



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

**SUBJECT: SITE CLEANUP ORDER FOR
LEGACY LAGOONS**

DATE: February 9, 2021

Approved

Date

2/9/2021

INFORMATION

The attached information memorandum will be provided to the Treatment Plant Advisory Committee (TPAC) to summarize the considerations previously discussed with TPAC and the City Council regarding compliance with the Site Cleanup Order from the Water Board to clean up the Legacy Lagoons.

/s/

KERRIE ROMANOW

Director, Environmental Services

For questions, please contact Jennifer Voccola-Brown, Sustainability and Compliance Division Manager, at (408) 975-2594.

TO: TREATMENT PLANT
ADVISORY COMMITTEE

FROM: Kerrie Romanow

**SUBJECT: SITE CLEANUP ORDER FOR
LEGACY LAGOONS**

DATE: February 9, 2021

INFORMATION

On January 14, 2021, the Treatment Plant Advisory Committee (TPAC) considered staff's recommended budget actions for the Legacy Lagoons Remediation Phase 2 Project (Legacy Lagoons Project) at the San José – Santa Clara Regional Wastewater Facility (RWF). These budget changes were recommended due to the deferral to complete Phase 2 of the project granted by the San Francisco Regional Water Quality Control Board (Water Board) and that most of the appropriated funds will not be used this fiscal year. TPAC members asked whether it was still possible to challenge the Site Cleanup Order from the Water Board to clean up the Legacy Lagoons. Mayor Liccardo, as Chair for TPAC, requested that staff follow-up with a verbal or written response, as appropriate. This information memo provides a summary of the relevant considerations previously discussed with TPAC and the City Council along with the City Attorney's legal response to the TPAC inquiry.

BACKGROUND

The City received a public notice on July 23, 2019 from the Water Board for an opportunity to comment on a Tentative Site Cleanup Requirements Order for the Legacy Biosolids Ponds in the City of San José, Santa Clara County. The City, as Administrating Agency of the RWF, responded on August 6, 2019 and raised various objections to the tentative order.

The Water Board issued (final) Order No. R2-2019-0026 Site Cleanup Requirements for City of San José-San Jose/Santa Clara Regional Wastewater Treatment Facility Biosolids Ponds (Order) on August 28, 2019. In the Order, the Water Board specified the cleanup must be completed fully by November 2023, with an allowance for a phased approach, recognizing the mutual benefits to the RWF, USACE, and Valley Water through collaboration. The Order also documented certain considerations to reduce environmental mitigation requirements if the RWF conducted the first phase of cleanup of lagoons L16-L19 by January 1, 2021, so that those ponds could be transferred to the Valley Water to allow for additional acreage of wetland restoration. The remaining cleanup would still need to be completed in November 2023.

The City contemplated challenging the Order, however, as discussed at subsequent TPAC meetings in September and November of 2019, proceeding with the cleanup was determined to be in the best interest of the regional Shoreline Project and provided benefits to all project

partners, including the RWF (i.e., the benefits of complying with the Order were greater than the potential costs of not complying). The Legacy Lagoons Project was also discussed intermittently throughout 2020, in the context of the larger Shoreline Project and Pond A-18. The Clean Water Act Section 401 Water Quality Certification Permit (401 Permit) subsequently issued by the Water Board on July 10, 2020 to conduct the Legacy Lagoons Project indicated a favorable 1:1 ratio requirement for mitigating impacts (typical mitigation ratios are 2:1 to 4:1), contingent on Lagoons L16-L19 being cleaned by January 1, 2021 and USACE and Valley Water committing to realign the Shoreline Levee to incorporate that land. The 401 Permit further stated that if the realignment did not occur, that mitigation beyond the 1:1 ratio would be subject to Water Board's approval. The City has since met its commitment and has completed the first phase of the cleanup by the Order's compliance date.

On July 7, 2020, staff submitted a request to the Water Board for the extension of the Legacy Lagoons Closure Plan and completion of the Phase 2 Cleanup in accordance with the requirements of the Order. Such an extension would reduce the burden on all agencies by allowing the cost to fund the project to be spread out over a longer time and would avoid logistical and safety issues due to concurrent construction of the Legacy Lagoons Cleanup Phase 2 and Shoreline Levee projects. Staff worked closely with USACE, Valley Water, and the Water Board to align project schedules in a way that reduced these impacts for the betterment of the regional Shoreline Project. Due in part to the collaborative working relationship shown during implementation of Legacy Lagoons Phase 1 cleanup, the Water Board agreed by letter dated September 1, 2020 to defer any enforcement action on completion of Phase 2 for four years to November 30, 2027, provided that USACE and Valley Water does in fact realign the Shoreline Levee to incorporate L16-L19.

The City's opportunity to legally challenge the Order was within 30 days of its issuance in August 2019. Copies of the above referenced documents are attached.

In December 2020, RWF learned that the Shoreline Levee Project bidding and construction was delayed due to cost concerns on that project which may justify further changes to the schedule of Legacy Lagoons Phase 2. Staff continues to coordinate with USACE and Valley Water, will monitor the situation, and report back to TPAC as developments arise.

/s/

KERRIE ROMANOW

Director, Environmental Services

For questions, please contact Jennifer Voccola-Brown, Sustainability and Compliance Division Manager, at (408) 975-2594.

Attachment A - Water Board's notice of opportunity to comment

Attachment B - Water Board's Tentative Order

Attachment C - City's comments and objections to the Tentative Order

Attachment D - Request for extension

Attachment E - Water Board's response to request for extension



Water Boards

Attachment A



GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

**NOTICE OF OPPORTUNITY TO COMMENT ON
SITE CLEANUP REQUIREMENTS FOR
THE LEGACY BIOSOLIDS PONDS IN THE CITY OF SAN JOSE, SANTA CLARA COUNTY
TO BE ISSUED TO THE CITY OF SAN JOSE**

NOTICE IS HEREBY GIVEN THAT the San Francisco Bay Regional Water Quality Control Board (Water Board) will accept written comments on the Tentative Order for Site Cleanup Requirements (SCRs) for the City of San Jose (the Discharger), the San Jose/Santa Clara Regional Wastewater Facility (RWF) majority owner, operator, and manager.

The Order would require site investigations for the cleanup and closure of the biosolids that were discharged into the 25 legacy biosolids ponds at the RWF. Specifically, the Order would require the Discharger to:

- 1) complete additional sampling and analysis of the biosolids;
- 2) identify and evaluate cleanup and closure options;
- 3) select a preferred alternative for the final cleanup and closure of the legacy biosolids; and
- 4) submit a workplan and schedule to achieve cleanup and closure.

The Order would not prescribe requirements for any other portion of the RWF. The Order is needed because of the potential threat to beneficial uses of the waters of the state and public health posed by the discharge of biosolids to the legacy biosolids ponds.

The Tentative Order is available for review at:

https://www.waterboards.ca.gov/sanfranciscobay/board_decisions/tentative_orders.html

SUBMISSION OF WRITTEN COMMENTS. Persons interested in the Tentative Order are encouraged to submit comments electronically. To be considered, comment letters must be received by **5:00 pm on August 7, 2019**. Submit comments to Tahsa Sturgis, by email to Tahsa.Sturgis@waterboards.ca.gov (must be a maximum of 15 megabytes); or mail or hand deliver to:

Tahsa Sturgis
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Please use the subject line: "**Comment Letter – City of San Jose SCR.**"

Please direct questions about this notice to Tahsa Sturgis at (510) 622-2316 or Tahsa.Sturgis@waterboards.ca.gov.

