

Central Valley Regional Water Quality Control Board
9/10 October 2014 Board Meeting

Response to Comments
for the
Stockton Port District
Facility-wide Storm Water Discharges from
Municipal Separate Storm Sewer System and
Non-Storm Water Discharges
from the Port of Stockton, San Joaquin County
Tentative Order Amending Waste Discharge Requirements Order No. 2011-0005

The following are Central Valley Regional Water Quality Control Board (Central Valley Water Board) staff response to comments submitted by interested parties regarding the tentative Order amending Waste Discharge Requirements Order R5-2011-0005 (NPDES Permit No. CAS0084077) for the Stockton Port District (Permittee) Municipal Separate Storm Sewer System (MS4).

The tentative Order amending the MS4 Permit (tentative Order) was issued for a 30-day public comment period on 4 August 2014 with comments due by 3 September 2014. The Central Valley Water Board received public comments regarding the tentative Order by the due date from the Permittee and the United States Environmental Protection Agency, Region 9 (USEPA). Changes were made to the tentative Order based on public comments received.

The submitted comments were accepted into the record, and are summarized below, followed by Central Valley Water Board staff response.

STOCKTON PORT DISTRICT (PERMITTEE) COMMENTS, 14 AUGUST 2014

Permittee Comment #1: Petition to State Board Appealing Order R5-2011-0005 – Tentative Order, Finding 4. The Permittee requests to include background information leading to the request for a Permit amendment by including language regarding the petition to State Board appealing Order R5-2011-0005 in Finding 4.

RESPONSE: Central Valley Water Board staff concurs and Finding 4 of the tentative Order is modified as shown below.

4. On or about 4 March 2011, the Permittee appealed Order R5-2011-0005 on a variety of issues. On 16 May 2014, in an attempt to resolve the issues in its permit appeal and to clarify the permit's terms, the Permittee submitted a written request to amend portions of its Permit for typographical errors, modification of definitions, use of consistent terminology throughout the Permit, and changes to the Monitoring and Reporting Program. Revisions to monitoring included reduced sampling locations and frequencies, and modification to sampling methods.

Permittee Comment #2: Compliance with Administrative Order on Consent (AOC) – Tentative Order, Finding 5. The Permittee requests to remove the last sentence from Finding 5. The Permittee contends that they no longer have any “responsibility to comply with the USEPA’s AOC” since the USEPA terminated the AOC.

RESPONSE: Central Valley Water Board staff concurs after conferring with USEPA. Finding 5 of the tentative Order Is modified as shown below.

5. The Permittee was issued an Administrative Order on Consent [AOC] (Docket No. CWA-309(a)-10-003) from the United States Environmental Protection Agency, Region 9 (USEPA) on 4 December 2009. The AOC was terminated on 5 January 2011. ~~This amendment to Order R5-2011-0005 does not modify remaining responsibilities, if any, by the Permittee to comply with the USEPA's AOC.~~

Permittee Comment #3: Inlet Monitoring at Retention Basin Inlet (RBI) Sampling Location – Tentative Order, Finding 6.k. The Permittee requests to modify tentative Order, Finding 6.k to remove the reference to Retention Basin Inlet monitoring during a discharge event. The Permittee contends that RBI monitoring occurs during storm events when water is being pumped into the Retention Basin; and only the Retention Basin outfall discharge, and applicable receiving water sites, are sampled during Retention Basin discharge events.

RESPONSE: Central Valley Water Board staff concurs that this was an error in the tentative Order.

In addition, Central Valley Water Board staff clarifies that RBI monitoring is to be conducted during at least two wet seasons and two dry seasons within the five year period of the Permit; and not just during storm events when water is being pumped into the Retention Basin.

RBI monitoring is required under Section VII.G Retention Basin Studies. Under this requirement, a Retention Basin Monitoring Work Plan (Work Plan), as part of the Storm Water Management Program, must be designed to evaluate the effectiveness of the Retention Basin in removing pollutants of concern. The Work Plan is designed to perform influent (i.e., inlet), effluent (i.e., outlet), and sediment chemistry/toxicity monitoring of the Retention Basin.

Finding 6.k of the tentative Order is modified as shown below.

- k. Section II.E. of the Monitoring and Reporting Program for the East Complex Retention Basin Monitoring is revised to change from daily monitoring of the basin (at mid-depth) ~~and inlet~~ during a discharge event to daily monitoring of outlet during a discharge event. This will provide information on the quality of the MS4 discharge from the basin.

Permittee Comment #4: Formatting –Attachment A, Finding 39/45. The Permittee requests that numbering of the Findings be corrected and sequential in Attachment A.

RESPONSE: Central Valley Water Board staff note the comment. The Permittee's comment pertains to the Administrative Draft of the tentative Order, not the tentative Order.

Permittee Comment #5: Maximum Extent Practicable (MEP) Goal – Attachment A, Finding 44. The Permittee requests the following be added/deleted to improve clarity and eliminate redundancy in Finding 44 of Attachment A:

44. [...] Nevertheless, the requirement to implement controls that reduce pollutants to the MEP is may not be limited by the goal of attaining water quality standards. ~~In some circumstances, compliance with MEP is not limited by the goal of attaining water quality standards.~~ [...]

