

April 22, 2004  
By telecopier and  
United States mail

Mr. Bruce Wolfe  
Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region  
2101 Webster Street  
Suite 500  
Oakland, California 94612

Dear Mr. Wolfe:

Please consider this letter to be Department of Navy comments to the Tentative Order, NPDES Permit No. CA01101116. This Tentative Order proposed a new permit for the operation of the wastewater treatment plant located on the former Naval Station Treasure Island. Frankly, the permit as proposed is unacceptable to the Department of Navy. Basically, the Navy's concerns center around the designation of the Department of the Navy as the operator in this proposed permit. Such designation is not in concert with the provisions of the Clean Water Act and could very well reduce the ability of the Bay Area Regional Water Quality Control Board (the "Board") to effect quick corrections of any violations that may arise under the permit.

However, we would also like to note the excellent work of at Ms. Ann Powell in preparing the proposed permit for issuance and working with the City of San Francisco Public Utility Commission staff to develop the technical parameters of the permit. Since the City and County of San Francisco (the "City") operates the plant, thereby providing an essential utility service for the City's Treasure Island and Yerba Buena Island market rate and homeless initiative housing programs, it is the City that has the most direct and immediate interest and benefit in a permit that is manageable and can be fully complied with. The law and the factual setting of this wastewater treatment plant support our view that the proposed permit incorrectly names the Department of Navy as discharger. We will focus our comments on our concerns with the operator designation, problems with enforcing the permit as it is now laid out and several smaller matters that impact the operator designation.

While respectfully acknowledging the Board's role and responsibilities in its delegated role under the Clean Water Act, it is a strange fiction to make the Department of the Navy a discharger and permittee simply because the Navy still owns the facility while all the activities generating a point source discharge requiring a permit come from non-Navy activities. While the Clean Water Act does state that owners and operators are subject to the

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provisions of the statute, NPDES permits regulate discharges and by extension dischargers. USEPA regulatory guidance and requirements particularly in the area of stormwater management repeatedly mention operators, discharges and dischargers and do not discuss owners. While this legal distinction may not seem important when things go well (which

Department of Navy fully expects from the City's competent operation of the waste water treatment plant), if there are plant upsets or failures which generate reportable violations, the Department of the Navy bears the misplaced brunt of the violations when it did nothing to cause nor contributed anything to the violation. Frankly, with the Department of Navy named as operator and permittee, effective, quick correction of any violations of the proposed permit are hampered. It is only fair and logical that the "person" generating the discharge and operating the treatment system by responsible and named in the permit to operate the treatment system.

The Navy objects to the wording in the Findings, paragraph 1, *Discharger and Permit Application* (also found verbatim on page 2 of the accompanying Fact Sheet and in the Public Notice) that lists the United States Navy as the owner and therefore the discharger. The Department of Navy is the owner and submitted the application for permit renewal in 1999. The City and County of San Francisco (City) is the operator and the discharger since it is City tenants together with the US Coast Guard that produce the discharge. All language in the permit when referring to the Discharger in reality refers to actions that the City as operator is responsible for, and not to the Navy as owner. The Findings in paragraph 1 should be changed to list the City as the discharger

In the Findings, paragraph 2, *Facility Location, Service Area and Population*, the permit, fact sheet and public notice all state that pursuant to the 1997 Cooperative Agreement (CA) between the Navy and the City, the City agreed to operate the plant. Actually as set forth in CA Functional Annex 6, *Utilities Services, Technical Execution Plan Utilities Management*, paragraph 15, *Environmental and Operating Permit Management*, a copy of the relevant portion of which is enclosed, the City and the Navy agreed that the Navy would remain permit holder until 1 April, 2000. The City (referred to as "Caretaker" in the CA) was to "take necessary action to assume any permits..." needed for the continuing operations of the City. It is now more than reasonable for the City to take a lead role in the responsibility for the plant including its operation under the permit since the Navy is not directly controlling the operation of the plant and can't directly guard against potential permit violations. The actual operator who is also the source of the discharge must be held accountable for the permit requirements by naming the operator the discharger and permit holder.

Finally there is the matter of permit fee payment and permit transfer procedures. While not specifically referenced in the proposed permit, a considerable fee is assessed as part of the permittee's obligations. Once again, as incorrectly named discharger, the Department of Navy is responsible for additional costs associated with a City-run operation that benefits its citizens. We also note the current proposed wording of Paragraph 19 concerning Change in

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Control or Ownership places Department of Navy in yet another untenable situation. As currently written, this provision does not allow for a clean, firm and final break from this permit when the Navy conveys Treasure Island to some other entity. As currently structured, the City must send a written request to the Board to transfer this Order. If the City fails to do so, the Department of Navy remains the sole discharger for the life of the permit. This is a completely untenable outcome when the sole goal of the Department of the Navy is to transfer the former Naval Training Center Treasure Island into non-federal ownership and productive reuse.

While not fully acceptable to the Department of the Navy, there is another method of designating dischargers that the Board has previously used. As a final concession to expedite permit issuance and hopefully make this an uncontested matter before the Board, the Navy is willing to accept a secondary discharger role with the City as the primary discharger. The Board has used this approach with both the Astoria Metals Corporation NPDES permit for Dry Dock 4 and the Pegasus NPDES permit for drydock operation at Mare Island. In the case of this proposed permit, the approach is even more appropriate. The City of San Francisco Public Utilities Commission applies their knowledge and skills in successfully operating several municipal treatment facilities and has done an excellent job at Treasure Island. If the City is named the primary discharger with the Department of Navy being a secondary discharger, you will have the best and most direct designation of the two parties having the most interest and control in the operation of a fully compliant treatment plant.

Department of Navy appreciates the opportunity to comment. As we have explained, this is a waste water treatment plant which the Navy allows to be used solely to support leasing activities at the former Naval Training Station Treasure Island that benefit the residents of the City and County of San Francisco. It is only reasonable that the City acknowledge its significant role and the benefits they derive from the continuing operation of this essential utility. I trust that the members of the San Francisco Regional Water Quality Control Board will see the how our primary/secondary discharger suggestion fairly balances the interests of the City and the American taxpayers which insuring the protection of the waters of the United States.

Sincerely,

Nicholas R. Bollo  
Environmental Counsel

Enclosure, as stated.