Date: July 23, 2019

DR. TERRY F. YOUNG, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

TENTATIVE ORDER

SITE CLEANUP REQUIREMENTS for:

CITY OF SAN JOSE SAN JOSE
SAN JOSE/SANTA CLARA REGIONAL WASTEWATER TREATMENT FACILITY
BIOSOLIDS PONDS

Location:

700 LOS ESTEROS ROAD
SAN JOSE, CA 95134
SANTA CLARA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (Water Board) finds that:

1. **Discharger.** The City of San Jose (the Discharger) is a majority owner of, operates, and manages the San Jose/Santa Clara Regional Wastewater Facility (RWF), which is located at 700 Los Esteros Road, San Jose (see Figure 1), and serves a population of approximately 1.5 million. Currently, the RWF provides tertiary treatment of domestic, industrial, and commercial wastewater from the Cities of San Jose, Santa Clara, Campbell, Los Gatos, Monte Sereno, Cupertino, Milpitas, Sunnyvale, and parts of Sunnyvale, Los Altos, and unincorporated Santa Clara County. The City of Santa Clara gained 20 percent ownership in the RWF in 1959 by partially funding upgrades to the RWF.
2. **Purpose of and Need for Order.** Pursuant to California Water Code (CWC) Section 13304, this Order requires site investigations for the cleanup and closure of the biosolids that were discharged into the 25 legacy biosolids ponds (numbered 1- 25) at the RWF (see Figures 2 and 3). Specifically, this Order requires the Discharger to:
 1. Complete additional sampling and analysis of the biosolids;
 2. Identify and evaluate cleanup and closure options;
 3. Select a preferred Alternative for the final cleanup and closure of the legacy biosolids ponds; and
 4. Submit a workplan and schedule to achieve cleanup and closure.

Through discussions with the Discharger, the legacy biosolids ponds' cleanup and closure will be completed in two phases. The first phase is the highest priority and consists of cleaning up and closing Ponds 16-19. The second phase consists of cleaning up and

closing Ponds 1 to 15 and 20 to 25, except for Ponds 4 and 8 (see Finding 3). This Order does not prescribe requirements for any other portion of the RWF, including any ponds used for the storage or disposal or the biosolids currently generated by the RWF. currently generated biosolids. The Order is needed because of the potential threat to beneficial uses of the waters of the state and public health posed by the discharge of biosolids to the legacy biosolids ponds as described below.

3. **Active and Legacy Biosolids Ponds.** Currently, the Discharger processes and dewateres the biosolids generated at the RWF. Once dried, the biosolids are trucked to the Newby Island Landfill for use as alternative daily cover. The National Pollutant Elimination Discharge (NPDES) Permit issued by the Regional Water Board (Order No. R2-2014-0034) for the RWF's treated effluent discharge into nearby surface waters contains specific biosolids management requirements but does not authorize permanent on-site sludge or biosolids storage or disposal.

Historically, biosolids were stored on-site in 25 ponds, which are referred to herein as the legacy biosolids ponds. Specifically, between 1962 and 1974, the City of San Jose collected and discharged biosolids from the RWF into 25 ponds in a 211-acre area adjacent to the RWF (Figures 2 and 3). Each pond is approximately 8.3 acres in area. Together, these 25 legacy biosolids ponds contain approximately one million cubic yards of biosolids. This activity occurred in large part prior to wastewater pretreatment requirements under the Clean Water Act and, therefore, the biosolids in the legacy biosolids ponds contain industrial waste, including metals, from industrial activities that were not subject to pretreatment requirements. Biosolids currently generated by the RWF are treated to the standards required in the Discharger's NPDES Permit (Order No. R2-2014-0034) and are not subject to, or the scope of, this Order's requirements.

Since use of the legacy biosolids ponds ceased about 1974, the ponds remained static until the material in the biosolids ponds was bulldozed into windrows in 1998. Ponds 4 and 8 contain biosolids material but are planned to continue their use as a stormwater basin and a City of San Jose Police Department bomb disposal site, respectively. This Order requires a closure plan for the remaining 23 legacy ponds (hereafter, the Site) in order to properly clean up and close the Site.

4. **Site Location and Adjacent Wetlands.** The area where the legacy biosolids ponds are located includes waters of the state and the U.S., as identified by field surveys conducted in 2011. The area is also diked former Baylands. In addition, adjacent to the Site, there are approximately 50 acres of wetlands and former salt ponds that are waters of the state and the U.S. The former salt ponds are part of the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge), owned and operated by the U.S. Fish and Wildlife Service, except for Pond A18, which is owned and operated by the City of San Jose.
5. **Surface Water Bodies.** The main surface water bodies adjacent to the Site are wetlands and former salt ponds, and Artesian Slough, where the RWF discharges its effluent. The Refuge borders the Site from northwest to northeast and consists of a dendritic pattern of meandering sloughs and creeks, former salt ponds, and restored tidal marsh. Artesian Slough flows from southwest of the Site to the northwest, to its confluence with Coyote Creek, before eventually discharging to San Francisco Bay.

Other surface waters near the Site include the Guadalupe River and Alviso Slough. The land comprising the Site also historically contained wetlands and currently contains wetlands that have been created over time within the ponds at the Site.

6. **Hydrogeology.** The Site lies within the northern part of the Santa Clara Valley groundwater basin, an extensive zone of unconsolidated to semi-consolidated clay, silts, sands, and gravels. The primary freshwater aquifers in this basin occupy buried channel deposits within the Pleistocene alluvium, which consists of permeable sand, silt, and cobbles. The buried channel deposits are grouped into "upper" and "lower" aquifers. The upper aquifer begins at a depth of about 45 feet below mean sea level (msl), while the lower aquifer is encountered at a depth of about 200 feet msl. The lower aquifer serves as the primary drinking water source for the Santa Clara Valley. Regional groundwater flow within the aquifer system is towards the Bay and is recharged by runoff from the Santa Cruz Mountains and the Diablo Range. Near the Bay, including the area occupied by the legacy biosolids ponds, these aquifers are separated from each other by the Pleistocene Bay Mud, an extensive clay layer that forms an aquitard.

Near the Site, the upper regional aquifer is overlain by a younger, Holocene-aged sequence of Bay Mud. Within the Holocene Bay Mud, there is a shallow water-bearing zone that consists of a two- to five-foot-thick layer of sand located approximately 12 to 15 feet below msl. Groundwater in this shallow zone is recharged from local runoff and percolation, including percolation from Artesian Slough. The quality of this groundwater is generally poor because of extensive saltwater intrusion, which results in high concentrations of total dissolved solids (TDS). Young Bay Mud clay is expected to underlie most of the RWF, including the legacy biosolids ponds. Young Bay Mud is generally classified as either fat clay or elastic silt and tends to be relatively weak and highly compressible under new loads.

