

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF December 4-5, 2008
Prepared November 6, 2008

ITEM NUMBER: 11

SUBJECT: Reissuance of Clean Water Act Section 301(h)-Modified NPDES Permit, Order No. R3-2008-0065, and Approval of Settlement Agreement, Morro Bay/Cayucos Wastewater Treatment Plant, San Luis Obispo County

KEY INFORMATION:

Dischargers:	City of Morro Bay and Cayucos Sanitary District
Facility Name:	Morro Bay/Cayucos Wastewater Treatment Plant
Facility Address:	160 Atascadero Road Morro Bay, California 93442 San Luis Obispo County
Type of Waste:	Municipal wastewater
Treatment:	Facility effluent is a blend of primary- and secondary-treated wastewater. All flow receives primary treatment. Approximately one million gallons per day (MGD) receives secondary treatment, which includes trickling filters, solids-contact, and secondary clarification. Blended wastewater is disinfected by chlorination, and then dechlorinated prior to discharge
Disposal:	To Pacific Ocean at Estero Bay via outfall and diffuser
Facility Design Flow:	Annual average of 2.06 MGD and peak seasonal dry weather flow of 2.36 MGD
Facility Permitted Flow:	Peak seasonal dry weather flow of 2.36 MGD
Current Flow:	1.2 MGD annual average
Existing Order:	Waste Discharge Requirements Order No. 98-15, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0047881
Recycling Requirements:	None
This Action:	Reissue NPDES Permit and approve Settlement Agreement

SUMMARY

On May 11, 2006, the Central Coast Water Board held a hearing to consider adoption of a reissued draft NPDES Permit (Order No. R3-2006-0019) for Morro Bay and the Cayucos Sanitary District. The Central Coast Water Board had questions regarding the potential effects of continued discharges from the Facility; more specifically, whether continued facility discharges would affect the southern sea otter and brown pelican. As a result, the Central Coast Water Board continued the hearing to allow USEPA to develop an Endangered Species Act Biological Evaluation (BE) on the potential effects of the discharge to sensitive species. Furthermore, the BE was required to receive concurrence of "no likely adverse effects" pursuant to Section 7 of the Federal Endangered Species Act from the U.S. Fish and Wildlife Service (USFWS).

The USEPA released the BE on September 6, 2007, and requested concurrence of "no likely adverse effects" on the brown pelican and southern sea otter from the USFWS. The BE recognizes no likely adverse effects on the southern sea otter and brown pelican provided that the Discharger implement conservation measures outlined in the BE. The USFWS responded to the USEPA's request for concurrence in a letter dated December 21, 2007. The USFWS letter concurred with the USEPA's findings indicating that continued discharges from the Facility would not likely have adverse effects to endangered species in the area.

The Morro Bay/Cayucos Wastewater Treatment Plant (hereinafter Facility) is one of the last in the Central Coast Region to operate under a Clean Water Act Section 301(h)-Modified NPDES permit. After several years of discussion, the Discharger has agreed to meet full secondary treatment standards by upgrading its facility to provide tertiary treatment within 8.5 years. The Discharger has already begun the upgrade process. The Executive Officer and the Discharger are preparing modifications to the Settlement Agreement to address schedule changes since the beginning of the hearing. The modified settlement agreement will be provided to the public when modified. The Settlement Agreement addresses the need for the issuance of one more 301(h)-Modified NPDES permit.

U.S. Environmental Protection Agency (USEPA) completed a Tentative Decision Document that concludes the Discharger meets Clean Water Act requirements for reissuance of its 301(h)-Modified NPDES Permit (Attachment 1). Water Board staff also performed a detailed evaluation of the applicable law, available data, and the regulations, and concludes that the Permit is eligible for reissuance.

There are high incidences of sea otter mortality in the vicinity of Morro Bay and Cayucos, apparently due to pathogens originating from felines, but the Discharger's unique monitoring efforts demonstrate it is unlikely that the subject discharge is contributing to this problem. This matter is discussed extensively in the Fact Sheet (Attachment F to the Permit). This issue has generated a considerable amount of written and oral comments.

Before the Water Board today, Draft Order No. R3-2008-0065 revises Draft Order R3-2006-0019, proposed on May 11, 2006, which includes the following modifications. Details of these changes are included in Attachment 2:

1. Standard template language implementing the State Water Resources Control Board's 2005 California Ocean Plan;
2. Revisions to address USEPA's Biological Evaluation and USFWS' concurrence, including USEPA conservation measures;
3. Revisions to address the Discharger's updated conversion schedule, including tertiary upgrades; and
4. Revisions to the fact sheet, including the regulatory history.

