

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

STAFF SUMMARY REPORT (Robert Schlipf)
MEETING DATE: November 12, 2014

ITEM: **11**

SUBJECT: **City of Emeryville, Wastewater Collection System, Alameda County - Reissuance of NPDES Permit**

CHRONOLOGY: 2004 and 2009 – NPDES permits reissued
December 2009 – Filed lawsuit against East Bay Communities for violations of NPDES permits and unauthorized Discharges
September 22, 2014 - Consent Decree by and among U.S. EPA, Board, State Board, EBMUD and East Bay Communities entered by Court

DISCUSSION: This item is one of items 11 through 17, which would reissue permits for the wastewater collection systems for each of the cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont and the Stege Sanitary District. These are known collectively as the East Bay Communities, and they all discharge untreated wastewater to East Bay Municipal Utility District (EBMUD) facilities through their wastewater collection systems. The requirements proposed in the tentative orders for the seven East Bay Communities are identical, with facility descriptions being the only difference. Item 10, which would reissue the permit for the EBMUD Wet Weather Facilities (WWFs), is associated with these items.

The attached Tentative Order (Appendix A) would continue the previous permit prohibition on causing or contributing to discharges from the WWFs. This prohibition was introduced in the 2009 permits consistent with a 2007 State Board order on the WWFs that held that the WWFs must either meet secondary treatment standards or cease discharge. The prohibition was necessary because high flows from wet weather inflow and infiltration from the East Bay Communities' collection systems, flows that EBMUD cannot control, result in excess wastewater discharge through the WWFs.

The U.S. District Court entered a Consent Decree on September 22, 2014, settling a lawsuit brought by the Board with U.S. EPA and the State Board against EBMUD and the East Bay Communities for permit violations leading to WWF discharges and sewer overflows. The Consent Decree requires cessation of WWF discharges starting in 2027 at the San Antonio WWF and at the last WWF by 2035.

Under the Consent Decree, each of the East Bay Communities must comply with the following:

- Clean sewers at specified minimum rates.
- Rehabilitate sewer mains and manholes.
- Eliminate sources of inflow and infiltration.
- Assist in implementation of a regional private sewer lateral rehabilitation program.

The East Bay Communities and EBMUD commented (Appendix B) on the tentative orders, with Emeryville adding a comment specific to its Tentative Order. Many of the comments from the East Bay Communities are identical to the ones made in the 2009 permit reissuances. We did not make revisions in response to these comments for the reasons described in the Response to Comments (Appendix C).

In summary, the East Bay Communities object to the cause and contribute prohibition described above and to the Board's authority to issue NPDES permits on collection systems. EBMUD supports the prohibition in the permits because it is consistent with the Consent Decree. The East Bay Communities cite as bases for their objections various legal arguments with which we disagree. The prohibition is appropriately based on federal regulation that ensures compliance with the Clean Water Act. The Board's authority to issue the NPDES permits is clear since the East Bay Communities discharge pollutants through the WWFs into waters of the U.S.

Emeryville further cites technical arguments related to its proximity to the EBMUD main plant and upstream bottlenecks for why it is not possible for its wastewater to cause or contribute to WWF discharges. We do not agree because modeling demonstrates that it is necessary for Emeryville to reduce wet weather flows to eliminate discharges from the WWFs.

We anticipate that the commenters will reiterate their concerns at the Board meeting. Though we have not revised the Tentative Order in response to comments, the attached Tentative Order does reflect minor editorial changes made to the public review version.

RECOMMEN-
DATION:

Adoption of the Tentative Order

CIWQS Place ID:

223685 (RS)

Appendices:

- A. Tentative Order
- B. Correspondence
- C. Response to Comments