7. **Biosolids Quality Characterization.** The material in the legacy biosolids ponds was sampled and analyzed three times over the past 22 years to determine the material's waste classification and potential reuse options. The modified California Waste Extraction Test (modified WET), which uses deionized water as the extraction fluid, or the standard WET method, which uses citric acid as the extraction fluid, were both used in the studies. The intent of the analysis is to determine the potential for metals in the biosolids to leach out over time. The three studies tested the material for conformance with the Total Threshold Limit Concentration (TTLC) and Soluble Threshold Limit Concentration (STLC) criteria for evaluating the biosolid's waste classification under California waste classification criteria, and the federal Toxicity Characteristic Leaching Procedure (TCLP) for classification of the biosolids under federal waste classification criteria.

All studies concluded that the total metal concentrations in the biosolids material did not exceed hazardous waste criteria. Additionally, all three studies concluded that the federal standards for hazardous waste were not exceeded and analysis using the modified WET test with deionized water indicated there were no exceedances of hazardous waste levels. However, there were some exceedances of California STLC criteria when the Standard WET test with a citric acid was performed (to simulate the acidic conditions typically found in landfills). Specifically, lead, chromium, and cadmium leached out at levels

exceeding California hazardous waste levels when citric acid is used as the extraction fluid.

The contaminants and sample locations at the Site that exceeded the STLC California hazardous waste criteria varied by study. Based on the three studies, it appears that some of the material in the biosolids ponds would be classified as a California hazardous waste if all the biosolids material was considered for offsite disposal, and therefore could only be disposed of at a Class I landfill facility. However, other options may exist for Site cleanup that may not trigger hazardous waste disposal requirements, such as described in Finding 9.

Although the three studies did not test the material from the berms that separate the legacy biosolids ponds, through discussions with the Discharger, it is assumed that the berms were constructed from Bay Mud when the biosolids ponds were windrowed and may be comprised of material that would not exceed state and federal hazardous waste criteria and thresholds for beneficial reuse. Although soil samples from the berms in Ponds 16-19 taken in March 2019 indicated the berm material may be suitable for reuse as wetland foundation material, additional sampling and testing of the material are needed to confirm this assumption. It is possible that the berm material could be beneficially reused for a nearby ecotone levee, as described below. This Order requires the berm material to be sampled and analyzed in addition to sampling and analysis of the legacy biosolids ponds' materials (Task 1), which will be a driving factor in developing the final closure plan.

8. **Closure Options.** The Water Board has discussed regulatory oversight of the Site with the Department of Toxic Substances Control (DTSC), and the agencies have agreed the Water Board will act as the primary agency for overseeing cleanup and closure of the Site. Water Board staff will coordinate and work with other local, federal, and state agencies, including DTSC as required for cleanup and closure of the Site. Based on the Discharger's submittals required herein, the Water Board could consider using an "Area of Contamination" (AOC) approach to facilitate on-site closure without the need to regulate and permit the Site as a Class I landfill facility. The AOC approach would allow the movement of wastes within a contiguous area of generally dispersed contamination without being subject to land disposal hazardous waste criteria and without triggering land disposal restrictions or minimum technology requirements. This approach would utilize the closure requirements specified in Title 27, Division 2, of the California Code of Regulations (hereafter, Title 27).

Under current conditions, the material from the legacy biosolids ponds is exposed and contains contaminants that could adversely affect human health and the environment, including wildlife. The ponds must be closed properly to avoid further threats to human health and the environment. Biosolids disposal alternatives were evaluated in a 2002 report (Brown and Caldwell 2002), and a preliminary geotechnical evaluation of the biosolids was conducted by GEO/Resource Consultants in 1994. The Discharger further evaluated disposal options for the material in the biosolids ponds in 2011 (2011 Preliminary Closure Alternatives). The scope of the closure options considered in 2011 was focused on assessing the Site's potential to facilitate land development after closure and for reusing the material. The 2011 Preliminary Closure Alternatives report

considered five different options for closure and cleanup of the Site as summarized in Table 1.

However, based on the analysis in the 2011 Preliminary Closure Alternatives report, other viable closure alternatives may exist that were not previously considered that could be evaluated by the Discharger. This Order requires the Discharger to move beyond a preliminary closure analysis and evaluate final closure alternatives and select a preferred closure alternative for the Site (Task 1 and Task 2). Options may include, but are not limited to, reusing some or all the biosolids material as ecotone fill, using an AOC approach that was discussed in the 2011 Preliminary Closure Alternatives Report, clean-closure of the Site, and utilizing Title 27 closure requirements.

Tentative Order

Table 1: Summary of the alternatives, and their respective considerations, evaluated in the 2011 Preliminary Closure Alternatives report.

Alternative No.	Description	Material Classification	Constraints Identified	Cost Estimate (Millions)	Timeframe (Years) ¹
1	Class I and Class II Off-site Disposal	Class II (biosolids ponds 2,3, and 25); Class I (All other biosolids ponds)	Limited Class I landfill options (only one in California); capacity of landfills; and transportation	\$179.7	10
2	Class II Off-site Disposal	Class II (DTSC Variance Needed)	Capacity of landfills; transportation; and variance from DTSC	\$97.62	5 - 6
3	Nevada Disposal	Class II (DTSC Variance Needed)	Transportation to Nevada for land application at agricultural land and mining facilities; viable facility for land application not identified; and variance from DTSC needed.	\$160.3	5 - 12
4	On-site Disposal Outside Biosolids Ponds Footprint	Class I	Construction of hazardous waste landfill cell would be needed; leachate disposal; methane venting; environmental monitoring; compensatory mitigation for fill of jurisdictional waters; and mounding aesthetics	\$20.26	2 - 4
5	On-site Disposal Within Biosolids Ponds Footprint	Class I	Construction of hazardous waste landfill cell would be needed; leachate disposal; methane venting; environmental monitoring; compensatory mitigation for fill of jurisdictional waters; and mounding aesthetics	\$19.74	2 - 4

¹ Includes both the anticipated permitting and implementation length, approximate.

9. **Water Quality Control Plan.** The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) was duly adopted by the Water Board and approved by the State Water Resources Control Board (State Water Board), U.S. EPA, and the Office of Administrative Law where required. The Basin Plan is the Water Board's master water quality control planning document. It designates beneficial uses of receiving waters, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed by the Plan. Existing and potential beneficial uses of waters within the Site and adjacent areas include the following:

Alviso Slough: Estuarine Habitat (EST), Fish Migration (MIGR), Preservation of Rare and Endangered Species (RARE), Water Contact Recreation (REC-1), Noncontact Water Recreation (REC-2), and Wildlife Habitat (WILD);

Artesian Slough: EST, RARE, REC-1, REC-2, and WILD;

San Francisco Bay²: Commercial and Sport Fishing (COMM), EST, Industrial Service Supply (IND), MIGR, Navigation (NAV), RARE, REC-1, REC-2, Shellfish Harvesting (SHELL), Fish Spawning (SPWN), and WILD;

Tidal Wetlands: COMM, EST, MIGR, RARE, REC-1, REC-2, SPWN, and WILD; and

Groundwater: Municipal or domestic water supply (MUN).

