

1 The order includes limits for what are called TCDD
 2 equivalents, which are dioxins and furans, and the order is
 3 based on what's called the State Implementation Plan for
 4 Toxics, and that requires that you have a -- that you
 5 evaluate a specific dioxin, 2, 3, 7, 8 TCDD for an effluent
 6 limit, and they -- they did that.

7 But they went beyond what the order required. They
 8 actually looked at all the different TCDD equivalents and
 9 they're applying effluent limits for those.

10 Even the SIP -- the SIP doesn't go there for those.
 11 What it says is that you should be monitoring for these
 12 equivalents so that you can have the data to look at at
 13 future multi-media strategies to control, and that's because
 14 these dioxins and furans are not being generated by our
 15 discharge, but they're everywhere in the environment and
 16 they are a problem.

17 But many dioxins are from, like, forest fires.
 18 They're from diesel engines, trucks driving around. That's
 19 where a lot of this stuff comes from. And the limits that's
 20 set -- are being applied here are in the parts per
 21 quadrillion -- actually, it's less than that. I'm not even
 22 sure what the number is, what you would call that number.

23 So they're extremely low numbers, and what we're
 24 asking is that if you follow the State Implementation Plan,
 25 only apply it to 2, 3, 7, 8 TCDD, and then for the other

1 equivalents, do the monitoring as the SIP says and then look
 2 at the data and again collect the data, and we'll see where
 3 that goes.

4 But they're applying, for example, the order
 5 applies TCDD equivalent effluent limit to our Reverse
 6 Osmosis Unit. So we take purified water, not the brine but
 7 the purified water, discharge it into the bay and they're
 8 applying the dioxin limits to that.

9 And it could possibly show up at those low levels,
 10 but if it's in our discharge, it's from the source water.
 11 It's from the bay. It's from the ocean. It's not because
 12 our Reverse Osmosis Unit is generating dioxin.

13 So we would ask again that you limit the effluent
 14 limit to the 2, 3, 7, 8 TCDD, which is what the SIP
 15 requires.

16 Support for a case by case exception. We did file
 17 a letter in April 2009 requesting a case by case exception
 18 for our marine mammal enclosure cleaning discharge. The SIP
 19 allows exceptions. The discharge is generated when we use
 20 heated pressure water to clean dolphin and sea lion
 21 enclosures.

22 This removes like bird runoff from the top of the
 23 enclosure. It's a real sanitation issue and a health for
 24 the animals issue. These animals support the public
 25 interest, they provide port security, and a number of

1 national security tasks.

2 So we request support from the Board in obtaining
 3 an exception for this discharge. It really doesn't have an
 4 impact for the bay and ask that requirements applied to this
 5 discharge other than a requirement -- there is a requirement
 6 for a Best Management Practices Plan, and we think that's a
 7 good idea, be delayed pending outcome of our exception
 8 rebut, which goes to the State Board and needs to be
 9 approved. So we're also asking for your support in getting
 10 that exception.

11 And just to show you a picture, this is -- doesn't
 12 really show the discharge, but this is the pins themselves,
 13 and as you can see, the top side area, bird dung gets on
 14 that and somebody's walking around with a wand cleaning that
 15 off just to make sure, again, that we maintain the health of
 16 the animals.

17 Okay. So I'm going to summarize what we're asking.
 18 We're asking you to implement our alternative acute toxicity
 19 standards for industrial storm water, which, again, was
 20 changing the first test at the end of the pipe to an action
 21 level and then letting us do a TRE, implement some
 22 corrective measures, and then follow that up with testing at
 23 the end of pipe and in the receiving water. That we apply
 24 the thermal limitation applicable to existing discharges for
 25 steam condensate. And that we remove the effluent limit for

1 TCDD equivalents and only apply it to that particular dioxin
 2 as required by the SIP, and then provide support for our
 3 case by case exception.

4 I want to end my discussion, again, by emphasizing
 5 what the Admiral talked about is that we are continuing to
 6 implement programs to improve water quality. He discussed
 7 our pier piling programs.

8 There's a lot of other efforts we have ongoing.
 9 We're supporting T.M.D.L's at Naval Base San Diego, Chollas
 10 and Clutter Creeks (phonetic). We're removing trash from
 11 Chollas and Clutter Creeks from upstream sources in
 12 collaboration with the City of San Diego.

13 We've installed and tested treatment systems, as he
 14 said, at our recycling center, and as he said, all of our
 15 new piers come in with collection and treatment systems.

16 We've moved things indoors. We have a good BMP
 17 inspection program and training program, a lot of Staff
 18 dedicated to that, and we're implementing a low impact
 19 development program.

20 By 2011, all of our major construction projects and
 21 renovation projects are going to incorporate low impact
 22 development.

23 But this proposed toxicity standard puts us in a
 24 position where we will always be in violation of our
 25 permits. There are too many variables affecting storm water

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1 runoff to consistently meet the standard 100 percent of the
2 time.

3 We've proposed an alternative that requires us to
4 conduct, as I said, the TRE's and make corrective actions,
5 and this is your opportunity to consider our proposal, which
6 is protective and evaluates true impacts to the receiving
7 water.

8 And lastly, you know, before you vote on this order
9 and maybe not even before; I think it's important you
10 understand that this will affect all the Navy installations
11 in San Diego.

12 And we recommend that, if you get the opportunity,
13 to actually come out and see our facilities, because I think
14 you would see that we're implementing programs to protect
15 water quality. And I think you'd also see that we're not
16 like the shipyards. We're different. Our facilities -- in
17 fact, the last time Vicente was at the Naval Base San Diego,
18 which is where we have most of our ships, he said he was
19 shocked to see that it wasn't like a NASSCO, and it's --
20 it's a different type of facility.

21 So thank you.

22 MR. WRIGHT: Thank you.

23 MR. GORDON: That's the end of my presentation.

24 MR. WRIGHT: Mr. Chris Stransky, are you speaking today?

25 MR. STRANSKY: Yes.

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1 The toxicity depends on storm intensity, duration, location,
2 of course, and a number of other factors that make it a real
3 challenge to understand what's happening.

4 The point is that this is really a ubiquitous
5 problem not in particular to any of these type of
6 facilities, but throughout the state and elsewhere.

7 And, unfortunately, the monitoring that is being
8 performed currently at the end of pipe doesn't answer the
9 question as to what is really happening in the receiving
10 water itself. Just a comment.

11 Second, the acute toxicity protocol or 96-hour
12 continuous exposures, they're not really representative of a
13 short-term storm event. The test methods were developed
14 with continuous point source discharges that were being
15 used, and I think there should be some consideration with
16 regard to that.

17 And we've come up with some ideas and methods that
18 should better reflect short-term storm water-type exposures.
19 These have been presented and are of interest to the
20 California Storm Water Quality Association, and they're
21 currently under consideration. And I can elaborate more on
22 that if you're interested.

23 And, finally, just to reiterate, I think the
24 efforts and compliance really should be based on and focused
25 on receiving waters as opposed to the end of pipe. This is

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1 MR. WRIGHT: And Mr. Gordon took over 20 minutes, so
2 let's -- if you're speaking, Mr. Stransky, please keep your
3 comments as brief as possible. How much time do you need?

