 80 percent removal rate would be about 6 percent higher. If the Plant operated at an 80 percent removal rate, the figure for 2006 based on the City's projected discharge would be slightly less than 12,000 tons.

⁵ EPA indicated in its February 11, 2002 response to comments that "the proposed discharge would meet the nine 301(h) requirements and is in full compliance with the CWA [Clean Water Act]." EPA also stated that the discharge of mass emissions at the proposed 15,000 metric ton level was "entirely consistent with the language and purpose of the OPRA [Ocean Pollution Reduction Act of 1994]."

would occur with a discharge of 15,000 tons per year that would not occur if the discharge were limited to 13,995 tons.

California law requires that an administrative agency "build a bridge" between the decisions it makes and the record that supports the decision. *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. It is difficult to find such a bridge in this case. The absence of a real-world controversy makes the entire issue seem academic at best. As we pointed out in our discussion above, unless the City fails to comply with its obligation to remove 80 percent or more of the TSS from its effluent, neither the 15,000 ton limit nor the 13,995 ton limit is actually at issue. If it continues to remove TSS at the current 85 percent rate, the Plant will not even approach those limits until it is operating at near design capacity, many years from now. Any concern about the short-term performance of the City in this regard would seem not to be addressed by the reduction and any long-term concerns ought to be resolved by the requirement that the discharge be no greater than 13,599 metric tons per year beginning in 2006. Clearly, the discharge from the Plant in 2006 is more relevant to its performance ten or fifteen years from now than its discharge in 2001.

The Regional Board discussed the reduction at its April 10 meeting. No clear reason was given for reducing the limit from 15,000 to 14,000 metric tons, although most of the Board members indicated on the record that they believed the 15,000 ton figure was not based on any legitimate environmental standards and that the reduction was an important statement of policy for the Regional Board to make. When asked by the Regional Board's counsel to articulate the findings in support of the reduction, the Chair responded:

"I think the record supports a ratcheting down of the limit, and that this is our effort to ensure that the public health, welfare, and safety is protected beyond that which is proposed by the permit. I also offer the observation that the 15,000 limit was simply selected based on the old permit so that we are entitled to adopt a permit that is more protective of the public health than is proposed."

At no time does either the Chair or any other member of the Board point to evidence in the record that leaving the mass emission limit at 15,000 tons will cause a water quality or public health consequence that reducing it to 13,995 tons will avoid⁶

⁶ There is little or no evidence in the record that the Regional Board considered reducing the mass emission limit for technology-based reasons, anti-degradation principles, the need to prevent nuisance conditions, or other statutory or regulatory bases.

In its response to the petition, the Regional Board submitted a justification for the decision that is slightly more specific:

There are many facts in the administrative record considered by the Regional Board in reaching its decision. These include, but are not limited to, the disparity between Petitioner's actual TSS emission rates and those proposed in their application, the ability of the PLMWTP [the Plant] to achieve much lower mass emissions than those proposed, the need to encourage water reclamation, the uncertainty of long-term impacts of the discharge, the lack of deep ocean monitoring, and the lack of monitoring for many human pathogens including viruses. [Response, page 9.]

Most of those issues have already been discussed above. The issues involving reclamation and the lack of monitoring are certainly very legitimate concerns. However, the question must be repeated with regard to those issues: how does a reduction from 15,000 tons to 14,000 tons in the order, when the actual discharge cannot exceed 12,000 tons during the life of the permit, improve reclamation prospects or lessen the need for more monitoring?

III. CONCLUSION

For the reasons stated above, the State Board concludes that the Regional Board failed to make findings, either in its order or during its deliberations, that justify reducing the mass emission limits for TSS from 15,000 metric tons per year to 13,995 metric tons per year in the waste discharge requirements. The order should be amended.

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IV. ORDER

It is hereby ordered that waste discharge requirements No. R9-2002-0025 be amended as follows: in paragraph B.1.a.(1), Limits on Total Suspended Solids, the narrative is amended to read:

“The discharge shall achieve a mass emission of TSS of no greater than ~~13,995~~ 15,000 mt/yr; this requirement shall be effective through December 31, 2005. Effective January 1, 2006, the discharger shall achieve a mass emission of TSS of no greater than 13,599 mt/yr.” [The remainder of the paragraph is unchanged.]

CERTIFICATION

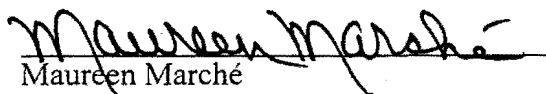
The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 15, 2002.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton

NO: None

ABSENT: None

ABSTAIN: None


Maureen Marché
Clerk to the Board

