



California Regional Water Quality Control Board

San Francisco Bay Region



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Arnold Schwarzenegger
Governor

Response to Comments For Item No. 8

Public Hearing On City of Palo Alto Palo Alto Regional Water Quality Control Plant Setting Mandatory Minimum Penalty

One comment letter was received for the Palo Alto MMP Complaint No. R2-2004-0070, from the City of Palo Alto (the City), on October 22, 2004. The following are staff responses to the City's comments:

Comment 1. The City believes that since the violations were not included in previous complaints, the Complaint should not have been issued.

Response 1. Water Board staff recognizes its omission of these violations in previous complaints but the State's statutes clearly require the assessment of MMPs against these violations.

Comment 2. The City believes it is not good public policy to reexamine and reevaluate past violations.

Response 2. The violations in this Complaint were not included or considered in any previous complaint. The Water Board staff believes that correcting a previous omission is good public policy.

Comment 3. The City objects to the fact that none of the violations cited in the Complaint would be violations of its current permit because of modifications the City sought and received in 2003.

Response 3. While we agree that the permit modifications were appropriate, those modifications were not retroactive and do not change the fact that the City did violate, in 2000, permit limits that were in effect at the time. The Complaint is thus warranted, because the statute clearly requires enforcement of permit limit violations that have occurred without regard to any permit modifications after the fact.

Comment 4. The City sees no reason for the Water Board to take this action because it will not provide any additional State funds since the City would choose to fund a Supplemental Environmental Project (SEP).

Response 4. The Water Board staff prepared this Complaint because it is mandated by State statute. Water Board staff did not prepare this Complaint to provide additional State funds.

Comment 5. The City believes that the original MMP complaint (issued in September 2001) was initiated before State Board guidance was made available to Water Board staff and that is the reason that the current MMP complaint differs from the original MMP complaint.

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Response 5. The Water Board staff report (6/6/01) for the September 2001 MMP Complaint specifically cites both State Board's Q & A (12/6/99) and revision (4/17/01) regarding SB 709. Therefore, the State Board guidance document was available for Water Board staff. The effluent violations stated in the current MMP complaint were inadvertently omitted from the MMP Complaint issued in September 2001.

Comment 6. The City requested that additional language be added to any future MMP complaints to state that no further MMP enforcement actions can be pursued for omissions of any known exceedances, such as the case is in this instance.

Response 6. The language suggested by the City is inappropriate because the MMP law does not grant that discretion to the Water Board. The law mandates the Water Board to assess penalties for all NPDES effluent violations that meet certain criteria. The law provides for very few exceptions. These exceptions do not include inadvertent omissions of past violations.