4 MR. STRANSKY: Oh, just two minutes, three minutes.
5 I'll make it quick.

6 MR. WRIGHT: Excellent.

7 MR. STRANSKY: Thank you, Chairman, and the Board, for
8 the opportunity.

9 I'm a principal for a local environmental company,
10 Nautilus, here in San Diego. I'm also an avid water sports
11 person as well, so I'm concerned about exposure myself.

12 Our company focuses and specializes in toxicity
13 monitoring and testing, and we perform toxicity tests or
14 have for storm water for the Navy, for the shipyards,
15 CalTrans, and a number of other industrial and
16 nonindustrial-type discharges.

17 And I'd just like to point out that on average what
18 we've been seeing as just sort of a point, that we've been
19 seeing toxicity related to the control, so statistically
20 based relative to the control, in probably -- approximately
21 about 50 percent or more of the grab samples that are
22 collected from impermeable hard surfaces, such as streets
23 and other locations that -- like streets and any other hard
24 surfaces.

25 And storm water is variable. We've heard that.

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1 what we're trying to protect and that's where the interest
2 is. I think a lot of money and effort could be diverted
3 from the end of pipe to the receiving waters, and that's all
4 I have. Thank you.

5 MR. WRIGHT: Thank you for your brevity.

6 Now, moving to Laura Hunter, followed by
7 Kelly Hirschbein, Mekaela Gladden, and Gabriel Solmer.

8 MS. HUNTER: Good morning again. Laura Hunter with the
9 Environmental Health Coalition. I'm not really sure where
10 to start, and I'm -- have to say that very disappointed in
11 the position that the military -- that the Navy is taking on
12 this permit. Déjà vu all over again.

13 They want to have different treatment. They want
14 to have weaker treatment, and it's completely unacceptable
15 from our perspective, from the environment's perspective,
16 and we hope from your perspective.

17 I mean, I get that nobody wants to be regulated
18 but, you know, if I were to ask Sean or Mike or NASSCO or
19 anybody, nobody wants to be regulated. The point is, the
20 stuff is toxic. Polluting our waterways is something we
21 have decided is not in our public interest. Poisoning our
22 bay is not in our national interest.

23 So it's up to you to really set the standards with
24 compassion, but you've got to hold them accountable for the
25 toxic water that's flowing off of their facilities into our

1 precious resources.

2 Let me speak to a couple of the issues. Water
3 diversion. You know, \$300 million, please. Either get some
4 real facts on that or make them acknowledge that the Board's
5 not telling them they have to divert every drop. They are
6 saying you can separate.

7 We're trying to get out the high risk, most toxic
8 water, and what they're requesting, the little action level,
9 that basically would just -- they're asking you to allow
10 them to just dump a big slug of toxic water in and then do
11 some little follow-up testing afterwards. You can't allow
12 that. That doesn't comply with the law, and that's just not
13 acceptable.

14 They should be spending money getting their high
15 risk water areas diverted. I mean, that's what they should
16 be doing. They're the ones who were choosing to operate
17 highly industrialized, highly pollutant generating
18 facilities on an impaired water body. That is the choice
19 that they're making, and so they need to bring those into
20 compliance.

21 Their arguments about storm water being, oh, you
22 know, it's all of us. There's nothing we can do. Woe is
23 us. It's the air that's polluting the bay. It's the bay
24 that's polluting itself. Those are early 1990's arguments
25 when no one wanted to take responsibility for toxic storm

1 shipyard work on the military bases. They are very, very
2 comparable.

3 Shocked with this Regional Board parking lot
4 doesn't comply. That's like a lameness factor of five that
5 they would even bring that in here. Oh, let me talk about
6 the ways the Regional Board parking lot is different than,
7 you know, multiple military facilities with toxic runoff,
8 with 58 storm drains flowing into an already impaired water
9 body.

10 52 or 53 storm drains in another flowing directly
11 into San Diego Bay, flowing directly into our sensitive
12 Tijuana River, give me a break.

13 If your guys' parking lot is out of compliance,
14 then you should get it into compliance. I don't know that
15 for a fact, but that is a specious argument, and I think
16 it's really, you know, hilarious if it wasn't so painful
17 that they have all kinds of money to spend running around
18 testing your parking lot, running around, you know, doing
19 these little studies to get out of being complied, but woe
20 is us, we don't have money to come into compliance.

21 Please. Those are our tax dollars, we want them
22 spent on them coming into compliance with the water quality
23 laws.

24 There was a C.H.P. officer earlier here, and I wish
25 he was still here. I wanted to say, if I'm speeding, can I

1 water. We've all evolved way much farther than that.

2 You've expressed that in the discharge permits
3 you've given to other very comparable facilities to them,
4 we'll talk about whether they're shipyards or not in a
5 minute, and you need to proceed on that same course with
6 them.

7 Fairness matters. For them to say, we're not a
8 shipyard, we're not a shipyard, well, yeah, you are. Many
9 of your facilities absolutely are shipyards. You heard
10 Vicente list off all of the shipyard activities that they do
11 at many of their facilities.

12 If they're not shipyards, it's because they're
13 worse than shipyards in terms of their pollutant loading.
14 They're shipyards plus airports plus all kinds of other
15 things.

16 And I also think I heard him say when they weren't
17 like shipyards, like the Radio Receiving Tower, they didn't
18 make that apply, the industrial storm water parts don't
19 apply to the Radio Receiving Tower because, granted, that's
20 not like a shipyard.

21 But you've got toxic runoff coming off of those
22 runways. You've got toxic runoff coming off of those
23 operational areas, and they absolutely should be treated at
24 least at the same level as our commercial shipyards, and you
25 heard that commercial shipyard workers are over doing

1 get out of speeding because other people are speeding? I
2 think I would know what his answer would be.

3 Toxicity limits. You gave them a pass last time.
4 Everybody else had a come to Jesus meeting. You made them
5 come into compliance. They didn't like it. They complained
6 about it, they didn't want to do it, but you know what, they
7 did it, which it gave the Navy a pass.

8 They've now had five more years. It's now the day
9 that they have -- day of reckoning, they now have to get
10 their toxicity standards, and I don't understand why there's
11 not a chronic level in there, too. So -- but maybe some of
12 the speakers after me will speak to that, but we think they
13 should have both.

14 I know I'm taking up too much time. I guess those
15 are just some of my comments. If -- the Navy has done a lot
16 of things for the environment. They have improved. They've
17 gotten a lot better.

18 I've sat on restoration advisory boards and
19 technical review committees for North Island for years and
20 years. You know, we worked on radioactive waste sites that
21 got cleaned up in San Diego Bay. We worked on mercury
22 spills that they got into San Diego Bay, a lot of things
23 have improved.

24 This is the next thing that they need to improve.
25 They need to come into compliance. If they want to be a

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1 leader and be called a leader, then they need to be a
 2 leader.
 3 I get that it's a little bit of tough love that
 4 they don't want to do it, but that's your job, and, you
 5 know, the things that -- the suggestions they're making
 6 would not meet the legal standards that you are empowered to
 7 and have the responsibility to enforce, so we would ask you
 8 to adopt the strong permit. We ask you to put in both of
 9 the toxicity limits and then let's move forward from here.

