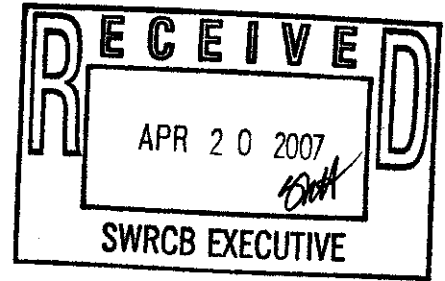




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901



Ms. Song Her
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

APR 20 2007

5/1/07 BdMtg Item 6
EBMUD
Deadline: 4/20/07 5pm

Re: Comments to A-1771—May 1, 2007 Board Meeting

Dear Ms. Her:

We have reviewed the revised draft order, "Own Motion Review of East Bay Municipal Utility District Wet Weather Permit (Order No. R2-2005-0047 [NPDES NO. CA0038440]) and Time Schedule Order (Order No. R2-2005-0048)," dated March 21, 2007. We believe that, if adopted, this revised draft order would result in the establishment of appropriate requirements in a revised NPDES permit issued to the East Bay Municipal Utilities District (EBMUD). Furthermore, we are pleased that the revised draft order recognizes the work of the blue ribbon panel to identify long-term solutions for achieving compliance with State and federal requirements and supports the continuation of this work under the terms of a separate time schedule order.

Regarding the compliance schedule provisions addressed in the revised draft order, we support the State Board's intention to address the issue of final effluent limitations in the Statewide compliance schedule-authorizing provisions being developed. We reiterate our conclusion that inclusion of the entire compliance schedule, including the final effluent limitation, in the enforceable permit provisions is necessary to ensure compliance with the Clean Water Act (CWA) and the implementing regulations. Specifically, the CWA defines a compliance schedule as an "...enforceable sequence of actions or operations leading to compliance with an effluent limitation...." [CWA section 502(17)]. In order for the provisions to be enforceable, they need to be included in the permit requirements. Similarly, EPA regulations at 40 CFR 122.2 define a compliance schedule as being "in a permit." Finally, EPA regulations at 40 CFR 122.4(d), 122.44(d)(1), and 122.44(d)(1)(vii)(A) require that the permit contain effluent limitations derived from and complying with all water quality standards, thus implementing the CWA requirements in section 301(b)(1)(C). To ensure consistency with all these requirements, it is necessary to include the whole compliance schedule in the enforceable permit provisions.

In prior years, we had not insisted on including the entire compliance schedule in the permit itself, and instead concentrated on ensuring it was included in the

administrative record or fact sheet, to facilitate public comment. We continue to believe that the entire compliance schedule, including the final effluent limitation, needs to be discussed in the fact sheet so as to afford the public adequate opportunity to comment on it. We have now concluded that it is also necessary to include these provisions in the permit itself in order to meet the statutory and regulatory requirements. We have reached this conclusion as a result of comprehensive re-analysis of the CWA and EPA's implementing regulations prompted by increased scrutiny of compliance schedules in general, and the potential use of longer compliance schedules, such as those authorized by recently-approved portions of the Regional Board 1 authorizing provisions. We appreciate the State Board's focus on compliance schedule requirements, as evidenced by the thorough and thoughtful discussion of compliance schedule issues in the draft order.

Thank you for the opportunity to comment on this proposed order. Please call me at (415) 972-3572 if you wish to discuss this further, or refer staff to Doug Eberhardt at (415) 972-3420.

Sincerely,

Alexis Strauss 20 April 2007

Alexis Strauss, Director
Water Division