

January 21, 2009

VIA EMAIL AND FACSIMILE: (510) 622-2460

Ms. Tong Yin, Water Resources Control Engineer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Comments on the Tentative Order, Fact Sheet and Self Monitoring Plan for the
San José/Santa Clara Water Pollution Control Plant NPDES Permit CA0037842

Dear Ms. Yin:

The City of San José submits the following comments regarding the recently issued Tentative Order, for NPDES Permit No. CA0037842 for the San Jose/Santa Clara Water Pollution Control Plan (Plant) and Waste Discharge Requirements for San Jose and Santa Clara sanitary sewer collection systems ('cities' collection systems.") The Plant provides tertiary treatment for domestic, commercial and industrial wastewater from the cities of San José, Santa Clara, Milpitas; as well as Cupertino Sanitary District, County Sanitation Districts 2-3, Sunol and Burbank Sanitary Districts, and the West Valley Sanitation District (Campbell, Los Gatos, Monte Sereno, and Saratoga). The Plant's service area has a population in excess of 1.4 million people. The cities collection systems serve their separate jurisdictions.

The City strongly supports the use of an open dialog in the derivation of the Tentative Order, and further appreciates the cooperative efforts of the Regional Board staff during the development of regulatory content contained in the draft order. As a result of these ongoing discussions many issues were resolved, and the City offers the following comments and recommendations to address and resolve any outstanding issues:

Collection System Requirements

The inclusion of language in the Tentative Order relating to the collection systems for the cities of San Jose and Santa Clara (see Table 1 (pg 1), Table 4 (pg 4), Findings A (pg 4), Finding B1 (pg 4-5), Finding B3 (pg 5) and Provision 5.c (pg 27)) is inappropriate and outside the scope of the Regional Water Board's authority. The inclusion of this language is inappropriate because the

San Jose/Santa Clara Water Pollution Control Plant, which is the primary entity regulated by the Tentative Order, is a joint powers authority (JPA), as acknowledged in the draft permit; and the cities collection systems are not owned or operated by the JPA. Inclusion of this language is outside the scope of the Board's authority because there is no regulatory framework for applying NPDES permit requirements to municipal sanitary sewer collection systems and the cities collection systems are already regulated under the State Water Resources Control Board General Waste Discharge Requirements for Collection System Agencies (General Collection System WDR, Order No.2006-003 DWQ, as amended by Order No. WQ 2008-0002-EXEC).

The lack of an NPDES permit framework for regulating sanitary sewer collection systems is well recognized. Regulations proposed for collection systems by USEPA in 2001 were withdrawn. The General Collection System WDR states that it is to be "the primary regulatory mechanism" for sanitary sewer systems within the State of California. Although the General Collection System WDR recognizes that Regional Water Boards may issue more stringent or more prescriptive WDRs for sanitary sewer systems, the Tentative Order does not satisfy the criteria set forth in the General Collection System WDR for issuance of a system specific WDR. Moreover, by combining an NPDES permit for a POTW with WDRs for the cities collection system, the Tentative Order creates confusion and uncertainty with respect to discharger responsibilities.

Finally, even if there were a regulatory basis for an order covering the cities collection systems, the Plant's NPDES permit order is not an appropriate mechanism. Under Government Code Section 6507, a JPA administering agency is a separate legal entity from the entities that formed the JPA. As such, the City of San Jose, as the administering agency for the San Jose/ Santa Clara Water Pollution Control Plant, is not the entity that owns or operates the cities collection systems. Neither the Clean Water Act nor NPDES regulations authorize the Regional Water Board to regulate an entity for a facility that is owned and operated by a separate legal entity.

Local Limits Revision (Page 25, Provision 5.a.iv)

The City conducted an exhaustive local limits evaluation process in 2005-2006 and as a result proposed substantial local limits modifications, as defined in 40 CFR 403.18, to the Regional Water Board for approval. On June 28, 2007 the Regional Water Board granted approval of the City's local limits modifications and instructed the City to proceed with local limits adoption through its public hearing process. The City completed its public hearing process on December 4, 2007 with revised local limits becoming effective on January 4, 2008. Subsequently by July 6, 2008 each of the respective tributary agencies had followed suit with modifications to their local ordinances necessary to implement the revised limits. Provision 5a.iv states:

- iv. *Evaluate the need to revise local limits under 40 CFR 403.5(c)(1); and within 180 days after the effective date of this Order, submit a report acceptable to the Executive Officer describing the changes with a plan and schedule for implementation.*

Given that the City recently completed a multi-year process to evaluate, modify and adopt revised local limits, which were adopted in 2008, the City respectfully requests that this permit condition be deleted.

