



REGIONALSAN

TAKING THE WASTE OUT OF WATER

Sacramento Regional County Sanitation District

June 19, 2015

Main Office

10060 Goethe Road
Sacramento, CA 95827-3553
Tel: 916.876.6000
Fax: 916.876.6160

Treatment Plant

8521 Laguna Station Road
Elk Grove, CA 95758-9550
Tel: 916.875.9000
Fax: 916.875.9068

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Mr. Adam Laputz
Assistant Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

Email to: RB5S-NPDES-Comments@waterboards.ca.gov

Re: Comments on Tentative Draft Order R5-2015-XXXX Amending Waste Discharge Requirements Order R5-2010-0114-03 (NPDES Permit No. CA0077682), Sacramento Regional County Sanitation District, Sacramento Regional Wastewater Treatment Plant, Sacramento County

Dear Mr. Laputz:

Following are comments of the Sacramento Regional County Sanitation District (Regional San) concerning "Order R5-2015-XXXX Amending Waste Discharge Requirements Order R5-2010-0114-03 (NPDES No. CA0077682)" (hereinafter "Tentative Resolution") and Attachment 1 to the Tentative Resolution (hereinafter "Tentative Permit"), transmitted on May 20, 2015.¹ We also enclose two technical memoranda that are referenced in these comments. Regional San recognizes that the Tentative Resolution and Tentative Permit were prepared under tight time constraints, and appreciates the efforts of Central Valley Regional Water Quality Control Board (Regional Water Board) staff to bring the matter to hearing before the end of July.

I. Comments on the Tentative Resolution

We recommend a technical correction in the Tentative Resolution. In the second sentence of paragraph 5, the date "11 April" should be changed to "29 October."

II. Comments on the Tentative Permit

A. Thermal Requirements and Continued Exceptions

1. General

Regional San supports the proposed findings on Thermal Plan exceptions, which are fully supported by the evidence. We observe that, on pages 9 and F-18, the Tentative Permit would include the finding and determination that

¹ All page numbers refer to the Tentative Permit.

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“This demonstration has shown the Effluent and Receiving Water Limitations for temperature in this Order are sufficient, . . .” Regional San agrees with this statement as currently written. We also note that section 316(a) of the Clean Water Act (CWA) and its implementing regulations suggest that there are two relevant determinations: one being that limitations based exclusively on the Thermal Plan are unnecessarily stringent; and the other being that the alternative limitations are sufficient. Practically, the first such conclusion is inherent in the second conclusion. But the Regional Water Board may properly, immediately before the sentences that begin with “This demonstration . . .” add a sentence that states: “The Discharger has demonstrated that Effluent and Receiving Water Limitations based on the Thermal Plan are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish, and wildlife in and on the body of water into which the discharge is made.”

Also, while agreeing with the proposed findings, Regional San also submits that the evidence would also support an alternative finding or determination under Code of Federal Regulations, title 40, section 125.73(c) based on absence of prior appreciable harm.

Last, we enclose a technical memorandum that is consistent with the current findings in the proposed amendment. (June 17, 2015 Technical Memorandum from Michael Bryan, Ph.D., to Robert Seyfried, *Operating the SRWTP Under the Currently Granted Thermal Plan Exceptions: Thermal Studies.*)

2. Modifications for Consistency and Clarity Related to Thermal Study

Adopted in December of 2010, Order R5-2010-0114 required the completion of a temperature study. As recognized in the Tentative Permit (for example on pp. F-15 - F-16), that study was completed. However, there is some confusion and ambiguity because the thermal study would, in the permit as amended, be referred to in the future, present, and past tenses. For example, on page F-127, the permit as amended would state: “This Order requires the Discharger to submit a workplan and time schedule for Executive Officer approval for development of a temperature study to evaluate the thermal effects of the discharge.” In contrast, on pages F-15 and F-16, it would describe the 2010 requirement for a temperature study, and completion of the study, as events that occurred in the past. We believe the confusion should be corrected with the following revisions to the Tentative Permit:

a. Revise the final sentence of section VI.C.1.i (p. 29) to read: “The results of these studies have been considered in this order.”

b. Revise section VI.b.2.d (pp. 32-33) such that the text reads, in its entirety: “Order R5-2010-0114 required the Discharger to complete a temperature study to evaluate the thermal effects of the discharge, and that study has been completed.” Alternatively, modify each sentence so that the sentences are in the past tense. (“The Discharger was required to submit . . .”, “The workplan was implemented . . .”, “The study included . . .”, “The Discharger consulted . . .”

c. Revise section VII.B.1.a of Appendix F (p. F-121) such that it reads in its entirety: “The USFWS and the NMFS requested studies to characterize fish behavior in the affected river to determine how fish behave in response to the discharge field and whether predator concentrations are elevated in the thermal discharge field. Order R5-2010-0114 required the Discharger to complete a study of the potential effect of the thermal discharge on

the receiving water, and included a reopener to allow modification based on consideration of results of the study. The Discharger submitted the study in March 2013, and the results are considered in developing this Order.”

d. Revise section VII.B.2.b of Appendix F (p. F-127) in the same manner as “b” above, and retain the final sentence that would be added in the Tentative Permit.

3. Minor Editorial Corrections

a. On the last line of page 8, insert “of” before “upstream.”

b. In sections VI.C.1.h (p. 29) and VI.C.2.d of Appendix F (p. F-15, second bullet), change “NFMS” to “NMFS.”

c. In the last paragraph of page F-4, delete “from the” following the case citation.