According to the May 11, 2006 Water Board meeting transcripts, the Central Coast Water Board continued the hearing to allow only the new information provided by the USEPA Biological Evaluation and the USFWS concurrence letter. Therefore, the purpose of this meeting is to continue the hearing from May 11, 2006, and consider new information provided by USEPA and USFWS. Because the action before the Water Board is a continuation of a previous hearing, the Water Board staff provided an opportunity for public comment only on the revisions noted above, not on the entire permit. Staff recommends issuance of the proposed waste discharge requirements, which will effectuate the Settlement Agreement and require the Facility upgrade to meet full secondary standards by upgrading to provide tertiary treatment in 8.5 years.

DISCUSSION

Discharger. The City of Morro Bay and Cayucos Sanitary District (hereinafter Discharger) are the owners and operators of the Morro Bay/Cayucos Wastewater Treatment Plant (hereinafter Facility), a municipal wastewater treatment plant.

Facility. The Facility is designed to treat an annual average wastewater flow of 2.06 MGD, and a peak seasonal dry weather flow of 2.36 MGD. The Facility provides treatment by a split stream process of physical and biological treatment. All wastewater flows through primary sedimentation basins. Approximately one MGD flows through secondary treatment facilities, including trickling filters, solids-contact, and secondary clarification. Secondary-treated wastewater is then blended with primary treated-wastewater and disinfected by chlorination, and then dechlorinated prior to discharge to the Pacific Ocean. Biosolids are anaerobically digested and dried, composted, and then trucked to the San Joaquin Valley for use as a soil conditioner.

The Morro Bay City Council unanimously agreed to upgrade the Facility to "meet tertiary standards with the intention to move towards reclamation" at its May 29, 2007 meeting. As a result, the Discharger plans to upgrade the facility to provide tertiary treatment.

Discharge and Receiving Water. Approximately 1.2 MGD effluent is currently discharged to the Pacific Ocean through a 27-inch diameter outfall that terminates with a 170-foot long diffuser in approximately 50 feet of water, 2900 feet from shore. The diffuser achieves a minimum initial dilution of 133 parts seawater for every part effluent

(133:1 dilution ratio). The zone of initial dilution is approximately 103 feet wide and 240 feet long.

This discharge is currently regulated by Order No. 98-15 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0047881. The NPDES Permit expired March 1, 2004, but continues in force until the effective date of the new permit, in accordance with 40 CFR Part 122.6. The Discharger applied for reissuance of this Permit and 301(h) Waiver on July 7, 2003.

Regulatory History. The treatment plant was originally constructed in 1954. It was upgraded in 1964 to a capacity of 1.0 MGD. In 1982, the outfall was extended further offshore to its current location. A new treatment plant was designed in 1981 to expand capacity and meet federal secondary treatment standards¹. Financial aid from state and federal agencies was not available. Consequently, the treatment plant's design was modified to provide biological treatment to a majority (~ one MGD), but not all, of the projected flow. In March 1983, Central Coast Water Board staff tentatively concurred that such a discharge would comply with applicable state laws, including water quality standards, and would not result in requirements for additional treatment, pollution control, or other requirements on any other point or non-point sources.

The treatment plant was upgraded from 1983 to 1985 to a peak seasonal dry weather flow of 2.36 MGD. In 1985, U.S. EPA approved a Clean Water Act Section 301(h)-Modified NPDES Permit that waived secondary treatment requirements for biochemical oxygen demand (BOD₅) and total suspended solids (TSS). The Permit required 75% removal of TSS and included a 30-day average TSS effluent limit of 70 mg/L. The Permit required 30% removal of BOD₅ and included a 30-day average BOD₅ effluent limit of 120 mg/L. An extensive monitoring program was also required.

