

Item 15 Response to Comments

**City of Redondo Beach
Seaside Lagoon
Tentative Order No. R4-2010-00XX
NPDES Permit No. CA0064297, CI No. 8034**

Agency/ Letter	#	Comment	Agree	Disagree	Reply	Action Taken
Letter dated September 29, 2010 from Maggie Healy of City of Redondo Beach Re: Comments on September 21, 2010 Revised Tentative Waste Discharge Requirements, City of Redondo Beach, Seaside Lagoon (NPDES No. CA0064297, CI No. 8034)						
	1	While the City greatly appreciates the Board's revisions reflected in the September 21, 2010 version of the 2010 Order, the City continues to have serious concerns regarding the 2010 Order. Specifically, the City Council of the City of Redondo Beach has expressed serious concern that if there is no movement on the Total Suspended Solids ("TSS") limitations-contained in the 2010 Order, it may not make sense for the City to spend its limited funds on the additional proposed Work Plan and Special Study, if closure of the Seaside Lagoon would be the end result of the adoption of the 2010 Order. We sincerely hope the Board will take our comments into consideration prior to adopting the new 2010 Order.		X	<p>Comments on the TSS effluent limitations are outside the scope of this limited comment period. Our September 21, 2010 letter transmitting the Revised Tentative WDRs to the City specifically stated that written submission pertained only to changes denoted by underline or strikethrough. Those changes related to the deletion of metals limits and the requirement for a Special Study; not changes to the TSS limits.</p> <p>Nevertheless, staff has taken the City's comments regarding the TSS limitations into consideration. However, the mission of the Regional Board is to preserve and enhance the quality of California's water resources for the benefit of present and future generations. Therefore, any decisions made regarding the contaminant concentrations permissible in any discharge must support that mission.</p> <p>In early 2000, during a review of the then current TSS limitations included in individual NPDES permits, staff became aware that the TSS daily maximum limitation was high relative to the technology based limits included in the permits for the publicly owned treatment works (POTW) facilities. Further, investigation yielded evidence that the daily maximum limit routinely included in industrial permits exceed criteria documented to result in adverse effects to</p>	None required.

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					aquatic life in the receiving waters. This information, along with the narrative objective for TSS included in the Basin Plan and evidence and recommendations in USEPA's Gold Book, has been used to develop an appropriately protective numeric limit for TSS. That limit has been consistently and systematically implemented into industrial permits as they are renewed.	
	2	<p>The City Requests That The Board Remove The Requirement To Monitor For Metals, Except As Set Forth In The Work Plan</p> <p>The City appreciates that the Board deleted new effluent limitations for metals. Nevertheless, the 2010 Order still includes onerous requirements in Tables E2, E-3 and E-4 that the City monitor for metals on a monthly basis in addition to the requirements set forth in section VI.C.2 related to a "Work Plan for Special Study".</p> <p>The requirement for monitoring includes 1) antimony; 2) arsenic; 3) cadmium; 4) copper; 5) nickel; 6) selenium; 7) silver; 8) thallium; and 9) zinc ("Metals"). Requiring the City to conduct such monitoring would constitute a significant additional expense in addition to the monetary commitments the Board is requesting in conjunction with the Work Plan and Special Study pursuant to section VI.C.2. The City requests that the Board remove the requirement to monitor for such Metals,</p>	X		<p>The monitoring required in the tables referenced will be required throughout the term of the permit. The City may utilize the sample results from the special study which complies with the NPDES permit requirements to comply with the permit requirements. For example, if you are monitoring the influent for arsenic monthly and the special study requires you to monitor arsenic weekly you may use one of the weekly samples collected to satisfy the monthly sampling requirement included in table E-2.</p> <p>Staff has included a footnote stipulating this procedure.</p>	A new footnote has been added to 3 tables in the MRP to allow the data from the Special Study to be used to satisfy the permit monitoring requirement.