RESPONSE: Central Valley Water Board staff does not concur in part with revising the first sentence. Accepting the proposed changes to the first sentence alters the intent of Finding 44.

In the issuance of the MS4 permit, the Central Valley Water Board required implementation of technically and economically feasible control measures to reduce pollutants in storm water to the MEP. The definition of MEP is dynamic and is the result of an iterative process of the cumulative effect of implementing, continuously evaluating, and making corresponding changes to a variety of technically and economically feasible BMPs that ensure the most appropriate controls are implemented in the most effective manner. In some circumstances, the Permittee implements BMPs that may be in compliance with MEP, and the goal of attaining water quality standards is still not achieved. In other circumstances, water quality standards are attained through the implementation of the appropriate technically and economically feasible BMPs, and implementation of controls are still required to continue maintaining compliance with the water quality standards.

Central Valley Water Board staff concurs in deleting the second sentence. The second sentence repeats what is already stated in the first sentence.

Finding 6.s is added to the tentative Order as shown below.

s. Finding 44 of Attachment A is revised to delete the sentence: "In some circumstances, compliance with the MEP is not limited by the goal of attaining water quality standards". This sentence is repetitive of what is stated in the prior sentence.

Permittee Comment #6: Formatting – Attachment A, Finding 47 and Monitoring and Reporting Program, Table B1 footnotes. The Permittee requests: (1) Finding 47 texts caught between Findings 53 and 54 to be removed; and (2) Table B1 footnotes be kept together on the same page with Table B1.

RESPONSE: Central Valley Water Board staff note the comment. The Permittee's comment pertains to the Administrative Draft of the tentative Order, not the tentative Order.

Permittee Comment #7: Receiving Water Limitations – Attachment A, Provision C.4. The Permittee requests a change to Provision C.4 by removing the phrase "or contributing" and replacing with "or substantially contributing". The Permittee contends one molecule could constitute the "contribute" threshold and that the "cause or contribute" language is not contained in the Clean Water Act Section 402, and is only found in federal rules that apply when performing a reasonable potential analysis under 40 CFR 122.44(d) (pursuant 33 USC 1311(b)(1)(C)), which does not apply to MS4s. The Permittee further contends that the provisions of Clean Water Act 402(p)(B)(3) for MS4 permits was replaced by requirements

under Clean Water Act Section 301 (*Defenders of Wildlife v. Browner*, 191 F 3d.1159, 1165 (9th Cir. 1999)).

RESPONSE: Central Valley Water Board staff does not concur. The proposed change is inconsistent with State Water Resources Control Board Order W 99-05 which identifies acceptable receiving water limitations language to be included in MS4 permits by the Regional Water Boards. The current receiving water limitations language is also consistent with USEPA policy, and the United States Court of Appeals decision in *Defenders of Wildlife v. Browner*.

Permittee Comment #8: Sanitary Sewer Overflow and Spill Response - Attachment A, Provision D.12.b.i. The Permittee contends that the Spill Sewer Overflow and Spill Response requirements were removed from the MS4 Permit and should therefore be removed from this section for consistency.

RESPONSE: Central Valley Water Board staff does not concur. The Permittee retracted this comment in their second submittal of comments, dated 19 August 2014.

Permittee Comment #9: Consistent Use of Storm Event Terminology - Attachment A, Monitoring and Reporting Program, Section II.B.3; Section II.B.8; Section I.B.8, footnotes 5, 6 and 7; Table B1, footnote b; Table B2, footnote a; Section II.D; Table D, footnote a; Section II.H.1.a; Table F, footnote 18; Section III.A; Fact Sheet, Item VI.A; Fact Sheet, Item VI.B; Fact Sheet, Item VI.E; and Fact Sheet, Item VII.G. The Permittee requests that the term “monitoring” should be removed from the term “storm monitoring event”. The Permittee contends that the addition of the term “monitoring” to describe a storm event as a “storm monitoring event” is not consistently carried throughout Attachment A, and this change has inadvertently resulted in the use of unnecessary and undefined terminology.

RESPONSE: Central Valley Water Board staff concurs. The Permittee comments were made on the Administrative Draft of to the tentative Order which was sent for the Permittee’s review prior to the public noticing of the tentative Order. The tentative Order did not include the proposed changes in the Administrative Draft of the tentative Order; therefore, no changes were required in the tentative Order.

This was not revised in Finding 6 of the Tentative Order. Finding 6 is modified as shown below.

6. This Order amends Order R5-2011-0005 (as shown in Attachment A in underline/strikeout) to correct typographical errors, ~~consistently use the terms “dry season”, “dry weather”, “dry weather monitoring event”, “dry weather field screening”, “wet season”, “wet weather”, and “wet weather monitoring event”,~~ and as summarized below.

