January 16, 2014

Sent via Electronic Mail erickson@waterboards.ca.gov

Elizabeth Erickson  
Los Angeles Regional Water Quality Control Board  
320 West 4th Street, Suite 200  
Los Angeles, CA 90013

Subject: California Association of Sanitation Agencies (CASA) Comments on Tentative Permit for San Jose Creek Water Reclamation Plant

Dear Ms. Erickson,

The California Association of Sanitation Agencies (CASA) appreciates the opportunity to provide comment on the tentative permit for the San Jose Creek Water Reclamation Plant (hereafter “tentative permit”). CASA is a statewide association representing more than 100 municipalities, special districts, and joint powers agencies that provide wastewater collection, treatment, clean energy and water recycling services to millions of Californians. Our association does not routinely comment on matters within individual regions, except in circumstances such as this, where the proposed regional action could have significant statewide implications. To the extent that the terms being incorporated into this individual NPDES permit could affect how other regions approach toxicity, and could impact the promulgation of a forthcoming statewide plan or policy governing toxicity, all of CASA’s members statewide have a significant interest in the development and implementation of this permit. CASA believes that the terms incorporated into the San Jose Creek permit are substantially similar to those in the Pomona and Whittier Narrows permits that were also the subject of recent CASA comments and testimony. CASA has three primary concerns within this permit, as outlined in greater detail below.

1. The Permit Contains Numeric Effluent Limits for Toxicity

Adoption of a permit that contains numeric effluent limits for toxicity, and specifically prescribes use of the Test of Significant Toxicity (TST) approach, in advance of the promulgation of a statewide policy on this issue is inappropriate and premature. The State Water Board has been working with stakeholders, U.S. EPA and regional water boards to develop revised toxicity provisions for inclusion in a statewide water quality control plan through a public process, and release of a revised draft is expected soon for public comment. An appropriate statewide plan will replace the current patchwork of regional water board practices with a consistent and standardized approach to toxicity. Adoption of numeric effluent limits for toxicity in an individual Regional Board permit is thus premature and interferes with a significant amount of work being done at the state level. CASA requests that the chronic toxicity limits contained in the tentative permit be removed and replaced with a narrative chronic toxicity

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1 See Tentative Permit at pp. 7, 11, 29.
limit and triggers, at least until such time as there is a comprehensive statewide toxicity plan to govern those terms.

2. **The Permit Contains Provisions Inappropriately Restricting How the TST Is Utilized**

Several conditions within the permits improperly limit or restrict the permittee’s ability to conduct recommended data evaluation procedures. For example, the tentative permit states that “…The TST hypothesis (Ho) (see above) is not tested using a multi-concentration test design; therefore, the concentration response relationship for the effluent and/or PMSDs shall not be used to interpret the TST result reported as the effluent compliance monitoring result. While the Permittee can opt to monitor the chronic toxicity of the effluent using five or more effluent dilutions (including 100% effluent and negative control) only the TST result will be considered for compliance purposes.”² (Emphasis added.) Limiting the ability of a permittee to utilize the appropriate promulgated chronic toxicity testing protocols, including the availability of a multi-concentration test, will significantly increase the false positive rate when using the TST. Moreover, prohibiting such activities is entirely inconsistent with what is expected to be contained in the statewide toxicity plan.

3. **The Permit Contains Provisions Requiring Continued Monitoring for Compliance Purposes During Accelerated Testing and TIE/TRE Implementation**

Requiring that TST results be reported as effluent compliance monitoring during these accelerated monitoring schedules and initiation of the TIE/TRE is inappropriate, counterproductive, and should not be included in the tentative permit. Specifically, the tentative permit states that “…TST results (“Pass” or “Fail”, “Percent Effect”) for chronic toxicity tests shall be reported as effluent compliance monitoring results for the chronic toxicity MDEL and MMEL.”³ This provision could place the discharger in immediate jeopardy of compliance violations, and is entirely inconsistent with what is expected to be contained in the statewide toxicity plan. CASA has been working with State Water Board staff and numerous stakeholders in developing the statewide toxicity plan, and it is our understanding that after an initial toxicity violation, accelerated testing and/or TIE/TRE implementation will occur. During that time no further violations should be incurred provided that the permittee conducts the required and appropriate actions to address the exceedance. Toxicity efforts conducted after an identified exceedance should focus on identifying the cause of the exceedance and addressing it. Continued routine monitoring during accelerated testing and/or TRE plan implementation will not assist in achieving those goals, and will only serve to increase reported violations that could subject the discharger to liability without contributing anything toward actually identifying and controlling toxicity. Dischargers should not be liable for continued toxicity violations after triggering accelerated testing and initiation of the TRE.

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² Tentative Permit at p. 30.
³ Tentative Permit at p. E-25.
We appreciate the opportunity to provide comments on the tentative permit, and feel free to contact me at alink@casaweb.org or (916) 446-0388 if you have any additional questions or concerns.

Sincerely,

[Signature]

Adam D. Link  
CASA Director of Government Affairs