10 Thank you.

11 MR. WRIGHT: Thank you.

12 Kalla Hirschbein.

13 MS. HIRSCHBEIN: Hello again. Kalla Hirschbein for
 14 Coastkeeper. As a representative of San Diego Coastkeeper,
 15 I'd like to express support for the Staff's proposed
 16 tentative order prepared by Staff and supported by the EPA.

17 We are not requesting anything above or beyond
 18 other current holders, only that the Navy be held to the
 19 same standard as other operators located in San Diego
 20 discharging into the bay and other local waters. My
 21 comments today will focus on the proposed acute toxicity
 22 standards.

23 Coastkeeper supports the Staff's inclusion of the
 24 same acute toxicity language adopted in the Continental
 25 Maritime permit. This revision is warranted for two

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1 reasons. First, the toxicity standard of the current permit
 2 is confusing, ambiguous, and difficult to enforce. Toxicity
 3 stated proposed in the tentative order is more protective of
 4 water quality and provides a clear definitive test that can
 5 be more easily applied and enforced.

6 Most notably, the EPA cited Continental Maritime's
 7 permit language as model language for NPDES acute toxicity
 8 standards. We support the EPA's assertion that the proposed
 9 acute toxicity standards are legally sound, technically
 10 correct, clearly stated, and can be more easily implemented.
 11 Therefore, we disagree with the Navy's contention that the
 12 toxicity requirement is inappropriately applied or overly
 13 conservative.

14 The same toxicity issues were considered in the
 15 Continental Maritime permit and decided in favor of staff
 16 and EPA's recommendation for more stringent standards.

17 Removing whole effluent testing and the
 18 corresponding TRE, TIE testing is contrary to the purpose of
 19 the Clean Water Act, and NPDES permitting, which is to
 20 monitor and limit toxic effluent discharge into our waters.

21 Changing the monitoring from end of pipe to
 22 testing -- receiving waters testing would defeat the intent
 23 of the NPDES permitting process.

24 Just in conclusion, we support what staff is
 25 saying, what the EPA is saying, and we hope that you vote in

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1 favor of that tentative order. Thank you.
 2 MR. WRIGHT: Thank you.
 3 Mekaela Gladden.
 4 MS. GLADDEN: I guess it's good afternoon now. Good
 5 afternoon, Mekaela Gladden. I am not going to repeat all
 6 the comments that I made on the last permit, all the same
 7 things apply.

8 We still believe that the permit should explicitly
 9 state that CTR applies at end of pipe, but we will be
 10 satisfied with another statement on the record that CTR
 11 applies end of pipe before the discharge hits the receiving
 12 water. Thank you.

13 MR. WRIGHT: Thank you.

14 Finally, Gabriel Solmer.

15 MS. SOLMER: Thank you. Good afternoon.

16 Gabriel Solmer, legal director at San Diego Coastkeeper.
 17 I just wanted to follow up on a few last issues,
 18 and we certainly agree with all of the comments made by the
 19 preceding speakers for the environment.

20 Just to point out that Coastkeeper is a supporter
 21 and has been intimately involved in Senator Kehoe's bill,
 22 that's the copper brake pad bill, and we certainly are a
 23 supporter of that and we're glad that the Navy is as well.
 24 It's going to go a long way towards addressing a lot of
 25 these issues, but that doesn't exempt the Navy from doing

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1 their fair share.

2 And let's also not misunderstand the Navy's
 3 proposed standard. When they say that they would -- that
 4 their standard would measure toxicity in the receiving water
 5 and end of pipe, you're not getting a two-for-one here.

6 What they really mean is that this becomes a
 7 receiving water limitation, because it's -- their standard
 8 says if you're not in the toxicity in the receiving water
 9 where it's diluting into the bay and causing a chronic
 10 problem, then you wouldn't ever get to the end of the pipe
 11 violation.

12 It's also absolutely reasonable to include the
 13 limits for all of the 18 equivalents. I just wanted to make
 14 sure that you understood there's no contradiction with the
 15 SIP, it only requires the -- the one being included, but it
 16 certainly doesn't have any contradiction with including all
 17 of them.

18 And then I wanted to just -- I had a quick question
 19 for Staff, and I'm hoping that this is just a typographical
 20 error. I'm sure that the Board is familiar with the State
 21 Implementation Plan that a compliance schedule, which this
 22 permit does include, may not extend beyond ten years from
 23 the effective date of the SIP.

24 We're finally getting closer to that, that's
 25 May 18th, 2010, and that date is important because all of

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1 the dates in the permit look to be in compliance with that
 2 requirement except -- and this was on Page 37 of the permit
 3 -- C1 on Page 37 lists June 10th, 2012, which, as you can
 4 understand, would be beyond the scope of the SIP.

5 So the compliance schedule for the final effluent
 6 limitations for diesel engine cooling water discharges for a
 7 number of metals and TCDD equivalents, and that has a date
 8 of June 10th, 2012.

9 So I believe that was meant to be changed to be in
 10 compliance with this SIP, if I could just get confirmation
 11 on that.

12 And then just to close, Coastkeeper's motto has
 13 always been, this was our motto when we were San Diego
 14 Baykeeper, that there's nothing more patriotic than clean
 15 water. We stand here hopefully to be hand-in-hand with the
 16 Navy to get our waters cleaned up. We just have a different
 17 way that we get there than they do. Thank you.

18 MR. WRIGHT: Thank you.

19 Back to the Navy. Who wishes to speak for the Navy
 20 at this point? Any summary statements? Admiral?

21 Admiral Hering?

22 ADM. HERING: Thank you. I guess the one thing that I
 23 have to say is, this obviously boils down to a gross
 24 mischaracterization of what does storm water and the
 25 facilities are all about.

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1 This particular permit that you're discussing today
 2 is Coronado, and we branched out into a much larger
 3 facility, and I will tell you that I offer every one of you
 4 an opportunity to walk the facility and see the difference.

5 Any one of my facilities are 90 percent cleaner in
 6 a -- and we conduct our business in a fashion that is
 7 respective of the environment better than all municipalities
 8 on the waterfront itself, and I challenge any municipality
 9 or any waterfront facility in the San Diego Bay to meet my
 10 standards, and if they're willing to apply that same
 11 standard, then we'll apply that standard across the board.

12 But to say that I'm exactly like a shipyard in
 13 every respect at every portion of those facilities is a
 14 gross mischaracterization of what we do in the San Diego
 15 Bay. Thank you.

16 MR. WRIGHT: Thank you.

17 Okay. Back to Staff. There were a number of
 18 issues that came up. I assume that Board members may have
 19 some questions of you as well, but I think one -- one that I
 20 wanted to have some discussion on is the proposal for -- the
 21 alternative proposal for toxicity requirement, and there may
 22 be some other things that you want to cover, but if you
 23 touch on that, please.

24 MR. RODRIGUEZ: The action level -- what they're
 25 proposing is so much of what is already there except for the

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1 first exceedance -- the first fail is not a violation, and
 2 the way that it's written in the permit now, the first fail
 3 would be a violation.

4 MR. WRIGHT: So -- but -- Ms. Solmer, her comments
 5 seemed to -- well, she did indicate that that was not a --
 6 their alternative was not a real substitute -- well, it's a
 7 substitute but not a meaningful substitute of the end of the
 8 pipe requirement.

