

REVISED

EXECUTIVE OFFICER SUMMARY REPORT
April 12, 2006

ITEM: 7

SUBJECT: NPDES Permit Renewal: Waste Discharge Requirements for the Fallbrook Public Utility District, Wastewater Treatment Plant No. 1, Discharge to the Pacific Ocean Via the Oceanside Ocean Outfall. (Tentative Order No. R9-2006-002, NPDES Permit No. CA0108031) (*Victor Vasquez*)

PURPOSE: To adopt updated waste discharge requirements and NPDES permit for the treatment and disposal to the Pacific Ocean of up to 2.7 million gallons per day (MGD), calendar monthly average, of at least secondary treated effluent from the Fallbrook Public Utility District's Wastewater Treatment Plant No. 1. If adopted this Order would update and replace Order No. 2000-012.

PUBLIC NOTICE: The NPDES permit hearing notice was published in The San Diego Union-Tribune newspaper on March 8, 2006 for the Regional Water Board meeting scheduled for April 12, 2006. Copies of the tentative Order were mailed on March 3, 2006 to the Fallbrook Public Utility District and to all known interested parties and agencies. Copies were made available for public review at the Regional Board office on March 3, 2006. The tentative Order was also posted on the Regional Board's website on March 13, 2006.

DISCUSSION: The Fallbrook Public Utility District (FPUD or Discharger) provides treatment and disposal of municipal wastewater for the community of Fallbrook in north San Diego County. FPUD owns and operates Wastewater Treatment Plant No. 1 (WTP1), the FPUD land outfall pipeline, and the FPUD wastewater collection system; together these facilities comprise a municipal POTW. WTP1 has a secondary treatment design capacity of 2.7 MGD and typically treats all wastewater to disinfected tertiary effluent. During the period 1999-2003, approximately 15 to 32 percent of the disinfected tertiary effluent from WTP1 was distributed as recycled water for irrigation to several recycled

water use sites within Fallbrook and along the Interstate 5 corridor in Oceanside; the discharge of recycled water is covered under separate waste discharge requirements. Effluent from WTP1 that is not distributed as recycled water is discharged to the City of Oceanside's Oceanside Ocean Outfall (OOO) in Oceanside and ultimately discharged to the Pacific Ocean. FPUD's land outfall pipeline conveys the treated effluent approximately 18 miles from Fallbrook to Oceanside.

The OOO is owned and operated by the City of Oceanside and has a design capacity of 30 MGD. FPUD may discharge up to an annual average of 2.4 MGD of treated wastewater under contract with the City of Oceanside. The City of Oceanside, US Marine Corps Base Camp Pendleton, and Genentech, Inc. also discharge through the OOO under separate waste discharge requirements.

The effluent discharge specifications contained in tentative Order No. R9-2006-002 for the discharge of treated wastewater to the Pacific Ocean are based principally on the 1994 *Water Quality Control Plan for the San Diego Basin* and the 2005 *Water Quality Control Plan for Ocean Waters of California* (Ocean Plan). The tentative Order contains minimum secondary treatment requirements established in the Code of Federal Regulations (40 CFR 133.102) for total suspended solids (TSS), carbonaceous biochemical oxygen demand (CBOD), percent removal of TSS and CBOD, and pH.

The need for water quality-based effluent limitations for toxic pollutants listed under Table B of the Ocean Plan was determined using the reasonable potential analysis (RPA) procedures of the Ocean Plan which were added in 2005. The RPA procedures use a statistical approach to determine if FPUD's discharge has the potential to cause an exceedance of the water quality objectives for the Pacific Ocean for the toxic pollutants listed under Table B of the Ocean Plan, based on historical effluent data and the dilution factor for the OOO. The RPA results for FPUD's discharge indicated that the effluent only has reasonable potential to cause an exceedance of the water quality objective for chronic toxicity, and therefore, a chronic toxicity water quality-based effluent limitation is included in the tentative Order. Performance goals, rather than effluent limitations, are included in the tentative Order for all other toxic pollutant parameters of Table B of the Ocean Plan. Performance goals are not enforceable effluent discharge specifications or standards for the regulation of the discharge;

however, inclusion of performance goals supports state and federal antidegradation policies and provide all interested parties with information regarding the expected levels of pollutants in the discharge that should not be exceeded in order to maintain the water quality objectives established in the Ocean Plan.