Regional Water Board Resolution No. 89-39, "Sources of Drinking Water," defines potential sources of drinking water to include all groundwater in the region, with limited exceptions for areas of high TDS, low yield, or naturally high contaminant levels. Since TDS in both the Bay Mud and alluvium groundwater underlying the Site exceeds 30,000 mg/l, domestic water supply is not considered a probable future beneficial use. The current and potential beneficial use of the groundwater in the alluvial deposits surrounding the Site is for industrial process supply.

10. **State Water Board Policies.** State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge. It requires maintenance of background levels of water quality unless a lesser water quality is consistent with maximum benefit to the people of the state, will not unreasonably affect present and anticipated beneficial uses, and will not result in exceedance of applicable water quality objectives. This Order and its requirements are consistent with Resolution No. 68-16. It does not authorize any lowering of water quality but requires a closure plan for the legacy biosolids ponds to prevent further water quality degradation by appropriately isolating the biosolids from surface and groundwater.

California Safe Drinking Water Policy: It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate

² Basin Plan Section 2.2.1 indicates that the beneficial uses of any specifically identified water body generally apply to its tributary streams. Because the former salt ponds are hydrologically connected to San Francisco Bay, the beneficial uses that are identified for San Francisco Bay also apply to the former salt ponds.

for human consumption, cooking, and sanitary purposes. While, as noted above, the groundwater underlying this Site is not, and probably could not, be considered a drinking water source, this Order promotes this policy as the closure of the legacy biosolids ponds is intended to prevent further water quality degradation.

State Water Board Resolution No. 92-49, as amended (Resolution No. 92-49): "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304," applies to this discharge. It directs the Regional Water Boards to set cleanup levels equal to background water quality or the best water quality that is reasonable, if background levels cannot be restored. Cleanup levels other than background must be consistent with the maximum benefit to the people of the state, not unreasonably affect present and anticipated beneficial uses of such water, and not result in exceedance of applicable water quality objectives. This Order and its requirements are consistent with the provisions of Resolution No. 92-49 because it requires the Discharger to assess the feasibility of clean-closure and attaining background levels of water quality. Attaining background levels of water quality may not be feasible, but the Water Board can approve the closure plan if required findings under Resolution No. 92-49 are made.

11. **California Environmental Quality Act (CEQA)**. This action is not a project as defined in the California Environmental Quality Act (CEQA; Pub. Resources Code §§ 21000 et seq.). There is no possibility that adoption of this Order may have a significant effect on the environment (Cal. Code Regs., tit. 14 §§ 15378 and 15061, subd. (b)(3)).
12. **Basis for CWC Section 13304 Order**. The Discharger has caused or permitted waste to be discharged or deposited where it is or probably will be discharged into waters of the state and creates or threatens to create a condition of pollution or nuisance. "Waste" includes "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal." (CWC § 13050(d)). Wetlands that are waters of the state are located on the Site, including on and around the legacy biosolids ponds. As such, the biosolids waste has discharged and threatens to continue to discharge into waters of the state. The biosolids waste creates or threatens to create a condition of pollution because it includes pollutants exceeding background levels, as noted herein, at levels that may meet or exceed the state thresholds for hazardous waste. Those levels unreasonably affect beneficial uses including WILD (wildlife habitat) and RARE (habitat for special-status species). Prior study has shown that the biosolids pose an unacceptable risk to ecological receptors, which include wildlife and special-status species. The waste creates or threatens to create a condition of nuisance because the biosolids waste is potentially injurious to health. Specifically, there is a potential human health risk from the biosolids waste due to the expected increase in human activity in the vicinity of the Site during construction of the Shoreline Project, described below, and use of the publicly assessible flood risk management levee upon completion of the Shoreline Project.
13. **Solid Waste Disposal Requirements**. Because closure options for the legacy biosolids ponds involve wastes being removed from the immediate place of release or potentially

left in place, this Order requires the closure plan to comply with waste management standards for discharges of waste to land for closure under Title 27.

Section 21400 of Title 27 includes a mandatory clean-closure attempt of surface impoundments, such as the legacy biosolids ponds, under which all residual waste must be completely removed from the impoundment and discharged to an approved landfill or land treatment unit. The Regional Water Board may, however, find that it is infeasible to attempt clean closure, due to both cost and technical considerations. The Regional Water Board will evaluate the feasibility of clean-closure based on the cleanup alternative analysis plan required in this Order. Clean-closure may not be feasible and an alternative that incorporates consolidation and reuse of some of the legacy biosolids in the Shoreline Project, described below, could potentially be more feasible, cost-effective, and provide additional multi-benefits, as described below.

14. **Opportunities for Coordination.** There is an opportunity to coordinate cleanup and closure of the Site with the adjacent South San Francisco Bay Shoreline Project (Shoreline Project), and such coordination may benefit both projects by reducing costs, reducing barriers to permitting (e.g., associated with the cleanup's potential wetland impacts), and allowing faster provision of improved flood protection to the RWF. The Shoreline Project includes lands adjacent to the Site. The Discharger is collaborating with the U.S. Army Corps of Engineers (Corps), the California Coastal Conservancy, and the Santa Clara Valley Water District, the Shoreline Project sponsors, to facilitate construction of the Shoreline Project, which will provide flood protection for the community of Alviso and the RWF.

The Shoreline Project includes construction of an approximately 3.8-mile-long flood risk management (FRM) levee and associated ecotone levee that are planned to be completed by 2023. The Shoreline Project's FRM levee is anticipated to be constructed along the Site's northeast boundary to its northwest boundary, but the final FRM alignment at the RWF had not been finalized as of issuance of this Order. The Corps has expressed an interest in having the Site area in the vicinity of Ponds 16-19 cleaned and available for the levee construction, which would result in an alignment that would be easier to construct and also allow conversion to tidal action of a portion of the Bay that would otherwise be located landward of the levee. The Discharger and other Shoreline Project stakeholders have indicated interest in constructing the ecotone levee with a combination of material from the biosolids ponds and clean fill that prohibits biological exposure from or pathways to the biosolids material. The Regional Water Board's order for the Shoreline Project, Order No. R2-2017-0049, conditionally allows the beneficial reuse of legacy biosolids and biosolids pond berm material in its ecotone levee. Reuse of a portion of the legacy biosolids and the pond berms could reduce the amount of material that must be otherwise managed on-Site or disposed of elsewhere. Additionally, coordination with the Shoreline Project, by allowing an alternate levee alignment in the vicinity of Ponds 16-19, would allow Ponds 16-19 to be restored to tidal action, which is anticipated to result in tidal marsh restoration. Restoring Ponds 16-19 would likely result in higher quality habitat than what currently exists in these ponds and mitigate a large portion of the Discharger's impacts to wetlands that will occur if the cleanup includes on-Site closure and consolidation. Mitigating a large portion of the Discharger's impacts to

wetlands by allowing restoration of Ponds 16-19 would substantially reduce the Discharger's financial obligation related to compensatory mitigation by minimizing the costs associated with implementing large-scale compensatory mitigation, including land acquisition, design, permitting, construction, and post-construction operation and maintenance.