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		other than as required in the Work Plan and Special Study. If metals are included in the permit, this monitoring, requirement would be added at that time.				
	3	<p>The Board Has Not provided Adequate Support For Setting The TSS Effluent Limitation At 75 mg/L</p> <p>The Board is asking the City for a significant financial commitment in connection with the proposed Work Plan and Special Study contained at section VLC.2 of the 2010 Order. The City <u>remains</u> concerned, however, about such an expensive undertaking when the TSS limitations on the permit will subject the City to significant penalties for noncompliance. This danger was demonstrated most recently in connection with the Notice of Violation and resultant Directive for Administrative Civil Liability sent to the City on September 15, 2010.</p> <p>In the Board's Response to the City's Comments ("Response"), the Board asserts that the existing limits for TSS were based, among other things, on its "best professional judgment" ;("BPJ). (See page 13 of the Board's 'Response to Comments, September 21, 2010) Board staff even acknowledges the fact that it "inadvertently omitted the BPJ rationale for the existing <u>daily</u> maximum limit of 75 mg/L." Id. The</p>	--	--	<p>Comments on the TSS effluent limitations are outside the scope of this limited comment period. Our September 21, 2010 letter transmitting the Revised Tentative WDRs to the City specifically stated that written submission pertained only to changes denoted by underline or strikethrough. Those changes related to the deletion of metals limits and the requirement for a Special Study; not changes to the TSS limits.</p> <p>Nevertheless, Regional Board staff believes it is necessary to address some of the allegations raised.</p> <p>First, the City's challenge to the existing TSS limit is untimely. The TSS daily maximum effluent limitation of 75 mg/L referenced was initially included in Order No. R4-2005-0016. That permit was issued by the Regional Board as part of the March 3, 2005 Consent Calendar. At that time, the City of Redondo Beach did not request further clarification regarding the modification in the TSS limit (including the rationale behind the modification), nor request any changes to the limit. In addition, the City never challenged any aspect of the 2005 permit in a petition to the State Water Resources Control Board. Accordingly, the TSS daily maximum limit of 75 mg/L is considered an existing limit. Although, upon renewal, the City may ask that the TSS limit be relaxed and provide sufficient support for that request, the City has the burden of showing that such a modification will not violate anti-backsliding and antidegradation requirements. To date, the City has not provided such data to the Regional Board.</p>	To provide greater clarification, a more-specific finding regarding the basis for the TSS daily maximum limit has been added to the permit and Fact Sheet.

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		<p>Board's Response does not, however, sufficiently explain the rationale for setting TSS limitation at 75 mg/L. The Response merely states that "BPJ is a method used to develop technology based NPDBS permit conditions using all reasonably available and relevant data. Authorization for BPJ limits is found under Section 402(a) (1) of the Clean Water Act and under 40 CFR 125.3." Board staff must provide a response that clearly explains how the TSS limitation of 75 mg/l is a result of its BPJ. It is not clear what the scientific basis was for reaching the conclusion that the TSS limitation should be 75 mg/L, as opposed to the original 150 mg/L limitation.</p> <p>Furthermore, the Board must cite and make available all the reasonably available and relevant data (as well as the specific page citations) it used to develop the TSS limitation. A mere passing mention of the Gold Book is not a sufficient explanation of the Board's BPJ rationale for the TSS limitation. (See attached statement from Dr. D.L. Marlin for further discussion on this issue.) The City respectfully requests copies of all documents and data, with citations to such documents, that Board staff used to conclude that the TSS limitation of 75 mg/L was indeed a result of its Best Professional Judgment and that such analysis was conducted at the-time the limitation was- originally decreased from 150 mg/L to 75 mg/L .</p>			<p>Second, the City has only recently questioned the limit (as part of the recent enforcement action taken against the City) and asserted that it was arbitrarily established. Regional Board staff disagree with this allegation. The TSS daily maximum limit specified in the 2005 Permit for Seaside Lagoon is correct. In its prior response to comments, Regional Board staff acknowledged that the Fact Sheet for that 2005 permit inadvertently omitted the basis for the daily maximum limit for TSS. It includes one reference for the TSS limit, an E, which references the existing permit. The permit, however, includes a limit for the monthly average and daily maximum concentrations for TSS. The monthly average limit (50 mg/L) was based on the existing permit. However, the daily maximum limit of 75 mg/L was based on best professional judgment (BPJ) in interpreting the narrative water quality objective in the Board's Water Quality Control Plan (Basin Plan). The agenda package for the 2005 permit, which was provided to and considered by the Board during the March 3, 2005 hearing, appropriately includes both references (i.e., the previous order reference for the monthly average TSS concentration and the BPJ reference for the daily maximum concentration). While staff acknowledge the inadvertent omission of the rationale in the Fact Sheet, the limit itself nevertheless remains valid.</p> <p>Staff developed the daily maximum effluent limit for TSS based on the narrative water quality objective included in the Basin Plan for Solid, Suspended, or Settleable Materials. That objective states "Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial uses." This narrative objective was translated into a numeric effluent limit in the City's 2005 permit. Since the Basin Plan does</p>	