9 MR. RODRIGUEZ: The other request that they're making is
 10 that compliance be determined in the receiving water.

11 MR. WRIGHT: Yes.

12 MR. RODRIGUEZ: Which is not what I said in the previous
 13 agenda item. The previous agenda item I stated that the
 14 effluent limitations apply at the end of pipe, and that's
 15 how this permit is written. Effluent limitations apply at
 16 the end of pipe.

17 There is no dilution credit given in this permit.
 18 If there was a dilution credit to -- if dilution credit was
 19 established, it would be calculated into the effluent limit,
 20 and the effluent limit would still apply at the end of pipe
 21 and not in the receiving water.

22 MR. WRIGHT: Okay. Could you help me understand the
 23 TCDD equivalents issue a little better?

24 MR. RODRIGUEZ: Yes. I'm going to ask Kristin Schwall
 25 to come up here and explain that.

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1 MS. SCHWALL: Hello, my name is Kristin Schwall. I'm a
 2 Water Quality Control Engineer with the Regional Board
 3 staff, and I've been looking into the TCDD issue, and it is
 4 very complex as you've heard from previous speakers.

5 And my understanding, to date, is that the TCDD
 6 limits, there's two bases. We have some discharges that are
 7 going to the ocean, and those limits for TCDD are based on
 8 the Ocean Plan. The Ocean Plan has criteria for TCDD
 9 equivalents, and so our limit is very applicable for the
 10 Ocean Plan.

11 The other limit -- the other discharges go to
 12 San Diego Bay, and those limits are based on the CTR. The
 13 CTR has limits for just one type of TCDD. TCDD equivalents
 14 are made up of a whole bunch of conjoiners, kind of
 15 different chemicals that all look the same. They're very
 16 similar.

17 But the CTR has a limit -- or the CTR has criteria
 18 for just one of those, and so the Navy is saying that we
 19 should base our limits on just that one conjoiner, but
 20 within the CTR preamble, it has language that supports our
 21 use of the TCDD equivalents. The TCDD equivalents are some
 22 of all the conjoiners.

23 Do you have any further questions?

24 MR. WRIGHT: Did you understand all of that?

25 MS. SCHWALL: Yes. It's very technical.

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1 MR. THOMPSON: Well, the real simple question is, why
 2 would we ask for something that's greater than what's in the
 3 SIP? That's the real fundamental question. If the State
 4 Implementation Plan called out for a certain number,
 5 whatever, why are we exceeding that by an exponential
 6 function? Because we can, or because we really think it's
 7 necessary, and if it wasn't necessary in the State
 8 Implementation Plan why is it necessary here?

9 MS. SCHWALL: The method that we followed is recommended
 10 in the preamble for the CTR.

11 MR. THOMPSON: I don't care about the preamble for the
 12 CTR. I want to know about why it's different. In other
 13 words, you're saying, we decided to use this, but the real
 14 criteria, as I understand it, should be the State
 15 Implementation Plan or am I wrong?

16 MS. SCHWALL: Well, the State Implementation Plan is
 17 the --

18 MR. WRIGHT: Okay. Other questions?

19 MR. LOVELAND: I think that one went unanswered. How is
 20 it different? I'm not understanding. If it's different,
 21 what is the difference and what is the basis?

22 MR. THOMPSON: They've interpreted it that way.

23 MR. WRIGHT: I -- I -- he was asking a question,
 24 Kristin. Did you understand the question?

25 MS. SCHWALL: Is there more questions?

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1 MR. LOVELAND: Yes. You said that the two are
 2 different, how are they different? What is the difference
 3 that you're basing your stance on?

4 MS. SCHWALL: The two types of limits. I'm sorry, could
 5 you clarify the question?

6 MR. LOVELAND: My question is, I'm asking you to
 7 clarify. What is the difference between the two and why are
 8 you making this assumption or determination? Just to say
 9 they're different leaves me out in no man's land.

10 MS. SCHWALL: Okay. There are two possible ways that
 11 you can interpret the CTR and using the SIP. The method
 12 that we used is the TCDD equivalents, and that's a method
 13 that sums all of the conjoiners effluent -- concentrations,
 14 and you compare that number to the effluent limit.

15 The other method is to establish effluent limits
 16 for each individual conjoiner that you go through the
 17 reasonable potential analysis and decide which conjoiner
 18 need effluents, and you establish individual effluent limits
 19 for each conjoiner, and we have chosen the method that is
 20 supported by the preamble in the CTR.

21 MR. LOVELAND: And why did you choose that method and --
 22 and what is -- where did the two interact? Why is one
 23 prevailing over the other?

24 MS. SCHWALL: This was our decision on how to proceed in
 25 this matter and it's, as you can see, it's very confusing.

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1 There -- there could be an interpretation to use the other
 2 method as well. This is the first time that we've
 3 encountered this issue.

4 MR. LOVELAND: Well, I guess, Mr. Chairman, that kind of
 5 brings up the confusion that I had. If, obviously, we have
 6 the option of using one over the other, there needs to be a
 7 clear understanding on my part, at least, before I can vote
 8 on this as to what is the value of one over the other? Why
 9 should we choose one versus the other? Given the
 10 alternatives, what's the consequences? It seems to have
 11 significant application here.

12 MR. CONNOLLY: Mind if I take a shot at it?

13 MR. WRIGHT: And what's your name?

14 MR. CONNOLLY: My name is Dan Connolly (phonetic), I'm a
 15 U.S. EPA contractor. I assist the Regional Board --

16 MR. WRIGHT: We can't hear you.

17 MR. CONNOLLY: Is it on?

18 MR. WRIGHT: Can you hear it back there?

19 MR. CONNOLLY: My name is Dan Connolly, I'm a U.S. EPA
 20 contractor. I assist the Regional Board in their NPDES
 21 efforts through permit writing and compliance evaluations,
 22 and I just thought maybe I could explain the TCDD
 23 equivalents a little easier.

24 Essentially, you have TCDD, a conjoiner, which
 25 is -- sorry, I'm usually behind the scenes -- is -- is a

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1 single parameter, and you have a family of these parameters,
 2 what we'll call the TCDD equivalents. So you have one and
 3 then you have a family of them that are similar pollutants.
 4 Okay?

5 So that's the difference between, you know, the --
 6 the Navy is saying just apply the one parameter, and in the
 7 permit they're applying the family of parameters.

8 Now, where the SIP and the CTR are related is the
 9 SIP implements the CTR. So when we talk about the SIP and
 10 CTR, we almost use them interchangeably, so that might be a
 11 little bit of where the disconnect is coming.

12 Now, in the preamble of the CTR, it specifically
 13 states, "If the discharge dioxin or dioxin-like compound,"
 14 and these are TCDD equivalents, dioxins. My hands are
 15 shaking. "Has reasonable potential to cause or contribute
 16 to a violation of a narrative criteria, numeric water
 17 quality-based effluent limits for dioxin or dioxin-like
 18 compounds should be included in NPDES permits, which are
 19 expressed using TEQ scheme."

20 TEQ scheme used for inland surface waters in closed
 21 bays and estuaries of California provided in Section 3 of
 22 the SIP consistent with the CTR and SIP, a TCDD equivalent
 23 criteria of 1.3 times 10 to the negative 8 micrograms per
 24 liter for the protection of human health is used, which is
 25 based on a one in a million cancer risk.

