



CVCWA Central Valley Clean Water Association

Representing Over Sixty Wastewater Agencies

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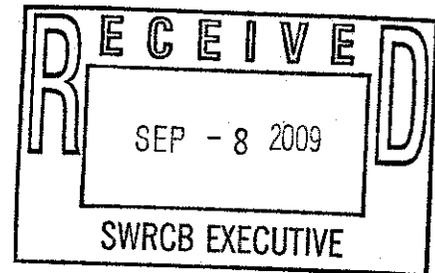
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September 7, 2009

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Sent via email to : commentletters@waterboards.ca.gov

SUBJECT: SWRCB/OCC File A-1948



Dear Ms. Townsend:

The Central Valley Clean Water Association (CVCWA) has reviewed the proposed order in the matter of Petition of California Sportfishing Protection Alliance (Waste Discharge Requirements Order No. R5-2008-0104 [NPDES Order No. CA0085286] for the Soper Company Spanish Mine, Nevada County) (proposed order). Based on our review, we are concerned the proposed order asserts that the state's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (2005) (SIP) renders applicable federal regulatory requirements moot.

The proposed order finds that the SIP supersedes federal regulatory requirements with respect to the inclusion of best management practices for priority pollutants in lieu of numeric effluent limitations when numeric limitations are considered to be infeasible. (Proposed Order at p. 5.) This conclusion is apparently based on the notion that numeric limits are "more stringent" than other effluent limitations. CVCWA disagrees with this supposition. The goal of the SIP is to "establish a standardized approach for permitting discharges of toxic pollutants ... in a manner that promotes statewide consistency." (SIP at p. 3.) To achieve this goal, the SIP sets forth a process for establishing water quality-based effluent limitations for priority pollutants, which is designed to implement federal regulatory requirements for such limitations. In short, the SIP is primarily about setting water quality-based effluent limits in NPDES permits to meet the requirements of section 122.44(d), title 40 of the Code of Federal Regulations.

Remarkably, the proposed order takes the position that the adoption of the SIP somehow extinguished the application of section 122.44(k), title 40 of the Code of Federal Regulations. Such an argument is unsupportable considering the language of the federal regulation at issue. Section 122.44 states, "... *each NPDES permit shall include conditions meeting the following requirements when applicable.*" (40 C.F.R. § 122.44.) The conditions set forth in the rule include the need for water quality-based effluent limitations required by subsection (d), as well as best management practices where numeric effluent limitations are infeasible as expressed in subsection (k). The adoption of the SIP does not, and indeed cannot, change the application of these provisions. (*Free v. Bland* (1962) 369 U.S. 663 [any state law which is "contrary to federal law must yield."]) The SIP expressly supersedes basin plan provisions and states, "[n]otwithstanding the provisions of these sections, effluent limitations must protect beneficial uses and *comply with State and federal antidegradation policies, federal antibacksliding requirements, and other applicable provisions of law.*" (SIP at p. 4, emphasis added.) Thus, where numeric effluent limitations are infeasible, the federal regulations authorize the use of best management practices.

We wish to make clear that CVCWA is not expressing an opinion with respect to the issue of infeasibility for the specific discharger and priority pollutants at issue in the proposed order. However, we do believe a consideration of the feasibility of numeric limitations to be the appropriate inquiry, consistent with governing federal regulations. Thus, the proposed order should be revised to clarify that such an analysis remains relevant.

Sincerely,



Debbie Webster, Executive Officer
Central Valley Clean Water Association

c: Pamela Creedon, CVRWQCB