The Permit was first reissued in 1992. The second Permit reissuance process began in May 1997. Multiple discussions between the Discharger, Central Coast Water Board staff, and USEPA staff resulted in several revisions to the permit and monitoring program, including a slight reduction in allowed mass-emissions of BOD₅, TSS, and oil & grease; expanded biosolids reporting; revised benthic sampling locations; and a revised receiving water sampling program. In July 1998, Water Board staff again determined that the

¹ **Secondary Treatment Standards and Clean Water Act Section 301(h).** The 1972 Clean Water Act required publicly owned treatment works to meet treatment standards that were based on performance of wastewater treatment technology available at that time. Clean Water Act Section 301 established a required performance level, referred to as "secondary treatment," that publicly owned treatment works were required to meet by July 1, 1977. The secondary treatment standards, as found in 40 CFR Part 133, are:

Parameter	30-Day Average	7-Day Average
BOD ₅ and TSS	30 mg/L	45 mg/L
BOD ₅ and TSS Removal	At least 85%	--
pH	6 – 9 at all times	

discharge would comply with applicable state laws, including water quality standards, and would not result in requirements for additional treatment, pollution control, or other requirements on any other pollutant sources. USEPA issued a tentative decision to grant another waiver of secondary treatment requirements in September 1998. The Central Coast Water Board approved the NPDES Permit, waiving secondary treatment requirements, in December 1998. The California Coastal Commission determined the Permit was consistent with the Coastal Zone Management Act on January 13, 1998. USEPA issued the Permit on January 26, 1999, which finally became effective March 1, 1999 (33 days after issuance).

Morro Bay/Cayucos Wastewater Treatment Plant is now one of only three remaining in California that operates under a 301(h) Waiver. Others include Goleta Sanitary District and San Diego. In 2004, Goleta Sanitary District and the Central Coast Water Board entered an agreement requiring Goleta Sanitary District to upgrade to full secondary treatment standards by November 2014. Orange County Sanitation District, the largest in the nation to operate under a 301(h) Waiver, recently elected to upgrade its treatment facilities to meet secondary treatment standards and forgo its waiver.

In anticipation of this Permit reissuance process, Water Board staff met with and sent a letter to the Discharger in January 2003 that requested it consider upgrading the treatment plant to meet federal secondary treatment standards and forego its 301(h) Waiver. In a March 20, 2003 response, City of Morro Bay Manager Robert Hendrix wrote:

“...we are using your correspondence as a catalyst for the formation of a long-term future policy on wastewater treatment. The [Morro Bay] City Council and [Cayucos] Sanitary District Board have selected members to serve on a subcommittee to work with your staff to consider a number of alternatives, formulate a draft policy or policies, and then return to the full legislative body in the late Spring of this year [2003] with a recommended course of action.”

In mid-2003, the subcommittee commissioned a study to determine whether an equalization basin could be added to improve treatment efficiency and allow the discharge to meet secondary treatment standards. The study concluded that an equalization basin would not accomplish this goal.

The Discharger submitted an application for reissuance of its Clean Water Act Section 301(h)-Modified NPDES Permit on July 7, 2003. They also requested a determination (“401 Certification”) as to whether the discharge would comply with applicable state laws, including water quality standards, and would not result in requirements for additional treatment, pollution control, or other requirements on any other pollutant sources. In an August 26, 2003 letter, staff declined to make such a determination, instead deferring to the Central Coast Water Board to make such a determination through joint issuance of waste discharge requirements with USEPA’s Permit, as provided in the Memorandum of Understanding between the State Water Resources Control Board and USEPA regarding administering CWA Section 301(h).

The existing permit expired on March 1, 2004, but continues in force until the effective date of reissuance, in accordance with 40 CFR Part 122.6.

In June 2004, after much public opposition to the 301(h)-Modified Permit, the Discharger commenced a process to upgrade the treatment plant to meet secondary treatment standards. The Discharger hired Carollo Engineers to assist in development of a detailed timeline to implement the upgrade. Water Board staff and USEPA chose to delay the Permit reissuance process until the timeline was developed. In April 2005, Carollo Engineers presented a 15-year timeline at a public meeting of the Discharger. After considering many public comments in opposition to the 15-year timeline, the Discharger rejected the 15-year timeline and directed Carollo Engineers to return with a timeline that was as "quick as possible."

In May 2005, Carollo Engineers returned and presented a 9.5-year timeline to the Discharger. The 9.5-year timeline is based on the shortest reasonable time necessary to select an engineering consultant, coordinate between the city and the sanitary district, develop a facility plan, obtain financing and permits, and design and construct the improvements. The 9.5-year timeline requires the Discharger to achieve full compliance with secondary treatment standards by June 23, 2015. The Discharger accepted the 9.5-year timeline and proposed it to Water Board staff on June 15, 2005.

Settlement Agreement. After the May 11, 2006 Water Board meeting, the Discharger decided to expedite the conversion schedule to upgrade its facility within 8.5 years.