In May 2005, a version of the proposed requirements contained in tentative Order No. R9-2006-002 was distributed for public comment as tentative Order No. R9-2005-0137. FPUD and US EPA submitted significant comments regarding tentative Order No. R9-2005-0137. Also, since the distribution of tentative Order No. R9-2005-0137, the State Water Board provided updates to its proposed permit template which recommend certain standard language, standard provisions, and format for NPDES permits being developed by the Regional Boards. To incorporate changes resulting from consideration of the comments received and the State Board template updates, the proposed NPDES requirements for FPUD and supporting Fact Sheet were revised and reissued for public comment as tentative Order No. R9-2006-002 (Supporting Documents # 2 and 3). By letter dated March 13, 2006, FPUD requested a deferral of the Regional Board hearing for tentative Order No. R9-2006-002, and the Regional Board responded via letter dated March 16, 2006 (Supporting Documents # 5 and 6).

In their review of tentative Order No. R9-2005-0137, FPUD and their legal consultant submitted extensive comments to the Regional Board. Responses to those extensive comments have been provided to the Discharger and also made available to the public at the time tentative Order No. R9-2006-002 was distributed for public comment (Supporting Document #4). FPUD and their legal consultant have submitted a second round of comments (Supporting Document #7) which include a marked-up copy of the tentative Order with additional changes requested by FPUD. Responses to this second round of comments (Supporting Document #9) ~~are being~~ have been prepared, and ~~will be~~ sent to the Regional Board members in the second agenda mailing and to the Discharger and other interested parties. ~~If necessary, a~~ An errata sheet (Supporting Document #10) containing proposed revisions to the tentative Order in response to the comments received, and for other reasons, ~~will~~ has also been prepared and sent to the Regional Water Board members in the second agenda mailing and to the Discharger and other interested parties.

SIGNIFICANT CHANGES: The following areas in tentative Order No. R9-2006-002 differ from the FPUD's current Order No. 2000-012:

1. Standard language for certain Findings, Standard Provisions, and the permit format recommended by the State Water Board are implemented.
2. The initial dilution ratio has been recalculated, resulting in an increase from 82:1 to 87:1. Attachment G of the tentative order contains information regarding how the new dilution factor was calculated.
3. Concentration effluent limitations prescribed by Order No. 2000-012 for conventional pollutants (e.g., CBOD, TSS, settleable solids), for the most part, have been retained. "Maximum at any time" technology-based effluent limitations based on secondary treatment standards have been removed. Mass emission rate effluent limitations have not been included for conventional pollutants.
4. A reasonable potential analysis (RPA) was conducted using data supplied by FPUD. Effluent limitations were included for constituents with reasonable potential to exceed water quality objectives. Constituents that do not have reasonable potential or had inconclusive RPA results are assigned "performance goals" in the tentative Order. These constituents are also assigned monitoring requirements, but the results will be used for informational purposes only, not compliance determination.
5. The discharge was determined to have reasonable potential to cause an exceedance of the water quality objective for chronic toxicity, and thus, an effluent limitation calculated using the revised initial dilution ratio was included in this tentative Order. However, the monitoring frequency for chronic toxicity has been reduced from monthly to quarterly.
6. Reasonable potential for acute toxicity was not indicated to be present in the discharge; an acute toxicity performance goal is instead included. The monitoring frequency for acute toxicity has been reduced from monthly to semiannually.
7. Section VII – Compliance Determination has been added to explain how compliance with the requirements of the tentative Order will be determined.

COMPLIANCE: FPUD has generally complied with the requirements of its current NPDES permit, Order No. 2000-012, with some

exceptions. Enforcement actions taken against FPUD with monetary penalties were as follows:

FPUD was issued a Mandatory Minimum Penalty Complaint for a \$3,000 mandatory minimum penalty on January 19, 2001 for four violations of Order No. 2000-012: one violation of the daily maximum CBOD effluent limitation on May 12, 2000; one violation of the 30-day average oil and grease effluent limitation on June 20, 2000; and two violations of the daily maximum CBOD effluent limitation on May 17 and 18, 2000. These four violations within a six-month period were chronic violations that required a mandatory minimum penalty of \$3,000 for the fourth violation, pursuant to Water Code Section 13385(i). The Complaint was subsequently dropped during a public hearing of the Regional Board in April 2001 because the 30-day average oil and grease effluent concentration on June 20, 2000 was determined to have been improperly calculated and, therefore, was not a violation.

