



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No. 7008 3230 0000 3863 1413
Return Receipt Requested

October 25, 2012

Diana C. Messina
Supervising Engineer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Re: Tentative Order/Draft NPDES Permit for the City of Tracy Wastewater Treatment Plant (NPDES Permit No. CA0079154)

Dear Ms. Messina:

Thank you for the opportunity to review and comment on the tentative order/draft permit (NPDES Permit No. CA0079154) for the discharge from the City of Tracy WWTP to the Old River, which was public noticed on September 24, 2012. We have concerns about the draft permit that need to be addressed to ensure the permit effectively protects water quality and complies with NPDES requirements. Our comments focus primarily on the reasonable potential analyses for iron, manganese, and aluminum, and the compliance schedule to implement the methylmercury TMDL. Pursuant to 40 CFR 123.44, we reserve the right to object to issuance of this permit if our concerns are not addressed.

A. Reasonable Potential Analysis for Iron, Manganese, and Aluminum

The permit must impose effluent limitations for iron, manganese, and aluminum. Section 301(b)(1)(C) of the Clean Water Act (CWA) requires effluent limitations necessary to meet water quality standards. 40 CFR 122.44(d)(1) requires that effluent limitations be established for all pollutants which are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. Although the effluent concentrations for iron, manganese, and aluminum do not exceed the applicable water quality objectives, the receiving water concentrations far exceed these objectives. It is therefore appropriate to conclude these discharges contribute to an excursion above applicable water quality standards and that reasonable potential exists. This approach would be consistent with the reasonable potential analysis procedures and conclusions used by other Regional Boards in evaluating similar permit

situations elsewhere in California. The proposed permit fact sheet states that iron, manganese, and aluminum are not priority pollutants and therefore, the Regional Board is not constrained to follow the State Implementation Policy (SIP) procedure for determining reasonable potential. However, as the State has not established an alternative procedure for conducting reasonable potential analysis for non-priority pollutants, it is appropriate for the Regional Board to follow existing State and federal guidance. If the Regional Board followed the SIP procedure for these pollutants, reasonable potential to exceed the water quality objectives would be determined as the receiving water concentrations exceed the objectives and the pollutants have been detected in the effluent. If the Regional Board followed EPA's Technical Support Document for Water Quality-based Toxics Control (TSD) procedure, reasonable potential would also be established for these pollutants. In addition, the proposal to delete existing effluent limitations for iron and aluminum does not meet federal antibacksliding requirements as no antidegradation analysis for these pollutants and associated rationale for allowing backsliding are provided in the fact sheet. In the absence of any established alternative procedure for determining reasonable potential, and consistent with federal regulatory requirements for reasonable potential analysis, antidegradation analysis, and antibacksliding, the data for iron, manganese, and aluminum demonstrate reasonable potential and effluent limits must be included in the permit.

B. Compliance Schedule for Methylmercury

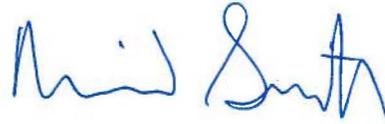
The proposed compliance schedule for methylmercury does not meet the requirements of the Clean Water Act. Section 502(17) of the CWA and the implementing regulations at 40 CFR 122.2 define a compliance schedule as an "enforceable sequence of actions or operations leading to compliance with an effluent limitation..." The interim requirements (milestones) included in the proposed compliance schedule are not sufficient to meet the requirements under 40 CFR 122.47(a)(3) and it does not appear that the length of the schedule complies with 40 CFR 122.47(a)(1).

The proposed compliance schedule included in the permit mirrors the TMDL implementation schedule, which includes workplans, progress reports, and studies as interim requirements. These interim requirements are not sufficient to meet the regulations at 40 CFR 122.47(a)(3), which provides the following examples of interim requirements, "(a) submit a complete Step 1 construction grant (for POTWs); (b) let a contract for construction of required facilities; (c) commence construction of required facilities; (d) complete construction of required facilities." The permit compliance schedule should be based on the interim requirements from the TMDL; however, the compliance schedule must also meet federal and State regulations concerning inclusion of compliance schedules in permits. In order to meet these regulations, it is necessary to include additional milestones. As warranted, the milestones and time necessary to complete them should be tailored based on discharger-specific needs. This approach was recently taken in recent revisions to compliance schedules in permits for the Mt. Shasta and Dunsmuir wastewater plants adopted by the Regional Board in October, 2012. The federal regulations allow progress reports to be included if the interim requirements cannot be readily divisible into 1-years increments, but reports alone are not acceptable as interim requirements.

The regulations at 40 CFR 122.47(a)(1) require that a compliance schedule “lead to compliance with the CWA and regulations...as soon as possible, but no later than the applicable statutory deadline under the CWA.” The TMDL requires that “wasteload allocations for dischargers in the Delta and Yolo Bypass shall be met as soon as possible, but no later than 2030...” The proposed schedule allows the discharger until 2030 to comply with the wasteload allocation (WLA). The fact sheet does not demonstrate that the discharger needs the entire time provided in the TMDL to meet the final WLAs and associated water quality standards as required by federal regulations. To support a determination that the compliance schedule requires compliance with the final effluent limitations “as soon as possible,” the Regional Board must consider the specific steps needed to modify or install treatment facilities, operations or other measures and the time those steps would take. The length of the compliance schedule will need to be re-evaluated each permit term and, as we have discussed with your colleagues, it is possible to revise interim milestones and associated scheduled through minor permit modifications during the permit term.

We appreciate the opportunity to provide input on the draft permit and we look forward to discussing these issues with you and your staff to seek a mutually satisfactory resolution. Please contact me at (415) 972-3464 or Elizabeth Sablad of my staff at (415) 972-3044 to set up a followup meeting or call.

Sincerely,



David Smith, Manager
NPDES Permits Office (WTR-5)

cc: Victoria Whitney, SWRCB

