

Lila Tang, Chief  
NPDES Permits Division  
California Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

May 16, 2006

Dear Ms. Tang:

Thank you for the opportunity to comment on the tentative order for the proposed NPDES permit reissuance for the Sanitary District No. 5 of Marin County (permit number CA0037427). The purpose of this letter is to present EPA's comments on the draft permit.

The permit contains limits for total coliform bacteria of 240 MPN/ 100 ml and 10,000 MPN/100 ml. However the fact sheet does not explain the basis for these limitations. Please add a section in the fact sheet explaining how these limits protect designated beneficial uses and how the limits implement the water quality objectives contained in Tables 3-1 and 3-2 of the Basin Plan. The fact sheet should also describe how the discharger complies with Table 4-2 of the Basin Plan.

The draft permit allows interim limits and compliance schedules for copper and cyanide. The SIP requires that interim limits be assigned based on performance or the previous permit limit. For cyanide the previous limit was used as an interim limit, but for copper, the draft permit assigns an interim limit based on performance, even though the water quality-based limit contained in the previous permit is more stringent. This is justified in the fact sheet (page 24): "However the Discharger has asserted that it is infeasible to achieve immediate compliance with the previous permit effluent limit. An interim limit based on recent performance is necessary." Regional Board staff should explain the basis pursuant to the SIP for allowing the less stringent performance-based criteria, and should provide an explanation of how the interim limits meet Federal anti-backsliding requirements. If Regional Board staff believes the SIP and Federal regulations allow the relaxation of a water quality-based limit from the previous permit to a performance-based interim limit based on infeasibility, Regional Board staff should provide an independent evaluation of infeasibility, rather than relying on the discharger's "assertion."

The SIP requires chronic toxicity monitoring to determine compliance with basin plan objectives. To comply with the SIP, the permit should either require chronic toxicity monitoring, or explain why Regional Board staff have concluded there is no reasonable potential for chronic toxicity. If chronic toxicity data was collected in the past, this data should be summarized in the fact sheet. The SIP states:

A chronic toxicity effluent limitation is required in permits for all discharges that will cause, have reasonable potential to cause, or contribute to chronic toxicity in receiving waters.

To determine compliance with the chronic aquatic life toxicity objective in a RWQCB basin plan, or an effluent limitation based on an objective, the RWQCB shall require, in a permit or other appropriate order, the use of short-term chronic toxicity tests...

Please check Section IV. A. 6 footnote 4, which describes alternate cyanide effluent limitations to ensure that the wording is consistent with other recently-issued permits.

We request the addition of the following sentence to Attachment E (MRP), paragraph I.B., prior to the last sentence of the paragraph. "Equivalent methods must be more sensitive than those specified in 40 CFR 136, must be specified in the permit, and must be approved for use by the Executive Officer, following consultation with the State Water Quality Control Board's Quality Assurance Program." EPA has made this comment on other recently proposed permits, and Board staff has incorporated this language into these permits. Also, please note that there is a mistake in the lettering of the paragraphs in this section on the public comment draft.

Thank you for your consideration of these comments. If you have any questions, please contact me or Nancy Yoshikawa at (415) 972-3535.

Sincerely,

Douglas E. Eberhardt, Chief  
CWA Standards and Permits Office