15. **Amendment.** This Order does not approve or yet require any specific cleanup of the legacy biosolids ponds. The Regional Water Board will review the required closure plan and its associated environmental document, after which it can either amend this Order or issue a new order to approve and require implementation of an approved cleanup plan.
16. **Notification of Interest Parties.** The Regional Water Board has notified the discharger and all interested agencies and persons of its intent under California Water Code Section 13304 to prescribe site cleanup requirements for the discharge and has provided them with an opportunity to submit their written comments.

IT IS HEREBY ORDERED pursuant to the authority in Water Code section 13304 that the Discharger, its agents, successors, and assigns shall cleanup and abate the effects described in the above findings as follows:

TASKS

1. **Closure Alternatives Analysis Plan.** The Discharger shall submit a Closure Alternatives Analysis Plan (CAAP), acceptable to the Executive Officer, that evaluates alternatives for the final cleanup and closure of the legacy biosolids ponds. The CAAP shall:
 - a. Include cleanup and closure alternatives that are evaluated in terms of effectiveness, feasibility, and cost;
 - b. Include appropriate additional sampling and analysis of the legacy biosolids and the legacy biosolids pond berms sufficient to characterize them for beneficial reuse or on-site consolidation;
 - c. Include a scope of work and schedule for the implementation of the preferred method for closure of the biosolids ponds;
 - d. Evaluate a clean-closure alternative's feasibility in accordance with the requirements of Title 27, Section 21400; and
 - e. Evaluate the feasibility of achieving background water quality consistent with Resolution No. 92-49.

The alternatives required to be evaluated in Task 1.a may include, but are not limited to, the following: use of the AOC closure approach; excavation and off-site disposal of contaminated materials; consolidation and capping in-place with monitoring of the closure's effectiveness; allowing a part of the Site to be used for the Shoreline Project's

alignment; and reuse of material from the biosolids ponds as part of the Shoreline Project. Alternatives that involve the beneficial reuse of the biosolids should consider the Shoreline Project's requirements and should include, but not be limited to, an evaluation of the potential for reusing the material in the biosolids ponds and their berms as fill in the Shoreline Project.

COMPLIANCE DATE: Not later than 45 days from this Order's issuance date.

2. **Consolidation/Closure Plan.** The Discharger shall submit a detailed Closure Plan, including the closure schedule, acceptable to the Executive Officer, for the preferred alternative for the cleanup and closure of the legacy biosolids ponds. The preferred alternative must fully protect the beneficial uses of waters of the state and human health. The Closure Plan shall:
 - a. Identify the preferred alternative based overall effectiveness, feasibility, cost, and the environmental impacts identified in an environmental analysis under CEQA.
 - b. Include design criteria consistent with Title 27 section 21400 to properly contain waste on Site if the Regional Water Board finds, based on the CAAP, that clean-closure and cleanup to background levels for soil and water quality are infeasible.
 - c. Include a scope of work and schedule for the implementation of the preferred method for cleanup and closure of the biosolids ponds, including a work plan that identifies and sets a schedule to obtain the necessary approvals for the work.
 - d. Include a schedule for the preferred alternative to ensure the Site is fully closed and associated mitigation measures completed, including any required compensatory mitigation for impacts to wetlands and other waters of the state, by **November 1, 2023**, or as otherwise consistent with the Shoreline Project's construction schedule and planned activities in the legacy biosolids ponds' vicinity.

If the Discharger coordinates with the Shoreline Project, the Closure Plan shall ensure that Ponds 16-19 are cleaned up sufficient to convey them to the Corps by **January 1, 2021**, so the land may be acquired for use in the Shoreline Project by May 2021, or as otherwise consistent with the Shoreline Project's construction and land acquisition schedule. Proposals to reuse material from the legacy biosolids ponds in the Shoreline Project shall be consistent with the Regional Water Board's order for the Shoreline Project, Order No. R2-2017-0049.

COMPLIANCE DATE: Not later than 90 days after the CAAP has been reviewed and accepted by the Executive Officer.

PROVISIONS

1. **Compliance.** The Discharger shall comply immediately, or as prescribed by the time schedules herein, with all the requirements of this Order. All required submittals must be

acceptable to the Executive Officer, who will review the submittals for compliance with the requirements of this Order. As provided by California law, violating this Order may result in an enforcement action requiring corrective action or imposing civil monetary liability.

2. **Technical Reports.** All technical reports submitted pursuant to this Order shall be prepared under the supervision of and signed under penalty of perjury by an appropriately qualified professional in the field of the reports' content matter, either be licensure or other demonstrable expertise, as verified and accepted by the Executive Officer.
3. **Contractor and Consultant Qualifications.** All technical documents shall be signed by and stamped with the seal of a California registered geologist, a California certified engineering geologist, or a California registered civil engineer.
4. **Lab Qualifications.** All samples shall be analyzed by state-certified laboratories or laboratories accepted by the Regional Water Board using approved U.S. EPA methods for the type of analysis to be performed. Quality assurance/quality control (QA/QC) records shall be maintained for Regional Water Board review. This provision does not apply to analyses that can only reasonably be performed on-site (e.g., temperature).
5. **Document Distribution.** Electronic and paper versions of all correspondence, technical reports, and other documents pertaining to compliance with this Order shall be provided to the Regional Water Board, and electronic copies shall be provided to the following agencies list, which may be disturbed by the Executive Officer as necessary:
 - a. The City of San Jose local enforcement agency, in the City's Code Enforcement Division;
 - b. The City of Santa Clara; and
 - c. The Santa Clara Valley Water District.
6. **Submittal Revisions.** Where the Discharger becomes aware that it failed to submit any relevant facts in a report or submitted incorrect information in any report to the Water Board, it shall promptly submit such facts or information.
7. **Report Certification.** All application reports or information to be submitted to the Executive Officer shall be signed and certified as follows:
 - a. For a corporation – by a principal executive officer or the level of vice president.
 - b. For a partnership or sole proprietorship – by a general partner or the proprietor, respectively.
 - c. For a municipality, state, federal, or other public agency – by either a principal executive officer or ranking elected official

A duly authorized representative of a person designated in this provision may sign documents if all the following are met:

- d. The authorization is made in writing by a person described in paragraph (a) of this Provision;
- e. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated facility or activity; and
- f. The written authorization is submitted to the Executive Officer

Any person signing a document under this Provision shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

8. **Cost Recovery.** The Discharger shall be liable, pursuant to Water Code section 13304, to the Water Board for all reasonable costs actually incurred by the Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. After the Discharger enrolls in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Discharger (as applicable) over reimbursement amounts or methods used in that program shall be consistent with the dispute resolution procedures for that program.

I, Michael Montgomery, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on August 7, 2019.

