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January 17, 2019

**VIA EMAIL: [LOSANGELES@WATERBOARDS.CA.GOV]  
[JEONG-HEE.LIM@WATERBOARDS.CA.GOV]**

Jeong-Hee Lim  
Chief, Municipal Permitting Unit  
Los Angeles Regional Water Quality Control Board  
320 West 4th Street, Suite 200  
Los Angeles, CA 90013

**Re: Comment Letter: City of Avalon Tentative WDR and NPDES Permit  
(NPDES Permit No. CA0054372)**

Dear Jeong-Hee:

The City of Avalon ("City") appreciates the opportunity to provide comments on the Tentative Waste Discharge Requirements for the City of Avalon Wastewater Treatment Facility ("Treatment Facility") (NPDES No. CA0054372) ("Draft Permit"). Best Best & Krieger services as City Attorney for the City and has been authorized by the City to submit these written comments on the City's behalf.

Based on its review of the Permit, Monitoring and Reporting Program ("MRP"), and Fact Sheet, the City has the following comments and requested changes:

**PERMIT-RELATED COMMENTS**

**P.1. Cover page: Table 3 and Fact Sheet Table F.1 and II.A.3.**

The discharge classification for the Treatment Facility has been changed from "minor" to "major" without any explanation as to the reason for this reclassification. As set forth in the current permit and the Report of Waste Discharge, the Treatment Facility has an average flow rate of 0.44 mgd and a maximum flow rate of 0.73 mgd. (See R4-2013-0182, Fact Sheet, section II.A.1; ROWD, "Facility and Treatment Process Description," at ¶ 1.) Discharges from the Treatment Facility have consistently met effluent limitations and water quality in Avalon Bay has been improving steadily. (See Draft Permit, Fact Sheet, II.D.)

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The City believes the maximum and average flow rates at the Treatment Facility and the lack of significant impacts to water quality from the Treatment Facility's discharges justify the continued classification of the Treatment Facility as "minor." For these reasons, the City requests the following modifications:

**Modification P.1:**

- Restore "minor" classification of discharge in Cover Page, Table 3 and Fact Sheet Table F.1
- Delete Fact Sheet Section II.A.3.

**P.2 Permit Sections III.I and V.A.3.e.**

These sections include a prohibition on the discharge of trash from the Treatment Facility. The Treatment Facility, however, does not discharge trash. The City is also concerned that the Draft Permit's use of "trash" without a definition creates ambiguity as to unauthorized discharges of "trash" and authorized discharges of treated effluent. Therefore, the City requests the following modification:

**Modification P.2:** Delete Permit Sections III.I and V.A.3.e.

**P.3 Permit Section IV.A.1.a, Table 4.**

Table 4 sets forth enforceable effluent limitations and non-enforceable performance goals. The effluent limits for Cyanide and Tributyltin have been removed because the effluent did not exhibit reasonable potential to exceed water quality objectives for those parameters. (Draft Permit, Fact Sheet IV.D.1 and Table F-10.) The units for measuring the performance goal for Cyanide, however, have changed from µg/L to mg/L and the performance goal has become more stringent. Similarly the units and limits for Tributyltin have changed and become more stringent. Finally, the units for TCDD Equivalents have changed. Because there is no reasonable potential for Cyanide and Tributyltin to exceed water quality standards, the City requests that the current standards and units be retained for these parameters.

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**Modification P.3:** Modify effluent limitations for each parameter as follows:

<u>Parameter</u>	<u>Units</u>	<u>Performance Goal</u>
Cyanide	<del>mg/L</del> <u>µg/L</u>	0.00076 <u>20</u>
Tributyltin	<del>ng/L</del> <u>µg/L</u>	14.5 <u>0.04</u>
TCDD Equivalents	<del>pg/L</del> <u>µg/L</u>	[no change]

**P.4 Permit Sections IV.A.1.b and VII.I, MRP X.D, and Fact Sheet VI.D.1 and 2.**

The effluent limitations for radioactivity have been modified to running annual average limitations based on drinking water MCLs. The Treatment Facility discharges to the Pacific Ocean and the applicable water quality control plan is the Ocean Plan. The Ocean Plan, however, does not include municipal or domestic supply as a beneficial use for the Pacific Ocean. Further, the Pacific Ocean is an attainment water for radioactivity, and the effluent limitations proposed in the Draft Permit are more stringent than required in the Ocean Plan. (Draft Permit, Fact Sheet, IV.D.1.) Finally, the City suspects, and is in the process of determining whether, the four reported exceedances of beta radiation during the prior permit term were reporting errors or lab errors, but has not been able to confirm the results as of the date of this letter. For these reasons, the City requests the following modifications:

**Modification P.4:**

- Convert the radioactivity effluent limitation in Table 4 into a performance goal.
- Delete the radioactivity source investigation and control study from MRP X.D.

