

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Robert Schlipf)
MEETING DATE: January 14, 2009

ITEM: 8A and 8B

SUBJECT: **East Bay Municipal Utility District, Special District No. 1, Point Isabel, San Antonio Creek, and Oakport Wet Weather Facilities; Richmond and Oakland; Contra Costa and Alameda Counties -** Reissuance of NPDES Permit (8A) and Issuance of Cease and Desist Order (8B)

CHRONOLOGY: September 2005 – Board reissues NPDES permit
May 2007 – State Board adopts “Remand Order”

DISCUSSION: This item would reissue the NPDES permit that covers East Bay Municipal Utility District’s (EBMUD) three Wet Weather Facilities (WWFs). The WWFs are unusual in that they only provide primary level treatment, meaning they remove gross solids from wastewater, which is then disinfected and dechlorinated prior to discharge. They were built this way because they only capture/treat peak wet-weather flows and discharge, on average, less than ten times per year.

Since the Board reissued this permit in 2005, the regulatory landscape has changed. In May 2007, as a result of its own motion review, the State Board adopted Order No. WQ 2007-0004 or the “Remand Order”. The Remand Order returned the 2005 permit to us with direction that this Board reissue it and require EBMUD to achieve secondary treatment standards for the WWFs’ discharges or cease their discharge. In our view, secondary treatment is not a reasonable alternative for the WWFs. This is because their discharges are intermittent in nature and not conducive to the biological treatment methods used to achieve secondary standards. The costs of implementing alternative treatment technologies to achieve secondary standards are well above any sort of infrastructure renewal and upgrade program that would help eliminate discharges from the WWFs. As such, the Revised Tentative Order (TO) (Appendix A) to reissue the permit would prohibit discharge from the three WWFs.

Because EBMUD will need to continue to discharge from the WWFs into the foreseeable future, we have developed a Revised Tentative Cease and Desist Order (CDO) (Appendix B) for consideration in

conjunction with the TO. The CDO would establish tasks and time schedules for EBMUD to eliminate discharges from the three WWFs.

San Francisco Baykeeper, Our Children's Earth, Citizens for Environmental Justice, the East Bay Collection System Agencies (Agencies), and EBMUD commented (Appendix C) on Board staff's original tentative order and tentative cease and desist order. We have responded to all comments (Appendix D) and made appropriate changes, all of which are reflected in the TO and CDO. We resolved many issues; however, some remain.

The most significant issue from the Agencies is that they would like the Board to delay consideration of this item. This is so the Agencies would have more time to be involved in developing the new requirements for the WWFs. While we expect that, over the next several years, the Agencies will be important partners in developing cost effective solutions to eliminate discharges from the WWFs, we do not believe that it is necessary to delay consideration of this item. This is because the Agencies will have ample opportunity to provide feedback on how discharges from the WWFs are eliminated. The primary purpose of this item is to reissue the permit for the WWFs so that it complies with the Remand Order. As pointed out above, the most effective means to comply with the Remand is to require EBMUD to eliminate all discharges from the three WWFs.

From Citizens for Environmental Justice, their most significant issue relates to compliance with the California Environmental Quality Act (CEQA). Specifically, Citizens for Environmental Justice objects to our use of a categorical exemption to CEQA for adopting the CDO. Our position is that categorical exemption use is legal and has been supported by past court decisions.

We anticipate that some commenters may reiterate their concerns at the Board meeting.

RECOMMEN-
DATION:

Adoption of the Revised Tentative Order and Revised Cease and Desist Order.

CIWQS Place ID:

222130 (RS)

Appendices:

- A. Revised Tentative Order
- B. Revised Tentative Cease and Desist Order
- C. Correspondence
- D. Response to Comments