Michael Montgomery
Executive Officer

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FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ORDER MAY SUBJECT YOU TO ENFORCEMENT ACTION, INCLUDING, BUT NOT LIMITED TO: IMPOSITION OF ADMINISTRATIVE CIVIL LIABILITY UNDER WATER CODE SECTION 13350, OR REFERRAL TO THE ATTORNEY GENERAL FOR INJUNCTIVE RELIEF OR CIVIL OR CRIMINAL LIABILITY

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Attachments: Figure 1: RWF Site Location Map
Figure 2: Aerial Photograph of Ponds Site
Figure 3: RWF Land Use Map



August 6, 2019

Tahsa Sturgis
1515 Clay Street, Suite 1400
Oakland, CA 94612

Also sent by email to Tahsa Sturgis at tahsa.sturgis@waterboards.ca.gov

Subject: Comment Letter – City of San José SCR, Response to Tentative Order from the City of San Jose, as Administering Agency for the San Jose-Santa Clara Regional Wastewater Facility

Dear Mr. Sturgis,

Thank you for providing the opportunity to comment on the Tentative Order - Site Cleanup Requirements (Tentative Order) for the San José-Santa Clara Regional Wastewater Facility (RWF or Facility) legacy biosolids ponds. The RWF has been an important and collaborative partner in the South San Francisco Bay Shoreline Levee Project (Shoreline Project or Project) for well over a decade, facilitating site visits, providing technical information, and identifying potentially available property that would either support or be incorporated into the project. As the Project nears construction, the RWF remains a critical partner in project success not just because of its vital role in treating wastewater for 1.5 million people, but also as the owner of properties within or adjacent to the proposed levee alignment.

The Tentative Order requires the RWF to submit a plan to clean the legacy biosolids ponds in time for a portion of the ponds to be transferred for a realignment of the Shoreline Project. The ponds have been retired for over 40 years with no additional discharge or disturbance. But for the Project, the ponds do not in fact pose an immediate threat to beneficial uses of the water of the state and public health. Additionally, but for the mandated cleanup, there would not be a potential disturbance of, and impact to, the aquatic features in these ponds. Essentially, the RWF is being required to cause a disturbance and then mitigate for it when these ponds left undisturbed do not pose an immediate threat.

We do acknowledge, however, that a clean-up could eventually be required and that this Project presents a unique opportunity for collaboration. We appreciate the opportunities to discuss the proposed order in-person and on the phone. The City of San José (City), as the majority owner of the Facility and administering agency of the RWF, submits the following preliminary comments and concerns on behalf of the RWF.

1. Tentative Order and Public Notice

The public notice and the Tentative Order identify the City of San José as the “Discharger.” The RWF is subject to ORDER No. R2-2014-0034, NPDES Permit No. CA0037842 Waste Discharge Requirements for the San José/Santa Clara Water Pollution Control Plant (commonly called the San José-Santa Clara Regional Wastewater Facility), the discharger is identified as the City of San José, City of Santa Clara, and San José/Santa Clara Water Pollution Control Plant, a joint powers authority. The RWF treats wastewater for the benefit of various other cities and sanitary districts in South Bay. Please conform Discharger to refer to the RWF; or if the City of San Jose is identified, it should be identified as the administering agency for the RWF.

The Tentative Order incorrectly includes Los Altos and Sunnyvale. The cities and sanitary districts served by the RWF are City of Milpitas; Burbank Sanitation District (serving areas of unincorporated Santa Clara County); Cupertino Sanitation District (serving Cupertino); West Valley Sanitation District (serving Campbell, Los Gatos, Monte Sereno, and Saratoga); and Santa Clara County Sanitation Districts No.2 and No. 3 (serving areas of unincorporated Santa Clara County).

2. Timeline

The Tentative Order proposes an ambitious timeline to submit and comply with submittals of Task 1 - Closure Alternatives Analysis Plan (CAAP), Task 2 - Closure Plan, and implementation of the approved Closure Plan.

The City’s ability to comply is dependent on actions and processes outside the City’s control, including but not limited to, approvals from other regulatory agencies, and financial or institutional resource limitations. Specifically, the following factors will impact the City’s ability to comply:

- Environmental permitting from US Fish and Wildlife Service, California Department of Fish and Wildlife, US Army Corps of Engineers, and California State Water Resources Control Board. Based on historical experience and circumstances, permitting can be known to take a year or longer for preparation, processing, and approval.
- Completion of environmental review pursuant to the California Environmental Quality Act depends on information and legislative approvals. Some of the information necessary for the review is from other agencies or must be coordinated with consultants.
- Construction procurement and activity will depend on market conditions, protests, and seasonal availability of the ponds.
- Project status with the Santa Clara Valley Water District and USACE could also impact the City’s ability or need to comply with the timeline for cleanup.

In anticipation of these other factors, the City has proactively engaged the regulatory agencies, initiated the environmental review, and contracted with consultants for preliminary work and evaluations. While these efforts may facilitate the timeline to comply, the City will

require the Regional Water Board staff's assistance in ensuring the expeditious approval of necessary permits. The City would ask that the Tentative Order be modified to expressly state that the City shall not be penalized for failing to meet a deadline if the delay is due, in part, to factor(s) beyond its control.

3. Mitigation Requirements

The Tentative Order acknowledges that a realignment and restoration to include ponds 16-19 would result in higher quality habitat to the San Francisco Bay than the lower quality aquatic features in the existing ponds. Considering the higher value and extraordinary opportunity to restore tidal wetlands, the City does not believe it is reasonable to require additional mitigation requirements for the remaining ponds in addition to the transfer of ponds 16-19, without further negotiations on the potential property transaction. Additional mitigation requirements are particularly onerous in light of the City's current negotiations with the Santa Clara Valley Water District to sell Pond A18. Pond A18 was specifically purchased with wastewater ratepayer funds to provide for wetlands mitigation. Finally, the City has initiated biological surveys, and depending on the results of the report, additional mitigation may not be necessary because of the lower quality aquatic features in the remaining ponds. Given that the decision to impose additional mitigation requirements is a discretionary decision, we urge the Board to minimize the impact of the Project on our residents that would be asked to bear the cost of any additional mitigation.

4. Biosolids and Berm Material Quality Characterization

The Tentative Order requires additional sampling of the legacy biosolids and lagoon berm material for potential use in the ecotone foundation. See Section 2. Purpose and Need for Order and Task 1 of the SCR. The legacy biosolids have been tested and characterized three times. This past March, the City conducted additional sampling and analysis of the berm material in ponds 16 through 19 to accommodate USACE's stringent schedule. The results were compared to the Project's Quality Assurance Project Plan by the City's consultant and initial evaluation was shared with the Shoreline Project sponsors and the Regional Water Board staff. Evaluation of the data found that the material was reasonably homogenic and generally meets the ecotone foundation criteria. The City acknowledges that if the berm material can be used, use by the Project sponsors of the berm material would be mutually beneficial to the City because it would either (1) relieve the City of the cost to consolidate the material and Project sponsors of the cost to acquire additional material, or (2) the City may use the berm material for capping as part of the cleanup project.

Requiring additional sampling of the materials, however, would only serve to slow down the City's cleanup project, increase costs, and present risk of delays for the U.S. Army Corps of Engineers (USACE) and the non-federal sponsors of the Shoreline Project. The City discussed the need for additional sampling with the Regional Water Board staff who acknowledged additional sampling would increase time to complete project cost and the overall cost. It was agreed that the City would complete a gap analysis and identify if additional information was necessary to prepare the CAAP, then make recommendations for additional monitoring based on the findings. If additional evaluations are necessary, the findings can be shared with the Project sponsors.

