

**California Regional Water Quality Control Board
San Francisco Bay Region**

RESPONSE TO WRITTEN COMMENTS

On the Tentative Order for
County of Santa Clara, Oregon Expressway Underpass, Palo Alto, Santa Clara County

The Regional Water Board received written comments on a tentative order distributed for public comment from the following:

1. County of Santa Clara (County), March 11, 2022
2. Guadalupe-Coyote Resource Conservation District (District), March 14, 2022

The comments are summarized below in *italics* (paraphrased for brevity), followed by a staff response. For the full content and context of the comments, please refer to the comment letters. To request a copy of the comment letters, see the contact information provided in Fact Sheet section 8.7 of the Revised Tentative Order.

Revisions are shown with ~~strikethrough~~ for deletions and underline for additions.

County of Santa Clara

County Comment 1: *The County requests that we remove the effluent limits for the four polycyclic aromatic hydrocarbons (PAHs)—benzo(a)pyrene, benzo(k)fluoranthene, chrysene, and indeno(1,2,3-cd)pyrene—because these parameters come from urban runoff, which is already regulated by the Municipal Regional Stormwater Permit (MRP). The County points out that these parameters have not been detected in groundwater upgradient of the Facility. The County asserts that it implements best management practices and monitoring required by the MRP to minimize urban runoff and pollutant loading from irrigation-related activities. The County opposes what it considers to be duplicate regulation. The County adds that it has no control over the source of PAHs.*

Response

We disagree. There is no duplicate regulation. The MRP does not cover discharges of urban runoff commingled with contaminated groundwater. It only covers the County's stormwater, urban runoff discharges, and certain non-stormwater discharges. In accordance with 40 C.F.R. section 122.44(d)(1)(i), NPDES permits must include effluent limitations for all pollutants that are or may be discharged at levels that have reasonable potential to cause or contribute to an exceedance of a water quality standard. As explained in Fact Sheet (Attachment F) section 4.4.3.1 of the Revised Tentative Order, PAHs in the combined urban runoff and groundwater have reasonable potential to cause or contribute to exceedances of water quality standards. Thus, the Revised Tentative Order contains effluent limits. The County's previous order similarly contained effluent limitations for PAHs. The County is not expected to have trouble complying with the effluent limits because it has not detected PAHs above reporting levels. (See Monitoring and Reporting Program [Attachment E] section 6.2.6 of the Revised Tentative Order.)

County Comment 2: *The County requests that we clarify that the term “translator” in Provision 6.3.1.3 refers to metals translators.*

Response

We agree and revised Provision 6.3.1.3 as follows:

If metal translator, dilution, or other water quality studies provide a basis for determining that a permit condition should be modified;

County Comment 3: *The County requests that we add language to Attachment F section 2.1 stating that when the air stripper is not operating, such as when storm-related debris interferes with the treatment system, flows that exceed the capacity to divert wastewater to the City of Palo Alto sanitary sewer collection system are routed through a separate conduit to the stormwater culvert and discharged without passing through the air stripper.*

Response

We disagree. The Revised Tentative Order does not automatically authorize routing wastewater around the air stripper due to lack of maintenance (e.g., interference of the air stripper caused by storm-related debris). However, Standard Provisions (Attachment D) section 1.7 of the Revised Tentative Order may allow such bypasses if the County can demonstrate that specific conditions are met.

County Comment 4: *The County requests that we correct a typographical error in Attachment G, section 3.1.2.*

Response

We agree and revised Attachment G section 3.1.2 as follows:

Minimum Levels. For the 126 priority pollutants, the Discharger should use the analytical methods listed in Table ~~G-1~~ G-2 unless the Monitoring and Reporting Program (MRP, Attachment E) requires a particular method or minimum level (ML). All monitoring instruments and equipment shall be properly calibrated and maintained to ensure accuracy of measurements.

Guadalupe-Coyote Resource Conservation District

District Comment 1: *The District is concerned about the impact of the discharge on wildlife, specifically during intense storms, when the portion of the combined wastewater exceeding the air stripper capacity is routed through a separate conduit to the stormwater culvert and discharged without passing through the air stripper. The District requests that we consider adding monitoring requirements to ensure that the fish and wildlife habitat beneficial uses are protected. The District also requests that we clarify how the permit will facilitate compliance with the Endangered Species Act.*

Response

The Revised Tentative Order establishes requirements that ensure that water quality standards are met at the discharge point. These include effluent limits that implement

water quality criteria protective of Matadero Creek beneficial uses, including fish spawning, fish migration, preservation of rare and endangered species, cold freshwater habitat, warm freshwater habitat, and wildlife habitat. Compliance with the effluent limits will be determined at a monitoring location far upstream of the discharge point; additional receiving water monitoring downstream of the discharge is unnecessary to assess discharge impacts and ensure beneficial uses are protected.

