



EAST BAY DISCHARGERS AUTHORITY
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A Joint Powers Public Agency

Pursuant to the Governor's Executive Order N-25-20 the Regulatory Affairs Committee meeting scheduled for November 16, 2020 at 2:30 p.m. will be telephonic. The dial-in number for the meeting is +1 669 900 6833 with meeting I.D. #892 8180 2436. Members of the public are encouraged to dial-in to the meeting using the same number. <https://us02web.zoom.us/j/89281802436>

ITEM NO. 15

REGULATORY AFFAIRS COMMITTEE AGENDA

**Monday, November 16, 2020
2:30 p.m.**

**East Bay Dischargers Authority
2651 Grant Avenue, San Lorenzo, CA 94580**

Committee Members: Johnson (Chair); Lamnin

RA1. Call to Order

RA2. Roll Call

RA3. Public Forum

RA4. EBDA NPDES Performance – See Item OM4
(The Committee will review NPDES Permit compliance data.)

RA5. NPDES Permit Renewal
(The Committee will receive an update on preparations for the Authority's permit renewal.)

RA6. Update on Nature-based Solutions Design Services Project
(The Committee will receive an update on the Authority's Request for Proposals process.)

RA7. Adjournment

(Any member of the public may address the Commission at the commencement of the meeting on any matter within the jurisdiction of the Commission. This should not relate to any item on the agenda. It is the policy of the Authority that each person addressing the Commission limit their presentation to three minutes. Non-English speakers using a translator will have a time limit of six minutes. Any member of the public desiring to provide comments to the Commission on an agenda item should do so at the time the item is considered. It is the policy of the Authority that oral comments be limited to three minutes per individual or ten minutes for an organization. Speaker's cards will be available in the Boardroom and are to be completed prior to speaking.)

(In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in an Authority meeting, or you need a copy of the agenda, or the agenda packet, in an appropriate alternative format, please contact the Administrative Assistant at the EBDA office at (510) 278-5910 or juanita@ebda.org. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the Authority staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.)

(In compliance with SB 343, related writings of open session items are available for public inspection at East Bay Dischargers Authority, 2651 Grant Avenue, San Lorenzo, CA 94580. For your convenience, agenda items are posted on the East Bay Dischargers Authority website located at <http://www.ebda.org>.)

**The next Regulatory Affairs Committee meeting is scheduled for
Wednesday, January 20, 2021 at 9:00 a.m.**

ITEM NO. RA4 EBDA NPDES PERFORMANCE – NPDES PERMIT

Please see the Operations and Maintenance Committee agenda, Item No. OM4 for permit compliance data.

ITEM NO. RA5 NPDES PERMIT RENEWAL

Recommendation

For the Committee’s information only; no action is required.

Background

The Authority operates under a National Pollutant Discharge Elimination System (NPDES) [permit](#) issued by the Regional Water Quality Control Board (Regional Water Board) for its combined discharge to the San Francisco Bay through the EBDA outfall. The permit includes monitoring requirements, pollution prevention and pretreatment provisions, and effluent limits that the Authority must adhere to. EBDA’s current permit went into effect on July 1, 2017 and expires on June 30, 2022.

Discussion

The application for the Authority’s next NPDES permit is due on September 30, 2021. To ensure that the Authority is best prepared to submit a thoughtful and complete application and to strategically negotiate permit provisions, staff is beginning preparations now. The overall timeline for renewal is as follows:

January 2021	Permit reissuance kick-off meeting (Coordinate with MAC mtg)
February – June 2021	Gather data and reports
July – August 2021	Analyze data for Reasonable Potential Analysis (determination of whether effluent limits apply) Develop and review tables, figures, and application forms
September 1, 2021	Draft Application completed
September 30, 2021	Final Application due to Regional Water Board
January – April 2022	Review and provide feedback on informal drafts from RWB and Tentative Order
May 2022	Permit out for public comment
June 8, 2022	Target RWB permit adoption date

Authority staff expects the permit renewal to be relatively straightforward, however there are always issues to negotiate. Staff anticipates new permit provisions on the following topics:

- **Cargill Brine Project:** If the project to accept mixed sea salt brine from Cargill, Inc. into the EBDA system moves forward, staff anticipates that the project and associated flows will be incorporated in the Authority’s permit. Based on the due diligence work conducted to date, staff does not expect many material changes to the permit resulting

from the brine discharge, but there would likely be a change of the toxicity monitoring species from a freshwater species to a marine species. Modeling is also underway to understand whether the Authority's dilution factor would change.