Further analysis of materials for use should be an option for the City and not a requirement. Therefore, the requirement and references to further sample and evaluate the biosolids and berm materials for reuse should be removed from the Order. If the requirement to conduct the sampling is not removed, the City proposes that 1.b be changed to read as follows, "If determined necessary, include a work plan for additional sampling and analysis of the legacy biosolids and the legacy biosolids pond berms sufficient to characterize them for beneficial reuse or on-site consolidation. Results to be incorporated into Consolidation/Closure Plan (Task 2)."

Closure Options

Table 1 is out of date and likely does not reflect the new alternatives analysis that will be performed for Task 1. City requests that Table 1 be removed because the Tentative Order's required alternatives analysis will be reviewed by the Regional Water Board staff.

5. Other Considerations Related to the Shoreline Project

The City, as the administering agency for the RWF, must also consider the cumulative cost of the Project to the residents of San Jose, Santa Clara, and outside agencies.


- The City is currently negotiating the sale of Pond A18 with the Santa Clara Valley Water District. In order for the City to proceed, the City has requested a copy of the hydrologic study to better understand the impact of the Project on the RWF and the community of Alviso from the landward side. With this information, the City can proceed with more confidence that the Shoreline Project would in fact better protect the RWF and Alviso from flooding due to heavy rains and/or riverine overbanking.
- The Shoreline Project includes construction of an Artesian Sough Closure structure. The closing off of the Artesian Slough will accelerate the cost to the RWF to construct an effluent pump station. This was a cost that the City did not anticipate incurring for several years as a result of sea level rising; but now should be accounted for in either increasing fees and/or the Pond A18 sale.
- The proposed trail along the levee, as part of the Shoreline Project, also raises potential concerns that must still be resolved. The RWF has been the site of an active bomb disposal facility which serves the needs of law enforcement for San Jose, and on occasion other law enforcement agencies in the Bay Area. It is likely that an active detonation will suspend construction; or require the temporary closure of the trail. It is critical that any trail alignment selected by USACE and approved by the Water Board be coordinated with the RWF and the San Jose Police Department, so that the trail alignment would not bring members of the public closer to the bomb disposal facility, and if so, the appropriate safety and security measures are taken to protect the public and the RWF.

The City of San José acknowledges the benefits that the South San Francisco Bay Shoreline Project and its associated components bring to the community of Alviso and the RWF. It also appreciates the effort being put into the design and the coordination by USACE and other non-Federal Sponsors of

the project. We look forward to ongoing coordination with the Regional Water Board to ensure the efficient closure of the legacy biosolids ponds in a manner that is fair to the City and its stakeholders.

If you have any questions regarding these comments or would like to discuss them, please contact Jennifer Voccola-Brown, Interim Sustainability & Compliance Manager at (408) 975-2594 or jennifer.brown@sanjoseca.gov.

Sincerely,



Kertie Romanow

Director

City of San José, Environmental Services Department

cc: Dave Sykes, City Manager, City of San José

Gary Welling, Director of Water and Sewer Utilities, City of Santa Clara

LTC John D. Cunningham, District Commander and Engineer, San Francisco District, U.S. Army Corps of Engineers

Melanie Richardson, Chief Operating Officer, Santa Clara Valley Water District

Amy Hutzler, Deputy Executive Officer, California State Coastal Conservancy

Anne Morkill, Refuge Manager, San Francisco Bay NWR Complex U.S. Fish and Wildlife Service



July 7, 2020

Tahsa Sturgis
San Francisco Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Order No. R2-2019-0026 Site Cleanup Requirements for the San José-Santa Clara Regional Wastewater Treatment Facility – Request for Extension of Closure Plan and completion of Phase 2 Cleanup

Dear Mr. Sturgis,

The City of San José (City), as the administering agency of the San José-Santa Clara Regional Wastewater Facility (RWF or Facility) and majority owner of the Facility would like to acknowledge receipt of your letter dated April 30, 2020 regarding our submittal of the Interim Closure Plan: Phase 1 Biosolids Removal and Consolidation (Interim Closure Plan) in accordance with Order No. R2-2019-0026 (Order) Site Cleanup Requirements for the legacy biosolids ponds (legacy lagoons) at the RWF. Thank you for your patience in our delayed response to your letter in these unusual times. The City appreciates the Water Board's acceptance of the project approach detailed in the Interim Closure Plan and your team's guidance and support during its development, without which this project could face greater challenges.

The Order requires the RWF to prioritize the cleaning of a portion of the legacy lagoons (ponds or lagoons 16-19) by January 1, 2021 with the intent to include them as part of a realignment of the South San Francisco Bay Shoreline Levee Project (Shoreline Project) in order to realize the benefits of restoring additional tidal wetlands to the Bay. We have taken extraordinary measures to comply with the aggressive timelines in the Order and continue to coordinate with the US Army Corps of Engineers (USACE) and other project sponsors to enable this realignment to occur. As we shared in a meeting with you and others from the Water Board on Wednesday June 3, 2020, we are poised to succeed on completion of Phase 1 by the January 1, 2021 deadline, barring any unforeseen circumstances. However, in order to meet that deadline, efforts needed to be focused on a phased approach and the Interim Closure Plan included the required information for Phase 1, with only conceptual details for Phase 2. Recognizing this challenge and the need to develop the Phase 2 Plan, the Water Board specified in its acceptance letter a deadline of November 30, 2020 to submit a Final Closure Plan. During the aforementioned meeting, among other things, we discussed an extension to the deadlines associated with Phase 2. An extension of at least four years from November 30, 2023 to November 30, 2027 to complete the overall project is requested for the following reasons:

1) The Phase 2 completion date in the Order does not allow adequate time for proper planning, design, and construction of Phase 2.

When the City's consultants assessed the biosolids materials as part of the geologic investigations to prepare the Closure Plan in accordance with the Order, it was determined that too many factors could impact the design of Phase 2 and that it would be prudent to better understand how the materials behave when moved before progressing with full design of the final closure, including Phase 2. Waiting for completion of Phase 1 allows consultants to take into consideration lessons learned during that phase so that they can be properly accounted for in the overall design of the consolidation, cap, and restoration or habitat creation area, which is a more complicated part of the project. The additional time will also allow the City time to assess whether opportunities to redevelop the property for RWF operational use exist, which cannot be contemplated within the timeframes required in the Order. The potential benefit would be to more efficiently design and cleanup the property with a planned operational reuse strategy in place.

Further, Phase 2 cleanup and closure of the remaining lagoons is a larger area than Phase 1 and includes additional work to complete. To meet the November 2023 deadline in the Order, a new environmental/civil consultant procurement would have to occur now, with the actual construction contract to be awarded in spring of 2021. It is unreasonable to expect that in less than one year from now is a enough time to conduct a consultant procurement, complete more analysis, identify final locations including the best final consolidation and wetland restoration or creation areas, finalize the design, and coordinate with permit agencies for the remainder of the cleanup, then solicit and award a construction contract. These activities are further challenged as a result of limited capacity to conduct procurements due to the City's focus on its emergency pandemic response.

