

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESPONSE TO WRITTEN COMMENTS

ON THE REISSUANCE OF WASTE DISCHARGE REQUIREMENTS FOR:

Mt. View Sanitary District
Martinez, Contra Costa County
NPDES Permit No. CA0037770

-
- I. Mt. View Sanitary District - August 9, 2006**
II. United States Environmental Protection Agency - August 14, 2006
III. Bay Area Clean Water Agencies (BACWA) - August 14, 2006
IV. Editorial Changes
-

Note: The format of this staff response begins with a brief introduction of the party's comments, followed with staff's response. Interested persons should refer to the original letters to ascertain the full substance and context of each comment.

I. Mt. View Sanitary District (District)

District Comment 1.

The District requests "that wet weather months be the period from November 1 through May 31 when Total Coliform Bacteria limits of 240 MPN/ 100 ml (moving median) and 10,000 MPN/ 100ml (Any single sample) will apply. In the past years, significant storms occurred in May and are expected to occur in the future."

Response 1.

We have made the suggested changes in section IV.A.1.d, Total Coliform Bacteria, of the revised Tentative Order. This change will not result in any degradation since the bacteria limits are also conditioned upon discharge flows greater than 1.85 mgd, which occur only during wet weather events.

District Comment 2.

The District requests "that Un-ionized Ammonia Limitations (3,d) be deleted from our NPDES permit. . ."

Response 2.

We are denying this request. This is because these proposed limits are based on the Basin Plan's receiving water objective requirements for un-ionized ammonia (Chapter 3).

District Comment 3.

The District believes that the language in the Compliance Determination section, specifically Average Monthly Effluent Limitation (AMEL), of the Tentative Order "is somewhat confusing and contradictory," and "requests that the sentence 'though the Discharger will be considered out of compliance for each day of that month for that parameter' be deleted."

Response 3.

We are denying this request. Please see Response 3 to BACWA.

District Comment 4.

The District requests that “the most recent provision developed by Regional Board staff for the SSMP replace the language in the T.O.”

Response 4.

We concur, and we have changed provision VI.C.7.b, Sanitary Sewer Management Plan, in the revised Tentative Order to be consistent with the permits previously adopted by the Regional Water Board in August 2006.

District Comment 5.

The District requests that the “Oil and Grease limitations be removed from the T.O.”

Response 5.

We are denying this request. This is because these proposed limits are based on the Basin Plan’s required effluent limitations for oil and grease that apply to all treatment facilities (Table 4-2).

District Comment 6.

The District requests that the language in prohibition III.B be changed.

Response 6.

Please see the following response to US EPA Comment 4.

II. United States Environmental Protection Agency (US EPA)

US EPA Comment 1.

“EPA continues to have concerns that the Regional Board is applying a site-specific WER to the copper CTR default value, and calculating limits that are less stringent than those based on the scientific information developed in the site-specific objective process. In past discussions with Board Staff, we have presented several legally and technically sound options for effluent limits consistent with the draft SSO findings. While Board staff opposed the suggestion for more conservative WERs presented in our comment letters for the permits adopted in August, at a meeting on July 27, we discussed with Board staff an option that may be acceptable by both Board staff and dischargers. Another option would be to use the CTR default WER of 1.0, and defer the use of the site-specific WER until the SSO process moves ahead.”

Response 1.

We have not made the changes suggested since we have concerns about the legality of U.S. EPA’s suggested approach. We have calculated the proposed limits correctly in accordance with the CTR and Basin Plan. The proposed limits are based on water quality objectives (WQOs), which are a function of water effects ratios (WERs). WERs account for how local water conditions attenuate the potential toxic effects of a pollutant. When site-specific information is unavailable, a default WER of 1.0 is used. However, site-specific studies for copper in San

Francisco Bay are recently available; they were completed in conjunction with the development of copper SSOs. The new information supports a WER of 2.4.

US EPA Comment 2.

US EPA believes that “if the permit applies a site-specific WER from the SSO study in advance SSO adoption, alternate limits should be placed in the permit, as was done in the permits adopted in August.”

Response 2.

We are denying this request. However, we are shortening the term of the permit, which we believes addresses U.S. EPA’s concern for the reasons explained below.

