

April 21, 2008

Mr. Daniel W. Hancock, Chairman
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814
VIA EMAIL: littlehoover@lhc.ca.gov



Re: Agenda Item 1: Public Hearing on California's Water Boards on Thursday, April 25, 2008

Dear Chairman Hancock and Commissioners:

We write on behalf of San Diego Coastkeeper (SDCK), a non-profit organization which works to protect the San Diego region's bays, beaches, watersheds and ocean for the people and wildlife that depend on them. We balance community outreach, education, and advocacy to promote stewardship of clean water and a healthy coastal ecosystem. San Diego Bay is one of the crown jewels of San Diego. It is a treasure that is central to the region's identity, economy and way of life. Unfortunately, due to decades of industrialization and neglect, the Bay remains on the top of the list of the most polluted bays in the United States.

In the last 40 years there have been notable improvements in the water quality of the Bay. Increased state and federal regulatory efforts have been and continue to play an integral role in these improvements. However, there is still a long way to go. With 56% of sediments acutely toxic to marine organisms, San Diego Bay ranks as the second most toxic of 18 bays studied nationally according to a 1996 National Oceanic Atmospheric Administration report. Reducing and mitigating the pollution of the Bay remains an important and challenging goal for a variety of stakeholders in the San Diego region with interests ranging from public health to environmental protection to tourism and recreation.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER PERMITS

Pollution from urban stormwater runoff is one of the largest threats to the water quality of the Bay. Ship building and repair facilities are major contributors of toxic urban runoff. Studies have revealed high levels of zinc, copper, tributyltin, mercury, petroleum, chromium, lead, PAHs and PCBs in the sediments adjacent to these facilities. Such toxic runoff affects the unique and precious ecosystems of the Bay. In addition, it poses a threat to human health because chemicals bioaccumulate as they travel up the food chain. San Diego Bay has been posted for over a decade with warnings about eating bay fish because of elevated levels of mercury, PCBs and arsenic.

The NPDES permit system is one of the most important tools in the protecting the Bay from being inundated with such toxic pollutants. Pursuant to the Federal Clean Water Act, the San Diego Regional Water Quality Control Board (Regional Board) is authorized to issue NPDES permits to dischargers. The Regional Board also has the duty to enforce these permits. Effective enforcement of NPDES permits is vital to the entire purpose of the NPDES system, however, this task is not easy and it is not cheap. Under California's Porter Cologne Act, permittees are required to pay certain fees for the privilege of discharging wastes into regulated water bodies. The range of these fees reflects each discharger's potential effect on water quality. Fee revenue supports the majority of the costs of the Regional Boards' regulatory programs and is thus necessary to achieve the goal of ensuring permit compliance.

CONCERNS OVER LACK OF COMPLIANCE AND ENFORCEMENT

Since 1995, SDCK has worked to achieve one of its primary goals of reducing toxic chemicals from reaching the Bay by helping to ensure effective implementation of stormwater permits. Currently, SDCK is deeply concerned about the United States Navy's failure to comply with the permit issued for the Naval Station San Diego (NAVSTA) facility and the Broadway Complex. Based on the large size of the Naval Station and its significant industrial stormwater discharges, the facility is classified as a major discharger. This classification is based on the score the facility received pursuant to the NPDES Permit Rating Worksheet. Further, pursuant to Title 23, Section 2200 of the California Code of Regulations, this facility has been identified as having a Threat to Water Quality and Complexity rating of 1/A. This rating reflects the determination that the Navy's discharges involve discharges of priority toxic pollutants from several discharge points which could cause long-term loss of a beneficial use, such as aquatic habitat.

One of SDCK's main concerns is to ensure the law is uniformly applied to all permittees whose discharge affects the Bay. According to the Navy's own data, it have been discharging copper and zinc at concentrations in excess of the water quality standards allowed in its permit, pursuant to the California Toxics Rule ("CTR") for the past four years. More specifically, these numbers show that stormwater has been discharged into the Bay from this facility with **up to 394 times the acceptable concentration of copper**, and up to 99 times the acceptable concentration of zinc. Additionally, the Navy's reporting shows the presence of 27 chemicals, including such toxic chemicals as mercury and arsenic whose discharge is not authorized by the permit. Absent action from the Regional Board to address this issue, San Diego Coastkeeper was compelled to file suit against the Navy for the above violations in June 2007; the case is currently pending.

The Navy's excessive discharges into the Bay in violation of its NPDES permit justify the fees associated with compliance with this permit, and also highlight the need to encourage and assist the Regional Board in effectively enforcing this permit. Because federal agencies are not subject to civil penalties or fines for non-compliance with NPDES permit provisions it is especially important that the Navy implement structural and preventative measures to comply with permit requirements before violations occur.¹ Although reducing the amount of toxic pollutants in its stormwater discharge may burden the Navy, this is no excuse to completely disregard the laws applicable to it vis-à-vis its NPDES permit, especially when one considers the fact that federal facilities fail to comply with the Clean Water Act twice as frequently as private industry.²

In San Diego, the Navy's water quality record has been less than stellar. In 2006, Regional Board records indicate that the Navy was responsible for 68 spills totaling 351,000 gallons from 2002 to 2006.³ The Regional Board found that the Navy allowed at least 14 million gallons of sewage to discharge from the San Diego Naval Base to Chollas Creek for over two years. The Naval Base could have generated a fine of \$1 million if it had been subject to civil penalties.⁴ In addition, the Navy is currently evaluating the extent of a fuel plume spill that leaked 500,000 gallons into groundwater supplies in Point Loma.⁵

¹ U.S. Dept. of Energy v. Ohio 503 U.S. 607, 630,(1992)

² U.S. Dept. of Energy v. Ohio 503 U.S. 607, 629-630, 112 (1992)

³ http://www.signonsandiego.com/uniontrib/20061126/news_lz1n26theweek.html

⁴ http://www.foley.com/publications/pub_detail.aspx?pubid=4770

⁵ http://www.signonsandiego.com/uniontrib/20060208/news_6m8plume.html

ALTERNATIVES

One approach the Navy could take to reduce its impact on the Bay is to build more stormwater retention facilities. This would allow the Navy to treat and/or divert the contaminated water. This is the approach the neighboring commercial shipbuilding and repair facilities have taken.⁶

If this is not a feasible option for the Navy, a number of innovative alternatives exist in the realm of Low Impact Development (LID). LID is a system of practices intended to reduce the quantity of stormwater runoff produced and improve the quality of the remaining runoff by controlling pollutants at their sources. In essence, LID techniques seek to utilize or mimic the ways that natural vegetation and soil absorb and filter out pollutants in stormwater.⁷

CONCLUSION

SDCK recognizes the importance of clean water and how excessive toxins in the Bay affect our local economy, public health, and various natural resources. NPDES permits bestow a privilege, not a right to discharge into our region's waterbodies. SDCK welcomes the opportunity to work with the Navy to develop innovative ways to help them reduce the toxic pollutants in their stormwater and come into compliance with its NPDES permit(s). However, a further relaxation of enforcement or oversight will not suffice.

Thank you for the opportunity to comment on this critical issue to Bay and public health in San Diego.

Sincerely,



Gabriel Solmer
Legal Director

⁶ Stormwater is diverted into stormwater retention facilities and discharged into the San Diego Municipal Sewer System where it is treated.

⁷ A number of techniques are outlined in the PUBLIC WORKS TECHNICAL BULLETIN 200-1-36, published by the US Army Corps of Engineers, 30 SEPTEMBER 2005.