



June 23, 2014

Mr. Bruce Wolfe, Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 92612

Attention: Susan Glendening

Subject: Tentative Order for Discharges of Water from Drinking Water Supply Distribution, Transmission, and Groundwater Systems General NPDES Permit

Mr. Wolfe:

The San Mateo Countywide Water Pollution Prevention Program (SMCWPPP) is providing comments on behalf of its member agencies regarding the Tentative Order (TO) for Discharges of Water from Drinking Water Supply Distribution, Transmission, and Groundwater Systems General NPDES Permit released on May 8, 2014 (Regional Potable Discharge General Permit). SMCWPPP is a program of the City/County Association of Governments of San Mateo County, a joint powers agency with the county and each of the 20 cities and towns as members.

As you are aware, due to the scope and coverage of municipal stormwater permits, SMCWPPP's member agencies that function as water utilities have been subject to potable water system discharge requirements for many years. Most recently, these requirements have been specified in Provision C.15 of the MRP. At the February 2, 2014, MRP 2.0 Steering Committee meeting, your staff acknowledged there are no specific problems with current MRP potable water discharge requirements or with compliance by the MRP Permittees. We agree and appreciate this acknowledgement. At the same meeting, staff further indicated their intention that requirements in the proposed General Permit would not be more burdensome to municipalities regulated under the MRP. We also very much appreciate the staff's statements in this regard, but believe clarification of the Regional Potable Discharge General Permit's fact sheet is necessary to better effectuate this.

In addition, as you know, on June 6, 2014, State Water Board (SWB) staff released for public comment a potable water discharge general permit that would apply state-wide and supersede all Regional Water Board permits that cover potable water discharges (excluding municipal stormwater permits). The SWB permit will allow municipal stormwater permittees to file a notice of non-applicability if their potable water discharges are already being effectively regulated by Regional Water Boards under their existing stormwater permits, such as is the case under the MRP. The SWB's permit is currently scheduled for adoption on September 23, 2014, after the scheduled Region 2 Regional Potable Discharge General Permit adoption date of August 13th. Given that the SWB's proposed general permit adoption process is proceeding, SMCWPPP requests that Region 2 put its adoption process on hold to prevent the unnecessary waste of public resources on redundant permitting actions. (We understand Region 5 has already decided to do this as a matter of efficiency and to avoid unnecessary duplicative regulation.)

In the event that the SWB does not adopt their draft permit, we request changes in the following three areas relative to the Region 2 TO:

1) The fact sheet portion of the TO needs to be modified slightly (or a new finding made) to explicitly state that discharges from drinking water systems permitted under another NPDES permit that provides an equivalent level of protection, such as the MRP, are exempt from seeking coverage under the Regional Potable Discharge General Permit.

Item J in Section IV of the Fact Sheet (Rationale for Discharges Not Covered – Discharges Permitted Under Other NPDES Permits) currently states:

“A Discharger would not need to seek coverage under this Order if its drinking water discharges are permitted under another NPDES permit provided that the other permit has requirements as stringent as, or more stringent than, this Order.” (emphasis added)

The “as stringent as, or more stringent than” language currently in the fact sheet is inconsistent with the staff’s previously stated intent and could ultimately limit the Regional Board’s discretion with regard to how potable water discharges are regulated under municipal stormwater permits in the future, including under reissued terms of the MRP. We believe substituting the “equivalent level of protection” terms for this language is in everyone’s interest, will help preserve the Regional Board’s flexibility in the stormwater permitting context, and help avoid future disputes and controversy. It is also easily justified – as discussed below in Comment 2, these potable water discharges are already defined as de minimis by the SWB and pose a minimal threat to water quality.

2) To the extent that the Regional Potable Discharge General Permit will regulate non-MRP dischargers, some of whom will need to coordinate with MRP permittees, or inform future requirements in municipal stormwater permits, SMCWPPP’s members suggest that the numeric effluent limit (NEL) for chlorine residual proposed in this permit be eliminated and replaced by a “benchmark” (or action level) as included in the MRP.