Permittee Comment #10: Consistent Use of Dry Season Terminology – Attachment A, Monitoring and Reporting Program, Section II.B.8, footnote 6. The Permittee contends that the MS4 Permit inconsistently uses the term “dry weather” and “dry season” to describe the two dry weather/season monitoring events. The Permittee requests to clarify the term “dry season”

temporally between June 1st and September 30th to be made in II.B.8, footnote 6. Alternatively, if this change is not made, the Permittee requests that the original terminology employed in the MS4 Permit be retained in Attachment A, Monitoring and Reporting Program, Section I.D; Fact Sheet, Section VI.A; and Fact Sheet, Section VI.B; and

RESPONSE: Central Valley Water Board staff concurs. The baseline monitoring schedule is summarized in Table F of the Monitoring and Reporting Program in Attachment A. The baseline monitoring consists of urban and receiving water monitoring, and dry weather field screening. Notes (a) – (e) in Table F specify the baseline monitoring to be conducted during 3 storm events, which includes an early season storm event that captures the “first flush”, a midseason storm event, and a late season storm event, and 2 dry weather events only if a discharge is occurring.

Footnote 6 in Attachment A, Monitoring and Reporting Program, Section II.B.8 is modified as shown below.

- ⁶ Dry weather monitoring events shall be preceded by at least seven days of no rainfall; the two dry weather monitoring events shall be separated by at least 14 days of no rainfall. Dry weather monitoring events shall occur in the dry season (June 1 through September 30).

In addition, Finding 6.p is added to the Tentative Order as shown below:

- p. Section II.B.8, footnote 6 of the Monitoring and Reporting Program for baseline monitoring sampling protocols is revised to clarify the term “dry season” to occur between 1 June and 30 September.

Since Central Valley Water Board staff concurs with the initial request, the Permittee’s requested alternative changes were not necessary.

Permittee Comment #11: Consistent Use of Dry Season Terminology – Attachment A, Monitoring and Reporting Program, Table F, Note (e). The Permittee contends that field screening for illicit discharges is intended to occur during the dry season and not during a dry weather monitoring event. The term “dry weather monitoring” should be removed and the term “per dry season” should be retained. As is, the modifications are inconsistent with the illicit discharge monitoring section, Monitoring and Reporting Program II.I. The Permittee requests to remove the term “dry weather monitoring” and retain the term “per dry season” in Table F, note (e) of the Monitoring and Reporting Program.

RESPONSE: Central Valley Water Board staff note the comment. The Permittee’s comment to make revisions to Table F, note (e) pertains to the Administrative Draft of the tentative Order, which was sent for the Permittee’s review prior to the public noticing of the tentative Order. The tentative Order did not include the proposed changes in the Administrative Draft of the tentative Order; therefore, no changes were required in the tentative Order.

Permittee Comment #12: Formatting – Attachment A, Monitoring and Reporting Program, Tables B1 and B2, footers. The Permittee requests footnotes for each table remain on the same page at the table itself.

RESPONSE: Central Valley Water Board staff note the comment. The Permittee's comment pertains to the Administrative Draft of the tentative Order, not the tentative Order.

Permittee Comment #13: Concurrent Receiving Water Monitoring Requirement, Sampling Location RBI – Attachment A, Monitoring and Reporting Program, Section II.D. The Permittee contends that monitoring location Retention Basin Inlet (RBI) is not a discharge requiring concurrent receiving water sampling since it is not an urban discharge monitoring location and should be removed from Monitoring and Reporting Program, Section II.D.

RESPONSE: Central Valley Water Board staff concurs. RBI is not an urban discharge or receiving water monitoring location. RBI monitoring is required under Section VII.G Retention Basin Studies. Under this requirement, a Retention Basin Monitoring Work Plan (Work Plan), as part of the Storm Water Management Program, must be designed to evaluate the effectiveness of the Retention Basin in removing pollutants of concern. The Work Plan is designed to perform influent (i.e., inlet), effluent (i.e., outlet), and sediment chemistry/toxicity monitoring of the Retention Basin.

Monitoring and Reporting Program, Section II.D of the tentative Order is modified as shown below.

D. Receiving Water Monitoring

All receiving water samples shall be grab samples, collected at mid-depth, in mid-stream of the receiving water, and in a manner that measures the water quality impacts of corresponding urban discharge outfalls. Receiving water monitoring shall be taken after discharges from D-2, D4, D-10, D11, RBI, RB (if discharging), and WC have occurred. Attachment B shows the approximate locations of the receiving water sampling stations. Each year, samples shall be collected **coinciding with the three qualifying storm events and two monitoring events during the dry season**¹³¹⁴ in accordance with the Port's sampling and analysis plan. Receiving water monitoring shall include at least the following:

In addition, Finding 6.q is added to the tentative Order as shown below.

- q. Section II.D of the Monitoring and Reporting Program is modified to remove retention basin inlet (RBI) monitoring from receiving water monitoring. RBI is not an urban discharge or receiving water monitoring location. RBI monitoring is a requirement under the Retention Basin Studies.

Permittee Comment #14: R-5 Drainage Description or Location, Attachment A, Monitoring and Reporting Program, Table C. The Permittee contends that the "Drainage Description or Location" for Station ID No. R-5 on Table C is incorrectly described.

RESPONSE: Central Valley Water Board staff note the comment. The Permittee comments were made on the Administrative Draft of the tentative Order which was sent for the Permittee's review prior to the public noticing of the tentative Order. The tentative

Order did not include the proposed changes in the Administrative Draft of the tentative Order; therefore, no changes were required in the tentative Order.