**P.5 Permit Section V.A.4.g and V.A.5.d.**

The Draft Permit includes new narrative standards for toxicity and BOD, which may be interpreted as creating separately enforceable requirements from the numeric limits. We believe that compliance with numeric limits in Section IV.A.1 should constitute compliance with these narrative limits. For these reasons, the City requests the following modifications:

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**Modification P.5:**

- Delete Permit Sections V.A.4.g and V.A.5.d; or, alternatively,
- Include a statement in Sections V.A.4.g and V.A.5.d that the Discharger is deemed in compliance with this requirement by implementing the requirements of Section IV.A.1.

**P.6 Permit Section V.A.4.h.**

This section addresses the chemical characteristics of pesticides in waste discharged from the Treatment Facility. Pesticides have not been present in the influent or effluent at the facility. The effluent, therefore, does not exhibit a reasonable potential to exceed water quality objectives for pesticides. For these reasons, the City requests the following modification:

**Modification P.6:** Delete Section V.A.4.h.

**P.7 Permit Section VII.J, MRP. V and Fact Sheet IV.C.6.**

The Draft Permit requires use of a two-concentration whole effluent toxicity (“WET”) testing method and analytical approach (the TST). We are concerned that the lack of internal safeguards in the two-concentration TST analytical approach is contrary to the EPA’s promulgated methods in 40 C.F.R. Part 136. The methods promulgated in 2002 were the subject of a legal challenge on multiple grounds, one of which is the tendency of WET testing to result in an unacceptable number of false indications of toxicity and nontoxicity. (*Edison Elec. Inst. v. EPA* (D.C. Cir. 2004) 391 F.3d 1267, 1271.) The court in *Edison* recognized that “WET tests are not without their flaws[,]” (*id.* at 1274), particularly because the methods do not rely on comparisons with an independent, objective, true value, which means that “their scientific validity must be assessed through other means.” (*Id.* at 1270.) Despite the recognized flaws in WET tests, the court upheld the promulgated tests, because the multiple-concentration test design, developed over “years of scientific studies, negotiation, and public notice-and-comment” provided safeguards to protect against an unacceptably high number of false results. The Court described the safeguards as follows:

A single WET test involves exposing multiple batches of organisms to the effluent at various concentrations, as well as to a

  
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“control” sample of pure water, and then aggregating the effects on each batch. Statistical analysis then is used to ensure that any observed differences between the organisms exposed to a given effluent concentration and those exposed to the control blanks most likely are not attributable to randomness - - that they are statistically significant. See Final Rule, 67 Fed. Reg. at 69,957-58. This safeguard addresses the petitioners’ concerns [regarding false positives]. EPA, in short, has offered a reasoned and thorough explanation of its decision on this subject.

(*Id.* at 1272-1273.) Until the TST analytical approach has been formally promulgated, it should not be required in the Draft Permit or be used to determine compliance. (40 C.F.R. § 122.44(i)(1)(iv).) For this reason, the City requests the following modifications:

**Modification P.7:**

- Delete all reference to the two-concentration TST method for conducting WET testing; and
- Retain the current WET testing requirements.

**MRP – RELATED COMMENTS**

**MRP.1 MRP Section I.S and Fact Sheet X.E.3.**

The Draft Permit indicates that the City is required to submit the results of the Discharge Monitoring Report – Quality Assurance (“DMR-QA”) Study annually to the State Water Board. This requirement appears to be based on the classification of the Treatment Facility as a “major” discharger. (Fact Sheet X.E.3.) As noted above, there is no factual basis for reclassifying the Treatment Facility in the Fact Sheet. Further, the City can only fulfill the DMR-QA requirement for the laboratory run by its contract operator. For this reason, the City requests the following modification:

**Modification MRP.1:**

- Delete MRP Section I.S and Fact Sheet Section X.E.3; or alternatively

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- Clarify that the DMR-QA Study requirement only applies to those laboratories run by the City's contract operator.

**MRP.2 MRP Table E-1.**

Table E-1 contains an error in the latitude and longitude for RSW-005. This error was also included in the ROWD and came to the City's attention when reviewing the Draft Permit. For this reason, the City requests the following modification:

**Modification MRP.2:** Change the Latitude and Longitude for RSW-005 as follows:

RSW-005 Latitude: 33.3320° Longitude: -118.3072~~140~~°

**MRP.3 MRP V.**

See Comment P.7, above.

**MRP.4 MRP Section VIII.A.2.**

This section lists the receiving water monitoring locations. There is a typo in the name of "RSW-002."