- **Total Residual Chlorine:** As previously discussed, the Regional Water Board is in the process of updating the Basin Plan, the regional document that sets water quality standards. The Basin Plan's performance-based 0.0 mg/L instantaneous maximum limit will be replaced with a water quality-based objective and averaging period. The new limit will be based on EPA's 1984 Ambient Water Quality Criteria for chlorine, which sets a one-hour average concentration of 13 ug/L for estuarine discharges. Because it is water quality-based, this approach allows effluent limits for deep water dischargers to be calculated considering dilution.

For EBDA, this means that instead of complying with an instantaneous maximum limit of 0.0 parts per million (ppm), with the new objective and EBDA's current 79:1 dilution factor, EBDA's compliance would be based on 1.04 ppm measured as a one-hour average concentration. Compliance with this limit could be achieved with minimal SBS dosing, and perhaps no SBS addition under most conditions.

The Basin Plan Amendment is scheduled for adoption by the Regional Water Board on November 18, 2020. It will then need to be adopted by the State Water Resources Control Board (State Water Board), Environmental Protection Agency (EPA), and the California Office of Administrative Law (OAL). Authority staff is hopeful that these approvals will occur prior to EBDA's permit adoption so that the new limits can be incorporated.

- **Toxicity Provisions:** The State Water Board has been working for a long time on developing provisions with an aim to improve consistency in the way that whole effluent toxicity is regulated in permits across the state. Toxicity is measured by testing live organisms' response to effluent exposure in order to assess any synergistic effects of pollutants in effluent. The Authority's permit currently requires quarterly testing for chronic and acute toxicity using fathead minnow, a freshwater species. There is no effluent limit for chronic toxicity, but exceedance of a threshold triggers additional monitoring and studies to understand the cause.

Based on the new provisions, all dischargers that exceed five million gallons per day will have effluent limits for chronic toxicity. The new provisions require use of the Test of Significant Toxicity (TST), which is a different statistical method for establishing toxicity based on organism data. The TST relies on an in-stream waste concentration, which allows for dilution. What this means is that EBDA's compliance test for chronic toxicity going forward will be based on a very small amount of effluent mixed with lab water, and therefore exceeding the chronic toxicity effluent limit is very unlikely. To better understand toxicity trends, the Regional Water Board intends to require a compliance test for chronic toxicity annually and then add additional non-compliance "surveillance monitoring" on a quarterly basis that would assess toxicity with a higher concentration of effluent.

The Toxicity Provisions are scheduled for adoption by the State Water Board in December 2020, and then require EPA and OAL approval. It is anticipated that they will be in place by the time EBDA's permit is renewed. Regional Water Board staff has already begun constructive discussions with Bay Area Clean Water Agencies (BACWA) representatives regarding how the provisions will be drafted in permits in the Bay Area.

- **Near-shore Discharges.** Over the course of this permit term, Oro Loma Sanitary District and Union Sanitary District have each received permits from the Regional Water Board to increase discharges through their local outfalls during wet weather in exchange for early action nutrient upgrades. In Union's case, they are also anticipating discontinuing discharges to the Hayward Marsh in the next few years. At the same time, San Leandro has also applied for a permit to discharge locally as part of their wetland treatment project. EBDA staff expects these new approaches to be reflected in the Authority's next permit, but does not anticipate any associated material changes.
- **Research on Contaminants of Emerging Concern (CECs):** Regional Water Board staff is looking for ways to increase funding to study CECs in the Bay, their impacts, and contributions from sources including wastewater. These additional studies would be managed through the Regional Monitoring Program (RMP), in which wastewater agencies already participate. Regional Water Board staff has expressed an interest in deleting unnecessary and/or duplicative monitoring requirements in individual NPDES permits in exchange for additional funding to the RMP for these studies. An effort to identify such unnecessary monitoring requirements is underway through BACWA, and staff anticipates these changes will be included in EBDA's new permit.