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		<p>To date, the City has not been provided with any documents demonstrating that the original lowering of the TSS limitation "from 150 mg/L to 75 mg/L was intentional. Instead, the lowering of the TSS limitation appears to be arbitrary.</p> <p>The Ninth Circuit provided that in issuing permits on a case-by-case basis using its Best Professional Judgment, the "EPA does not have unlimited discretion in establishing permit effluent limitations. EPA's own regulations implementing this section enumerate the statutory factors that must be considered in writing, permits." <i>National Resources Defense Council, Inc. v. EPA</i>, 863 F.2d 1420, 1425 (9th Cir. 1988)(citing 40 C.F.R. §125.3(c). (d) and 51 Fed. Reg at 24915 ("In developing the BPJ permit conditions, [the EPA] Regions are required to consider a number of factors, enumerated in [33 U.S.C. § 1314(b)]...."). The Ninth circuit also noted that, "[i]n addition, courts reviewing permits issued on a BPJ basis hold EPA to the same factors that must be considered 'in establishing the national effluent limitations." See, e.g, <i>Trustees of Alaska v. EPA</i>, 749 F.2d 549., 553 (9th Cir, 1984) (EPA must consider statutorily enumerated factors in its BPJ determination of effluent limitations). Accordingly, the Board should analyze each of the statutorily enumerated factors (including but not limited to 40 C.F.R. § 125.3 and 33 U.S.C § '1314(b)) in the Board's BPJ determination of the TSS limitation. If such analysis has been completed, the Board's response should cite to</p>			<p>not contain a numeric objective for TSS, Regional Board staff looked to the U.S. Environmental Protection Agency's (USEPA) Quality Criteria for Water (known as the "Gold Book") as guidance. The Gold Book contains criteria for solids (suspended and settleable) and turbidity. In the Gold Book, USEPA notes that "In a study downstream from the discharge of a rock quarry where inert suspended solids were increased to 80 mg/L, the density of macroinvertebrates decreased by 60 percent...". This indicates that suspended solids concentrations of 80 mg/L in the receiving water resulted in adverse affects to aquatic life. Since the Gold Book indicates that TSS at a concentration of 80 mg/L yielded adverse effects to aquatic life, it was clear to Regional Board staff that the 150 mg/L limit include in the City's 2005 permit was not protective of the aquatic life beneficial use. In an effort to ensure that the impacts to the receiving water did not adversely impact the aquatic life in King Harbor, staff utilized its best professional judgment to establish the 75 mg/L concentration as the daily maximum effluent limit for the City's 2005 permit. BPJ is a method used to develop NPDES permit limits using all reasonably and available data. Authorization for BPJ limits is found under Section 402(a)(1) of the Clean Water Act and under 40 CFR 125.3.</p> <p>As described above, this analysis for TSS occurred in 2000. Subsequently, staff began to implement the 75 mg/L TSS concentration for the daily maximum limit in individual industrial permits as they were renewed. A number of similar permits include the TSS daily maximum limit of 75 mg/L, some of them were adopted as early as 2001.</p> <p>Staff has attached the following documentation regarding the basis of the TSS limit, as well as documentation that the limit has been implemented in other similar Orders.</p>	