FPUD was issued an Administrative Assessment of Civil Liability containing a \$87,000 mandatory minimum penalty on December 11, 2002 for 31 violations of the total suspended solids and CBOD effluent limitations of Order No. 2000-012 during the period April 2001 through June 2002. FPUD petitioned the enforcement action to the State Water Board, which dismissed the petition for failure to raise substantial issues. FPUD subsequently petitioned the enforcement action in San Diego Superior Court, and a settlement agreement was reached between the Regional Board and FPUD on July 15, 2004 for a reduced penalty of \$33,000.

KEY ISSUES:

None

1. FPUD has commented that certain Compliance Determination and Enforcement Provisions of Section VII in the tentative Order prejudice when a violation of a permit requirement occurs. For example, according to Provision VII.A, the average of daily effluent sample results during a calendar month applies to each day of the calendar month and could result in counting a violation for each day of the month if that average exceeds the Average Monthly Effluent Limitation (AMEL). FPUD's concerns are actually a separate issue regarding how liability for violations will be calculated, in accordance with state law and other enforcement considerations. For example, if the AMEL is exceeded in a 31-day month, 31 violations will be counted; however, if those violations were the result of a single

- operation upset, state law allows violations within the first 30-day period to be collapsed to one violation and liability will be determined based on “two” violations - one from the first 30 days of the month and the second from the 31st day.
2. FPUD objected to a provision in the tentative Order that incorporate sanitary sewer overflow (SSO) reporting requirements of Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies*. That provision has been deleted in the tentative Order as indicated in the Errata Sheet. Nonetheless, FPUD’s sewage collection system is part of the POTW, and if adopted, the tentative Order would require FPUD to comply with the standard federal provisions applicable to all POTWs including duty to mitigate, proper operation and maintenance, and timely reporting of non-compliance.
 3. 40 CFR 122.45(d) states that all effluent limitations for POTWs shall be expressed as average monthly and average weekly discharge limitations, unless impracticable. FPUD objects to the inclusion of instantaneous effluent limitations for Oil and Grease, Settleable Solids, and Turbidity, on grounds that average monthly and average weekly effluent limitations for these are not impracticable. However, those instantaneous effluent limitations are technology-based requirements prescribed by the 2005 California Ocean Plan and are, therefore, included in the tentative Order.
 4. In accordance with requirements of the Ocean Plan, the tentative Order requires FPUD to develop and conduct a Pollution Minimization Program (PMP) when determination of compliance with effluent limitations is constrained by the lowest analytical detection levels currently attainable by available analytical methods. Water Code Section 13263.3 authorizes Regional Boards to impose requirements on a discharger to complete and implement a pollution prevention plan (PPP) under certain conditions but precludes the Regional Board from including such requirements in waste discharge requirements. The PMP, as required by the Ocean Plan, is not the same as a PPP within the context of Water Code Section 13263.3, and thus, the PMP language from the Ocean Plan is retained in the tentative Order.
 5. FPUD requested the addition of specific provisions that would pre-authorize bypasses at their treatment plant similar

to provisions included in the City of Oceanside's NPDES permit. The general federal standard provisions for bypasses are sufficient to address proposed bypasses. The City of Oceanside's NPDES permit included more specific bypass provisions because the City of Oceanside submitted specific information about specific bypasses that it has planned; therefore, the Regional Board was able to evaluate the specific information and determine that the planned bypasses would be authorized in accordance with the federal standard provisions for bypasses. The specific bypass conditions for Oceanside included specific conditions to ensure that water quality would be protected. FPUD could similarly submit specific information regarding their planned bypasses for Regional Board review. Since FPUD has not, to date, submitted specific information, specific provisions have not been included in the tentative Order.

SUPPORTING DOCS:

1. Site Map
2. Transmittal letter for tentative Order No. R9-2006-002.
3. Tentative Order No. R9-2006-002 including Attachments A-G.
4. Response to Comments document for tentative Order No. R9-2005-0137.
5. Deferral request letter from FPUD dated March 14, 2006.
6. Regional Board response letter dated March 16, 2006 for FPUD deferral request.
7. Comment letter for tentative Order No. R9-2006-002 from FPUD dated March 21, 2006 including marked-up copy of tentative Order No. R9-2006-002.
8. Transmittal letter for Response to Comments document for tentative Order No. R9-2006-002 and Errata Sheet for tentative Order No. R9-2006-002.
9. Response to Comments document for tentative Order No. R9-2006-002.
10. Errata Sheet for tentative Order No. R9-2006-002.

RECOMMENDATION:

Adoption of Tentative Order No. R9-2006-002, NPDES Permit No. CA010831, with errata, is recommended.