



February 6, 2017

VIA EMAIL to: vcuevas@waterboards.ca.gov and veronica.cuevas@waterboards.ca.gov

Mr. Sam Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 W. Fourth St., Suite 200
Los Angeles, CA 90013
Attention: Veronica Cuevas

Subject: Comments on Tentative NPDES Permit No. CA0055531, CI 4424 for the City of Burbank Water Reclamation Plant

Dear Mr. Unger:

The Southern California Alliance of Publicly Owned Treatment Works (SCAP) provides the following comments on the draft permit for the City of Burbank Water Reclamation Plant (WRP) (which would apply equally to the other National Pollutant Discharge Elimination System (NPDES) permits being proposed for adoption by the Los Angeles Regional Water Quality Control Board (Regional Board) for the other WRPs on March 2, 2017).

Primary Concerns:

1. Unlawful Chronic Toxicity Requirements. SCAP has consistently opposed the adoption of any permit that violates federal and state law. The WRP permits proposed for adoption on March 2nd continue to contain effluent limitations, monitoring requirements, and compliance determinations for chronic toxicity that violate both federal regulatory requirements and binding State Water Board precedent applicable to the Regional Board.

The Burbank WRP tentative permit, as proposed, fails to include monitoring based on 40 C.F.R. Part 136 methods. Under federal regulations, 40 C.F.R. §122.41(j)(4) and §122.44(i), monitoring must be conducted using these promulgated methods unless another method is required under Subchapters N or O. In the case of pollutants where there are no approved methods under 40 C.F.R. Part 136 or Subchapters N or O, monitoring must be conducted according to a test procedure specified in the permit for such pollutants. Monitoring methods for compliance determinations for chronic toxicity are included in 40 C.F.R., Part 136, but instead, the tentative permit contains unlawful and unapproved toxicity requirements, not contained in the federal regulations including:



- Use of a null hypothesis which presumes the recycled water produced by the WRP is toxic, and must be disproved. This presumption may make recycled water reuse less attractive in a time when water reuse is vital.
- Use of the Test of Significant Toxicity (TST) statistical procedure, which compares only 100 recycled water to a control, without the promulgated method's prescribed use and analysis of a multi-concentration dose response and the Percent Minimum Significant Difference (PMSD).
- Use of Pass/Fail effluent limits also not prescribed by the promulgated methods, and directly contrary to precedential State Water Board orders *directed at this Regional Board* to not use numeric effluent limits, and to instead use triggers for additional monitoring to confirm the existence of toxicity, and to address the underlying cause of toxicity. *See SWRCB Order Nos. 2003-0012 and 2003-0013.* This mandate remains in place until the State Board adopts a new policy on how to craft permit requirements for chronic toxicity.

These proposed permit requirements all represent unpermitted and unauthorized modifications to the approved regulatory test methods for determining chronic toxicity contained in the 2002 Methods formally adopted by USEPA in 40 C.F.R. Part 136. When this Regional Board initially imposed the TST-related requirements, SCAP sued USEPA over their approval of an at that time approved Alternate Test Procedure (ATP) in California allowing these modifications. As a result of that limitation, USEPA withdrew the ATP, making use of the TST-related requirements unlawful. These requirements also violated the Los Angeles Region's Basin Plan, which requires effluent limits for the constituents causing toxicity, not limits for chronic toxicity. For these reasons, the currently proposed chronic toxicity requirements should be removed from the WRPs' permits.

SCAP has appealed other NPDES permits from this region and has filed another suit against USEPA for using and approving of the use of TST-related requirements. The Regional Board should abstain from using these requirements until all of these appeals and challenges have been resolved. Otherwise, Regional Board staff resources will be wasted if the permits all need to be revised later.

2. Unlawful Performance Based Effluent Limitations. Requiring some dischargers to meet performance based effluent limits (PBELs) well below the scientifically derived and protective water quality standards, and placing these dischargers at enforcement risk because they routinely perform *better than* standards, creates perverse incentives not to have better effluent quality, and also raises equal protection issues since dischargers in the Los Angeles region are penalized much more severely than a discharger with the exact same effluent quality elsewhere in the State (or in the other 49 states for that matter). This discrepancy must be recognized and corrected by making the proposed PBELs into performance goals, and calculating water quality based effluent limits for ammonia and copper (if reasonable potential exists) based on the TMDL wasteload

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allocations and the site specific objectives (SSOs) adopted by this Regional Board as being protective along with a margin of safety. SCAP also incorporates by reference the comments of Burbank on this issue, and respectfully requests that the permits not be adopted as proposed.

SCAP greatly appreciates the Regional Board's attention to these important issues.

Sincerely,

Steve Jepsen, Executive Director