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		the specific documents (and the specific page numbers) that include such analysis. Currently, the record does not sufficiently document or explain the BPJ rationale for the TSS limitation.			<ol style="list-style-type: none"> 1. Pages from the Bain Plan including the narrative criteria for solids. 2. Pages from the Gold Book with the analysis for Solids. 3. Limits Comparison Table from Item 9, Seaside Lagoon, March 9, 2005 Agenda Package 4. Stellar Biotechnologies, Order No. 01-075, Page 4 5. BP West Coast Products LLC, Order R4-2005-0065, Page F-28. 6. Al Larson Boat Shop, Order R4-2007-0030, Page 12. 	
	4	The City continues to believe that the actions of the Regional Water Quality Control Board for the San Francisco Bay Region in connection with Order. No. 2006-0038 provide support for the idea that the Board should waive monitoring for compliance with TSS at Seaside Lagoon. (See also study entitled " <i>Evaluation of the Accuracy and Reliability of EPA Test Method 160.2 to Measure Total Suspended Solids in Effluent from Marine Sand Processing Facilities, June 1, 2005</i> ") In fact, as demonstrated by documentation previously submitted by the City in its original comments dated August 30, 2010, the concentrations of TSS in King Harbor are higher than the concentration in the discharge from Seaside Lagoon		X	<p>Comments on the TSS effluent limitations are outside the scope of this limited comment period. Our September 21, 2010 letter transmitting the Revised Tentative WDRs to the City specifically stated that written submission pertained only to changes denoted by underline or strikethrough. Those changes related to the deletion of metals limits and the requirement for a Special Study; not changes to the TSS limits.</p> <p>Nevertheless, in response to assertions that the concentrations of TSS in Seaside Lagoon are lower than the concentrations in King Harbor, which provides the influent and is the receiving water for discharges from the Lagoon, staff has implemented intake credits for TSS discharges from the Lagoon. The intake credits essentially allow the Discharger to discharge up to the maximum concentration of TSS detected in the intake water. If the maximum TSS concentration detected in the intake water for that day is 80 mg/L, then the Discharger will be in compliance if discharges from the Lagoon on that day are 80 mg/L or less. Consequently, the City of Redondo</p>	None required.

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					<p>Beach will not be held accountable for the TSS concentrations in the intake water.</p> <p>Method 160.2 is the EPA approved method for analyzing TSS. This method is applicable to drinking, surface and saline waters. For samples with high dissolved solids, the filter must be thoroughly washed to remove dissolved material and to minimize potential interference.</p>	
	5	Based on the foregoing, the City requests that the Board set the TSS limitation at 150 mg/L as was contained in the City's prior permit. At a minimum, the Board should set the TSS limitation at 120 mg/L as contained in the current Time 'Schedule Order (" T S O ") , which the City understands will remain in effect until September of 2013.		X	See response to comment 3 above.	None required.
	6	<p>The City Is Unclear As To The Reference To A TSS Limitation Of 60 mg/L In The Fact Sheet</p> <p>The Fact Sheet contains an average monthly effluent limitation for TSS of 60 mg/L. (Table F-6). The 2010 Order instead contains a level of 50 mg/L. (Table 6, p. 17.) The City requests clarification as to the reference to a TSS limitation of 60 mg/L in Table F-6 of the Fact Sheet.</p>	X		The 60 mg/L TSS limit included in Table F-6 was a typographical error. The number has been updated to 50 mg/L which is the appropriate monthly average limitations.	Limit has been updated to read 50 mg/L.
	7	The City Requests Clarification As To The Work Plan For Special Study	X		The language proposed by the City does not differ significantly from the language staff has included in the permit except for the inclusion of TSS in the Special Study.	Language has been modified on