**Modification MRP.4:** Correct typo.

**MRP.5 MRP Sections VIII.C.2 and D.**

The MRP requires the City to participate in two regional studies. The need for and value of these studies relative to the costs of such studies are unclear. The City is a small jurisdiction with limited means and must prioritize its resources on known water quality problems. For this reason, the City requests the following modifications:

**Modification MRP.5:** Delete MRP Sections VIII.C.2 and VIII.D.

**MRP.6 MRP Table E-3.**

**Modification MRP.6:** The City requests the following revisions to Table E-3:

  
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- Change the sampling frequency for all indicator bacteria to “monthly” to be consistent with the monthly sampling frequency for *Enterococcus*.
- Remove organic nitrogen, total phosphorus, and Chromium VI.
- Restore the semiannual sampling frequency for radioactivity that is present in the current permit.
- To the extent that Table E-3 incorporates limitations that are established in the Ocean Plan, the City requests that these limitations be incorporated into the Draft Permit by reference rather than separately set forth in the permit.
- Restore the units for TCDD Equivalents that are used in the current permit.

**MRP.7 MRP Section X.A.7**

This Section requires the City to submit a copy of the laboratory certification each time the laboratory obtains a new or renewal certification from ELAP. This provision imposes a requirement on the City that the City cannot entirely control. If the City requests such certificate from a laboratory, for example, but the laboratory fails to provide the certificate to the City, the City may be in violation of its Permit. The City requests the following modification:

**Modification MRP.7: Revise MRP Section X.A.7 as follows:**

The laboratory conducting analyses shall be certified by ELAP, in accordance with CWC section 13176, or approved by the Regional Water Board Executive Officer, in consultation with the State Water Board’s Quality Assurance Program, and USEPA for that parameter and must include quality assurance/quality control (QA/QC) data in their reports. ~~A copy of the laboratory certification shall be provided each time a new/renewal certification is obtained from ELAP and must be submitted with the annual summary report. Each monitoring report must affirm in writing that: “All analyses were conducted at a laboratory certified for such analyses by the State Water Resources Control Board Division of~~

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~~Drinking Water or approved by the Regional Water Board Executive Officer (in consultation with the State Water Board's Quality Assurance Program) and USEPA, and in accordance with current USEPA guideline procedures or as specified in this MRP."~~

**MRP.8 MRP Section X.D.**

See Comment P.4, above.

**MRP.9 MRP Section XI.A.**

This Section requires an annual inspection of "the entire ocean outfall." The City has been conducting an annual visual inspection of the entire ocean outfall. There are a few portions of the outfall that are under sand or sediment and cannot be visually inspected without removing the sand or sediment. The City therefore requests the following modification:

**Modification MRP.8:** Modify the first sentence of the second paragraph of MRP Section IX.A as follows:

The Discharger shall conduct an annual visual inspection of the entire length of the ocean outfall which is not obstructed from view by sand, sediment or similar obstructions~~shall be externally inspected annually~~ during July or August. Inspections shall include general observations and photographic/video graphic records of the exterior outfall pipes and the adjacent ocean bottom.

**FACT SHEET – RELATED COMMENTS**

**FS.1 Fact Sheet II.A.3.**

See Comment P.1, above.

**FS.2 Fact Sheet II.D.**

**Modification FS.2:** The City requests a change to Fact Sheet Section II.D to improve accuracy as shown below:

The sanitary sewer overflows occurred, in part, as a result of the discharger's failure to adequately identify and address collection system problems.

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**FS.3      Fact Sheet II.E.**

**Modification FS.3:** The City requests a change to Fact Sheet Section II.E to improve accuracy as shown below:

There are currently no planned ~~improvements~~ changes to the Avalon WWTF.

**FS.4      Fact Sheet III.C.5.**

Section III.C.5 of the Fact Sheet states that the Draft Permit contains restrictions on pollutants “that are no more stringent than required by the federal CWA and California Ocean Plan.”

This statement appears to contradict the statement in Fact Sheet Section VI.D.1, which states:

“the final effluent limitations are more stringent than required in the Ocean Plan to protect the beneficial uses of the receiving water”

**Modification FS.4:** The City requests resolution of the apparent conflict regarding the stringency of limitations.

**FS.5      Fact Sheet IV.C.6.**

See Comment P.7, above.

**FS.6      Fact Sheet VI.D.1. and D.2**

See Comment P.4, above.

**FS.7      Fact Sheet VII.B.2.b and c.**

Sections VII.B.2.b and c of the Fact Sheet state that the Draft Permit includes an operations plan for proposed expansion and a treatment plant capacity study. The Draft Permit, however, does not include these requirements. For this reason, the City requests the following modification:

**Modification FS.7:** Delete Section VII.B.2.b and c of the Fact Sheet

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The City thanks you for the opportunity to submit these comments on the Draft Permit and looks forward to modification to the Draft Permit based on these comments.

Sincerely,



Shawn Hagerty  
of BEST BEST & KRIEGER LLP

SXH:RJA

cc: Scott Campbell, Best Best & Krieger  
Denise Radde, City of Avalon  
Van Madding, Montrose Environmental