

City of Palo Alto

Public Works Department

October 21, 2004

Mr. Bruce H. Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, California 94612



MTC

Attention: Mr. Wolfe:

Thank you for the opportunity to submit comments on your Complaint No. R2-2004-0070. We will be at the November 17, 2004 Regional Board meeting to present these comments. We do not believe that it is appropriate for the City of Palo Alto to pay penalties for the noted exceedances and appreciate the opportunity to explain our position to you and the Regional Board members.

Our reaction to the proposed complaint is quite negative. As you know, Palo Alto already paid \$129,000 in penalties for CY 2000. To reopen this issue, re-examine the data set, and make new judgments about which exceedances require penalties is, in our opinion, not good public policy. Spending more staff time on revisiting previous Regional Board decisions is inefficient and unnecessary. To make the situation even more exasperating from our perspective, none of the "new" exceedances would occur today because of permit modifications we sought and received. The CY2000 penalties highlighted the need to change the chlorine residual and bacteriological monitoring requirements. We appreciated the Regional Board agreeing with us and modifying the permit requirements (moving to discrete Cl residual reporting and switching to enterococci). You can imagine how frustrating it would be after all the time and scientific analysis spent on changing these requirements, to now go back and have penalties imposed on the old requirements.

Anyone having a comment on the judgments the Regional Board made in the original complaint had the opportunity to raise those comments during the original public notice and hearing process. A new action would not provide additional State funds because we would choose to fund an SEP. Frankly, from any perspective, we see no reason for the Regional Board to take this action and object to it. The action would set the very undesirable precedent of reconsidering previous Regional Board decisions. We suspect that the original complaint was initiated before State Board guidance was made available to Regional Board Staff and that is the reason that the current proposal differs from the original one. In any event, guidance is just that - guidance. The inefficiency of revisiting a previous action is reason enough for not using the guidance in this case, four years after the exceedance.

Divisions

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Regional Water
Quality Control
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Mr. Bruce H. Wolfe
SFBRWQCB
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Should the Board feel obligated to impose this penalty, we request two things:

1. First, we request that the following be added to the complaint: "The Regional Board will take no further Minimum Mandatory Penalty enforcement actions for CY 2000 for exceedances for which the Regional Board is currently aware."

We will be asking for similar language on all future Regional Board complaints. Such language has become standard practice in many of our industrial enforcement actions and we see now that we must insist upon it here.

2. Second, we request 30 days be provided for us to develop and submit a proposed SEP to the Regional Board in lieu of payment of any imposed penalty. The complaint documents do not specify when the SEP proposal is due in the event a waiver is not submitted (our situation). Therefore, we are suggesting 30 days be provided.

Thank you for consideration of these comments.

Sincerely,



William D. Miks
Manager, Regional Water Quality Control Plant

WDM:ma

cc: Mr. Michael Chee, SFBRWQCB