California Regional Water Quality Control Board
San Francisco Bay Region

RESPONSE TO WRITTEN COMMENTS AND STAFF-INITIATED CHANGES

On the Tentative Order for
Delta Diablo
Delta Diablo Wastewater Treatment Plant and Sanitary Sewer System
Antioch, Contra Costa County

The Regional Water Board received written comments from Delta Diablo on a tentative order distributed for public comment on June 17, 2025. Delta Diablo comment 5 requested minor editorial and formatting changes, which we incorporated into the Revised Tentative Order. Comments 1 through 4 are summarized below in *italics* (paraphrased for brevity), followed by a staff response. For the full content and context of the comments, refer to the comment letter. To request a copy of the comment letter, see the contact information provided in Fact Sheet section 7.5 of the Revised Tentative Order.

Revisions are shown with ~~strikethrough~~ for deletions and <u>underline</u> for additions. This document also contains staff-initiated revisions in addition to those arising from the response to comments.

DELTA DIABLO

Comment 1: *Delta Diablo requests that we remove lead effluent limits, monitoring requirements, and any references to the aforementioned requirements because there is no reasonable potential for lead.*

Response: We agree and revised Table 2 as follows:

Table 1. Effluent Limitations

Parameter	Units	Average Monthly	Maximum Daily	Average Weekly	Instantaneous Minimum	Instantaneous Maximum	One-hour Average
All Discharge Conditions							
⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮
Cyanide, Total	µg/L	18	39	-	-	-	-
~~Lead, Total Recoverable~~	~~µg/L~~	~~13~~	~~42~~	-	-	-	-
Dioxin-TEQ	µg/L	1.4×10^{-8}	2.8×10^{-8}	-	-	-	-
⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮

We revised Table E-3 as follows:

Table E-1. Effluent Monitoring

Parameter	Unit	Sample Type	Minimum Sampling Frequency	Monitoring Location [1]
All Discharge Conditions				
⋮	⋮	⋮	⋮	⋮
Cyanide, Total [9]	µg/L	Grab	1/Month	EFF-001
~~Lead, Total Recoverable~~	~~µg/L~~	~~C-24~~	~~1/Month~~	~~EFF-001~~
Dioxin-TEQ	µg/L	Grab	Once	EFF-001
⋮	⋮	⋮	⋮	⋮

We revised Fact Sheet section 4.3.3.2 (second paragraph) as follows:

> The MECs, most stringent applicable water quality criteria and objectives, and ambient background concentrations used in the analysis are presented in the following table, along with the reasonable potential analysis results (yes, no, or unknown) for each pollutant. Based on this analysis, ammonia, copper, ~~lead,~~ and cyanide were found to exhibit reasonable potential by Trigger 1 under current conditions.

We revised Fact Sheet section 4.3.4.3 as follows:

> **WQBEL Calculations.** The following table shows the WQBEL calculations for copper, ~~lead,~~ cyanide, dichlorobromomethane, hexachlorobenzene, 4,4' DDT, and endrin in accordance with SIP section 1.4. For dioxin-TEQ and ammonia, SIP section 1.4 is used as guidance.

We revised Table F-12 as follows:

Table F-12. Monitoring Requirements Summary

Parameter [1]	Influent INF-001 [2]	Effluent EFF-001 [2]	Effluent EFF-002 [2]	Effluent EFF-003, EFF004 [2]	Effluent EFF-005 [2]	Effluent EFF-006 [2], [3]	Biosolids BIO-001 [2]
⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮
Copper, Total Recoverable	-	1/Month	-	-	-	-	-
~~Lead, Total Recoverable~~	~~-~~	~~1/Month~~	~~-~~	~~-~~	~~-~~	~~-~~	~~-~~
Dioxin-TEQ	-	Once	-	-	-	-	-
⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮

Comment 2: *Delta Diablo requests to be allowed to perform total dissolved solids effluent monitoring instead of salinity monitoring because it does not have Environmental Laboratory Accreditation Program accreditation for salinity. Delta Diablo*

also requests to be allowed to collect grab samples for total dissolved solids monitoring at Monitoring Location EFF-006 when discharging reverse osmosis concentrate alone because it expects durations of this discharge scenario to be brief.