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		<p>The City requests .a modification to language contained at section VI.C.2 related to a "Work Plan for Special Study),(page 26), as well as the same language contained in E-11, F-23 and F-4D 'and any other places where such language occurs, as follows:</p> <p>"2. Work Plan for Special Study,</p> <p>a. The City of Redondo Beach's Work Plan for the Seaside Lagoon is due to the Regional Water Board on February 7, 2011, for Executive Officer approval. The objective of the Work Plan is to refine data collection related to sampling location, timing and. other logistics in order to have the best data set for arsenic, cadmium, copper; nickel selenium, silver, thallium, zinc and total suspended solid (TSS) to determine reasonable potential, intake credits, and other permit provisions. Elements of the Work Plan are to include:</p> <ul style="list-style-type: none"> • expanded monitoring program (weekly sampling at a minimum) for the metals list above and TSS in the influent and effluent • expanded sampling methods to include grab and composite sampling, • expanded sampling locations to include influent and effluent, 			Staff agrees with the City's proposal to include TSS and has modified the language according.	Page F23. The language provided by the City was included on pages F-40 and E-11.

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		<ul style="list-style-type: none"> • examination of sampling and laboratory protocols to insure adequate QA/QC; • examination of variability of TSS as applied to intake credits." 				
	8	<p>E. Conclusion</p> <p>In conclusion, the City respectfully requests that the Board consider 'changing the TSS limitation contained in the 2010 Order The City Council discussed this matter at its meeting on September 21, 2010 and expressed distinct concerns about the current proposed TSS 'limitation of 75 mg/L.. As demonstrated by the recent Directive for Administrative Civil Liability sent to the City On September 15, 2010, the City is exposed. to significant penalties if the effluent from Seaside Lagoon exceeds the levels established in the 2010 Order. The City requests that the Board keep in mind the unique facility provided to the public at Seaside Lagoon., as well as the fact that Seaside Lagoon only operates three month's out of the year, thus limiting any alleged impacts to the environment.</p>		X	<p>Comments on the TSS effluent limitations are outside the scope of this limited comment period. Our September 21, 2010 letter transmitting the Revised Tentative WDRs to the City specifically stated that written submission pertained only to changes denoted by underline or strikethrough. Those changes related to the deletion of metals limits and the requirement for a Special Study; not changes to the TSS limits.</p> <p>However, the Los Angeles Regional Board's Basin Plan is designed to preserve and enhance water quality and protect the beneficial uses of all regional waters, including aquatic life.</p> <p>Also see Response to Comments 1 and 3 above.</p>	None required.
	9	The City notes that it has been provided with		X	Regional Board staff disagree with this assertion. As the	None

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		a scant four business days to comment on the revised version of the 2010 Order. This short time frame has prejudiced the City in that it was unable to fully analyze all of the issues presented and to obtain additional declarations from environmental professionals that might have been helpful in supporting the City's position herein.			<p>City is fully aware, Regional Board staff released the Revised Tentative WDRs on September 21, 2010 for a limited public comment period in response to comments previously raised by the City concerning the metals limits. On September 20, 2010, representatives of the City and Regional Board staff met at the Regional Board office to discuss the City's comments. At that time, Regional Board staff informed the City that it agreed with its comments relating to the metals limits and that staff was going to delete the metals limits from the permit and require a Special Study. Also at that time, Regional Board staff notified the City that staff was going to release the new changes for a short and limited public comment period. Since the changes were made in response to comments raised by the City, such a public comment period was not legally required as they were a logical outgrowth of comments received. Nevertheless, as a courtesy, Regional Board staff released the Revised Tentative WDRs for a one-week limited comment period so that the City and other interested persons had the opportunity to review and comment on the changes. Our September 21, 2010 letter transmitting the Revised Tentative WDRs to the City specifically stated that written submission pertained only to changes denoted by underline or strikethrough. Those changes related to the deletion of metals limits and the requirement for a Special Study; not changes to the TSS limits. Since there were only a few changes, and most of the changes were what the City had requested, Regional Board staff believes that the City did have time to fully analyze the changes and does not agree that the City was prejudiced in any way.</p> <p>Further, as noted above, comments on the TSS effluent limitations are outside the scope of this limited comment period. Thus, the City's inability to obtain additional</p>	required.

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					declarations from environmental professionals concerning the TSS limit (such as the one submitted by D.L. Marrin, Ph.D.) would have been outside the scope of this limited comment period. Of course, the City is free to make oral comments on TSS at the hearing on this matter and may bring environmental professionals it feels could support its position.	