In this case, we believe that an alternate limit should not be included in the Tentative Order since it overly complicates the permit, and will put in place an overly stringent copper limit that may not be necessary to protect water quality. The District is a shallow water discharger. The permits adopted in August 2006 were either for deepwater dischargers, or shallow water dischargers who had conducted a site-specific translator study. This means that those alternate limits were calculated based upon the 2.4 WER, the copper SSO-adjusted saltwater criterion, and a site-specific translator. The District was not able to conduct a site-specific translator because of recently implemented tide gates that allow saltwater flows into the marsh. This changed the District’s receiving water from fresh to estuarine, which in turn made the applicable criteria more stringent. Provision 5 of the Tentative Order requires the District to conduct a copper translator study in accordance with US EPA guidelines. Upon completion of this study, the alternate WQBELs based on the copper SSO will be determined. Therefore, to address U.S. EPA’s concern that copper limits be reevaluated in a timely manner, we are including an expiration date for this permit of May 17, 2010, which is when interim copper limits in other permits sunset, and which is when we fully expect the copper SSO to be in place and effective.

US EPA Comment 3.

US EPA believes that provision VI.C.6, Copper Compliance Schedule, should be deleted.

Response 3.

We have made changes to the revised Tentative Order as suggested.

US EPA Comment 4.

US EPA states that “if blending does not occur at this facility, paragraph III.B. under discharge prohibitions should be deleted.”

Response 4.

We concur. We have deleted the second paragraph of prohibition III.B in the revised Tentative Order.

US EPA Comment 5.

US EPA states that “Section VI.C.8.b, regarding the Sanitary Sewer Management Plan, should be amended to include the new standard language incorporated into the permits adopted by the Board in August.”

Response 5.

Please see response to District's Comment 4.

US EPA Comment 6.

US EPA request that "the changes made to the permits adopted in August that describe the permitted facility as the treatment plant and the collection system should be made to this draft permit."

Response 6.

We have made the suggested changes in the revised Tentative Order.

US EPA Comment 7.

"US EPA does not see any justification for giving an exemption to chronic toxicity monitoring to a major POTW discharger," and believes that "chronic toxicity monitoring should be placed in the permit."

Response 7.

We revised the Tentative Order to require that the District conduct screening phase monitoring for chronic toxicity, consistent with the minimum requirements in the SIP, before the next permit reissuance. In our view, this is a reasonable balance of monitoring for this facility since it is unlikely that it will exhibit significant chronic toxicity in the receiving water. This is because the District (a) has advanced secondary treatment, (b) discharges on average around 2 mgd, and (c) does not accept significant amounts of industrial waste.

US EPA Comment 8.

US EPA states "Federal regulations at 40 CFR 122.47(a)(3) state that compliance schedules exceeding one year must contain interim requirements and the dates for their achievement. The permit should include numeric interim limits at least as stringent as current performance," because "the draft permit authorizes a compliance schedule 10 years from the effective date of the permit (F-19)."

Response 8.

We have not made the suggested change. In the case of dioxin-TEQ, it is impossible to calculate an interim performance based limit because the District has only collected six samples for this pollutant. In order to develop an adequate data set to evaluate current performance, and set an interim limit in the next permit, this Order requires twice/yearly monitoring. While 40 CFR 122.47(a)(3) requires interim requirements, it does not require interim limits. Because the Tentative Order grants the District a compliance schedule for dioxin-TEQ, it requires that it (a) implement a pollution minimization program to reduce loadings of dioxin-TEQ to its treatment plant, (b) support the development of a dioxin-TEQ TMDL, and (c) monitor twice per year. In our view, these interim requirements satisfy 40 CFR 122.47(a)(3), and are reasonable for this discharge.

US EPA Comment 9.

US EPA recommends “deleting the first part of the first sentence [provision VI.C.5, Copper Translator Study] which reads ‘To develop information that may be used...’ and replacing those words with ‘If the discharger wishes the Board to consider site-specific translators...’”

Response 9.

We changed the revised Tentative Order as suggested.

US EPA Comment 10.

US EPA recommends changing “the footnote on page E-5 regarding mercury . . . to be consistent with permits adopted in August.”

