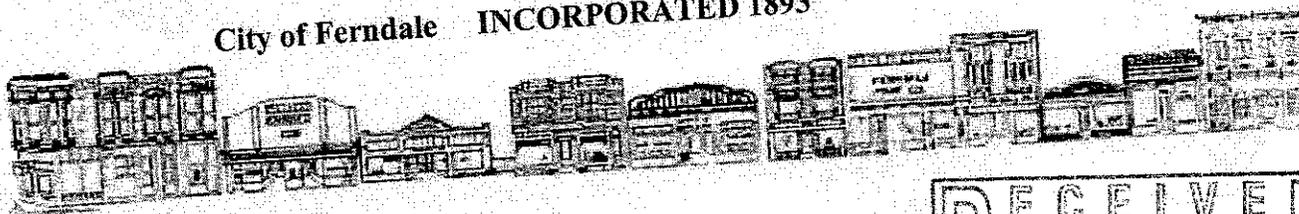
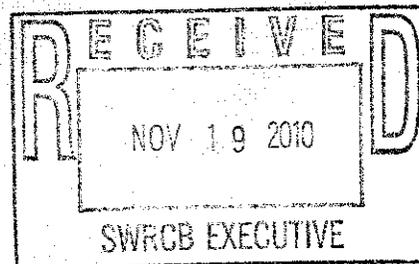


City of Ferndale INCORPORATED 1893



November 18, 2010

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, Sacramento, CA 95814



Dear Ms. Townsend:

We appreciate the opportunity to comment on the State Water Resources Control Board's (SWRCB) preliminary draft Policy for Whole Effluent Toxicity (WET) Assessment and Control (Policy). The City of Ferndale (COF) is a Victorian town located just off the coast approximately 20 miles south of Eureka where we discharge into the Salt River, a tributary of the Eel River. We have a firm commitment to water quality on the North Coast as substantiated by the fact that the City is in the process of spending \$9 million constructing the first tertiary treatment facility in the Eel River Basin.

The City supports the effective and appropriate implementation of the Whole Effluent Toxicity (WET) program and strongly supports the use of WET testing as a tool for supplementing current protocols to address uncertainties associated with water chemistry monitoring and biological assessments. The COF has conferred with other local agencies and organizations on this issue and we share many of the same concerns and comments. The subsequent comments and questions are submitted for consideration with the intent to improve the implementation of toxicity test provisions designed to assess the water quality of surface waters, enclosed bays, and estuaries within the State of California.

TEST FREQUENCY

The COF is permitted as a minor "non-continuous" discharger. The policy states on page 55 of Brian Ogg's staff report in **Issue 2C: Monitoring Frequency**, "Facilities that non-continuously discharge at a rate less than one million gallons per day would be obligated to conduct one toxicity test per three month discharge period (rounding up whenever the discharge period is not a multiple of three)"

As per our basin plan, the COF has the ability to discharge into the Salt River from October 1st through May 15th. While this time period is seven and a half months in duration, historical data shows that in some cases the COF doesn't always use that entire period. Moderate weather in the fall has sometimes allowed us to keep from discharging until the first of November, which would be six and a half months. The proposed policy would require us to "[round] up whenever the discharge period is not a multiple of three, which in our case would be from 6 ½ months to 9 months and would require us to take an additional test. The COF would ask that if this policy is implemented the State Water Board would consider situations like this and make provisions to "round down" in some instances, lowering the number of tests that need to be taken.

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The COF has not had a failed test as long as WET has been required. The current policy allows for trigger points which start the Toxicity Reduction Evaluation (TRE) process which are specific to applicable offenders and do not affect other treatment facilities that are compliant. We would like to see a streamlined option to lower the proposed testing requirements for dischargers with a continued history of compliance. With more tests being required it makes better sense, in our opinion, to have a trigger point after a set number of tests have failed rather than have to do accelerated testing following a SINGLE failed test. TRE's are a viable option under the current policy since fewer tests are performed. With more tests there will be greater chance to fail if not given an account for a possible bad sampling period.

TEST PROCEDURE:

We ask that you consider whether to require Chronic testing or Acute testing but not the provision to require both tests. Other concerns in this area pertain to species. Many facilities have already identified their "most sensitive species". Will these be accepted? The COF has a concern that under this policy each chronic test stands alone and subsequent tests results are not considered in the overall picture. It is the City's position that a median or average of all tests would be better applied as a way to equal the amount of weight each test carries.

