



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

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Sent via Electronic Mail to veronica.cuevas@waterboards.ca.gov

Sent via Electronic Mail to raul.medina@waterboards.ca.gov

Veronica Cuevas and Raul Medina
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Subject: California Association of Sanitation Agencies (CASA) Comments on Tentative NPDES Permits for Whittier Narrows and Pomona Water Reclamation Facilities

Dear Mr. Medina and Ms. Cuevas,

The California Association of Sanitation Agencies (CASA) appreciates the opportunity to provide comment on the Tentative Permits for the Whittier Narrow and Pomona Water Reclamation Facilities. CASA is a statewide association representing more than 100 municipalities, special districts, and joint powers agencies that provide wastewater collection, treatment, clean energy and water recycling services to millions of Californians. Our association does not routinely comment on matters within individual regions, except in circumstances such as this, where the proposed regional action could have significant statewide implications. To the extent that the terms being incorporated into these individual NPDES permits could affect how other regions approach toxicity, and could impact the promulgation of a forthcoming statewide plan or policy governing toxicity, all of CASA's members statewide have a significant interest the development and implementation of these permits. CASA has three primary concerns within these permits, as outlined in greater detail below.

1. Adoption of Permits with Numeric Effluent Limits for Toxicity Is Premature and Contrary to Existing State Water Board Precedent

Adoption of a permit that contains numeric effluent limits for toxicity and mandates use of the Test of Significant Toxicity (TST) in advance of the promulgation of a statewide policy on this issue is inappropriate and premature. As noted in comments submitted by the Sanitation Districts of Los Angeles County (LACSD), the current policy in effect for toxicity effluent limitations specifies inclusion of narrative effluent limitations with triggers for initiation of toxicity identification and reduction evaluation (TIE/TRE) procedures, consistent with precedential State Water Board Order WQO 2003-0012. There, the State Water Board found that the applicability of final numeric effluent limitations in permits for wastewater treatment plants discharging to inland waters, bays and estuaries is an issue of statewide importance that should be addressed in the statewide implementation plan (SIP). The State Water Board has been working with stakeholders, U.S. EPA and regional water boards to develop revised toxicity provisions for inclusion in a statewide water quality control plan through a public process, and



release of a revised draft is expected soon for public comment. An appropriate statewide plan will replace the current patchwork of regional water board practices with a consistent and standardized approach to toxicity. Adoption of numeric effluent limits for toxicity in an individual Regional Board permit is thus premature and interferes with a significant amount of work being done at the state level. CASA requests that the chronic toxicity limits contained in the tentative permits be removed and replaced with a narrative chronic toxicity limit and triggers, at least until such time as there is a comprehensive statewide toxicity plan to govern those terms.

2. ***Provisions Restricting How the TST Is Utilized Are Inappropriate and Entirely Inconsistent with Promulgated Methods and the Anticipated Statewide Plan***
 - A. ***Dischargers Must be Allowed to Conduct Multi-Concentration Tests, Dose Response Evaluations, and Use All 40 CFR Part 136 Testing Protocols for Compliance Purposes***

Several conditions within the permits improperly limit or restrict 40 Code of Federal Regulations (CFR) Part 136 *required* and recommended data evaluation procedures. Limiting the ability of a permittee to utilize the appropriate promulgated chronic toxicity testing protocols, including the availability of a multi-concentration test and dose response evaluations, will significantly increase the false positive rate when using the TST.¹ Moreover, prohibiting such activities is entirely inconsistent with what is expected to be contained in the statewide toxicity plan, and could result in confusion and the need to reopen this permit once such a plan is adopted.

Numeric limits based on a single effluent concentration chronic toxicity test using the TST, as prescribed in the tentative permit, are highly problematic and will inevitably lead to a substantially increased rate of “false positives.” Allowing a discharger to conduct multiple concentration tests and evaluate the dose-response relationship is one of the more critical and significant method-defined procedures for addressing this variability and validating data that has been acknowledged to be inherently variable. In recognition of this, interpretation of the 40 CFR Part 136 methods has called for evaluation of the dose-response relationship as necessary for ensuring that test results are reported accurately, and why USEPA has in the past suggested that multiple concentration testing be conducted for all NPDES effluent compliance determination tests. Thus, CASA concurs with the suggestions made by LACSD in its comments on the tentative permits and recommends that the permits be modified to include language that will specifically allow the permittee to monitor the chronic toxicity of the effluent using five or more effluent dilutions as well as utilize all 40 CFR Part 136 specified procedures, including evaluation of the dose-response relationship, to determine if results are reliable. These are vital quality assurance / quality control procedures that must be available to permittees. Moreover, it

¹ See Pomona Permit at Part VII.J, p. 26, “...the concentration-response relationship for the effluent and/or PMSDs shall not be used to interpret the TST result reported as the effluent compliance monitoring result. While the Permittee can opt to monitor the chronic toxicity of the effluent using five or more effluent dilutions (including 100% effluent and negative control) only the TST result will be considered for compliance purposes.”



is anticipated that these procedures will be available under the terms of the statewide toxicity plan when it is released, meaning any restrictions in these permits will be inconsistent with statewide policy.

B. Continued Monitoring for Compliance Purposes During Accelerated Testing is Inappropriate, and Does Not Serve to Address Any Underlying Toxicity Issues

Toxicity is not a pollutant, but an effect, and as such accelerated monitoring and the TIE/TRE process are the best methods of allowing a discharger to investigate and ultimately identify the toxicant. Requiring that TST results be reported as effluent compliance monitoring during these accelerated monitoring schedules and initiation of the TIE/TRE is inappropriate, counterproductive, and should not be included in the tentative permit for Pomona or Whittier Narrows.² Moreover, placing dischargers in immediate jeopardy of compliance violations is entirely inconsistent with what is expected to be contained in the statewide toxicity plan, and could result in confusion and the need to reopen this permit once such a plan is adopted. CASA has been working with State Water Board staff and numerous stakeholders in developing the statewide toxicity plan, and it is our understanding that after an initial toxicity violation, accelerated testing and/or TIE/TRE implementation will occur. During that time no further violations should be incurred provided that the permittee conducts the required and appropriate actions to address the exceedance. Toxicity efforts conducted after an identified exceedance should focus on identifying the cause of the exceedance and addressing it. Continued routine monitoring during accelerated testing and/or TRE plan implementation will not assist in achieving those goals, and will only serve to increase reported violations that could subject the discharger to liability without contributing anything toward actually identifying and controlling toxicity. Dischargers should not be liable for continued toxicity violations after triggering accelerated testing and initiation of the TRE.

We appreciate the opportunity to provide comments on the tentative permits, and feel free to contact me at alink@casaweb.org or (916) 446-0388 if you have any additional questions or concerns.

Sincerely,

Adam D. Link
CASA Director of Government Affairs

² See Pomona Permit at Part V.8, p. E-15, “During the TRE Process, monthly effluent monitoring shall resume and TST results (“Pass” or “Fail”, “Percent Effect”) for chronic toxicity tests shall be reported as effluent compliance monitoring results for the chronic toxicity MDEL and MMEL.”