Response 10

We have made the suggested changes in the revised Tentative Order.

III. Bay Area Clean Water Agencies (BACWA)

BACWA Comment 1.

“BACWA supports and incorporates by reference the comments make by Mountain View Sanitary District in its comment letters.”

Response 1.

Comment noted. See response to the District’s comments.

BACWA Comment 2.

BACWA believes that “The 2.4 copper WER should be used for calculation of the final copper effluent limit.”

Response 2.

We concur, and the 2.4 copper WER was used to calculate the proposed copper effluent limits contained in the Tentative Order (Fact Sheet, p F-21).

BACWA Comment 3.

Bay Area Clean Water Agencies (BACWA) indicates that the permit should not contain any provisions relating to how compliance will be determined because the proposed language prejudices violations and the number of violations, which should not be done without the benefit of a hearing where evidence can be presented and weighed. BACWA points out that even an EPA comment letter on another template permit found such language prejudging an outcome to be inappropriate. See Comment letter from USEPA Region IX on Proposed Permit for Fallbrook Public Utility District (Aug. 3, 2005) (‘determinations about whether a discharge violates the Clean Water Act and/or a permit are appropriately made on a case by case basis.’) Thus, blanket compliance determinations language applicable to all permits is inappropriate. This prejudgment of the number of permit violations is improper particularly when it is contrary to ... Mandatory Minimum Penalties (MMP) statute [which] does not find every exceedance to be a ‘violation’ and does not find 31 or 7 ‘violations’ from 31 or 7 days of exceedances, but

merely one violation. ... BACWA requests the Compliance Determination language be included in regional or statewide policy documents, instead of individual permits.

Response 3.

We are denying BACWA's request. One of BACWA's main concerns appears to be that it believes the compliance determination language would find 31 violations, and therefore, would result in 31 MMPs if the District violated an average monthly effluent limitation. However, this is not the case. The Tentative Order indicates that an exceedance of an average monthly effluent limitation will represent a single violation, though the Discharger will be considered out of compliance for each day of that month. In other words, one violation would equate to one MMP. In our view, this is an accurate assessment of compliance determination. A violation of an average monthly limit is allowed to be deemed a violation of each of the days of that month. *Atlantic States Legal Foundation, Inc. v. Tyson Foods*, 897 F.2d 1128 (1990).

In regards to BACWA's reference to U.S. EPA's August 3, 2005, letter in support of its contention, we note that U.S. EPA's quote is taken out of context. U.S. EPA's statement was in relation to the San Diego Regional Water Board's proposal to exempt violations of discharges to land from the Clean Water Act. It was not in relation to the compliance determination language in the permit template. In our view, the language as proposed, is appropriate for determining compliance with limitations contained in the Tentative Order.

However, consistent with permits adopted in August 2006, we have revised this section and Attachment A of the Tentative Order to incorporate new language that is consistent with the SIP related to the use of multiple samples in compliance determinations and a definition for "reporting levels."

IV. Editorial Changes

- E.1** We added a map that identifies the monitoring locations (Attachment 1 of the Monitoring and Reporting Program (MRP)), and corrected the table in section II. of the MRP accordingly, and all other respective areas of the Tentative Order.
- E.2** Deleted prohibition III.D because it's already contained in Standard Provisions and Reporting Requirements, Attachment G.
- E.3** We changed the monitoring frequency of Oil and Grease in the effluent from monthly to quarterly.
- E.4** We changed the temperature units from Fahrenheit to centigrade
- E.5** We changed the monitoring frequency of Ammonia in the receiving water from monthly to quarterly.
- E.6** We included 'copper and dioxin-TEQ' in the first sentence of the first paragraph in provision VI.C.3.

- E.7.** We added two sentences to the end of VI.A.2 to clarify that duplicative requirements in standard provision attachments do not constitute separate requirements.
- E.8.** We corrected the Fact Sheet basis for the Pollution Minimization Program to be 2.2.1, instead of 2.1, of the SIP.
- E.9.** We corrected the ML for mercury at I.C. of the Monitoring and Reporting Program to 0.0005 µg/l instead of 0.002 µg/l. U.S. EPA Method 1631 specifies a minimum level of quantification (or ML) at 0.5 ng/l.