The Regional Water Board is not responsible for enforcing the California Endangered Species Act or Federal Endangered Species Act. Fact Sheet section 3.3.8 of the Revised Tentative Order explains that this permit does not allow acts prohibited by these laws.

District Comment 2: *The District asks whether the tentative order accounts for microplastics (e.g., from vehicle tire wear and tear) and their effects on water quality, fish, and wildlife habitat in and adjacent to Matadero Creek, and requests that we consider the cumulative impacts of the discharge given the concurrent impacts of separately regulated stormwater runoff.*

Response

Microplastics are an evolving water quality concern. At this time, it is unclear whether and how NPDES permits should address them. The State Water Resources Control Board recently adopted a definition of microplastics for drinking water and is collaborating with others to develop a Statewide Microplastics Strategy. Because the amount of urban runoff and stormwater in the discharge is small relative to the amount discharged elsewhere in the watershed, the contribution of this discharge to any cumulative impact is insignificant.

District Comment 3: *The District states that the monitoring locations are not optimally located to monitor impacts to downstream or floodplain habitat. The District requests that we add downstream monitoring locations.*

Response

We disagree. The effluent limitations in the Revised Tentative Order were crafted to maintain water quality standards in receiving waters. The required influent and effluent monitoring is sufficient to evaluate compliance with the effluent limits. Additional downstream monitoring would serve no purpose. See our response to District Comment 1.

District Comment 4: *The District points out that the City of Palo Alto and Santa Clara Valley Water District's "Northwest County Recycled Water Strategic Plan" indicates that the County could potentially divert more wastewater from the Oregon Expressway underpass to the sanitary sewer collection system to increase recycled water supply. The District believes this is more environmentally sound than discharging to Matadero Creek. The District requests that we investigate this alternative prior to adoption of the Revised Tentative Order. The District also requests that we require the County's cooperation with, and financial participation in, related feasibility studies.*

Response

While we fully support water recycling, this NPDES permit is not an appropriate vehicle to force the County to cooperate with, or financially participate in, recycled water feasibility studies. The Revised Tentative Order responds to the County’s specific application to discharge and contains requirements as necessary to maintain water quality standards.

***District Comment 5:** The District requests that we clarify how monitoring data collected pursuant to Time Schedule Order R2-2019-0016 was used to inform the tentative order.*

Response

The Revised Tentative Order requirements are based on monitoring data collected pursuant to the Time Schedule Order from May 2019 through April 2020, and monitoring data collected pursuant to the previous order from January 2019 through June 2021. Fact Sheet sections 4.3.2 and 4.4.3 describe how we used these monitoring data to evaluate the need for and to calculate effluent limits.

***District Comment 6:** Pointing to language in Time Schedule Order R2-2019-0016, the District says the tentative order needs to address the fact that the air stripper is insufficient to consistently reduce pollutant levels to comply with the previous order.*

Response

The Revised Tentative Order addresses this point by superseding the County’s enrollment under the previous general order and imposing more appropriate technology-based effluent limitations, discussed in Fact Sheet section 4.3.2.

***District Comment 7:** The Revised Tentative Order would rescind Time Schedule Order R2-2019-0016 “except for enforcement purposes.” The District would like to understand how the Time Schedule Order might be used for enforcement and requests information related to past, current, and anticipated enforcement be included in the tentative order*

Response

There are no past or pending enforcement actions related to Time Schedule Order R2-2019-0016. We do not anticipate the need to enforce the Time Schedule Order, but the language in question preserves our ability to do so.

***District Comment 8:** The District states that the City of Palo Alto may renaturalize a segment of Matadero Creek to enhance recreational, environmental, and public safety benefits. The District requests that we consider the impact of the discharge on the success of this project.*

Response

The discharge would not adversely affect the project because the Revised Tentative Order imposes requirements to ensure that the discharge does not contribute to any exceedances of water quality standards. See our response to District Comment 1.

***District Comment 9:** The District states that the tentative order does not demonstrate that the discharge will not lower water quality in Matadero Creek when compared to the*

level of discharge authorized in the previous order. The District points out that there have been multiple new or modified discharges and activities that impact Matadero Creek; therefore, approving the same level of discharge may no longer be protective.

Response

We disagree. The Revised Tentative Order is based on recent discharge and receiving water monitoring data reflecting current creek conditions. It establishes requirements, including maximizing air stripper treatment and wastewater diversions to the sanitary sewer system, that ensure that the discharge will not lower water quality or otherwise cause or contribute to exceedances of water quality standards, including protection of Matadero Creek's beneficial uses. Other Matadero Creek discharges, including some that may be new or modified, are also subject to NPDES permit requirements that protect water quality and comply with applicable antidegradation provisions.