Permittee Comment #15: East Complex Retention Basin Monitoring, Attachment A, Monitoring and Reporting Program, Section II.E. The Permittee requests a maximum limit be placed on the monitoring frequency for the Retention Basin (RB) urban monitoring location to reflect the monitoring frequency specified in Section II.B.8 of the Monitoring and Reporting Program. Section II.B.8 specifies the yearly monitoring frequency required at all urban discharge and receiving water monitoring locations be conducted during three qualifying storm events and two dry weather events.

RESPONSE: Central Valley Water Board staff does not concur with inserting a maximum limit on RB monitoring frequency. A maximum limit to monitoring frequency becomes a conflict when exceedances of water quality standards persist. When water quality exceedances persist, the Permittee must prepare a Report of Water Quality Exceedances (RWQE) report that summarizes the current best management practices (BMPs) implemented and additional BMPs to be implemented, includes proposed revisions to the Storm Water Management Program, implementation schedule with milestones and performance standards, and monitoring program and rationale for new or improved BMPs. The process of preparing a RWQE, submitting a RWQE, implementing new or improved BMPs, creating a monitoring program for the new or improved BMPs, and evaluating the effectiveness of the BMPs is part of the iterative process which is a compliance requirement.

If a maximum limit is placed for the RB monitoring frequency, extra monitoring, as part of the RWQE, for any new or improved BMPs installed or implemented will not occur; and the Permittee will not be able to obtain the information needed to determine if the BMPs have been effective in reducing the persistent exceedances of water quality standards.

Attachment A, Monitoring and Reporting, Section II.E is modified as shown below.

E. East Complex Retention Basin Monitoring

~~The retention basin shall be monitored via grab samples collected at mid-depth from the deepest point in the basin the RB sampling station (Table A). This monitoring shall occur prior to daily during each outfall discharge event. If urban discharges enter the retention basin while it is discharging to the San Joaquin River, then the Permittee shall resample the basin at least daily as long as inlet discharges are occurring. Samples shall be analyzed for the same parameters as those listed for the retention basin inlet RB specified in Table B-2-B-1. For RB, "first flush" shall be considered to be the first discharge event occurring during the storm water year. Monitoring RB shall be consistent with the frequency of urban discharge monitoring described in Section II.B.8.~~

In addition, Finding 6.d of the tentative Order is modified as shown below.

- d. Monitoring and Reporting Program, section II.C (page 11) of the Permit describes the urban discharge monitoring to be conducted at several representative outfall locations. A change specific to the East Complex Retention Basin is included in Monitoring and Reporting Program, Section II.E to clarify the "first flush" for the purposes of monitoring the retention basin and make RB monitoring frequency consistent with urban discharge monitoring.

Permittee Comment #16: Formatting, Attachment A, Monitoring and Reporting Program, II.F. The Permittee requests spacing be corrected that has cutoff a paragraph and left a page blank.

RESPONSE: Central Valley Water Board staff note the comment. The Permittee's comment pertains to the Administrative Draft of the tentative Order, not the tentative Order.

Permittee Comment #17: Toxicity Reduction Evaluation (TRE) Corrective Action Plan, Attachment A, Monitoring and Reporting Program, Section II.H.4.b. The Permittee contends that the MS4 permit inappropriately requires the trigger of a TRE Corrective Action Plan before knowledge of the pollutants is known and before a second sample is collected indicating the problem is not transient. The Permittee requests a change be made to trigger a TRE Corrective Action Plan once a pollutant or class of pollutants is identified through Toxicity Identification Evaluation and aligned with the trigger for developing a TRE.

RESPONSE: Central Valley Water Board staff concurs.

Section II.H.4.b in Attachment A is modified as shown below.

4. Toxicity Reduction Evaluation (TRE) Protocols

[...]

- b. No later than 90 days from the detection of statistically significant chronic toxicity following the identification of a pollutant or class of pollutant, as defined described in paragraph 2-d-4.a above, the Permittee shall submit to the Central Valley Water Board staff a TRE Corrective Action Plan that shall, at a minimum, discuss the following items:

In addition, Finding 6.n is added to the Tentative Order as shown below.

- n. Section II.H.4.b of the Monitoring and Reporting Program for toxicity reduction evaluation (TRE) protocols is revised to trigger a TRE Corrective Action Plan once a pollutant or class of pollutants is identified through Toxicity Identification Evaluation and aligned with the trigger for developing a TRE. Currently, the TRE Corrective Action Plan is triggered before knowledge of the pollutant is known and before a second sample is collected indicating the problem is not transient.

Permittee Comment #18: Formatting - Attachment A, Monitoring and Reporting Program, II.I. The Permittee requests spacing be corrected that has cutoff text and left a page blank. The Permittee comment pertains to the Administrative Draft, not the tentative Order.

RESPONSE: Central Valley Water Board staff note the comment. The Permittee's comment pertains to the Administrative Draft of the tentative Order, not the tentative Order.

Permittee Comment #19: Minimum Levels (MLs) – Attachment A, Monitoring and Reporting Program, Section IV.G. The Permittee contends that Minimum Levels (MLs) for priority and non-priority pollutants should be removed from Table G and related discussion

pertaining to State Water Resources Control Board's *Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) should be removed entirely. If reference to the MLs obtained from the SIP cannot be removed in its entirety, the Permittee requests that only SIP MLs be retained and MLs for non-priority pollutants be removed from Table G. The Permittee states that non-priority pollutant MLs in Table G have no basis and present a challenge attaining commercially available 40 CFR 136 approved methods. The Permittee also provides an updated regulatory reference.

