



October 10, 2014

Veronica Cuevas
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

VIA EMAIL veronica.cuevas@waterboards.ca.gov

Subject: **Bay Area Clean Water Agencies (BACWA) Comments on Tentative NPDES Permits for Whittier Narrows and Pomona Water Reclamation Facilities**

Dear Ms. Cuevas,

The Bay Area Clean Water Agencies (BACWA) appreciates the opportunity to comment on the Tentative Orders issued to the Whittier Narrows and Pomona Water Reclamation Facilities. BACWA is a joint powers agency whose members own and operate publicly-owned treatment works (POTWs) and sanitary sewer systems that collectively provide sanitary services to over 6.5 million people in the nine-county San Francisco Bay Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health.

As you are already familiar, the State Water Resources Control Board has been developing a toxicity plan with the goal to establish uniform toxicity requirements across the State. It is our understanding that the statewide plan will be adopted in the near future. As such, BACWA believes it is important to voice our concerns on the toxicity provisions included in the Tentative Orders, in order that they do not undermine the statewide effort in a manner that will adversely impact our member agencies. We support the comments that are being sent by the California Association of Sanitation Agencies (CASA), and reiterate these comments below.

On behalf of our member agencies, BACWA requests that the Los Angeles Bay Regional Water Quality Control Board (Water Board) consider the following comments.

1. Adoption of Permits with Numeric Effluent Limits for Toxicity Is Premature and Contrary to Existing State Water Board Precedent

Adoption of a permit that contains numeric effluent limits for toxicity and mandates use of the Test of Significant Toxicity (TST) in advance of the promulgation of a statewide policy on this issue is inappropriate and premature. As noted in comments submitted by the Sanitation Districts of Los Angeles County (LACSD), the current policy in effect for toxicity effluent limitations specifies inclusion of narrative effluent limitations with

triggers for initiation of toxicity identification and reduction evaluation (TIE/TRE) procedures, consistent with precedential State Water Board Order WQO 2003-0012. There, the State Water Board found that the applicability of final numeric effluent limitations in permits for wastewater treatment plants discharging to inland waters, bays and estuaries is a statewide issue that should be addressed in the statewide implementation plan (SIP). The State Water Board has been working with stakeholders, U.S. EPA and regional water boards to develop revised toxicity provisions for inclusion in a statewide water quality control plan through a public process. Release of a revised draft is expected soon for public comment. A statewide plan will achieve the State Board's objective to establish a standardized approach to toxicity. Adoption of numeric effluent limits for toxicity in an individual Regional Board permit interferes with work being done at the state level. BACWA requests that the chronic toxicity limits contained in the tentative permits be removed and replaced with a narrative chronic toxicity limit and triggers, at least until such time as there is a comprehensive statewide toxicity plan.

2. *Provisions Restricting How the TST Is Utilized Are Inappropriate and Entirely Inconsistent with Promulgated Methods and the Anticipated Statewide Plan*

A. *Dischargers Must be Allowed to Conduct Multi-Concentration Tests, Dose Response Evaluations, and Use All 40 CFR Part 136 Testing Protocols for Compliance Purposes*

Several conditions within the permits improperly limit or restrict 40 Code of Federal Regulations (CFR) Part 136 *required* and recommended data evaluation procedures. Limiting the ability of a permittee to utilize the appropriate promulgated chronic toxicity testing protocols, including the availability of a multi-concentration test and dose response evaluations, will significantly increase the false positive rate when using the TST.¹ Moreover, prohibiting such activities is inconsistent with what is expected to be contained in the statewide toxicity plan, and could result in confusion and the need to reopen this permit once such a plan is adopted.

Numeric limits based on a single effluent concentration chronic toxicity test using the TST, as prescribed in the tentative permit will result in a substantial increase of tests with "false positives" incorrectly indicating violations occurred. Allowing a discharger to conduct multiple concentration tests and evaluate the dose-response relationship is a critical method-defined procedure for validating data that has been acknowledged to be inherently variable. In recognition of this, interpretation of the 40 CFR Part 136 methods has called for evaluation of the dose-response relationship as necessary for ensuring that test results are reported accurately, and why USEPA has in the past suggested that multiple concentration testing be conducted for all NPDES effluent compliance

¹ See Pomona Permit at Part VII.J, p. 26, "...the concentration-response relationship for the effluent and/or PMSDs shall not be used to interpret the TST result reported as the effluent compliance monitoring result. While the Permittee can opt to monitor the chronic toxicity of the effluent using five or more effluent dilutions (including 100% effluent and negative control) only the TST result will be considered for compliance purposes."

determination tests. Thus, BACWA concurs with LACSD in recommending that the permits be modified to include language to specifically allow the permittee to monitor chronic toxicity of the effluent using five or more effluent dilutions and utilize all 40 CFR Part 136 specified procedures, including evaluation of the dose-response relationship, to determine if results are reliable. These are common-sense quality assurance / quality control procedures that must be available to permittees. Moreover, it is anticipated that these procedures will be available under the terms of the statewide toxicity plan when it is released, meaning any restrictions in these permits will be inconsistent with statewide policy.

B. Continued Monitoring for Compliance Purposes During Accelerated Testing is Inappropriate, and Does Not Serve to Address Any Underlying Toxicity Issues

Toxicity is not a pollutant, but an effect that must be identified. BACWA has been working with State Water Board staff and numerous stakeholders across the State in developing the statewide toxicity plan, and it is our understanding that after an initial toxicity violation, accelerated testing and/or TIE/TRE implementation will occur. During that time no further violations should be incurred provided that the permittee conducts the required and appropriate actions to address the exceedance. Accelerated monitoring and the TIE/TRE process are established methods a discharger uses to investigate potential sources of the recorded toxicity event. Requiring that TST results be reported as effluent compliance monitoring during these accelerated monitoring schedules and initiation of the TIE/TRE is inappropriate, counterproductive, and should not be included in the tentative permit for Pomona or Whittier Narrows.² Moreover, placing dischargers in immediate jeopardy of compliance violations is entirely inconsistent with what is expected to be contained in the statewide toxicity plan, and could result in confusion and the need to reopen this permit once such a plan is adopted. Dischargers should not be liable for continued toxicity violations after triggering accelerated testing and initiation of the TRE.

BACWA appreciates the opportunity to comment on the Tentative Orders and thanks you for considering our concerns.

Respectfully Submitted,

David R. Williams

David R. Williams
Executive Director
Bay Area Clean Water Agencies

cc: BACWA Board

² See Pomona Permit at Part V.8, p. E-15, "During the TRE Process, monthly effluent monitoring shall resume and TST results ("Pass" or "Fail", "Percent Effect") for chronic toxicity tests shall be reported as effluent compliance monitoring results for the chronic toxicity MDEL and MMEL."