



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

MAY 23 2014

David Gibson
San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108

Re: Tentative Order for South Bay International Wastewater Treatment Plant

Dear Mr. Gibson:

Thank you for the opportunity to review and comment on Tentative Order No. R9-2014-0009 (National Pollutant Discharge Elimination System (NPDES) Permit No. CA0108928), which regulates the discharge from the South Bay International Wastewater Treatment Plant (IWTP). The United States Environmental Protection Agency (EPA) urges adoption of the tentative order. We are pleased the proposed permit incorporates substantial improvements to existing monitoring, reporting, and discharge requirements. Furthermore, EPA strongly supports the inclusion of influent limits to protect the IWTP from pollutants that could pass through or interfere with wastewater treatment operations.

Pretreatment – Tentative Order, Special Provisions for Municipal Facilities, Section VI.C.5

EPA supports the proposed pretreatment provisions and influent limits in the tentative order. The pretreatment requirements reflect the unique circumstances associated with binational industrial source control and reinforce the collaborative work between United States Section of the International Boundary and Water Commission (IBWC) and its partners in Tijuana, Mexico to protect the IWTP and the Pacific Ocean from harmful industrial waste.

The Clean Water Act and NPDES regulations establish requirements to prevent the introduction of pollutants into publicly-owned treatment works that will interfere with the operation of a POTW, pass through the treatment works, or otherwise be incompatible with such works. To address the multi-jurisdictional nature of the IWTP service area, the tentative order includes requirements that recognize both IBWC's and its partners' responsibilities to implement and report on activities undertaken to protect the IWTP.


One of the proposed pretreatment provisions requires IBWC to monitor and limit pollutants in the influent flowing into the IWTP. These limits do not directly establish water quality or discharge requirements that must be attained in Mexico, but simply impose conditions on discharges that may be made into a sewage treatment plant located in the United States. Furthermore, these limits were developed based on the specific treatment and operational capacity of the IWTP, and are therefore essential to ensure that the plant is protected from pass


through or interference in accordance with the Clean Water Act and NPDES regulations. The tentative order also requires IBWC to update these influent limits as necessary in the future to ensure they continue to protect treatment operations at the IWTP and prevent harmful pollutants from passing through the IWTP. Enclosed is a 1999 memo from EPA's Office of General Counsel that further supports the Regional Board's authority to establish influent limitations for the IWTP.

Inclusion of these provisions is consistent with the pretreatment requirements in the NPDES permit for the Nogales International Wastewater Treatment Plant that Arizona Department of Environmental Quality issued on March 31, 2014. Because the Nogales facility collects wastewater from a service area in Mexico, pretreatment controls are incorporated into the permit to ensure influent does not harm the treatment plant or the receiving water. The proposed pretreatment provisions in the IWTP permit are fully consistent with the provisions of the Nogales permit.

We appreciate the time and effort you and your staff directed toward the development of this order. Please contact David Smith, Manager, NPDES Permits Office, at (415) 972-3464 if you have any questions.

Sincerely,



 Jane Diamond, Director
Water Division

Enclosure



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460**

MAR 26 1999

**OFFICE OF
GENERAL COUNSEL**

MEMORANDUM

SUBJECT: Nogales International Wastewater Treatment Plant NPDES Permit

**FROM: Daniel Magraw, Director
Office of International Environmental Law**

A handwritten signature in black ink, appearing to read "D. Magraw", written over the typed name.

**TO: Chuck Fox
Assistant Administrator for Water**

My office recently received a copy of the attached letter from John Leonard, Deputy Assistant Secretary for Western Hemisphere Affairs at the State Department, concerning the terms of the NPDES permit that EPA Region IX proposes to issue to the U.S. Section of the International Boundary and Water Commission (USIBWC), for discharges from the Nogales (Arizona) International Wastewater Treatment Plant.

Agreeing on terms for the final permit is a obviously a delicate matter involving international diplomacy, and I am concerned that Mr. Leonard's letter can be construed to imply that the proposed permit somehow would violate international law as expressed in U.S. treaties, IBWC minutes, or customary international law. This memorandum explains why that is not the case.

First, the proposed influent limitations in the permit do not establish water quality or discharge requirements that must be attained in Mexico. The proposed influent requirements simply impose conditions on discharges that may be made into a sewage treatment plant located in the United States. The proposed influent requirements would not, as Leonard alleges, "regulate another country"; and as a legal matter they are not inconsistent with the IBWC practice of "settling differences through mutual respect and cooperation." Nor are the influent requirements inconsistent with the 1944 Water Treaty or IBWC Minute No. 276. For example, the preamble to the Minute notes that the U.S. and Mexico "have enacted legislation to control discharges of industrial wastewater into receiving bodies or into sewage collection systems." This clearly contemplates domestic U.S. regulations to protect health and the environment, as does paragraph 6 of the Minute, which provides:

That the Governments of the United States and Mexico, in conformity with their own national legislation, take appropriate actions to prevent the discharge of untreated industrial wastewater into the international trunkline to preserve the efficiency of the Nogales International Sewage Treatment Plant.

Second, the Leonard letter states that the responsibility for representing the views of the U.S. government with respect to the interpretation or application of the 1944 Treaty properly rests with the U.S. IBWC Commissioner. While this may be technically correct, in order to represent U.S. government views on the implementation of a treaty, the State Department (of which the U.S. Commissioner is a functionary) must speak for the entire U.S. government (including EPA). Moreover, there is nothing in the Treaty or the Minute that would prohibit the United States from issuing the proposed permit. The proposed influent limitations raise a policy issue, not a legal one.

Third, it is irrelevant from a legal standpoint – though not necessarily from a policy standpoint – that “the USIBWC lacks the authority to enforce ... inflows from Mexco.” The proposed permit would not require USIBWC to do so.

Needless to say, we fully support the Agency’s goal of issuing a permit that furthers protection of the border environment, and we recognize the sensitive nature of the discussions with USIBWC. We also appreciate that EPA may not wish to act to the full extent of its legal authority, but wish to ensure that EPA’s action is informed by a proper understanding of applicable legal principles. We would be pleased to consult further with your office and Region IX if that would be helpful. Any questions regarding the international aspects of this matter may be directed to me (260-7616) or Joe Freedman of my staff (260-7627).

Attachment

cc: Alexis Strauss
Diane Rogas
Alan Hecht
Robert Dreher
Susan Lepow