



Tri-TAC
Jointly Sponsored by:
League of California Cities
California Association of Sanitation Agencies
California Water Environment Association

November 4, 2011

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Via Electronic Mail

Mr. Samuel Unger, Executive Officer
Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

c/o Brandi Outwin-Beals: boutwin@waterboards.ca.gov

SUBJECT: Tentative Waste Discharge Requirements (WDRs) and National Pollutant Discharge Elimination System Permit (NPDES) – City of Los Angeles, Donald C. Tillman Water Reclamation Plant (NPDES No. CA0056227, CI No. 5695) and Los Angeles-Glendale Water Reclamation Plant (NPDES No. CA0053953, CI No. 5675)

Dear Mr. Unger:

The California Association of Sanitation Agencies (CASA) and Tri-TAC appreciate the opportunity to provide comments on the Tentative Waste Discharge Requirements (WDRs) for the City of Los Angeles' Donald C. Tillman and Los Angeles-Glendale Water Reclamation Plants (WRPs). CASA and Tri-TAC are statewide organizations comprised of members from public agencies and other professionals responsible for wastewater treatment. Tri-TAC is sponsored jointly by CASA, the California Water Environment Association, and the League of California Cities. The constituency base for CASA and Tri-TAC collects, treats and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California.

CASA and Tri-TAC do not routinely comment on individual WDRs proposed by the regional water boards. The exception to this practice is when a draft permit would establish a precedent or conflict with efforts to ensure consistent statewide approaches to important regulatory and technical issues. The latest drafts of the WDRs for the City of Los Angeles' WRPs include new language related to whole effluent toxicity monitoring, reporting, and compliance that we believe is inappropriate, technically flawed and at best premature, given the State Water Resources Control Board's (State Water Board)

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ongoing process to develop statewide policy governing toxicity testing and permitting. Specifically, apparently in response to comments from United States Environmental Protection Agency (U.S. EPA), both draft WDRs would require a novel manner of reporting of “compliance” with the chronic toxicity narrative effluent limit.¹

U.S. EPA’s comments provide no legal authority supporting the proposed change, and CASA and Tri-TAC do not agree that this reporting requirement is appropriate for wastewater treatment plants. To our knowledge, this requirement has not been imposed on any other discharger within the Los Angeles region or the rest of the state. The revision was not justified by any findings setting forth the need for the proposed requirement.

As acknowledged by many experts, chronic toxicity testing is inherently uncertain. According to studies used in the support of promulgation of the chronic toxicity testing methods, the false positive rate for the *Ceriodaphnia dubia* and fathead minnow chronic toxicity tests are each 4%.² Due to this uncertainty, it is not possible to conclusively demonstrate the presence of chronic toxicity using a numeric effluent limit such as 1.0 TUC=100/NOEC, even if it is based on multiple test results (e.g. a monthly median). Instead, conclusive demonstration of chronic toxicity must be determined using multiple test results, followed by accelerated testing, which is why current implementation requirements include a trigger for further accelerated testing, which can be (though is not always) more conclusive. It is not correct to state that chronic toxicity is “Present” when a 1.0 TUC monthly median has been exceeded. For instance, if the discharger is unable to conduct three tests to calculate a monthly median, due to control failure in a test or other reasons, the exceedance of a 1.0 TUC=100/NOEC could simply be due to the inherent false positive rate of the test methods.

The Regional Water Board acknowledged this uncertainty by including language stating that an “Absent” determination “does not imply the complete absence of chronic toxicity effect.”³ However, the reverse statement is also true (i.e., “Present” does not necessarily imply the actual presence of chronic toxicity effect). Due to this uncertainty, the discharger cannot accurately state in a monitoring report, under penalty of perjury, that chronic toxicity is “Present” or “Absent.” Requiring a discharger to do so would put the discharger in the untenable position of having to submit incomplete monitoring reports to avoid potentially perjuring him or herself.

¹ Table 3A of the draft Monitoring and Reporting Programs for the Donald C. Tillman WRP (p. E-10) and of the Los Angeles Glendale WRP (p. E-9).

² Federal Register, Volume 67, No. 223, November 19, 2002, p. 69955.

³ Draft Monitoring and Reporting Programs for the Donald C. Tillman WRP (p. E-10) and for the Los Angeles Glendale WRP (p. E-9).

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Furthermore, a requirement for the discharger to report chronic toxicity as “Present” or “Absent” based on whether monthly median chronic toxicity results are above or below 1.0 TUc could be interpreted as if it were a final numeric effluent limitation for chronic toxicity. Reporting “Present” does not, however, signify a violation of the narrative chronic toxicity effluent limit due to uncertainty in the chronic toxicity test. In 2003, the State Water Board issued a precedential Water Quality Order indicating that it is premature to impose numeric effluent limitations for chronic toxicity absent formal adoption of a statewide policy on this issue.⁴

The State Water Board has embarked upon a process to develop such a statewide policy for toxicity, including adoption of a statewide objective and implementation program with monitoring and reporting requirements. The State Water Board has conducted multiple workshops and released an initial draft for public comment. Upon adoption, which is anticipated in 2012, the policy will be binding on the regional water boards. This statewide policy is nearing completion, and is intended to bring consistency to the approach to toxicity testing and related permit requirements. We urge the Regional Water Board not to depart from its established approach to toxicity in these permits, but rather to allow the state process to proceed before making substantive changes in the regional approach that has been working well for many years.

CASA and Tri-TAC join the City of Los Angeles Bureau of Sanitation in requesting that the reporting requirements for these WRPs be consistent with the reporting requirements for other dischargers in the region and State, and that the Regional Water Board remove the added language from Table 3A.

Sincerely,



Terrie Mitchell, Chair
Tri-TAC



Roberta L. Larson, Director, Legal and
Regulatory Affairs
CASA

⁴ WQO 2003-0012.