To assist with the Authority's permit renewal application and negotiation, staff is recommending contracting with EOA, Inc. EOA specializes in water quality regulatory and technical support for public agencies and has supported the Authority's last two permit renewals. Sole-sourcing this engagement to EOA allows the Authority to capture the institutional knowledge gained in the last two cycles and ensures efficiency since EOA has processes in place to analyze EBDA's data. Staff estimates this contract to cost approximately \$100,000. By oversight, this was not included as a line item in the FY 2020/2021 budget. However, as previously reported, staff included \$200,000 in the budget for potential fines associated with the unpermitted discharges that occurred in May 2020. Based on conversations with Regional Water Board staff, EBDA staff does not expect enforcement on those discharges. Therefore, staff proposes to move those funds to the NPDES permit budget under the Special Studies fund and use them for this technical support. With the Committee's support, staff will bring the EOA contract to the Commission for consideration next month.

ITEM NO. RA6 UPDATE ON NATURE-BASED SOLUTIONS DESIGN SERVICES PROJECT

Recommendation

For the Committee's information only; no action is required.

Background

Wetlands, horizontal levees, and other "Nature-Based Solutions" (NBS) have the potential to provide multiple benefits including water quality improvement through reduction of nutrients and contaminants of emerging concern, creation or restoration of habitat, and protection from sea level rise. As noted previously, the Authority has been engaged in several parallel projects that seek to advance NBS concepts along the East Bay shoreline, including the Transforming Shorelines Project. Transforming Shorelines is led by the San Francisco Estuary Partnership (SFEP) and funded by USEPA Region 9 under its Water Quality Improvement Fund. The project contains a number of components aimed at advancing NBS at wastewater treatment plants. Elements include:

- Establishment of the Transforming Shorelines Collaborative, a stakeholder group that will collaborate on challenges and opportunities associated with NBS projects around the Bay, including San Leandro, Hayward, Oro Loma, and others
- Development of a toolkit for NBS at wastewater treatment plants, including cost-benefit analysis
- Continued UC Berkeley research at the Oro Loma Horizontal Levee demonstration project, including study of reverse osmosis (RO) concentrate treatment
- A feasibility study for NBS at the Hayward Ponds
- Design and environmental permitting of the EBDA First Mile horizontal levee project

EBDA is leading the Hayward and First Mile projects with support from SFEP and the EBDA Member Agencies.

Discussion

In November 2019, the Commission approved Resolution 19-42 authorizing the General Manager to enter into a funding agreement with the Association of Bay Area Governments, SFEP's parent agency. Per that agreement, SFEP will pass through grant funds to EBDA to reimburse the Authority for consultant costs associated with the Hayward and First Mile projects.

In coordination with SFEP, City of Hayward, and East Bay Regional Park District (EBRPD) staff, Authority staff developed a Request for Proposals (RFP) seeking an engineering and environmental consultant for the Hayward and First Mile projects. The RFP was distributed to potentially interested firms and posted on EBDA's website in September. The Authority received two proposals. Following proposal review and interviews of both consultant teams, staff has selected a preferred consultant and is currently negotiating the scope and fee. Staff expects to bring a contract for the Commission's consideration next month, followed by a kickoff meeting in January.

Agenda Explanation
East Bay Dischargers Authority
Regulatory Affairs Agenda
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Following project kickoff, staff and the consultant will initiate public and stakeholder outreach associated with the project, likely in early 2021. Outreach will build on the process that has been undertaken by the Hayward Area Shoreline Planning Agency (HASPA) as part of their [Shoreline Master Plan](#). The HASPA team has consulted with key stakeholders including resource agency staff to inform their proposed solutions. The resulting preferred alternative takes stakeholder preferences into consideration and presents a preferred alternative that includes a horizontal levee south of Bockman Canal consistent with the First Mile project, as well as nature-based features including a treatment wetland and horizontal levee at the oxidation ponds in Hayward. EBDA staff has coordinated closely with the HASPA team during the Master Plan development and plans to continue to collaborate as the projects move forward.