Water Board staff met with the Discharger prior to the May 11, 2006 Water Board meeting, and agreed with its reasoning for a 9.5-year timeline. In light of the recent expedited conversion schedule proposed by the Discharger of 8.5 years, Water Board staff considers the expedited schedule to be an improvement on the originally approved 9.5 year conversion schedule. The Conversion Schedule is as follows:

CONVERSION SCHEDULE

Task	Date of Completion
Preliminary Activities:	
1. Issuance of Request for Consulting Engineering Proposals for Facilities Master Plan	November 11, 2005
2. Award of Consulting Engineering Contracts	April 27, 2006
Facilities Planning:	
1. Submit Final Draft Facilities Master Plan	November 30, 2007
2. Submit Final Facilities Master Plan	September 30, 2009
Environmental Review and Permitting:	
1. Complete and Circulate Draft CEQA Document	February 27, 2009
2. Obtain Coastal Development permits	May 31, 2011
Financing:	
1. Complete Draft Plan for Project Design and Construction Financing	December 31, 2007

Task	Date of Completion
2. Complete Final Plan for Project Financing	June 30, 2008
3. Submit proof that all necessary financing has been secured, including compliance with Proposition 218	October 30, 2009
Design and Construction:	
1. Initiate Design	September 30, 2010
2. Issue Notice to Proceed with Construction	May 29, 2012
3. Construction Progress Reports	Quarterly (w/ SMRs)
4. Complete Construction and Commence Debugging and Startup	January 31, 2014
5. Achieve Full Compliance with federal Secondary Treatment Requirements ²	March 31, 2014

In November 2008, Water Board staff and the Discharger approved a Settlement Agreement to enforce the Conversion Schedule, which will be provided prior to the Water Board meeting. The Settlement Agreement includes escalating liquidated damages of \$100 to \$1,000 per day if the Discharger fails to complete a required action by the date set forth in the Conversion Schedule, and "force majeure" provisions for any event beyond the control of the Dischargers.

The Settlement Agreement contemplates that the Water Board will concur in the issuance of a 301(h)-Modified NPDES permit in order to effect in the Settlement Agreement and the Discharger's obligation to complete the upgrade within an 8.5 year period. Another 301(h)-Modified NPDES permit is necessary because the timeline to achieve compliance with secondary treatment standards exceeds the five year life of an NPDES permit. The next Permit will contain secondary treatment requirements, and will be accompanied by a time schedule or other order to shelter the Discharger from mandatory minimum penalties until the upgrade is completed. If state and federal law (see 40 CFR 122.47) allow a compliance schedule in the NPDES permit, the Permit will include the interim limits and a compliance schedule, and no time schedule or other order will be necessary.

USEPA Tentative Decision. USEPA summarized its evaluation of the Discharger's 301(h) application in a tentative decision dated November 10, 2005. A copy of USEPA's Tentative Decision Document is included as **Attachment 1**. USEPA's tentative decision is to grant the Discharger's request for reissuance of its 301(h)-Modified NPDES permit.

Proposed NPDES Permit. The proposed Permit is included as **Attachment 3**. The Permit is formatted in the new statewide template. The Fact Sheet includes staff's detailed evaluation of compliance with permit requirements, summary and rationale for proposed changes to the Permit, and written comments and responses. For the sake

² Refer to Finding F of the Order

of readability, these topics will only be discussed briefly in this staff report. Staff encourages the reader to review the Fact Sheet, which is Permit Attachment F, for a complete discussion of these topics.

Monitoring and Reporting Requirements. The Discharger's Monitoring and Reporting Program (MRP) is among the most comprehensive and intensive of all ocean discharges less than 5 MGD in California. Every important aspect of the treatment process, receiving waters, seafloor sediment, and marine life is monitored. Influent and effluent quality and quantity are routinely monitored to evaluate treatment process efficiency. Effluent is regularly monitored for conventional pollutants (e.g., TSS, pH), as well as whole effluent toxicity and priority pollutants (e.g., arsenic, benzene, trihalomethanes, etc.).

Evaluation of Compliance with Permit Requirements. Central Coast Water Board staff completed a comprehensive and detailed evaluation of the Discharger's monitoring data. This evaluation included all limitations relevant to reissuance of the proposed Permit. These include effluent limitations for TSS, BOD₅, pH, and other parameters; as well as receiving water limitations for bacteria (including beach water quality), light transmittance, dissolved oxygen, pH, sulfides in sediment, organic materials in sediment, and marine life (including sea otters). Staff determined that the discharge meets all of the Permit's effluent and receiving water limitations, and that the Permit is eligible for reissuance.

