



NATURAL RESOURCES DEFENSE COUNCIL

February, 20 2007

*Via Electronic Mail*

Tam Doduc, Chair, and Members of the Board  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814



Re: *Comments on Draft State Water Board Order, "In the Matter of Own Motion Review of EBMUD Wet Weather Permit (Order No. R2-2005-0047 [NPDES No. CA0038440]) and Time Schedule Order (Order No. R2-2005-0048), SWRCB/OCC File A-1771*

Dear Chair Doduc and Members of the Board:

On behalf of the Natural Resources Defense Council, thank you for the opportunity to comment on the above-described Draft Order, which has significant statewide implications. NRDC strongly supports staff's *sua sponte* review of the EBMUD permit and TSO for compliance with the federal Clean Water Act and state Porter-Cologne Water Quality Control Act.

Indeed, the underlying facts of the EBMUD matter raise serious questions about the ability, and intent, of at least one Regional Water Quality Control Board to operate the NPDES program in compliance with basic precepts of federal and state law. The underlying orders issued by the San Francisco Regional Water Quality Control Board constitute clear violations of California's NPDES Memorandum of Agreement with the U.S. Environmental Protection Agency. In considering the Draft Order, the Board should bear in mind that actions such as those the Draft Order would correct undermine and threaten the ability of California to maintain its delegation of Clean Water Act authority.

We agree with the majority of the Draft Order. In particular:

- Wet weather facilities and overflow structures are POTWs under the Clean Water Act (CWA);
- Wet weather facilities and overflow structures therefore must comply with the secondary treatment requirements of the CWA;
- Basin Plan limits that purport to waive the secondary treatment requirements of the CWA are illegal, must be eliminated where they

exist in Basin Plans, and cannot form the basis of effluent limits in NPDES permits;

- Reasonable Potential Analyses must be conducted for discharges from wet weather facilities and overflow structures;
- Water Quality Based Effluent Limits for wet weather facilities and overflow structures must ensure compliance with CTR, NTR, and Basin Plan limits; and
- Self-monitoring programs need to be sufficiently frequent and comprehensive to assess compliance with permit limits and facility performance through fully representative data.

The Draft Order appropriately rejects the compliance schedules as applied by the San Francisco RWQCB. However, the Draft Order inappropriately endorses compliance schedules for new or more stringent limits in NPDES permits. Because compliance schedules extending beyond 1977 are inconsistent with the requirements of the CWA, we urge the State Water Board to amend the Draft Order and direct the San Francisco RWQCB to eliminate all compliance schedules from the EBMUD permit, and require issuance of TSOs for parameters for which the San Francisco RWQCB finds immediate compliance to be unattainable.

Approval of the Order as written, with amendments for compliance schedules, is critical to correcting an increasing pattern of permits statewide that do not meet the minimum requirements of the Clean Water Act and state law. Environmental organizations like NRDC are increasingly focused on patterns of Regional Water Board noncompliance with basic legal requirements. By adopting the Draft Order, with the amendments suggested, the Board can send a positive signal that it is firmly committed to assuring that Regional Water Quality Control Boards live up to the spirit and letter of all applicable legal requirements as they impose permits on dischargers of water pollution.

Sincerely,



David S. Beckman  
Michelle Mehta  
Anjali Jaiswal

cc: Alexis Strauss, Director, Water Division, U.S. EPA Region IX