Response: We agree and revised Table E-3 as follows:

Table E-2. Effluent Monitoring

Parameter	Unit	Sample Type	Minimum Sampling Frequency	Monitoring Location [1]
All Discharge Conditions				
⋮	⋮	⋮	⋮	⋮
TSS [3]	mg/L	C-24	3/Week	EFF-001
~~Salinity~~ Total Dissolved Solids	~~ppt~~ mg/L	Grab or C-24 [4]	1/Month	EFF-001, EFF-006
Temperature	°C	Grab	1/Month	EFF-001, EFF-006
⋮	⋮	⋮	⋮	⋮

We also revised Fact Sheet section 6.1.2 as follows:

> **Effluent Monitoring.** Effluent flow monitoring at Monitoring Location EFF-001 is necessary to understand Facility operations. Flow monitoring from two power plants, Corteva Agriscience – Pittsburg Operations, and the Antioch Brackish Water Desalination Project are necessary to ensure that the combined flow is accurately represented by the Discharger's most recent mixing zone analysis. Monitoring for the other parameters is necessary to evaluate compliance with this Order's effluent limitations and to conduct future reasonable potential analyses. This Order contains new effluent monitoring requirements for ~~salinity~~ total dissolved solids and temperature.

We also revised Table F-12 as follows:

Table F-12. Monitoring Requirements Summary

Parameter [1]	Influent INF-001 [2]	Effluent EFF-001 [2]	Effluent EFF-002 [2]	Effluent EFF-003, EFF004 [2]	Effluent EFF-005 [2]	Effluent EFF-006 [2], [3]	Biosolids BIO-001 [2]
⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮
TSS	3/Week	3/Week	-	-	-	-	-
~~Salinity~~ Total Dissolved Solids	-	1/Month	-	-	-	1/Month	-
Temperature	-	1/Month	-	-	-	1/Month	-
⋮	⋮	⋮	⋮	⋮	⋮	⋮	⋮

Comment 3: *Delta Diablo requests that we require it to revert to monthly routine chronic toxicity monitoring only after an exceedance of the chronic toxicity MDEL or MMEL, not a single "fail" test result.*

Response: We agree and revised Monitoring and Reporting Program Table E-3 footnote 10 as follows:

> Chronic toxicity tests shall be performed in accordance with MRP Section 5.1. The monitoring frequency shall be reduced to quarterly if no chronic toxicity test over the previous two years results in a "fail" at the instream waste concentration or if no chronic toxicity test during the species sensitivity screening (required by MRP Appendix E-1, section 2.1.1) results in a "fail" at the instream waste concentration. The monitoring frequency shall immediately revert to once per month after any ~~result of "fail"~~ exceedance of the MDEL or MMEL at the instream waste concentration.

We also revised Monitoring and Reporting Program section 5.1.3.1 as follows:

> The monitoring frequency shall immediately revert to once per month after any ~~result of "fail"~~ exceedance of the MDEL or MMEL at the instream waste concentration.

We also revised Fact Sheet section 6.1.3 (fourth paragraph) as follows:

> As required by Toxicity Provisions section III.C.4.b.i(B), this Order requires that the routine chronic toxicity monitoring frequency revert to monthly if the Discharger ~~fails to comply with this Order's chronic toxicity requirements or has a chronic toxicity test result of "fail"~~ exceeds the MDEL or MMEL at the IWC.