B. Copper Effluent Limitations and Related Findings

1. Mixing Zones

Regional San requests that the Regional Water Board grant mixing zones for meeting water quality criteria for copper. In the mixing zone analysis conducted by Regional San for the 2010 permit renewal, an acute mixing zone of 60 feet and chronic mixing zone of 350 feet downstream were found to be appropriate. The Regional Water Board found, on pages F-52 and F-54 of the existing permit (as reflected in the Tentative Permit), that the described mixing zones comply with the state’s *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP). The Tentative Permit proposes to carry forward the prior rationale denying mixing zones based on conclusions that the Sacramento Regional Wastewater Treatment Plant (SRWTP) can meet the effluent limitations without consideration of a mixing zone (pp. F-57 and F-52).² It is not correct to assume or conclude that the SRWTP will consistently meet the proposed copper effluent limitations of 7.4 µg/L as an AMEL and 10 µg/L as an MDEL. Data in the present record, including the data summarized in Table F-10 as revised (p. F-57), indicate that the SRWTP cannot meet the proposed limitations. Also, as with other constituents (e.g., salts), there has been a slight upward trend in copper effluent concentrations. This is likely due to the drought and increased water conservation. Therefore, the SRWTP may have more difficulty in the future complying with the proposed effluent limitations.³ There is assimilative capacity in the Sacramento

² The 2010 permit disallowed acute mixing zones for any pollutants for the additional reason that the Delta is impaired for unknown toxicity and has experienced a significant pelagic organism decline. (Tentative Permit, p. F-52.) This reason does not, Regional San submits, have to do with copper or a 60-foot acute mixing zone for copper. In addition, as discussed in the text, the 2010 permit’s conclusions that relate to mixing zones for copper assume that mixing zones are not needed for compliance. The data in the present record demonstrate that this assumption is not accurate at this time.

³ Regional San is pursuing the EchoWater Project. Although not designed for copper removal, the new treatment facilities may incidentally result in some copper reduction. However, the project will not come on line until years in the future, and its actual performance is not known.

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River, and Regional San requests mixing zones be allowed. The proposed limitations create risk of liability or compliance costs that are unnecessary for the protection of beneficial uses.

Mixing zones have been justified for copper. An enclosed memorandum describes effluent limitations for the appropriate mixing zones based on updated analysis since the 2010 order. (June 17, 2015 Memorandum to Bob Seyfried from Airy Krich-Brinton, *Copper Effluent Limits for the Sacramento Regional Wastewater Treatment Plant*.) The disallowance of a mixing zone for copper is not supported. (See also State Water Resources Control Board Order WQO 2004-0013.)

Regional San is aware of the time restrictions driving Regional Water Board action in this case and, while maintaining that mixing zones should be granted here, also anticipates working with Regional Water Board staff in evaluating this issue in the future.

2. Other Findings Related to Copper and Metals

The proposed amendment assumes that antibacksliding requirements and antidegradation policies apply to the effluent limitations for copper. (For example, pp. F-97, F-100, F-30.) Regional San agrees that if antibacksliding principles apply, there is an applicable exception, and if antidegradation applies, the policy is satisfied. However, Regional San does not believe the Regional Water Board should assume that antibacksliding and antidegradation are implicated by this action.

The copper effluent limitations in Order R5-2010-0114 were the subject of administrative challenge and court litigation. They were in that sense never “final.” The court found that the limitations were not lawfully adopted, and required that the limitations be vacated. For each of these reasons, the limitations from the 2010 Order are not the correct “baseline” for antibacksliding or antidegradation purposes. In Order R5-2014-0103, the Regional Water Board amended effluent limitations for coliform that were the subject of then-pending litigation. It stated: “To the extent that antibacksliding requirements may be applicable to limits not in effect at this time (and which became the subject of presently-unresolved litigation), the Central Valley Water Board finds that the seasonally-different total coliform effluent limitations are subject to one or more anti-backsliding exceptions” (Order R5-2014-0103, ¶ 11.) This Order thus effectively recognized that it is at least uncertain whether limitations that are under challenge are subject to antibacksliding rules. In addition, the amendment was not treated as triggering antidegradation. We believe that same approach is appropriate here. The Tentative Permit’s discussion and findings related to meeting antibacksliding requirements (pp. F-97 (bottom) and F-100), and antidegradation (p. F-30) should thus be deleted or, at minimum, qualified to explain that these requirements and policies are being addressed in the event they may apply in these circumstances. In other words, the Regional Water Board should delete these sections, or alternatively explain that antibacksliding and antidegradation are being addressed to the extent they may be applicable.

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Also, the Tentative Permit, at paragraph 2 on page F-30, states that the Regional Water Board is obligated to be fair and reasonable. We agree with this paragraph but observe that it is not essential and that the hardness values are supported without this paragraph having been included.

Thank you for considering our comments. If you have questions or need additional information, please contact Robert Seyfried of my staff at 916-876-6068 or seyfriedr@sacsewer.com

Sincerely,



Christoph Dobson

Director of Policy & Planning

Enclosures:

1. June 17, 2015 Technical Memorandum from Michael Bryan, Ph.D., to Robert Seyfried, *Operating the SRWTP Under the Currently Granted Thermal Plan Exceptions: Thermal Studies.*
2. June 17, 2015 Memorandum to Bob Seyfried from Airy Krich-Brinton, *Copper Effluent Limits for the Sacramento Regional Wastewater Treatment Plant.*