Chronic Toxicity Testing Requirements (Page E-8, Section V.B.2.a (6))

Section V.B.2.a (6) reads:

IC₁₅, IC₂₅, IC₄₀, and IC₅₀ values (or EC₁₅, EC₂₅ ...etc.) as percent effluent.

This section requires additional reporting beyond the IC₂₅ calculations found in our current NPDES permit. EPA guidance (Freshwater Manual, 4th Ed.) does not discuss IC₁₅ or IC₄₀, and does not require or recommend that these endpoints be calculated or reported. While some statistical software may automatically calculate these endpoints, other software does not. The rationale for this expanded reporting is not clear and there is no indication as to how this additional information will be utilized. Therefore, the City recommends deleting any reference to IC₁₅ and IC₄₀ (or EC₁₅ and EC₄₀).

Chronic Toxicity Reporting Requirements (Page E-9, Section V.B.2.b)

Section V.B.2.b reads:

Compliance Summary. The results of the chronic toxicity testing shall be provided in the self-monitoring report and shall include a summary table of chronic toxicity data from at least eleven of the most recent samples. The information in the table shall include items listed above under 2.a, specifically item numbers (1), (3), (5), (6) (IC₂₅ or EC₂₅), (7), and (8).

The City's current and proposed Whole Effluent Chronic Toxicity testing requirements are based upon a 3-sample median of <1 TU_c, and our current reporting requirements specify a summary table of chronic toxicity data from at least three of the most recent samples. The rationale for this expanded reporting is not clear and there is no indication as to how the additional reported information will be utilized. Therefore, the City recommends replacing "eleven" with "three" in the Tentative Order.

Table AE-2 (Page E-18, Alga Test Duration)

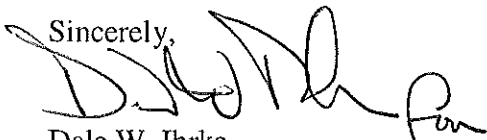
The Effect endpoint presented in the table for the *Selenastrum Capricornutum* is "Cell division rate". However, the rate of growth is not measured. This would require daily measurements to determine the rate of growth during log phase of growth. This is not the endpoint described in the EPA method; rather the cell density or biomass is measured at the end of the test. Therefore, the City recommends replacing "Cell division rate" with "Final cell density".

In closing, the City of San Jose wishes to explicitly acknowledge Water Board staff efforts to begin implementing regulatory doctrines that address potentially significant dioxin compliance implications for wastewater discharges. The Conceptual Model / Impairment Assessment Report (2005) prepared for the Clean Estuary Project indicated "possible impairment" for Bay sport

fishing due to dioxin and noted wastewater dischargers represent but a small proportion of total dioxin loading to the Bay. In April 2008, the San Francisco Estuary Institute convened an expert panel to evaluate dioxin impairment issues and to make recommendations regarding strategies to address dioxin regulatory impacts. The City applauds Regional Water Board efforts to resolve wastewater compliance issues through the innovative use of "minimum levels" for interim limits derivations and "bioaccumulation equivalency factors" for TEQ calculations as referenced by the expert panel. The City will continue to work cooperatively with regulatory staff and interested stakeholders to address the expert panel's short- and long-term recommendations.

The City looks forward to continuing our collaborative working relationship with the Regional Water Board, federal and state resource agencies, and other interest groups on important environmental and regulatory issues. If you have any questions or comments on this submittal please do not hesitate to call David Tucker at (408) 945-5316.

Sincerely,

A handwritten signature in black ink, appearing to read "D. W. Ihrke". The signature is fluid and cursive, with a large initial "D" and a distinct "Ihrke" at the end.

Dale W. Ihrke
Deputy Director
Environmental Services Department