Comment 4: *Delta Diablo requests that Fact Sheet section 2.2 (Discharge Point and Receiving Water) be revised to reflect the due date and requirements for Provision 5.3.5.8 (Outfall Inspection and Maintenance).*

Response: We agree and revised Fact Sheet section 2.2 as follows:

> **Discharge Point and Receiving Water.** The Discharger routes its final effluent to New York Slough via a 400-foot iron pipe diffuser located about 500 feet offshore, about 26 feet deep. The diffuser is outfitted with 50 ports, each with three-inch diameters, located eight feet apart and pointing in alternating directions. During the diffuser's last inspection in August 2018, several ports were reported to be blocked by sediment. The Discharger plans to re-inspect ~~and remove the sediment~~ by the end of ~~2026~~ 2029 and conduct maintenance activities as specified in the plan Provision 5.3.5.8 requires.

STAFF-INITIATED CHANGES

In addition to minor editorial and formatting changes, we made staff-initiated changes shown below.

Change 1
We revised the tentative order to add a reopener provision related to the *State Policy for Water Quality Control: Toxicity Provisions* (Toxicity Provisions) and to provide additional background and applicability for the Toxicity Provisions in the Fact Sheet.

We revised Provision 5.3.1 as follows:

> **5.3.1. Reopener Provisions.** The Regional Water Board may modify or reopen this Order prior to its expiration date in any of the following circumstances as allowed by law or as otherwise authorized by law. The Discharger may request a permit modification based on any of these circumstances. With any such request, the Discharger shall include antidegradation and anti-backsliding analyses as necessary.
>
> 5.3.1.1. If present or future investigations demonstrate that the discharges governed by this Order have or will have a reasonable potential to cause or contribute to adverse impacts on water quality or beneficial uses of the receiving waters;
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> ⋮
>
> 5.3.1.7. To revise the aquatic toxicity provisions, if the California Supreme Court determines that the Test of Significant Toxicity cannot be used in NPDES permits and the State Water Board suspends or revises the aquatic toxicity water quality standards.

We revised Fact Sheet section 3.3.6 as follows:

> **Toxicity Provisions.** On December 1, 2020, t~~T~~he State Water Board adopted ~~the~~ *State Policy for Water Quality Control: Toxicity Provisions* (Toxicity Provisions), which established statewide numeric water quality objectives for both acute and chronic toxicity using the Test of Significant Toxicity (TST) and a program of implementation to control toxicity. O~~n~~ October 5, 2021~~.~~, the State Water Board adopted a resolution confirming that the Toxicity Provisions were adopted as a state policy for water quality control for all inland surface waters, enclosed bays, estuaries, and coastal lagoons of the state, regardless of their status as waters of the United States. The Toxicity Provisions establish a uniform regulatory

approach to provide consistent protection of aquatic life beneficial uses and protect aquatic habitats and life from the effects of known and unknown toxicants. The Toxicity Provisions were approved by the Office of Administrative Law on April 25, 2022, and by U.S. EPA ~~approved the Toxicity Provisions~~ on May 1, 2023. ~~Toxicity Provisions sections II.C.1 and II.C.2 establish numeric chronic and acute toxicity objectives that apply to all inland surface waters, enclosed bays, and estuaries in the State with aquatic life beneficial uses. The Toxicity Provisions include related implementation provisions and require that compliance with the chronic toxicity water quality objectives be assessed using U.S. EPA's Test of Significant Toxicity (TST) (U.S. EPA, *National Pollutant Discharge Elimination System Test of Significant Toxicity Implementation Document* [EPA/833-R-10-003], June 2010). This Order implements the Toxicity Provisions.~~

On December 14, 2023, the State Water Board applied for U.S. EPA Region IX review and approval of a limited-use alternative test procedure (ATP) for the use of one effluent concentration when conducting whole effluent toxicity (WET) tests, pursuant to 40 C.F.R. section 136.5 (Aug. 28, 2017). The application is specific to acute or chronic WET tests in Table 1 of the application when using the TST statistical approach (U.S. EPA, 2010) for analyzing the data. The application is being sought for all dischargers or facilities in the State of California and their associated laboratories. The ATP application is still pending with U.S. EPA.

The use of the TST has been the subject of litigation. In December 2024, the Second District Court of Appeal upheld the use of the TST in an NPDES permit in the case *Camarillo Sanitary District v. California Regional Water Quality Control Board - Los Angeles Region*.