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1 The rest is all technical, but, essentially, the
 2 preamble of the CTR said, if you detect one, go ahead and
 3 apply all.

4 MR. WRIGHT: Okay. Mr. King and then Mr. Destashe, and
 5 George, I don't know if that answered your question or not.

6 MR. KING: That went a long way, although I couldn't
 7 quite catch everything as you were reading it. You did a
 8 great job.

9 What I was going to ask is the old saying, don't
 10 take the law into your own hands, you take them to court.
 11 This is a good opportunity for Counsel to weigh in on
 12 something that seems to be which standard we should apply
 13 here. If this is a legal matter and we're looking to
 14 differing criteria, it would seem to be good to get some
 15 legal input on this.

16 MS. HAGAN: This is a new issue for me. My impression
 17 is that one is more conservative than the other. It doesn't
 18 sound to me as though one is legally required over the
 19 other, but I do not know the answer to that. If we -- if
 20 you would like, I could try and look into that.

21 MR. KING: I would think it would be worth it here,
 22 since this is a point of contention, that we give you enough
 23 time and consider -- because it doesn't seem to be purely
 24 technical. It seems to be that there's got to be some
 25 criteria between the two and not just flipping a coin.

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1 MR. CONNOLLY: I would also like to add that this is
 2 consistent with other permits, maybe not all permits, but
 3 this procedure has been used throughout the State of
 4 California.

5 MR. WRIGHT: Okay. Mr. Robertus and then Mr. Destashe.

6 MR. ROBERTUS: Obviously, the staff opted for a more
 7 conservative approach, and what I believe the Board is
 8 looking for is, perhaps, a quantification or qualification
 9 as to why it would be applicable to this permit.

10 I think Staff may be able to enlighten or
 11 illuminate the concern for dioxins in San Diego Bay, why
 12 would we want to have a more strict consideration for a
 13 discharger dealing with dioxins. So would that help,
 14 perhaps?

15 Can the permit team enlighten the Board on why
 16 we're concerned about dioxins, where they come from, the
 17 legacy of dioxins, and where we are in our current strategy
 18 to protect the Bay, and why a more conservative
 19 consideration in this permit might be appropriate?

20 David Barker, do you have some thoughts on who
 21 could address that?

22 MR. WRIGHT: After we hear from Staff, I do want to hear
 23 from Mr. Gordon on this. I think he's raised this as an
 24 important issue for the Navy, so I think it's important that
 25 we hear from him as well.

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1 MR. ROBERTUS: I want to add that the team writing the
 2 permit is a different part of our Staff that does the water
 3 quality body assessments, so I may have to get someone from
 4 elsewhere on the Staff to fill in on this.

5 MR. RODRIGUEZ: A reasonable potential analysis was done
 6 for at least one of the dioxins. I don't know if it was --

7 MR. WRIGHT: Can you speak a little more into the mike?

8 MR. RODRIGUEZ: The reasonable potential analysis was
 9 done --

10 MR. WRIGHT: They can't hear you in the back.

11 MR. RODRIGUEZ: The reasonable potential analysis was
 12 done for one of the dioxins. I don't know -- and so there
 13 was a concern for that, for at least one. I do not know if
 14 more than one was done, and then the -- based on that one,
 15 the -- you can apply across the family of chemicals and have
 16 the equivalent apply to the other ones, but I don't know if
 17 more than one -- if a reasonable potential analysis was done
 18 for more than one.

19 MR. WRIGHT: Okay. Mr. Gordon, you know, we may get to
 20 the point where we're just going to have to set this aside
 21 for the time being and deal with the other issues until we
 22 can reach greater clarification and maybe you can clarify,
 23 Mr. Gordon.

24 MR. GORDON: I'll try. I guess our major issue with
 25 this is that if you look at the processes we're talking

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1 about and what we're discharging, these are not dioxin
 2 producing discharges. I mean, for example, you know, I
 3 brought up the Reverse Osmosis. Reverse Osmosis isn't going
 4 to generate dioxins. These are things that are present in
 5 the environment.

6 And, essentially, by putting these effluent limits
 7 on us, if we don't meet that effluent limit -- and these are
 8 10 to the minus 8 micrograms. These are -- if you measured
 9 your drinking water, if you measured the bay, if you
 10 measured these water bodies, you're going to find it.

11 And if you put these limits on it, you're basically
 12 telling us that you can't make the limit, and you're going
 13 to have to stop your Reverse Osmosis units. I mean, those
 14 are the types of things we're concerned about.

15 So we're asking you to limit to what the State
 16 Implementation Plan only requires. We'll do the monitoring
 17 for the other data. We're just -- we don't want to have to
 18 stop operations or stop discharges because of the dioxin
 19 that we're not generating that's present in the environment.
 20 So that's what we're looking for.

21 MR. WRIGHT: I understand you're making the case, but I
 22 was hoping that you might clarify this discussion of why one
 23 is more relevant than the other aside from the fact that it
 24 would stop your operations. I'm just trying to -- we're not
 25 getting any clear answer from Staff, and --

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1 MR. GORDON: Well, I will say this --
 2 MR. WRIGHT: You're an expert in this field, so clarify.
 3 MR. GORDON: I will try. Our position, the State
 4 Implementation Plan is, as was mentioned, is how the State's
 5 chosen to implement the California toxicity limits.

6 And Gabriel was correct, it doesn't prohibit
 7 limiting limits on certain pollutants, but when it gets to
 8 TCDD or these dioxins, it says, essentially, develop or
 9 evaluate this 2, 3, 7, 8 TCDD, this specific dioxin, for an
 10 effluent limit.

11 And then it says after that, and this is a quote
 12 from it, or it -- not exact quite, but it says the stated
 13 purpose in the SIP for monitoring TCDD equivalents is to
 14 develop future multi-media control strategies, and that's
 15 because it's recognized that the source of these pollutants,
 16 they're not under the control of the Navy. I mean, we can't
 17 control things that are falling into the environment.

18 So I think that's what was recognized when they
 19 developed the SIP. I haven't seen the preamble. I can't
 20 really address that specific question, but I know that the
 21 State Implementation Plan --

22 MR. WRIGHT: I was hoping you could.

23 MR. GORDON: I know you were. I know it's approved by
 24 the EPA, though. The Implementation Plan goes to the EPA
 25 and it's approved.

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1 MR. WRIGHT: All right. Thank you.

2 Should we move on? You want to set this aside?

3 MR. LOVELAND: I'm willing to set this aside, and I
 4 would suggest, Mr. Chairman, that we're probably going to
 5 need some more efforts to clarify this for the -- for the
 6 Board.

7 I don't think that Staff was -- was quite prepared
 8 for -- for this line of questioning today, and they need a
 9 chance to really zone in on -- on what they want to say
 10 about it.

11 But I do have a question for the Navy, in -- in
 12 your presentation, Admiral, you indicated that you felt that
 13 it was a gross mischaracterization to identify these all as
 14 shipyard equivalents, and knowing the diversity of those
 15 bases, what limited amount I do know, I can understand part
 16 of that.

17 But would you -- would the alternatives available
 18 to you be any different if the individual components of your
 19 command were characterized individually to be more accurate
 20 in your mind, anyhow, as to -- as to what is shipyard-type
 21 activity and which is not?

