



OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

December 17, 2018

SAN DIEGO RM:008
2018 DEC 19 AM 10:33

CERTIFIED MAIL – 7005 0309 0005 7237 2950
RETURN RECEIPT REQUESTED

California Regional Water Quality Control Board, San Diego Region
Attention: Vicente Rodriguez
2375 Northside Drive, Suite 100
San Diego, California 92108-2700

Subject: Comment - Tentative Order No. R9-2019-0012

Dear Mr. Rodriguez:

The United States Section of the International Boundary and Water Commission (USIBWC) has reviewed the above referenced Tentative Order. The tentative order proposes to replace the interim influent limitations contained in Order No. R9-2014-0009, Section VI.C.5.a.ii, Table 7, Interim Influent Limitations, with final influent limitations proposed for the USIBWC South Bay International Wastewater Treatment Plant (SBIWTP) Maximum Allowable Headworks Allocations Report (MAHA Report), dated February 13, 2018, and submitted to the San Diego Water Board on June 18, 2018.

The USIBWC agrees that the results of our studies into plant removal efficiencies warrants a more accurate listing of the maximum influent loadings that the SBIWTP can efficiently handle and the changes to Table 7, however, the USIBWC respectfully opposes the Tentative Order No. R9-2019-0012, Amending Order No. R9-2-14-0009 (NPDES No. CA 0108928) in addressing the MAHA. The USIBWC has the following comments in relationship to the respective permit.


1. The NPDES permit is intended to limit and prevent contaminants in effluent being discharged into the waters of the United States. The proposed Amendment creates limitations on the influent being discharged into the USIBWC treatment facilities and creates a basis for a potential permit violation that is unrelated to effluent discharged from the treatment plant but instead related to the quality of influent entering the plant.
2. As noted in the basis for order amendment, the changes to Section V.A.c.5.a.1 is to “ensure an adequate pretreatment program is implemented in Tijuana” and vests the USIBWC with the duty to take steps to create and implement such a program to comply with MAHA limitations. Pursuant to the Clean Water Act regulation regarding establishment of a pretreatment program, 40 C.F.R. 403.8, such a program can only be established if the Publicly Owned Treatment Works implementing the program has the legal authority to enforce pretreatment program requirements in a Federal, State, or local court. The USIBWC, and any U.S. entity, lacks that legal authority because dischargers to the sewer infrastructure leading to Mexican and USIBWC facilities are located in another sovereign

country (Mexico) and are not subject to U.S. federal, state, or local court jurisdiction. Therefore, inclusion of a pretreatment program requirement in the USIBWC's permit where the dischargers are not subject to U.S. jurisdiction is contrary to Clean Water Act regulations.

3. USIBWC will withdraw this protest to the above identified Tentative Order if the Board amends the Permit as follows:
 - a. strike "comply" from the first sentence of V.A.c.5.a.i.;
 - b. add the following verbiage to V.A.c.5.c.i.: after "the Discharger shall work with CILA to take all appropriate actions, subject to the discretion and authority of the Discharger, to prevent the discharge of untreated industrial wastewater in the Tijuana sewage collection system...";
 - c. add the following language as V.A.c.5.c.vii: "Influent exceedances of the MAHA, failure by Mexico to take remedial steps to prevent MAHA exceedances, failure by Mexico to implement a pretreatment program in Tijuana, or actions that occur outside of the United States that cause non-compliance with MAHA limitations shall not be construed as violations of this permit."

Thank you for your interest and support in these efforts and if you have any questions, please contact me at (915) 832-4749, or have your designee contact Mr. Wayne Belzer, Environmental Engineer, at (915) 832-4703 or by email at wayne.belzer@ibwc.gov.

Sincerely,



Jose A. Nuñez, P.E.
Principal Engineer