A separate legal challenge to the State Water Board's adoption of the Toxicity Provisions originated in Fresno County Superior Court on July 18, 2022, through a petition for writ of mandate filed by Camarillo Sanitary District, City of Simi Valley, City of Thousand Oaks, Central Valley Clean Water Association, and Clean Water SoCal (formerly known as Southern California Alliance of Publicly Owned Treatment Works) (Petitioners) . One of the claims was that the Toxicity Provisions was inconsistent with the Clean Water Act. On October 9, 2023, the superior court denied the petition in its entirety.

On December 19, 2023, three of the Petitioners filed a notice of appeal of the Fresno Superior Court's decision upholding the Toxicity Provisions. On August 5, 2025, the Fifth District Court of Appeal issued a published opinion holding that the TST statistical approach, which is an integral component of the Toxicity Provisions, cannot be utilized in NPDES permitting to evaluate WET data because the TST is not an approved method under 40 C.F.R. part 136. The Court of Appeal did not, however,

disturb the Toxicity Provisions' use of the TST as a part of its water quality objectives. The State Water Board prevailed on all other claims in the litigation. The Court of Appeal's decision became final on September 4, 2025.

On September 15, 2025, the State Water Board filed a petition for review of the Fifth Circuit Court of Appeal's decision with the California Supreme Court. On November 12, 2025, the California Supreme Court granted review. The issues to be briefed and argued are limited to the issues raised in the State Water Board's petition for review.

Pending the California Supreme Court's review, the opinion of the Fifth Circuit Court of Appeal is not binding on the Water Boards. However, the opinion may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority.

In accordance with Water Code sections 13146 and 13247, the Regional Water Board must fully implement the water quality objectives and their implementation procedures in the Toxicity Provisions. The numeric water quality objectives for chronic and acute toxicity established by the Toxicity Provisions, which are based on the TST, were approved by U.S. EPA and remain in effect. As such, the numeric water quality objectives continue to serve as the applicable federal water quality standards in California.

The Regional Water Board must also continue to comply with federal Clean Water Act NPDES regulations for determining reasonable potential and establishing applicable water quality-based effluent limitations (WQBELs). NPDES regulations (40 C.F.R. section 122.44(d)(1)(vii)(A)) require that all WQBELs be derived from and comply with all applicable water quality standards. Moreover, although the Toxicity Provisions left in place narrative water quality objectives for aquatic toxicity in the Basin Plan, the Toxicity Provisions did supersede Basin Plan provisions and portions of the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) for implementing narrative water quality objectives. As such, there are currently no Basin Plan or SIP procedures in effect for implementing narrative water quality objectives to determine reasonable potential as required by 40 C.F.R. section 122.44(d)(1)(ii). As a result, the Regional Water Board must fully implement all of the Toxicity Provisions.

Change 2
Delta Diablo completed its Antioch Brackish Water Desalination Plant in October 2025, prior to the effective date of the Revised Tentative Order.

Therefore, we revised Provision 5.3.5.5 as follows:

> **Species Sensitivity Screening.** Within 18 months of ~~implementation of the Antioch Brackish Water Desalination Plant (see Fact Sheet section 2.5)~~ the effective date of this Order, the Discharger shall complete and submit the results of a species sensitivity screening consistent with the Monitoring and Reporting Program, Appendix E-1, section 2.1.1.~~2.1.3. This requirement supersedes the requirement to complete a species sensitivity screening within 18 months of the effective date of this Order, as required by Monitoring and Reporting Program, Appendix E-1, section 2.1.1. If the Antioch Brackish Water Desalination Project is delayed, the Discharger shall complete a species sensitivity screening and submit the results with its application for permit reissuance, consistent with Appendix E-1, section 2.1.2.~~

Therefore, we revised Fact Sheet section 5.3.5.5 as follows:

> **Species Sensitivity Screening.** This Order ~~requires the Discharger to submit an updated species sensitivity screening consistent with MRP section 2.1.3 within 18 months of implementation of the Antioch Brackish Water Desalination Project. MRP section 2.1.2~~ requires the Discharger to complete and submit an updated species sensitivity screening within 18 months of the effective date of this Order, consistent with MRP Appendix E-1, section 2.1.1~~, however, Provision 5.3.5.5 delays the study until after completion of treatment plant upgrades to ensure the study is representative of discharge~~. Fact Sheet Section ~~7~~6.1.3 contains more information on the rationale for toxicity monitoring requirements.