Potable water discharges have been effectively managed under MS4 permits since the late 1990s using industry standard Best Management Practices (BMPs). During that time, no evidence has emerged to suggest the BMP-based approach and benchmark-based monitoring and reporting practices are not effective in protecting water quality. For this reason, the TO provides no documentation of actual water quality problems caused by the thousands of these essential potable water system discharges that occur every year throughout the region. There is also no information presented demonstrating that NELs have been appropriately calculated on a non-water quality basis or that they would be any more effective than benchmarks or action levels in ensuring that BMPs are effectively implemented for protecting water quality.

Indeed, these potable water system discharges have already been defined by the State Water Board as “de minimis” and “not likely to cause or have a reasonable potential to cause or contribute to an adverse impact on the beneficial uses of receiving waters.” This definition is codified in the California Code of Regulations (CCR Title 23 Division 3 Chapter 9 Article 1 Section 2200 Subdivision (b) (9) Category 3 footnote 18).

18 De minimis discharge activities include, but are not limited to, the following: ... discharges from fire hydrant testing or flushing; discharges resulting from construction dewatering; discharges associated with supply well installation, development, test pumping, and purging; discharges resulting from the maintenance of uncontaminated water supply wells, pipelines, tanks, etc.; discharges resulting from hydrostatic testing of water supply vessels, pipelines, tanks, etc.;

discharges resulting from the disinfection of water supply pipelines, tanks, reservoirs, etc.; discharges from water supply systems resulting from system failures, pressure releases, etc.; and other similar types of wastes that have low pollutant concentrations and are not likely to cause or have a reasonable potential to cause or contribute to an adverse impact on the beneficial uses of receiving waters yet technically must be regulated under an NPDES permit. (emphasis added)

The basis for the proposed NEL for chlorine residual is detailed in Fact Sheet Section VI.B.3.b.i. Here, Board staff appears to be asserting that since the typical (required) concentration of chlorine residual in a water distribution system is at a level above the U.S. EPA's acute water quality criterion, reasonable potential for toxicity therefore exists for discharges of chlorinated waters within 300 feet of receiving waters. While it is true that water purveyors are required to maintain a chlorine residual in their distribution systems, the appropriate point of application for a Reasonable Potential Analysis (RPA) is after the application of dechlorination BMPs. Following application of industry standard dechlorination BMPs, chlorine residual concentrations would be reduced to below the detection level of handheld instruments (~ 0.13 mg/L) and therefore not exhibit reasonable potential.

The Fact Sheet in section VI.B.4 (p. F-22) also cites the following rationale as the basis for the finding of reasonable potential for toxicity and inclusion of Water Quality-Based Effluent Limitations (WQBELs):

“This Order imposes numeric WQBELs for total residual chlorine because it is feasible to calculate numeric WQBELs for these pollutants. Also, field test kits are readily available to measure them, so it is feasible to collect representative total residual chlorine data.”

But this is circular reasoning and puts the cart before the horse relative to the need for WQBELs. The mere existence of a water quality objective for a given constituent, in this case the USEPA water quality criterion for chlorine residual, does not constitute sufficient grounds for imposition of a numeric WQBEL. Similarly, the availability of a test method, in this case field test kits, does not constitute sufficient grounds for imposition of a numeric WQBEL. (By that reasoning, NPDES permits would all include numeric WQBELs for all 126 of the California Toxics Rule constituents since there are water quality objectives and established test methods for each constituent.) Even if this were not the case, with respect to setting an appropriate WQBEL, it is questionable whether the U.S. EPA water quality criterion for chlorine residual (EPA 440/5-84-030, January 1985) is applicable to these intermittent potable water system discharges. The referenced document states “These criteria are intended to apply to situations of continuous exposure ...” (p. 2).

We also disagree with the characterization of the “feasibility” of imposing numeric WQBELs in this urban runoff-related context. As you know, in 2005 and 2006 the SWB convened a Blue Ribbon Panel of Experts to address the feasibility of NELs in California's storm water permits (“The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater Associated with Municipal, Industrial, and Construction Activities (June 19, 2006)). For multiple reasons, the Panel concluded that NELs were infeasible. Subsequently NELs were therefore deleted from the Construction General Permit (Order No. 2009-0009-DWQ) and subsequent amendments and also from the Industrial Stormwater General Permit (Order No. 2014-0057-DWQ).