RESPONSE: Central Valley Water Board staff concurs in part with the correcting the citation of the regulatory reference (i.e., 65 Fed. Reg.31682). The citation refers to the federal register where the public was notified of the regulation. The regulatory citation should cite the specific codification of the regulation.

Central Valley Water Board staff does not concur with the remaining comments, which pertain to the Administrative Draft of the tentative Order, not the tentative Order.

Attachment A, Monitoring and Reporting Program, Section IV.G is modified as shown below.

- G. For priority toxic pollutants that are identified in the CTR (~~65 Fed. Reg.31682~~ 40 CFR 131.38), the MLs published in Appendix 4 of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California 2005 (SIP) shall be used for all analyses, unless otherwise specified. The lowest MLs from Appendix 4 of the SIP is are included as Table G. For Priority Pollutants, in accordance with Section 2.4.2 of the SIP, when there is more than one ML value for a given substance, the Permittee may select any SIP ML that is less than the water quality objective instead of the MLs listed in Table G. If no ML value is below the water quality objective, the Permittee shall select the lowest SIP ML value, and its associated analytical method.

For pollutants not contained in Appendix 4 of the SIP, the test method and method detection limit (MDL) listed in Table G shall be used for all analyses, and the ML for these parameters shall be lower than or equal to the lowest applicable water quality criteria from the Basin Plan and/or the SIP. For these constituents, the Permittee may propose different MLs and/or ELODs as described below under H.4 for Executive Officer approval.

In addition, Finding 6.r is added to the tentative Order as shown below.

- r. Section IV.G of the Monitoring and Reporting Program is revised to cite the appropriate regulatory requirement, 40 CFR 131.38. The current regulatory citation, 65 FED. Reg. 31682, refers to the federal register where the public was notified of the regulation. The regulatory citation should cite the specific codification of the regulation.

Permittee Comment #20: Estimated Limit of Detections (ELODs) - Attachment A, Monitoring and Reporting Program, Table G. The Permittee requests removing ELODs in Table G for pyrethroid pesticides in water. The Permittee contends that pyrethroid pesticides are non-priority pollutants, and there are no corresponding minimum levels in the SIP. The Permittee also contends that the MS4 permit does not define or discuss what an ELOD is, how the ELOD values were established, or how an ELOD is to be used with regard to monitoring and reporting.

RESPONSE: Central Valley Water Board staff does not concur. The ELOD is lowest quantity of a constituent that can be detected. Table G clarifies the MS4 permit requirement that states the Permittee must use “the lowest quantifiable concentration” in its testing. Table G informs the Permittee what the Board’s expectations are.

Permittee Comment #21: Monitoring for Organochlorine Pesticides and Polychlorinated Biphenyls (PCBs) – Tentative Order, Finding 6.i. The Permittee pointed out that Finding 6.i incorrectly states that organochlorine pesticides have not been detected in the urban discharge monitoring. The Permittee contends that organochlorine pesticides have been detected in the receiving water monitoring and requested to fix the error in Finding 6.i.

RESPONSE: Central Valley Water Board staff concurs after expanding the dataset to include data outside of the current permit term. Finding 6.i of the tentative Order is modified as shown below.

i. The Permittee has been monitoring polychlorinated biphenyls (PCBs) and organochlorine pesticides since 2004. Organochlorine pesticides and polychlorinated biphenyls (PCBs) have not been detected in the Port’s urban discharge or receiving water monitoring since 2004 (based on 436 urban discharge and 1,120 receiving water samples). Organochlorine pesticides sampling indicates six urban discharge exceedances for DDT, DDE, and DDD and one receiving water exceedance for DDT out of 827 non-detects (urban discharge monitoring) and 2,733 non-detects (receiving water monitoring). Organochlorine pesticides are legacy pesticides that have been banned in the United States and are not stored, used, or produced on Port property. PCBs are mixtures of synthetic organic chemicals that were commonly used for various applications until 1979 when USEPA banned PCB manufacturing. USEPA authorized commercial applications of PCB, such as operation of transformers and maintenance of natural gas pipelines, have not been identified activities at the Port. Because sampling has adequately characterized urban discharge and receiving waters for these constituents, this Order includes revisions to discontinue monitoring for PCBs and organochlorine pesticides. Future monitoring will be considered during the renewal of the MS4 permit for the Port of Stockton or as part of the Central Valley Water Board’s Region-wide MS4 permit development (currently underway). This Order includes revisions to discontinue monitoring for organochlorine pesticides and PCBs.

STOCKTON PORT DISTRICT (PERMITTEE) COMMENTS, 19 AUGUST 2014

Permittee Comment (8/19/14) #1a: Consistent Use of Dry Season Terminology – Attachment A, Monitoring and Reporting Program, Section II.B.8, footnote 6. The Permittee contends that the original intent of the MS4 Permit, the Port of Stockton’s Sampling and Analysis Plan (attached to the Storm Water Management Plan), and the Port of Stockton’s current sampling practices, dry weather monitoring needs to be consistently defined in the MS4 permit as occurring during the dry season. The Permittee requests to add clarifying language to Section II.B.8, footnote 6 of the Monitoring and Reporting Program.