Therefore, we revised Fact Sheet section 6.1.3, paragraph seven as follows:

> Provision 5.3.5.5 of this order requires a new toxicity screening that complies with MRP (Attachment E), Appendix E-1, section 2.1.1~~2.1.3~~, and that satisfies the minimum screening requirements in Toxicity Provisions III.C.2.a. The Toxicity Provisions require that data be analyzed using the TST, and the test species include one vertebrate, one invertebrate, and one aquatic plant/algae from Table 1 of Toxicity Provisions section III.B.2. The Toxicity Provisions species screening requirements are summarized in MRP Appendix E-2. ~~Instead of conducting a toxicity screening within 18 months of the effective date of this Order, Provision 5.3.5.5 of this Order requires the Discharger to conduct a new toxicity screening within 18 months of implementation of the Antioch Brackish Water Desalination Project, described in Fact Sheet section 2.5. This Order allows the Discharger to delay conducting its species sensitivity screening to ensure~~

~~that it will collect samples representative of the discharge once it begins receiving RO concentrate.~~

Change 3
We revised Attachment D of the tentative order to reflect U.S. EPA's deadline extension for complying with the Phase 2 implementation of the NPDES eReporting Rule. We revised section 1.7.5 as follows:

1.7.5.1. **Anticipated bypass.** If the Discharger knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least 10 days before the date of the bypass. The notice shall be sent to the Regional Water Board. As of December 21, 202~~5~~8, a notice shall also be submitted electronically to the initial recipient defined in Standard Provisions – Reporting section 5.10 below. Notices shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (40 C.F.R. § 122.41(m)(3)(i).)

1.7.5.2. **Unanticipated bypass.** The Discharger shall submit a notice of an unanticipated bypass as required in Standard Provisions – Reporting section 5.5 below (24-hour notice). The notice shall be sent to the Regional Water Board. As of December 21, 202~~5~~8, a notice shall also be submitted electronically to the initial recipient defined in Standard Provisions – Reporting section 5.10 below. Notices shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. (40 C.F.R. § 122.41(m)(3)(ii).)

We revised section 5.5 (third paragraph) as follows:

5.5.1. The Discharger shall report any noncompliance that may endanger health or the environment….

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As of December 21, 202~~5~~8, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events must be submitted to the Regional Water Board and must be submitted electronically to the initial recipient defined in Standard Provisions – Reporting section 5.10. The reports shall comply with 40 C.F.R. part 3, 40 C.F.R. section 122.22, and 40 C.F.R. part 127. The Regional Water Board may also require the Discharger to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section. (40 C.F.R. § 122.41(l)(6)(i).)

Change 4
We revised Fact Sheet section 3.2 to clarify the state law requirements that are retained from the previous order, as follows:

> **California Environmental Quality Act (CEQA).** Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of the California Environmental Quality Act (CEQA), Public Resources Code division 13, chapter 3 (commencing with § 21100). ~~This Order includes two provisions—~~Provision 5.3.4.2.1 and Attachment G Provision 1.9.1 are state law requirements that are retained from~~—under state law only. These state law requirements are not subject to the exemption under Water Code section 13389. However,~~ the previous order. To the extent Water Code section 13389 does not apply to these state law requirements, ~~imposed these requirements. As such,~~ retaining them ~~these requirements~~ is not a project subject to CEQA because they will not cause a direct or indirect physical change in the environment (Public Resources Code §§ 21065, 21080).