22 Would -- again, to clarify my question, if you have
 23 a base that -- on 10 acres you're doing X activity, which is
 24 very much akin to what Continental Marine is doing, perhaps,
 25 and 20 acres where you're doing something entirely

1 different, if those were delineated, would it allow you more
 2 options to comply, to act differently rather than the way
 3 they're being characterized right now, if I understood your
 4 objection?

5 ADM. HERING: Yes, sir. And, as a matter of fact,
 6 the -- if you take a look, the permit for what we consider
 7 to be industrial is our graving dock. That would be very
 8 similar in -- in the type of work that we do to the
 9 shipyard.

10 It is a dry dock in which we separate and segregate
 11 our industrial activities that occur on the pier and in and
 12 around those areas, and it has a separate permit.

13 But to categorize the waterfront in a fashion that
 14 we are all doing maintenance of that level, as a matter of
 15 fact, all the aircraft maintenance that you put in your
 16 statement this morning is all done inside closed buildings.
 17 We don't do any blasting in the wide open. There's no
 18 abrasive manufacturing efforts going on at the waterfront.
 19 None of that is.

20 You drive by the piers and you see that when we get
 21 ready to do that type of stuff, the EPA approved white
 22 water -- white sheet goes up, and the entire area that's
 23 under construction or under rework is completely protected
 24 from the environment.

25 So to categorize it as if we were dumping all this

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1 stuff in the water is gross. That's not how we do business.
 2 And, again, I ask each of you to come on on a bus, and we'll
 3 take a drive around a facility, and we'll match what we say
 4 to words in action that those facilities are not polluting
 5 in a fashion that they're being characterized in here.

6 And you can take a walk through the shipyard, and
 7 we'll let you walk through the areas that we say are
 8 industrial, and you can see the difference between that and
 9 our waterfront.

10 So the answer is absolutely, and we know where they
 11 are and we do what we have to do to control that type of
 12 activity on the piers and where they have the greatest
 13 impact.

14 And as I said, as we build new piers, we put those
 15 things into practice. Pier 13 is an industrial pier, we do
 16 most of our work, and in that pier we can show you where we
 17 built all those collection efforts into that pier.

18 But to say that every other pier on the station or
 19 every other pier on the waterfront does that same type of
 20 activity is simply wrong. Inaccurate. Not allowed.

21 MR. WRIGHT: Okay. Thank you, Admiral.

22 You know, George, that's a good question, and
 23 actually I thought I heard in an earlier presentation, maybe
 24 it was the Staff presentation, that an alternative was to
 25 isolate those particular types of facilities that were most

1 problematic. Instead of looking at the whole thing, try to
 2 isolate different parts, so maybe that's what needs to be
 3 done.

4 MR. LOVELAND: I thought I heard that, too. But the way
 5 I understood it was that they were talking about isolating
 6 individual functions in terms of how they -- how they
 7 treated the runoff.

8 MR. WRIGHT: Uh-huh.

9 MR. LOVELAND: And -- but the permits, they'll apply
 10 across the board, and I'm wondering if -- if they were
 11 isolating the -- the functions, would different permit
 12 requirements apply, and I'm not sure of the answer to that.

13 I -- I really like the idea of visiting the
 14 facilities and looking. I know that it takes a lot of time
 15 and it's a difficult thing for the Board to do, but I think
 16 it would, for me anyhow, would help in my understanding and
 17 certainly maybe give us better understanding of what
 18 alternatives there are to resolve this -- this issue.

19 The statement was made earlier today about the
 20 necessity or the desirability of being consistent in these
 21 permits, and I think that is very, very true that we should
 22 be consistent.

23 But, at the same time, that doesn't mean painting
 24 everybody with a number one brush if they're doing different
 25 functions, and we need to understand where it is different.

1 or where it is not different and how we can be consistent
 2 within that framework.

3 MR. WRIGHT: And I agree with that, and -- and at the
 4 same time, certainly we cannot just stand still. We need to
 5 continue moving ahead, doing whatever we can to address
 6 pollution problems in the bay.

7 But, you know, it -- like you say, you can't just
 8 paint everything with the same brush and -- but I think we
 9 need to do some fine-tuning on this, and maybe one way to do
 10 that is, as you suggested, become more familiar with the
 11 situation. I think -- in fact, I think we're obligated to
 12 do that.

13 Mr. Thompson -- oh, I'm sorry. Mr. Destashe. I
 14 thought you had waved me off earlier. Okay. So back to
 15 you.

16 MR. DESTACHE: Actually, I did wave you off, because I
 17 wanted to finish the toxicity side of it before we got to
 18 the point that Mr. Loveland made very -- very clearly.

19 I think there are -- there are distinct areas in
 20 these -- and specifically North Island. I think that the --
 21 the Admiral was pretty clear on it's not just an industrial
 22 plant.

23 And I think it behooves the Regional Board and
 24 Staff to look at, and really I think we would -- we would
 25 have to look to the Navy to characterize their specific

1 areas in which they determine that they are industrial
 2 and -- and administrative activities and airport activities
 3 and repair activities so that Staff could look at those
 4 areas and either agree or disagree or come to some
 5 compromise.

6 I don't think we can characterize it 100 percent as
 7 industrial, and I think that's an important factor in this
 8 permit and I think we should proceed in that fashion.

9 MR. WRIGHT: And I don't think Staff is necessarily
 10 doing that. I think Staff is trying to isolate the
 11 different parts of it, but I'm not so sure it's been done
 12 with great enough clarity.

13 MR. DESTACHE: And Staff has tried to lay out exact
 14 areas, but I think there are different activities that need
 15 to be addressed within the permit for different areas and
 16 different treatment facilities that are for different areas;
 17 I absolutely believe that.

18 MR. WRIGHT: Okay. So Mr. Thompson, then I would
 19 suggest that we discuss how we can maybe continue this --
 20 this matter and try to reach some -- some greater clarity
 21 and some agreement on what does need to be done.

22 I know. I'm seeing shaking heads, but we -- my --
 23 my opinion is, frankly, is that as I said. We can't stand
 24 still. We need to do whatever we can to improve the quality
 25 of the water in the bay, but we need to do it in -- in a way

1 that recognizes that there are some facilities that have an
 2 impact, some that don't, some have greater impact than
 3 others and so on.

4 Mr. Thompson.

5 MR. THOMPSON: Just a few minutes, and I'm going to
 6 caveat my comments with a preface that I spent 30 years
 7 working for the Department of the Navy as a civilian, all of
 8 it in ship repair, in Long Beach, in the last 13 years in
 9 the San Diego area, both at the Naval Station as the
 10 Planning Officer for the Old Shore Intermediate Maintenance
 11 Activity, and then the last eight years as the Deputy
 12 Submarine Repair Officer Civilian Essential Manager that the
 13 old seaman as well as now, the Southwest Regional
 14 Maintenance Center maintains all the submarines in
 15 San Diego.

16 And so over those years, I have watched the
 17 Department of the Navy strive very hard to get to the point
 18 of trying to be in compliance wherever they can with all the
 19 regulatory guidance that comes out of not only EPA at the
 20 federal level but at the State level as well.

21 And I think they've done an admirable job in that
 22 respect, because I've seen the results. I've watched the
 23 evolution over the years. And as the Admiral pointed out,
 24 he is absolutely correct, you cannot compare the Naval
 25 station activities in this area to a Naval shipyard or even

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1 a private shipyard.