RESPONSE: Central Valley Water Board staff concurs. The baseline monitoring schedule is summarized in Table F of the Monitoring and Reporting Program in Attachment A. The baseline monitoring consists of urban and receiving water monitoring, and dry weather field screening. Notes (a) – (e) in Table F specify the baseline monitoring to be conducted during 3 storm events, which includes an early season storm event that captures the “first flush”, a midseason storm event, and a late season storm event, and 2 dry weather events only if a discharge is occurring.

Footnote 6 in Attachment A, Monitoring and Reporting Program, Section II.B.8 is modified as shown below.

- ⁶ Dry weather monitoring events shall be preceded by at least seven days of no rainfall; the two dry weather monitoring events shall be separated by at least 14 days of no rainfall. Dry weather monitoring events shall occur in the dry season (June 1 through September 30).

In addition, Finding 6.p is added to the Tentative Order as shown below:

- s. Section II.B.8, footnote 6 of the Monitoring and Reporting Program for baseline monitoring sampling protocols is revised to clarify the term “dry season” to occur between 1 June and 30 September.

Permittee Comment (8/19/14) #1b: Dry Weather Monitoring – Fact Sheet, Monitoring and Reporting Program, VI.A and VI.B. The Permittee requests the “dry season” terminology discussion of urban discharge and receiving water monitoring should be retained in the Fact Sheet.

RESPONSE: Central Valley Water Board staff note the comment. The Permittee’s comment pertains to the Administrative Draft of the tentative Order, not the tentative Order.

Permittee Comment (8/19/14) #2: Non-Priority Pollutant MLs and Pyrethroid Pesticides ELODs- Attachment A, Monitoring and Reporting Program, Section IV.H.4. The Permittee requests to clarify the documentation to be provided to the Executive Officer to modify MLs and ELODs and to eliminate the need for the Executive Officer to approve the revised MLs and ELODs in Section IV.H.4 of the Monitoring and Reporting Program if MLs for non-priority pollutants are not removed from Table G.

The Permittee contends that flexibility is needed to modify MLs should a change of labs occur during the midst of wet season when the frequency of sampling events is dictated by weather. The Permittee also contends that flexibility in submitting supporting documentation for ELODs for pyrethroids is necessary because methods to measure pyrethroids in water are not standardized across laboratories and the actual ELOD achieved in a given analysis will vary depending on instrument sensitivity and matrix effects.

RESPONSE: Central Valley Water Board staff concurs, in part, with adding language specifying the documentation needed for revision of ELODs.

Central Valley Water Board staff does not concur with:

- (1) removing the Executive Officer’s approval of the revised MLs and ELODs. The Executive Officer must be able to verify that the revised MLs and ELODs are higher than the water quality standards for constituents in order to determine if a water quality standard is violated ; and

- (2) adding clarification language for justification for using alternative MLs, which is repetitive of what is already stated in the first sentence of Section IV.H.4.

Monitoring and Reporting Program, Section IV.H.4 of Attachment A is modified as shown below.

4. For Table G pollutants, priority toxic pollutants, if the Permittee can demonstrate that a particular ML or ELOD is not attainable, in accordance with procedures set forth in 40 CFR 136, the lowest quantifiable concentration of the lowest calibration standard analyzed by a specific analytical procedure (assuming that all the method specified sample weights, volumes, and processing steps have been followed) may be used instead of the ML listed in Appendix 4 of the SIP or Table G. The Permittee must submit documentation from the laboratory to the Central Valley Water Board Executive Officer for approval prior to raising the ML or ELOD for any constituent. Justification for using an alternative ELOD should describe the procedure used by the available laboratory(ies) to determine the ELOD and the reason that the Table G ELOD could not be attained using the procedure.

In addition, Finding 6.o is added to the Tentative Order as shown below:

- o. Section IV.H.4 of the Monitoring and Reporting Program for standard monitoring provisions is revised to include language specifying the documentation needed for revisions of estimated limit of detections (ELODs).

Permittee Comment (8/19/14) #3: Non-Priority Pollutant Minimum Levels (MLs) and Pyrethroid Pesticides Estimated Limit of Detections (ELODs) - Attachment A, Monitoring and Reporting Program, Table G. The Permittee requests replacing MLs in Table G for a limited number of non-priority pollutants with specific reporting limits used by laboratories; and ELODs in Table G for certain pyrethroid pesticides in water with specific method detection limits (MDLs) used by laboratories. The Permittee submitted supporting documentation from Alpha Analytical Laboratories (Alpha) and Caltest Analytical Laboratories (Caltest).

RESPONSE: Central Valley Water Board staff concurs, in part, with changes to MLs for some of the general constituents in Table G. The revised MLs are appropriate for storm water discharges and receiving water.