Finally, from a practical standpoint of burden and practicality, both relative to the regulated community and the Regional Board staff, the proposed WQBEL approach should be abandoned as there would likely be hundreds, perhaps thousands of discharges per year to which the NELs would apply if the potential 200+

water purveyors cited in the fact sheet all enrolled under this permit. Compliance would be evaluated via field measurements, using handheld instruments, taken frequently by non-laboratory staff. These measurements are subject to interference by factors including turbidity, potentially causing false positive readings. All discharges meeting the threshold monitoring criteria (flow and distance to waterbody) in the TO would be subject to a Mandatory Minimum Penalty of \$3,000 if Minimum Level of 0.13 mg/L were exceeded for any reason.

Given all of the above and the success of historic MRP practices related to the regulation of potable water discharges, we respectfully suggest that chlorine residual should continue to be regulated via benchmarks or action levels.

3) As a practical matter and for purposes of consistency and coordination with future "equivalent" requirements in MRP 2.0 or other municipal stormwater permits it may issue, we suggest that the Regional Board make significant reductions in notification, monitoring, and reporting requirements proposed under the TO to reflect the de minimis, low threat nature of these discharges, which are required to protect potable water quality for human consumption.

Further reduction in notification, monitoring, and reporting requirements is consistent with the intent of State Water Board Resolution No. 2013-0029, *Directing Actions in Response to Efforts by Stakeholders on Reducing Costs of Compliance While Maintaining Water Quality Protection* (adopted September 24, 2013). That Resolution included "Whereas 12" that summarized recommendations by the NPDES stakeholder group that would "reduce costs of compliance while allowing agencies to focus resources in areas that would have the most direct benefit toward improving water quality." Whereas 12(c) proposed that:

"When renewing or revising NPDES permits, consider removing overlapping monitoring requirements, reducing monitoring frequency for parameters consistently in compliance, encouraging surrogate monitoring, and eliminating unnecessary reports."

An example of unnecessary reporting is contained in Provision VII.C.3, Post-Discharge Notification and Reporting. Provision VII.C.3.a.ii Notification states that:

"The Discharger shall notify the Regional Water Board as soon as possible and no later than 24 hours after becoming aware of a discharge resulting in noncompliance with the Effluent Limitations in Provision V or Receiving Water Limitations in Provision VI of this Order."

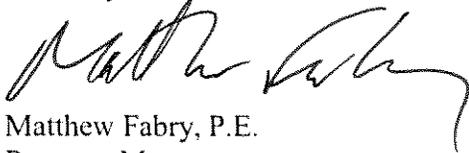
Effluent Limitations Provision V contains items A. Best Management Practices and B. Chlorinated Water. Prior draft versions of this permit as early as one week before the release of the TO had limited the Notification requirements to only noncompliance with Provision V.B, the chlorinated water effluent limit. While 24 hour notification of a single grab sample with a value above the effluent limit is in and of itself excessive for the potable water discharges (and another reason for replacing limits with benchmarks or action levels), that pales in comparison to the monumental challenges associated with first determining if and when a BMP is either not being adequately implemented or otherwise being implemented in noncompliance with the permit and then having to report all such noncompliance within 24 hours to the Regional Water Board.

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In conclusion, SMCWPPP appreciates the TO excluding its member agencies from the proposed Regional Potable Discharge General Permit as they do not want or need another NPDES permit and the associated additional annual permit fees, administrative costs, and potential exposure to mandatory minimum penalties.

We respectfully request that to avoid future disputes and unnecessary constraints on flexibility, the fact sheet for the TO be clarified to use an "equivalent level of protection" criterion instead of an "as stringent as" criterion relative to requirements in municipal stormwater permits sufficient to make use of this exclusion. We also suggest that Regional Water Board consider suspending activity on the Regional Potable Discharge General Permit and that efforts be redirected to working with SWB staff on adoption of the state-wide general permit for potable discharges. Finally, we are requesting that the proposed chlorine WQBELs be replaced with benchmarks and that monitoring and reporting burdens be reduced for those that will come under or have their other requirements assessed relative to the Regional Potable Discharge General Permit.

Sincerely,



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San Mateo Countywide Water Pollution Prevention Program

Cc: Dr. Thomas Mumley, Assistant Executive Officer, Regional Water Board
Tom Howard, Executive Director, State Water Board
Stormwater Committee Members