Consequently, the false positive error rate associated with the Test of Significant Toxicity (TST) combined with the implementation procedures that include single test numeric chronic WET limits being proposed by the SWRCB is worrying for a number of reasons. For regulators, false violations divert enforcement resources away from real water quality violations. False determinations of impairment ultimately consume regulatory resources through development of unnecessary TMDLs. For permittees, false violations are subject to enforcement action and citizen lawsuits. Permittees may also be put in the outrageous position of being required to solve issues that do not exist or to expend already strained resources attempting to identify sources of toxicity that do not exist. In the most extreme cases, permittees could be forced to implement and maintain expensive Best Management Practice (BMP) and employ programs that may not ultimately improve biological communities.

OPERATIONAL ISSUES:

As mentioned in an earlier paragraph, the City doesn't always commence our discharge on October 1st but may begin on October 28th, for example. We would like to see provisions for a minimum discharge limit for sampling, e.g. if a permittee discharges for 4 days in a month should they be required to test as if they discharged a full month?

Assuming that there are looming toxics that will get caught in the respective systems, we agree that multi-testing makes sense for plants with short detention times. Currently our facility is a pond system and may have a 2-3 day detention time, depending on the flows. In facilities with long detention times such as 30-45 days, most toxics will become diluted during that time and be taken care of naturally. By requiring these facilities to sample more frequently during the long detention time there will undoubtedly be failed tests which won't be representative of the overall systems.

While we are a "seasonal discharger" and our operators know the systems and the trends we have for different times of the year other facilities around us discharge continuously and must take monthly samples under the proposed policy. If monthly samples are required and it's during a brief period when toxics may be higher, for a short period, this would be a negative effect on the testing procedure and again not representative of the normal activity of the treatment process.

In our local area we have little to no industrial discharge relative to the larger municipalities across the state and we feel this policy does not address the 'how', 'when' and 'where' but takes more of a "Just Do It" approach.

FISCAL ISSUES:

More tests mean more money. And with the economy in the shape that it's in, this will be detrimental to our small City. In 2009 we completed the third year of a three-year, tiered program to raise sewer rates. This was done mainly for the purpose of having the available funds to pay for and operate our new facility.

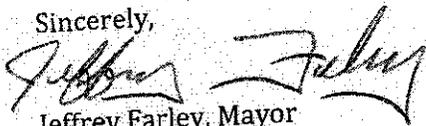
This policy will have a huge fiscal impact on small communities. The City of Ferndale alone will see our WET testing costs go from less than 1% of our budget increasing as much as 200% for routine tests and could increase another 1200% if there are failed tests. Additionally, there are plants that have spent considerable money for studies that allow them to use control water rather than receiving water due to the adverse conditions of their receiving waters and they will be going backwards in their progress and undoubtedly will be set up to fail.

ETHICAL ISSUES

The Environmental Laboratory Accreditation Program (ELAP) teaches prospective technicians that "you shouldn't take a sample that you don't reasonably believe is representative of the respective system". This proposed policy tells our operators and technicians to do just the opposite. The State Board has the authority to suspend licenses or take them away for operators that fail to use their "best professional judgment". We feel that this policy takes that judgment away from our operators.

The City is apprehensive about this Policy and is concerned that it will result in the imposition of requirements that are more stringent than necessary to comply with the Clean Water Act. In some cases, this may constitute an unfunded mandate in an especially difficult economic time for the State and local agencies. Because of the concerns listed, the City respectfully requests the SWRCB to consider these issues and work with the regulated community to find an effective use of TST as a tool in conjunction with other effective toxicity measurement tools. In particular, the City requests that the SWRCB clarify how violations will be interpreted and reconsider the expiration of Water Boards granting compliance schedules. The City looks forward to working with the State Water Board to develop the most appropriate means to attain water quality standards. If you have any questions regarding this letter, please do not hesitate to contact our Chief Plant Operator, Doug Culbert at 707-786-4224 or chiefoperator@ci.ferndale.ca.us.

Sincerely,


Jeffrey Farley, Mayor

File: WWTP
Correspondence
Copy: City Manager
Chief Plant Operator
Lisa Bernard, WQCB

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