Central Valley Water Board does not concur with:

- (1) the requested change to the ML for biochemical oxygen demand (BOD). The Central Valley Water Board adopted a basin plan amendment (Resolution No. R5-2005-0005) that meets the requirements of a TMDL for the 303(d) listing for Organic Enrichment/Low Dissolved Oxygen impairment in the Stockton Deep Water Ship Channel (DWSC). Portions of the Port of Stockton discharges storm water and non-storm water into the San Joaquin River (Stockton DWSC). Since the Permittee is subject to the TMDL, BOD monitoring data must be representative in order for the Permittee to determine the contribution of BOD to low dissolved oxygen; and
- (2) substituting MDLs for ELODs for pyrethroids pesticides in water. MDLs and ELODs are both detection limits, but are determined differently. The ELOD is the lowest quantity of a constituent that can be detected and is estimated from the mean of the blank, the standard deviation of the blank and some confidence factor.

There are two methods for determining the MDL:

- (a) an analysis which analyzes seven samples of concentration near the expected limit of detection is performed. Many steps must be performed to determine the MDL in the laboratory, which may include heating a sample, addition of acids, and dilution or concentration, prior to analysis with the instrument. Additional steps in an analysis add additional opportunities for error. Detection limits are defined in terms of error, this will increase the measured detection limit; or
- (b) if the instrument detection limit is known, the MDL may be estimated by multiplying the instrument detection limit or lower level of detection by the dilution prior to analyzing the sample solution on the instrument. This estimation ignores the uncertainty that arises from performing the sample preparation and may underestimate the true MDL.

Since the supporting documentation did not include the method used for the analysis, staff is not able to validate the method used to determine whether the proposed ELODs are appropriate.

The proposed amendment to Monitoring and Reporting Program, Section IV.H.4 allows the Permittee to submit justification for using an alternative ELOD and states that a description of the procedure used by the available laboratory(ies) to determine the ELOD and the reason that the Table G ELODs could not be attained using the procedure. If the tentative Order is adopted for the permit Amendment, the Permittee may submit the documentation for staff to review.

The General Constituent portion of Table G in Attachment A, Monitoring and Reporting Program is modified as shown below.

CONSTITUENTS	MLs
GENERAL	mg/L
Total Petroleum Hydrocarbons	5
Total Suspended Solids	<u>3</u> 2
Total Dissolved Solids	<u>10</u> 2
Volatile Suspended Solids	<u>3</u> 2
Total Organic Carbon	1
Dissolved Organic Carbon	1
Biochemical Oxygen Demand	2
Chemical Oxygen Demand	20-900
Total Kjeldahl Nitrogen	<u>1</u> 0.1
Alkalinity	<u>10</u> 2
Total Ammonia-Nitrogen	<u>0.5</u> 0.1
Nitrate-Nitrite as N	<u>0.2</u> 0.1
Dissolved Phosphorus	0.05

CONSTITUENTS	MLs
Total Phosphorus	<u>0.1</u> 0.05
Total Hardness	<u>5</u> 2
MBAS	0.5
Chloride	2
Fluoride	<u>1</u> 0.1
Methyl tertiary butyl ether (MTBE)	1
Perchlorate	4 µg/L
Turbidity	0.1 NTU
Specific Conductance	20 µmhos/cm <u>1</u> µmhos/cm
Methylmercury	0.05 ng/L

In addition, Finding 6.m of the Tentative Order is modified as shown below:

- m. Table G of the Monitoring and Reporting Program is revised to clarify the use of minimum levels (MLs) to be consistent with the State Water Board's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (2005). In addition, Table G is revised to reflect MLs appropriate for storm water discharges and receiving water.

Permittee Comment #4: Sanitary Sewer Overflow and Spill Response - Attachment A, Provision D.12.b.i. The Permittee contends that the Spill Sewer Overflow and Spill Response requirements were removed from the MS4 Permit and should therefore be removed from this section for consistency.

RESPONSE: Central Valley Water Board staff note the comment.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 9 (USEPA)
COMMENTS, 29 AUGUST 2014**

USEPA Comment #1: Compliance with Administrative Order on Consent – Tentative Order, Finding 5. USEPA agrees that that the Permittee has fulfilled the requirements contained within the Administrative Order on Consent (AOC) (Docket No. CWA-309(a)-10-003) dated 4 December 2009, which was subsequently terminated on 5 January 2011. USEPA contends the Permittee still has the responsibility to achieve the MEP standard and all the requirements contained within the NPDES permit.

RESPONSE: Central Valley Water Board staff concurs. The current MS4 permit includes the requirement to achieve MEP standard in the Port of Stockton's storm water discharges and, if identified as a source of pollutants to waters of the United States, non-storm water discharges. Discharge Prohibition A.3 further defines the MEP standard to be equivalent to Best Available Technology Economically Achievable for non-conventional and toxic

pollutants (BAT), and Best Conventional Technology Economically Achievable for conventional pollutants (BCT).

Finding 5 of the tentative Order is modified as shown below.

5. The Permittee was issued an Administrative Order on Consent [AOC] (Docket No. CWA-309(a)-10-003) from the United States Environmental Protection Agency, Region 9 (USEPA) on 4 December 2009. The AOC was terminated on 5 January 2011. ~~This amendment to Order R5-2011-0005 does not modify remaining responsibilities, if any, by the Permittee to comply with the USEPA's AOC.~~

USEPA Comment #2: Monitoring for Organochlorine Pesticides and Polychlorinated Biphenyls (PCBs) - Tentative Order, Finding 6.i. USEPA recommends retaining monitoring for PCBs and organochlorine pesticides in discharge outfalls and in receiving waters. USEPA contends that monitoring frequency for these compounds should be at least once during permit term; and the Permittee should utilize analytical methods with sufficiently sensitive analytical methods with method detection limits (MDLs) below the applicable water quality objective to yield numeric results to be used in program management and surface water assessments.