Several interested parties argue that the discharge has impacted the local southern sea otter population. For convenience to the reader, that portion of the Evaluation of Compliance with Permit Requirements regarding sea otters is included here.

Toxoplasma and Sea Otters. In April 2002, an association of scientists, including those from University of California (UC) Davis School of Veterinary Medicine, California Department of Fish and Game, and Central Coast Water Board staff Karen Worcester, published *Coastal freshwater runoff is a risk factor for Toxoplasma gondii infection of southern sea otters* in the International Journal for Parasitology. The study documented extensive infection of southern sea otters along the Central Coast by *Toxoplasma gondii*, a protozoan parasite known to originate in land-based mammals, primarily felines. The scientists theorize that sea otters become infected by *T. gondii* by consuming shellfish, which are filter feeders and accumulate microorganisms such as *T. gondii* in their tissue. More than 220 live and dead sea otters were examined between 1997 and 2001, with the goal of identifying spatial clusters and risk factors for *T. gondii* infection. The study found:

"Spatial analysis of pooled live and dead otter serological data revealed a large cluster of *T. gondii*-seropositive [i.e., infected] otters (20/23, or 87% seropositive) within a 20 km coastal region centered on the towns of Morro Bay and Cayucos, California. Otters sampled from the area were nearly twice as likely to be seropositive to *T. gondii* as expected, and this difference was statistically significant ($P = 0.082$)."

The study evaluated the cluster of high infection rates around Morro Bay and Cayucos to determine whether other risk factors could explain the cluster. The study found:

“...significantly increased odds of *T. gondii* seropositivity were detected for otters sampled near maximal (heavy) freshwater outfalls. Based on our analysis, the odds of *T. gondii* seropositivity were highest for adult male sea otters samples from areas of central California with maximal freshwater outflow, especially those sampled near Morro Bay/Cayucos. No significant associations with *T. gondii* seropositivity were found in relation to sewage flow, either by univariate analysis or by logistic regression analysis. However, 96% of our otter samples (214/223) were obtained from coastal areas with minimal values for municipal sewage exposure.”

Although the study suggests the high rate of infections is most closely associated with heavy freshwater outflow (the second highest rate of infection was centered around Elkhorn Slough, a freshwater outflow similar in magnitude to Morro Bay), the data also indicate that the highest infection rates are centered around the only discharge with a 301(h)-modified permit in the studied area. Scientists have speculated that flushable cat litter may be source of *T. gondii* in domestic wastewater. In March 2003, staff requested the Discharger evaluate its discharge as a potential source of *T. gondii*. The Discharger collaborated with the UC Davis School of Veterinary Medicine to monitor the discharge by hanging clusters of mussels from buoys at each end of the outfall diffuser hypothesizing that any *T. gondii* present in the discharge would accumulate in the mussels over time. According to a December 13, 2004, letter from Dr. Patricia Conrad of the UC Davis School of Veterinary Medicine:

“We were able to complete testing of 120 mussels that had been outplanted at the Morro Bay outfall buoy (30 mussels each in the early dry season, late dry season, early wet season, and late wet season). Toxoplasma RNA was not detected in any of the 120 mussels from the outfall buoy that have been tested thus far.”

Although this monitoring methodology has limitations, it is the only and best method known to monitor a discharge for the presence of *T. gondii*. These monitoring results strongly suggest that the subject discharge is not a source of *T. gondii* loading to Estero Bay and is not contributing to sea otter mortality. Water Board staff's opinion is that these pathogens originate from non-point sources.

The USEPA drafted the BE on September 6, 2007, and requested concurrence of “no likely adverse effects” on the brown pelican and southern sea otter from the USFWS. The BE recognizes no likely adverse effects on the southern sea otter and brown pelican provided that the Discharger implement conservation measures. The USFWS responded to the USEPA's request for concurrence in a letter dated December 21, 2007. The USFWS letter concurred with the USEPA's findings indicating that continued discharges from the Facility would not likely have adverse effects to endangered species in the area.

The December 21, 2007 USFWS letter offers some concern for the southern sea otters located within the vicinity of the subject wastewater discharge and points out that some

scientific literature discusses the possibility that pollutant loading from the sewage treatment plant discharges could have an effect on the otter. However, the USFWS acknowledges that fact that a significant degree of scientific uncertainty exists as to the mechanisms for potential impacts to the otter. The USFWS letter also states that "this decision [to upgrade the facility to provide tertiary treated wastewater] has significant potential to minimize the concerns regarding possible effects on the otter." Staff believes that the USFWS concerns will be addressed when the Discharger upgrades the facility to provide tertiary treatment.