It took an extraordinary effort this year to prepare for the cleanup of lagoons L16-L19 in Phase 1 and only one dry season is available to complete the work in time to meet the Order. Phase 2 is more than twice as large and will require multiple dry seasons to construct in addition to a consultant procurement. Currently we anticipate two to three years; however, this depends on what is learned during Phase 1 and could be affected by issues beyond our control, such as weather. Accordingly, an extension to January 30, 2024 to submit the Final Closure Plan is requested.

2) Scheduling conflicts cause logistical and safety challenges with the Shoreline Project.

As mentioned, to complete the remainder of the project by November 2023, construction of Phase 2 must commence by July 2021. The Shoreline Project is currently scheduled for award of Reaches 4 and 5 construction in January of 2022 with construction activity in that area through August of 2023, and likely increasing the performance period until Fall of 2024. The amount of activity and number of trucks for both projects in the areas around RWF and specifically the legacy lagoons needed is beyond the capacity of the roads in the area where the lagoons are located. It also increases the number of truck trips on the already impacted


public right of ways, Zanker and Los Esteros Roads. All of this creates substantial safety and logistical challenges, at great risk of delay to both projects and operational efficiency of the RWF. Therefore, it is prudent to delay construction of Phase 2 of the Legacy Lagoons Project until after USACE is completed.

3) Significant impacts to ratepayers due to unanticipated cost.

The RWF serves 1.4 million residents and 17,000 main business connections across eight cities and unincorporated areas. The RWF is funded by rate revenue from the contracting agencies, which in turn set rates that include their respective sanitary sewer system costs. When a major project and expense is identified, it is spread out across the ratepayers. Normally, advance notice is required and provided to the contracting agencies so that the cost can be anticipated and planned for through various financing strategies over the course of multiple years. Because this project was not planned for and carried a stringent compliance timeline, it creates a significant impact to the RWF owners and contract agencies. In order to complete Phase 2 of this project within the current compliance timeline, a construction contract must be issued in late Fiscal Year 2020-2021, which requires it to be fully funded in the coming fiscal year's budget. The current estimate for Phase 2 completion is approximately \$40 million (in addition to the \$8M for Phase 1), which results in a significant one-time rate increase with no preparation for financing. Allowing this extension will allow the owners of the RWF and the contract agencies to better plan for financing needs and minimize the rate impacts to its ratepayers.

The City of San Jose, as administrator of the RWF, fully understands the regulatory obligations associated with this Order and is taking them with the utmost seriousness. These extensions would provide a more reasonable and realistic timeline, and it allows the RWF and USACE to complete their projects in an efficient and safe manner while at the same time lessening immediate financial impacts on ratepayers. Thank you for consideration of this request. Please contact me at jennifer.brown@sanjoseca.gov to discuss any questions or comments regarding this request.

Sincerely,



Jennifer Voccola-Brown, Sustainability & Compliance Manager
City of San José, Environmental Services Department

cc: Gary Welling, Director of Water and Sewer Utilities, City of Santa Clara
Bryan Sousa, City of San José Local Enforcement Agency
Rachel Roberts, City of San José Local Enforcement Agency
Keith Lichten, San Francisco Regional Water Quality Control Board
Terry Seward, San Francisco Regional Water Quality Control Board
Keith Roberson, San Francisco Regional Water Quality Control Board
Melanie Richardson, Chief Operating Officer, Santa Clara Valley Water District



San Francisco Bay Regional Water Quality Control Board

Sent via email: no hard copy to follow

September 1, 2020

City of San Jose
Attn. Ms. Jennifer Voccola-Brown, Sustainability and Compliance Manager
700 Los Esteros Road
San Jose, CA 95134
Jennifer.Brown@sanjoseca.gov

Subject: Order No. R2-2019-0026, Site Cleanup Requirements for the San Jose-Santa Clara Regional Wastewater Treatment Facility – Request for Extension of Closure Plan and Completion of Phase 2 Cleanup

Dear Ms. Brown:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff have reviewed the Request for Extension of Closure Plan and Completion of Phase 2 Cleanup, that was submitted by the City of San Jose in a letter dated July 7, 2020. Order No. R2-2019-0026 (Order) imposed Site Cleanup Requirements for 23 on-site legacy biosolids ponds at the San Jose-Santa Clara Regional Wastewater Treatment Facility (RWF). The Order requires the City to prioritize the cleanup of a portion of the ponds (Ponds 16-19) by January 1, 2021. That prioritization recognizes the opportunity to coordinate that work with a potential realignment of the South San Francisco Bay Shoreline Levee Project (Shoreline Project) and the need to complete that important project, which will provide protection to the RWF from anticipated sea level rise.

The City has committed to complete the cleanup's first phase, Ponds 16-19, by the January 1, 2021, deadline. The City has requested an extension of the deadlines associated with Phase 2, for the cleanup of the other 19 legacy ponds covered under the Order. The requested extension is approximately four years past the Order due date, but will not exceed November 30, 2027.

As justification, the City states that the design and implementation of the Phase 2 cleanup, which involves a much larger area than the Phase 1 work, would benefit from the experience gained from Phase 1. Also, the Phase 2 cleanup, if conducted per the current deadline, would occur simultaneous to the construction of the Shoreline Project,

JIM McGRATH, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

creating potentially significant safety and logistical challenges. Lastly, the current deadline for the Phase 2 work involves a rate increase to the RWF's rate payers.

Staff recognizes the opportunity to improve Phase 2 work using lessons learned from Phase 1, and the potential challenges should there be a need to coordinate the cleanup project with a Shoreline Project alternative alignment. We will not recommend an enforcement action for failure to meet Order Task 2's November 1, 2023, deadline for the full closure of and completion of associated mitigation measures associated with the remaining legacy ponds, provided: the Shoreline Project is realigned such that there is a need to coordinate the two projects' logistics, and the City meets the proposed completion date of November 30, 2027. Should the Shoreline Project remain on its currently proposed, more bayward, alignment, a potentially significant barrier to expeditiously completing the cleanup would be removed. In that event, recognizing the importance of completing the cleanup, we will consider a request from the City for delay past the current 2023 deadline, but of a duration shorter than four years.

Please be aware that delays in the cleanup's completion may result in additional wetland mitigation or other requirements pursuant to the cleanup project's Clean Water Act section 401 water quality certification, which I issued on July 10, 2020. Such delays should be addressed in the reporting required under the certification, and I suggest you reach out to Tahsa Sturgis of my staff as the timing becomes clearer.

We appreciate City staff's hard work to facilitate the cleanup of Ponds 16-19 and look forward to continuing to coordinate with the City on the cleanup. If you have any questions, please call Alan Friedman at (510) 622-2347 or via email to alan.friedman@waterboards.ca.gov, or Tahsa Sturgis at (510) 622-2316 or via email to tahsa.sturgis@waterboards.ca.gov.

Sincerely,



Digitally signed by
Michael Montgomery
Date: 2020.09.01 14:41:41

-07'00'

Michael Montgomery
Executive Officer

Cc: Water Board:

Terry Seward, terry.seward@waterboards.ca.gov
Keith Lichten, keith.lichten@waterboards.ca.gov
Elizabeth Morrison, elizabeth.morrison@waterboards.ca.gov
Tahsa Sturgis, tahsa.sturgis@waterboards.ca.gov
Keith Roberson, keith.roberson@waterboards.ca.gov