USEPA further contends that reports of pollutants "not been detected" need to be supported by analytical methods with appropriate MDLs as well as such pollutants should be adequately described and addressed in the Permittee's current Storm Water Management Plan.

RESPONSE: Central Valley Water Board staff concurs. The Permittee has conducted monitoring for PCBs and organochlorine pesticides between 2011 and 2013 under their current permit term. Appropriate and available MDLs submitted with water quality data sets by the Permittee are utilized by the Permittee. Erosion and sediment control measures are incorporated in the Permittee's Storm Water Management Plan (SWMP) and are expected to reduce sediment-bound pollutants (e.g., PCBs, organochlorine pesticides) in receiving waters. USEPA approved test methods and collection method specifications for PCBs and organochlorine pesticides are described in the Permittee's Storm Water Management Plan, including their Sampling and Analysis Plan and Standard Operating Procedures.

Annual cost estimates for laboratory analysis of PCB and organochlorine pesticide samples is \$12,937.50. This estimate is based on monitoring conducted by the Permittee to date using USEPA Method 608. The estimated annual cost covers analysis of grab or composite samples collected at 5 receiving water and 6 urban discharge monitoring locations during 3 storm events and 2 non-storm events in addition to quality control samples.

Finding 6.i of the tentative Order is modified as shown below.

- i. The Permittee has been monitoring polychlorinated biphenyls (PCBs) and organochlorine pesticides since 2004. Organochlorine pesticides and pPolychlorinated biphenyls (PCBs) have not been detected in the Port's urban discharge or receiving water monitoring since 2004 (based on 436 urban discharge and 1,120 receiving water samples). Organochlorine pesticides sampling indicates six urban discharge exceedances for DDT, DDE, and DDD and one receiving water exceedance for DDT out of 827 non-detects (urban discharge monitoring) and 2,733 non-detects (receiving water monitoring).

Organochlorine pesticides are legacy pesticides that have been banned in the United States and are not stored, used, or produced on Port property. PCBs are mixtures of synthetic organic chemicals that were commonly used for various applications until 1979 when USEPA banned PCB manufacturing. USEPA authorized commercial applications of PCB, such as operation of transformers and maintenance of natural gas pipelines, have not been identified activities at the Port. Because sampling has adequately characterized urban discharge and receiving waters for these constituents, this Order includes revisions to discontinue monitoring for organochlorine pesticides and PCBs. Future monitoring will be considered during the renewal of the MS4 permit for the Port of Stockton or as part of the Central Valley Water Board's regional MS4 permit development (currently underway). ~~This Order includes revisions to discontinue monitoring for organochlorine pesticides and PCBs.~~

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 9 (USEPA)
COMMENTS, 30 AUGUST 2014**

USEPA Comment (8/30/14) #1 – Updating Total Maximum Daily Load (TMDL) Language – Attachment A, Findings 79, 80, 86, 87, 88, 90, 91, and 92; Attachment A, Provision 26; Attachment A, Fact Sheet, Section IV.C and Section V.G, page 13-15, 27-36. USEPA requests TMDL language contained in various sections of Attachment A of the tentative Order be updated to reflect approved TMDLs and numeric waste load allocations (WLAs) for dissolved oxygen, diazinon, chlorpyrifos, and methylmercury, consistent with requirements under 40 CFR 122.44(d)(1)(vii)(B). USEPA contends that the Permittee is subject to waste load allocations in three approved TMDLs for organophosphate pesticides (e.g., diazinon and chlorpyrifos), organic enrichment/low dissolved oxygen, and methylmercury.

USEPA specifically requests that WLAs be included as Water Quality Based Effluent Limits (WQBELs) in Attachment A of the tentative Order and described as being achieved with a best management approach in the Fact Sheet. The Permittee should address each TMDL pollutant within their SWMP and demonstrate how implement(ed) best management practices (BMPs) will achieve the WLAs. The Permittee may have already started non-structural BMPs or installed some structural BMPs and may already have such descriptions in their SWMP. If this has not occurred, then updates to the SWMP should occur. Also, under the Monitoring and Reporting Program requirements mercury monitoring should be collected by Permittee and evaluated as part of their Annual Report preferably or in other permit required reports. This will allow the Central Valley Water Board to assess attainment with the Permittee's WLAs.

RESPONSE: Central Valley Water Board staff does not concur with incorporating changes into Attachment A of the tentative Order. The Notice of Public Hearing stated that the scope of the tentative Order amending the MS4 Permit is to fix typographical errors, providing clarification, reducing monitoring, and revising sampling locations. USEPA's comment on updating TMDL language with approved TMDLs and WLAs is outside the scope of the MS4 permit amendment.

Although USEPA's comment is outside the scope of the MS4 permit amendment, Central Valley Water Board staff verified with USEPA that the TMDL language currently in the MS4 permit does address the items that they commented on.