



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

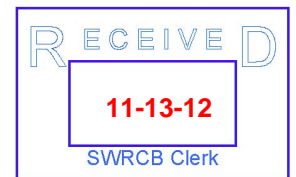
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*Via Electronic Mail*

November 13, 2012

Charles R. Hoppin, Chair, and Members  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812

c/o Jeanine Townsend, Clerk to the Board  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)



Re: **Petitions Re: Waste Discharge Requirements for the Sacramento Regional County Sanitation District, Sacramento Regional Wastewater Treatment Plant—SWRCB/OCC Files A-2144(a) and A-2144(b)**

Dear Chairman Hoppin and Members of the Board:

Thank you for the opportunity to provide comments on the proposed draft order regarding the Sacramento Regional County Sanitation District (SRCSD) NPDES permit. CASA and Tri-TAC have followed very closely the development of this permit and the State Water Board's review. CASA and Tri-TAC are statewide organizations comprised of members representing local 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.

When we testified before the State Water Board in July, we articulated our concern that the order as initially proposed would deviate from established regulations, policy and practice in several areas. Unfortunately, the proposed revised order exacerbates rather than alleviates these concerns. Several findings in the draft order, and the newly articulated supporting rationales, are contrary to established policy and practice. If

applied to other public wastewater discharges in California, these precedents may lead to inappropriate and costly requirements that are not needed to protect water quality.

Before addressing the issues of statewide importance, we note that the proposed order contains numerous statements that are vague, factually incorrect or technically in error. To cite just one example, the proposed order asserts that a chlorine contact basin or chamber would provide greater disinfection than a pipeline such as the District employs. Many of our member agencies use pipeline systems, which may provide better hydraulic conditions than chambers for assuring that the chlorine has adequate time to perform its function. This issue, and other similarly incorrect statements, have been ably detailed by SRCSD in its written comments and, we agree that these flaws in the order must be addressed. Our key concerns with the proposed order are as follows:

### **The Proposed Order is Inconsistent with Board Precedent Regarding Implementation of Water Code Section 13241.**

Previous, adopted State Water Board orders have clarified the obligation of a regional water board to comply with Porter-Cologne when it adopts a permit more stringent than necessary to comply with applicable water quality objectives. For example, the State Water Board's Vacaville Order stated "[t]his Board has previously held that when a Regional Board includes permit limits more stringent than limits based on an applicable numeric objective in the relevant basin plan, the Regional Water Board must address the section 13241 factors..." (Order 2001-0015, *In the Matter of the City of Vacaville's Easterly Wastewater Treatment Facility*, at p.15.) It is important to note that the proposed order now acknowledges that "the Basin Plan contains a water quality objective of a maximum geometric mean of 200 fecal coliform per 100 ml." However, the permit contains effluent limits of 2.2 MPN, which are far more stringent than the Basin Plan water quality objective. Contrary to the State Board's Vacaville Order and other Board orders, the proposed draft order concludes that in setting the requirements for tertiary filtration, there is no obligation to make findings based on evidence concerning factors that must be considered under Water Code section 13241 (i.e. no requirement for meaningful consideration of economics or reasonableness), and that evidence of "discussion" during a board meeting is sufficient. The proposed draft order treats the required Porter-Cologne analysis as essentially irrelevant.

### **The Proposed Order Relies Upon the Unsupported Establishment of a New Water Quality Objective for Recreational Waters.**

The Draft Order proposes to uphold the requirement that the SRWTP implement tertiary treatment based on the contact recreation (REC-1) designated use without an established regulatory basis. The only regulation related to pathogens applicable to the SRWTP discharge is the numeric water quality objective for fecal coliform bacteria identified in the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan). However, the Permit, which the proposed order would uphold, does not implement this water quality objective. Instead, the proposed order affirms the use of a

risk threshold for risk of infection of 1 in 10,000 as an acceptable risk from exposure to treated effluents as a de facto water quality objective applicable to POTWs.