2 There is industrial activity that does go on in the
 3 facilities, but it's not 24 hours a day, seven days a week
 4 in general. It's over periods of -- short periods of time,
 5 usually, when a ship is in for maintenance. Those ships are
 6 assigned to certain piers to do that maintenance, and it
 7 isn't like the entire base is contributing to the problem
 8 from the standpoint of the industrial activity that goes on.

9 So I think the point taken concerning if, in fact,
 10 there's going to be some additional requirements in the
 11 permit, and I'm going to talk about that in a second.

12 I think we need to do take into consideration that
 13 you can't characterize an entire installation as part of
 14 this because the actual activity taking place is isolated to
 15 certain areas.

16 The other piece to this that really troubles me
 17 is -- and it's kind of fundamental. There was a comment
 18 made about, well, the taxpayers of America want their money
 19 spent cleaning our waters. Well, I think you'll find a lot
 20 of taxpayers of America would rather see money being spent
 21 in -- in the course of National defense, and we need to keep
 22 in mind, that's what the Navy provides.

23 It's not to say that you ignore trying to keep
 24 the -- you know, clean the water as best you can to the
 25 point, but there is a monetary aspect and impact of putting

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1 in place regulatory requirements that -- that will tax the
 2 ability of that agency, and this even goes to the private
 3 sector, but more so when you're talking about the Department
 4 of Defense activities.

5 They don't have the money anymore to do this. The
 6 money that used to go to the Department of Defense and Naval
 7 activities is being diverted to other things that is beyond
 8 their control; and then they have no way to comply.

9 And I'll give you a good example. Before I retired
 10 back in 2007 from the Navy, we could not buy parts for
 11 nuclear submarines. Period. There was no money to
 12 manufacture parts for submarines. We were getting them off
 13 decommissioned submarines. Almost every submarine that came
 14 by, we were taking parts off of decommissioned submarines.
 15 That's how bad it is.

16 And -- and to continue to -- to bring to bear
 17 additional requirements that may or may not be necessary,
 18 and we haven't decided that yet, to expend dollars to comply
 19 with something that may or may not be necessary or that may
 20 have a negligible effect, just doesn't make any common sense
 21 from the taxpayer's standpoint as well when there's other --
 22 other monetary reasons that would require that money to be
 23 spent in other areas.

24 I personally think that the Navy has presented some
 25 options here concerning the toxicity requirements and -- and

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1 as well as the -- the TCDD issue that makes sense to me. I
 2 don't -- I don't see where we need to go such a high order
 3 given their restrictions.

4 I -- I take very, very well to heart the fact that
 5 there was a comment made that the -- the private shipyards
 6 have decided they can't meet these requirements, so they're
 7 diverting as much as they can into the City sewer system.
 8 Navy doesn't have that option.

9 How do you pay for that? There was a comment made,
 10 well, they don't have to divert all of it. Well, okay.
 11 Where do you draw that line? What do you divert, what don't
 12 you divert, and what is that cost?

13 There was a question about \$300 million cost of
 14 implementing all these requirements. I'll be honest with
 15 you, that number is probably pretty close when you apply it
 16 over the entire Naval complex within the San Diego Harbor
 17 over all the facilities, because it will take a lot of money
 18 to implement requiring compliance with these restrictions.

19 Now, here's my last comment, and it's probably
 20 going to be a question for Staff at some point. If, in
 21 fact, we put this permit in place and the Navy cannot
 22 comply, okay? They're going to be in violation. Are we
 23 prepared to shut down a Naval facility in San Diego Harbor
 24 because they cannot comply with an order? That's the
 25 question that will have to be asked and answered at some

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1 point in time. Thank you.

2 MR. WRIGHT: Okay. I don't think the latter is even a
 3 question.

4 Mr. Robertus, do you have a recommendation?

5 MR. ANDERSON: I have one question.

6 MR. WRIGHT: Point of clarification?

7 MR. ANDERSON: Just a real quick question. Was there
 8 any problem with us supporting the case by case exceptions
 9 that the Navy has requested?

10 MR. ROBERTUS: I don't see a problem with that. I
 11 will -- I'm compelled to say at this point that when I first
 12 became the Executive Officer for the Board, I met with Navy
 13 attorneys and Naval officers and endeavored to carve out the
 14 portions of the Naval installations surrounding the bay and
 15 encouraged them to get involved in the municipal storm water
 16 program, because that program by law from Congress says you
 17 have an iterative process to reduce pollutants to the
 18 maximum extent practicable.

19 The industrial storm water program, which is driven
 20 by SIC codes on dry land, and then it ratchets up a bit, in
 21 my mind, for industrial shipyard activities on the bay,
 22 you -- you have to address a higher standard, BATVCT, or
 23 best available technology or best current technology and
 24 cost is not an option -- an option in that case.

25 And to date, I'm not aware that the Navy has

1 responded to my requests that they get involved in the
 2 municipal storm water program, and I don't -- I can't
 3 address why they did or didn't, and maybe they did, I'm just
 4 not aware of it.

5 But that permit and my reason for going to them was
 6 to avoid the dilemma we face today, because if this Board
 7 does not adopt the permit as I've -- as it's been prepared,
 8 then there's the circumstance that the Navy may have
 9 discharges going into San Diego Bay that would be
 10 unregulated.

11 The Board carves out those portions that I think the
 12 permit addresses and then leave those areas that aren't
 13 appropriately to be regulated by this permit and have them
 14 unregulated and that leaves them honorable, potentially, for
 15 unregulated discharges going into a body of water that is of
 16 critical focus of our regulatory reach.

17 So if -- if -- if it's the Board's pleasure, I
 18 would make a recommendation at this time.

19 MR. WRIGHT: I'd like to hear your recommendation.

20 MR. ROBERTUS: My recommendation is that the permit be
 21 adopted with errata. The Navy has options to pursue these
 22 additional matters of toxicity in the petition process, and
 23 I'm reluctant to say this, but on occasion I do, sometimes
 24 issues cannot be resolved by this Board, and if the Navy
 25 wants to make its case as it has made it before you today,

1 We just don't have a lot of options. This is a
 2 federal permit, and we -- we, perhaps, could defer to
 3 U.S. EPA and we've endeavored, as your Staff, to work in
 4 concert with U.S. EPA even using a contractor that they paid
 5 for. So those are my comments.

6 My recommendation is to adopt the tentative order.
 7 MR. WRIGHT: Well, members of the Board, I agree with
 8 Mr. Robertus. So I think it's time to move forward with
 9 this permit.

10 I -- I understand that the Navy is a good citizen
 11 in a lot of respects, but I also have -- have to -- I think
 12 we have to understand that San Diego Bay belongs to all of
 13 us and that we, as a Board, have a responsibility to make
 14 certain that all the activities that are -- have a -- do not
 15 pollute the bay.

16 Well, somebody make a motion one way or the other
 17 or some kind of a motion.

18 MR. RAYFIELD: Actually, Mr. President, I'd like to ask
 19 one -- one more question here, Mr. Chairman.

20 The Navy, in my opinion, has made a good case for
 21 the whole area not be considered an industrial area, if you
 22 will, or an industrial discharge, and I'm -- I really don't
 23 know the answer to this, but I'm wondering, is there some
 24 way to segment or separate, perhaps, the permit such that
 25 that -- we deal with that part that is industrial or

1 they certainly have that right to continue to do so.

