

Fort Bragg Municipal Improvement District No. 1

The Fort Bragg Municipal Improvement District No. 1 (hereinafter Discharger or District) submitted comments on the draft NPDES permit (Order No. R1-2009-0030) on April 20, 2009. The comments identified errata, requested clarification of certain provisions of the draft Order, or requested minor changes to the draft Order. Errata identified and minor changes requested by the Discharger have been incorporated in the revised draft Order. The following are staff responses to significant comments from the Discharger:

Comment 1: Pollutant Minimization Program. The draft Order is not clear about what is being proposed/required under the Pollutant Minimization Program (PMP) on page A-6 (Definitions). Please clarify, keeping in mind that the Fort Bragg Municipal Improvement District does not have available funding for any additional monitoring requirements or plans.

Response: The requirement to develop and conduct a Pollutant Minimization Program, found on page 19 of the draft Order, is not a new requirement for the District. This requirement is included in the District's previous permit, WDR Order No. 2005-0096, and is a standard requirement in all NPDES permits. The District is required to develop and conduct a PMP only under the following circumstances: 1) there is an effluent limitation for a pollutant, 2) the effluent limitation is less than the reported Minimum Level or Method Detection Limit, 3) the concentration of the pollutant is reported as Detected, but not Quantified (DNQ) or Not Detected (ND), and 4) there is evidence, such as health advisories for fish consumption, presence of whole effluent toxicity, and results from benthic or aquatic tissue sampling, that the pollutant is present in the effluent above the calculated effluent limitation. The PMP is more fully described on pages 18-19 of the 2005 Ocean Plan.

Comment 2: Influent Monitoring. Table E-3 of the Monitoring and Reporting Program requires daily monitoring of the influent with a monthly reporting of maximum daily and mean daily flow rates. District staff has previously discussed with Regional Board staff, especially as part of the Headworks Construction Project that influent metering was not required and no provisions were or could be made to properly locate an influent meter. District staff requests this be eliminated from the new permit; effluent flows are still available to identify what goes through the treatment plant.

Response: The draft Order has been revised to reflect this request.

Comment 3: Total Chlorine Residual. The District notes what appears to be an inconsistency between Table E-4 of the MRP and Footnote #4 on page E-4 of the MRP. Table E-4 requires that total residual chlorine is to be monitored daily by "grab" sample. However, Footnote #4 on page E-4 indicates that monitoring for this constituent shall be "continuous" using a method with a reporting limit of 0.05 mg/L or as low as technically feasible. The previous permit required daily "meter" sampling with a higher detection limit of 0.1 mg/L. In addition, the required detection limit of 0.05 mg/L for total residual chlorine is too low, District staff would like a more realistic detection limit – at least 0.1 mg/L and request a modification from the draft to the final permit.

Response: The requirement for continuous effluent monitoring for total chlorine residual was in error, as was the requirement to use a method with a minimum detection limit of 0.05 mg/L. Footnote #4 of the draft Order has been revised to read as follows:

Total residual chlorine shall be monitored daily at a point following dechlorination and prior to discharge to the Pacific Ocean (Discharge Point 001). The Discharger shall monitor total residual chlorine in the effluent using a method with a reporting limit no greater than 0.1 mg/L.

Comment 4: Monitoring Frequency for Ocean Plan Table B Monitoring. The District requests that monitoring for the Ocean Plan Table B analytes be reduced from annually to once during the life of the permit. The Proposed Draft Amendments to the Standard Monitoring Procedures (Appendix III) of the California Ocean Plan (August 2006) proposes a minimum monitoring frequency of once per permit term for discharges less than 10 MGD, and our request of a reduction to once during the permit term would fit in with the proposed amendment.

Response: The draft Order has been revised to reduce the monitoring frequency for Table B pollutants to once during the life of the permit for those constituents where effluent limitations have not been established in this Order. Monthly effluent monitoring for copper and zinc and daily monitoring for total residual chlorine and annual monitoring for chronic toxicity are retained in the draft Order.

Comment 5: Discharge Prohibition III.A. The District is unclear of the justification for Prohibition III.A, as explained on page F-12 of the Fact Sheet, which reads:

***Prohibition III.A.** The discharge of any waste not disclosed by the Discharger or not within the reasonable contemplation of the Regional Water Board is prohibited.*

This prohibition is retained from the previous Order (Order No. R1-2005-0096) and is based on the Basin Plan, and State Water Board Order WQO 2002-0012 regarding the petition of WDRs Order No. 01-072 for the East Bay Municipal Utility District and Bay Area Clean Water Agencies. In State Water Board Order No. WQO 2002-0012, the State Water Board found that this prohibition is acceptable in Orders, but should be interpreted to apply only to constituents that are either not disclosed by the Discharger, or are not reasonably anticipated to be present in the discharge but have not been disclosed by the Discharger. It specifically does not apply to constituents in the discharge that do not have "reasonable potential" to exceed water quality objectives.

The State Water Board has stated that the only pollutants not covered by this prohibition are those which were "disclosed to the Ordering and ... can be reasonably contemplated." [In re the Petition of East Bay Municipal Utilities District et al., (State Water Board, 2002) Order No. WQO 2002-0012, p. 24] In that Order, the State Water Board cited a case which held the Discharger is liable for discharge of pollutants not "within the reasonable contemplation of the permitting authority..., whether spills or otherwise,..." [Piney Run Preservation Assn. v. County Commissioners of Carroll County, Maryland (4th Cir. 2001) 268 F. 3d 255, 268.] Thus the State Water Board authority provides that, to be permissible, the constituent discharged (1) must have been disclosed by the Discharger and (2) can be reasonably contemplated by the Regional Water Board.

Whether or not the Discharger reasonably contemplates the discharge of a constituent is not relevant. What matters is whether the Discharger disclosed the constituent to the Regional Water Board or whether the presence of the pollutant in the discharge can otherwise be reasonably contemplated by the Regional Water Board at the time of Order adoption.

The Discharger states that it appears that this is left open to interpretation and appears to leave the District in a precarious position. How is the District supposed to disclose a pollutant whether or not the presence can be reasonably contemplated? What is this prohibition really aimed at?

Response: As stated in the Fact Sheet, for the discharge of a waste to be permissible, it must have been disclosed by the Discharger and be reasonably expected by the Regional Water Board to be received or accepted for treatment by a municipal wastewater treatment facility. This prohibition is intended to prohibit discharges of wastes such as bulk loads of toxic chemicals, bulk loads of petroleum products or fuels, bulk loads of pharmaceuticals, bulk loads from hazardous waste cleanups, drilling

fluids, bulk loads of agricultural chemicals, explosive material, or any other substance discharged into the WWTP which, if discharged directly, would alter the chemical, physical, biological, or radiological integrity of the water. In its report of waste discharge, the District did not indicate in its NPDES application that it accepted wastes other than municipal sewage.

Comment 6: Wet Weather Flow. The District questions why there is no reference to the 2.2 MGD wet weather flow on page F-13 of the Fact Sheet. There is a reference under the footnote No. 6 on the next page (page F-14).

Response: Prohibition III.F (section IV.A.6 of draft Order) limits the mean dry weather flow to the WWTP to the treatment facility's design flow of 1.0 mgd. The mean dry weather flow is calculated as the lowest consecutive 30-day period without rainfall. There is no similar flow restriction in the draft Order applicable during wet weather. The reference to the wet weather treatment capacity in Footnote 6 on page F-14 states the basis for calculating mass-based effluent limitations for BOD and total suspended solids when the plant flow exceeds 1.0 mgd.