

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

RESPONSE TO WRITTEN COMMENTS

on Proposed Tentative Order and Settlement Agreement for
West County Agency, Richmond Municipal Sewer District Water Pollution Control Plant
Richmond, Contra Costa County

On June 5, 2020, the Regional Water Board received written comments from Rick Coates on a proposed Tentative Order and Settlement Agreement distributed for public comment. The proposed Tentative Order and Settlement Agreement relate to alleged violations of NPDES Permit No. CA0038539 (Permit).

Water Board prosecution staff summarized the comments, shown below in *italics* (paraphrased for brevity), and followed each comment with prosecution staff's response. For the full content and context of the comments, refer to the attached comments.

Prosecution staff believes the proposed liability—the mandatory minimum penalty—is appropriate given the completed upgrades and ongoing improvements at the treatment plant. Thus, prosecution staff recommends approval of the proposed Tentative Order and Settlement Agreement by the Water Board or its delegate, in this case, the Executive Officer.

Rick Coates's Comments and Prosecution Staff Responses

Comment 1: *Mr. Coates asks why the Regional Water Board has not proposed to impose a restraining order for further development until the underlying problems are corrected.*

Response: A restraining order is unwarranted. The alleged violations occurred after primary and secondary clarifier upgrades were performed from April through October 2018. It was after these upgrades that West County Agency (Discharger) struggled to meet biochemical oxygen demand and total suspended solids effluent limits due to issues with the upgraded biological treatment process. Since then, the Discharger violated its monthly average ammonia effluent limit only once, in November 2019. Moreover, the Discharger is subject to Order R2-2019-0003, which requires various tasks to increase treatment reliability and fully comply with Permit limits by December 31, 2022. These tasks include constructing a new headworks with bar screens and grit removal, replacing the mechanical surface aerators with a diffused aeration system, replacing the secondary clarifier mechanisms, replacing the dissolved air flotation thickener with a rotary drum thickener, and replacing the dechlorination system.

Comment 2: *Mr. Coates asks why the Regional Water Board has not proposed to require the Discharger to spend the penalty money on capacity improvements, maintenance, or monitoring.*

Response: Water Code section 13385(n)(1) requires penalties be paid to the Cleanup and Abatement Account. The Regional Water Board may allow a discharger to satisfy a portion of the administrative civil liability by completing or funding one or more eligible Supplemental Environmental Projects (SEPs) in accordance with the State Water Resources Control Board

Policy on Supplemental Environmental Projects (May 3, 2018) and Water Quality Enforcement Policy (October 5, 2017) (Enforcement Policy). However, projects or actions already required by law or regulation are not acceptable SEPs. Thus, necessary capacity improvements, maintenance, and monitoring at the wastewater treatment plant are not appropriate SEPs. In this case, the Discharger proposed to pay a portion of the penalty toward the Watershed Rangers Program managed by KIDS for the BAY.

Comment 3: *Mr. Coates states that agencies seem to treat fines as a cost of doing business and are not deterred by the threat of mandatory minimum penalties.*

Response: The proposed action conforms to the principle of progressive enforcement described in the Enforcement Policy. A higher penalty is unwarranted based on the criteria set forth in the Enforcement Policy (e.g., gravity of the violation, harm or potential for harm, culpability, history of violations). The alleged violations occurred as a result of bringing treatment plant upgrades online, and the Permit already requires the Discharger to implement various tasks to increase treatment reliability and comply with Permit limits.

Attachment: Rick Coates's Comments