2 The -- typically on San Diego Bay, any permitting
 3 activity we engage, we are going to be more conservative
 4 until we are convinced that the bay is, in a confident way,
 5 clearly fully supporting beneficial uses.

6 That's not the condition that we face today for
 7 San Diego Bay. In fact, there's another kind of activity on
 8 the bay which deals with marinas that I'm going to be
 9 bringing back to you in the future and the question of
 10 whether we're going to be regulating permits, NPDES permits.
 11 The State Board is currently working on that.

12 But I feel that the permit that is before you
 13 today, this tentative order, is an appropriate permit at
 14 this time, and I have to address the issue of violations
 15 since the Board has brought it up.

16 The Navy, if they have violations, that certainly
 17 is important to them, but this Board has no recourse. You
 18 cannot fine the Navy.

19 As far as shutting down their activity, I can't
 20 even imagine taking such a course of action. We may be able
 21 to issue a Cease and Desist Order on their discharges, but I
 22 don't know that they would comply.

23 Case in point. The federal government
 24 International Boundary Water Commission, it was necessary to
 25 take them to court, and we've been in court for many years.

1 shipyard-like processes versus the rest of the area which is
 2 more akin to municipal storm water, in which case, in my
 3 mind, monitoring and other things would be different from
 4 these two areas or for these two areas, but is that
 5 feasible?

6 Why must we consider all of -- just because they're
 7 all part of the Navy, all four installations under the same
 8 umbrella and under the same regulations?

9 MR. WRIGHT: Well, Staff has attempted to subdivide the
 10 facilities, and they are under -- under different permits or
 11 will be under different permits, but your point is that
 12 maybe this permit is -- covers too much.

13 MR. RAYFIELD: Exactly.

14 MR. WRIGHT: Mr. Robertus?

15 MR. ROBERTUS: I'm curious as to the Navy's perspective
 16 on the submission of the report of waste discharge for this
 17 permit. Did they intend that the report of waste discharge
 18 applied to the entire geographical area of the Naval station
 19 as it's represented in the permit, or does the permit
 20 misrepresent what they submitted to us in the report of
 21 waste discharge or have they changed their position since
 22 they reported the -- presented the information, the facts on
 23 the report of waste discharge, and if it changed, why did it
 24 change?

25 Because I believe the permit we've written is

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1 representative of what they presented to us in the report of
 2 waste discharge. So if we've misrepresented and included
 3 geographical areas that was not their intent to submit the
 4 report of waste discharge for, I think that needs to be
 5 clarified.

6 MR. WRIGHT: Okay. Would you clarify that, please?

7 MR. GORDON: I'll try. Brian Gordon with the Navy. I'm
 8 not sure I quite understand the question, but I will say
 9 this.

10 One of the issues that we have on our Navy
 11 installations is they are kind of unique. They are -- they
 12 are mixed use facilities. So when we talk about separating
 13 the industrial versus nonindustrial areas, one of the
 14 challenges we have is they're all commingled across the
 15 bases in some cases.

16 So we do have a number of administrative areas, for
 17 example, but in many cases, they may be right next to an
 18 industrial. Is it possible to do? Well, I suppose if you
 19 bermed all over the base and put new storm drain systems in,
 20 it's potentially possible, but we're talking about a lot of
 21 infrastructure changes, and, in my mind, it doesn't result
 22 necessarily in improvement in water quality.

23 What was brought up before is isolating some of
 24 these areas and would that help us. Again, it's just so
 25 hard to isolate. And as far as the toxicity standard, that

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1 doesn't help us with the toxicity standard unless -- I guess
 2 I think -- I still think there's a misperception that it's
 3 our industrial activities that are causing the toxicity, and
 4 the point is, it's -- it's -- all of our runoff is not going
 5 to pass that toxicity standard.

6 MR. WRIGHT: You raise a good point, the toxicity
 7 standard doesn't go away. I mean, that's a separate issue
 8 and we have to decide how we want to handle that.

9 Thank you.

10 MR. GORDON: Thank you.

11 MR. WRIGHT: Okay. Do I have a motion?

12 MR. DESTACHE: I have one other question before I -- and
 13 this is for Mr. Robertus.

14 From your statement regarding the MS -- the storm
 15 water permit and your discussion with the Navy, they opted
 16 or it's your belief that they opted to stay as an industrial
 17 permit in lieu of becoming part of the -- the overall storm
 18 water management and storm water permit for the -- for the
 19 region?

20 MR. ROBERTUS: Well, I can only conclude, based on the
 21 answer I got to the question I presented, that it was their
 22 intent when they submitted the report of waste discharge
 23 that this permit is based on for -- for the Board to proceed
 24 to write a permit that essentially says what this permit
 25 says. It regulates the whole installation.

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1 And if you heard the word "commingled," that's the
 2 problem. The runoff from these areas is commingled with
 3 runoff from other areas. It's not delineated separately,
 4 and that very same problem exists throughout our urban
 5 areas.

6 The urban areas in this region have been regulated
 7 for over 20 years with some areas with separate industrial
 8 storm water permits, some areas with municipal storm water
 9 permits. And as you saw in the chart at the very beginning
 10 of the presentation, the Navy installations were in the
 11 latter phases of this 20-year process of regulating the
 12 discharges from industrial activities that ring the bay.

13 So I'm perplexed at this point where if the Navy's
 14 claiming they have unique separate facilities on the bay
 15 that are industrial similar to shipyards and only those
 16 areas have these potentially harmful discharges that we
 17 regulate with this process, then they should have submitted
 18 a report of waste discharge that exclude all those other
 19 areas.

20 I would present that they didn't do that because
 21 then they would have discharges from Naval property that
 22 doesn't have a permit. They could alleviate that problem by
 23 joining a municipal storm water program, which they have not
 24 elected to do.

25 So I -- I don't know -- I would suggest an option

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1 is, rescind this permit, rescind the existing permit and
 2 figure out what they want to do and have them discharge
 3 without a permit and sort it out, but that, I don't think,
 4 is appropriate.

5 MR. DESTACHE: And I would agree that that's not an
 6 appropriate option for us right now, and at this point, I'm
 7 going to make a motion to approve this permit and we'll, you
 8 know -- and with the statement that I think the Navy needs
 9 to approach this in a different fashion.

10 MR. WRIGHT: Is there a second?

11 MR. KING: Second.

12 MR. WRIGHT: I heard that that would be very difficult
 13 to do that.

14 MR. DESTACHE: And I may add to my motion that with the
 15 errata as it's written today.

16 MR. WRIGHT: All those in favor of the motion say "aye."

17 MR. KING: Aye.

18 MR. LOVELAND: Aye.

19 MR. RAYFIELD: Aye.

20 MR. DESTACHE: Aye.

21 MR. WRIGHT: Aye.

22 Those against?

23 MR. THOMPSON: I'm against.

24 MR. WEBER: I am, too, against.

25 MR. ANDERSON: Against.

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1 MR. WRIGHT: The motion is approved 5 to 3.

2 Thank you, everybody. We appreciate it. Yes.

3 It's way past lunchtime.

4 (Hearing adjourned at 1:20 p.m.)

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