There is no valid technical basis in the record for the de factor objective based on the 1 in 10,000 risk level. The draft order would appear to set a “pathogen free” standard to apply wherever there is a REC-1 use and a wastewater discharge. This level of stringency has not to our knowledge been applied elsewhere, and our organizations are very concerned about the precedent the proposed order would set regarding level of risk that is acceptable for discharges to recreational waters.

With regard to the adopted numeric fecal coliform objective, the proposed order introduces the concept that the Basin Plan fecal coliform objective is not attained in the background receiving water upstream of the discharge. If this assertion is valid and of significant import, it is puzzling why this information has not led to past regulatory actions address the water quality problem upstream of the discharge. Furthermore, to the extent this conclusion is valid, to the State Water Board must acknowledge that the SRWTP discharge more than meets the fecal coliform objective on an “end-of-pipe” basis, and is actually slightly increasing assimilative capacity in the river.

### **The Findings Regarding the Impact of Point Sources on Nutrient Levels are without Evidentiary Basis.**

The proposed order concludes that point source dischargers are contributing to exceedances of downstream biostimulatory water quality objectives, but includes no findings to demonstrate that SRCSD’s discharges have a reasonable potential to cause or contribute to exceedances of the narrative biostimulatory water quality objectives. Instead, the proposed order generally proclaims that reductions of total nitrogen loads from point sources as a category are necessary to protect beneficial uses from cultural eutrophication without making any specific evidentiary findings that link such impacts to the District’s discharge.

### **The Proposed Order Relies on Non-Regulatory Criteria and a Precautionary Approach that Were Not the Basis for the Underlying Regional Water Board Action to Justify the Nutrient Requirements.**

The proposed order references a World Health Organization (WHO) *recommended* criterion of 1 ug/L of total microcystin for *drinking water*, and implies that the San Joaquin River exceeds this criterion. Not only is this WHO value not an approved regulatory standard, but it is wholly inappropriate to apply this drinking water criterion to justify an effluent limitation for nitrate of 10 mg/L in the SRWTP discharge to the Sacramento River with no consideration of dilution or transformations in the receiving water.

The proposed order also justifies the nitrate effluent limitation of 10 mg/L based on the totality of the circumstances and because the provision is within a “zone of reasonableness” considering current technologies. While the Water Boards have an

obligation to act reasonably in regulating discharges, the concept that the boards may impose requirements in permits without a technical or legal basis simply because the requirements are deemed to fall within an amorphous “zone of reasonableness” is deeply concerning. The use of this undefined and potentially unconstrained new “standard” would have sweeping implications for permits.

Perhaps most troubling is the proposed order’s finding that the effluent limitations are reasonable because regional boards can, and should, take preventive action to regulate discharges that *may* affect the quality of waters of the state. This reliance on the precautionary principle is a significant departure from the established practice of water quality regulation under the Clean Water Act and Porter Cologne. Both the state and federal law are grounded in the establishment of water quality objectives, which must protect beneficial uses of the waters, and the derivation of effluent limits in permits to attain those objectives. This approach is critical to ensuring that communities can make use of the waters of the state for the greatest benefit of the people, and expressly rejects the notion that regulatory agencies should simply prohibit or restrict discharges in the absence of any supporting information that the discharges would cause or contribute to an exceedance of a water quality objective.

In summary, our associations continue to be concerned that the proposed order will fundamentally alter the process of regulating and permitting California’s wastewater treatment agencies without the protections of notice and comment rulemaking. We respectfully request that the State Water Board either remand the permit to the central Valley Regional Water Board, or itself modify the proposed to: (1) Revise the disinfection requirements based on 23 most probable number per 100 milliliter (23 MPN/100 mL) total coliform; and (2) modify the effluent limitation for nitrate such that it is calculated based on the maximum contaminant level (MCL) and consideration of the mixing zone that the WDRs and Revised Draft Order recognize as applicable for meeting human health criteria.

Sincerely,



Roberta Larson, Executive Director  
CASA



Terrie Mitchell, Chair  
Tri-TAC