Public Participation. The Central Coast Water Board and USEPA notified the Discharger and interested parties of their intent to reissue this NPDES Permit and provided them with an opportunity to submit their written comments and recommendations on two different occasions.

Notification was provided through publication in the San Luis Obispo Tribune on December 19, 2005, and through direct mailing of the Draft NPDES permit (Order R3-2006-0019) to the several known interested parties. Written comments were due February 3, 2006. Comments received on February 3, 2006, and associated staff responses were incorporated verbatim from the 2006 Draft Permit staff report into the Fact Sheet. The Central Coast Water Board considered these comments and responses at its hearing on May 11, 2006. Since the continued hearing on December 4-5, 2008, will be to discuss new evidence only, the Central Coast Water Board is not required to review these comments and responses. They are included in the Fact Sheet to maintain a record of the 2006 proceedings.

Notification of the Central Coast Water Board and USEPA's intent to reissue Draft Order R3-2008-0065 was provided through internet posting, publishing in the San Luis Obispo Tribune on September 12, 2008, and through direct mailing to known interested parties as well as other interested parties. Written comments were considered only for new information (i.e., USEPA's Biological Evaluation and USFWS concurrence letter). Written comment and staff response are included in the Fact Sheet (Attachment F) of this Order.

Summary of Comments and Responses. As noted above, written comments received by February 3, 2006, and associated staff responses are included in the Fact Sheet. These comments and staff responses were considered at the May 11, 2006 Water Board meeting, and do not required further review.

Written comments received prior to and on October 14, 2008, and Water Board staff's responses can be found in Attachment F, Section VI.C. of the Fact Sheet, though a brief summary follows here. According to the September 4, 2008 public notice, written comments were to address relevant revisions incorporating only new information, specifically, the USEPA's Biological Evaluation and the USFWS concurrence letter. Some written comments submitted by the public addressed issues other than revisions based on new information. These comments were reviewed and considered and may have triggered a response.

Water Board staff received comments from the Discharger, Marine Research Specialists, Natural Resources Defense Council, Surfrider Foundation, the Otter Project, the Santa Lucia Chapter of the Sierra Club, and the Defenders of Wildlife.

Members of the public stated that meaningful public comments were impossible without reviewing a draft copy of the settlement agreement. As noted above, this agenda item is a continuation of a hearing held begun on May 11, 2006. Prior to the hearing, the Executive Officer of the Water Board, the City of Morro Bay, and the Cayucos Sanitary District had entered into a final settlement agreement that set forth an expedited conversion schedule to 8.5 years. That settlement agreement was provided to the public during the meeting, but is not a document subject to public review and comment in draft. The parties have subsequently agreed to modify the agreement to make changes to the schedule and add new factual information. The modified agreement will be made available to the public. The settlement agreement is consistent with the proposed permit and all terms and conditions will be enforceable through the permit. The purpose of the settlement agreement is to agree to a conversion schedule for the facility upgrades.

It is important to note that the Clean Water Act requires publicly owned treatment works to achieve at secondary treatment prior to discharge to ocean waters of the United States, unless the facility obtains a variance from U.S. EPA pursuant to Clean Water Act section 301(h) to implement modified secondary treatment (301(h) waiver). The facility will not complete the upgrade to at least secondary treatment until after the five-year term of this permit, and, therefore a 301(h) waiver continues to be necessary for the discharge subject to this permit. The next permit will contain the final enforceable compliance dates to achieve at least secondary treatment. The Clean Water Act establishes secondary treatment as the technology based standard for discharges to surface water, but tertiary treatment that meets Title 22 California Code of Regulations requirements is required for certain reclaimed water uses. The Discharger intends to upgrade to tertiary treatment for purposes of reclaimed water use during the eight and one-half year conversion schedule set forth in the settlement agreement. The Central Coast Water Board may require the discharger to comply with more stringent water quality based standards beyond secondary treatment for discharges to surface water if necessary to protect the beneficial uses of waters of the state and the United States. With respect to the discharge to the ocean, the Fish and Wildlife Service (USFWS) has concurred with U.S. EPA's Biological Evaluation supporting the continued 301(h) waiver, which concluded that the continued discharge from the facility will have no likely adverse affects on the southern sea otter and the brown pelican. If the Central Coast Water Board receives new information to support the need to impose more stringent water quality based requirements beyond secondary, it may consider imposing such requirements only after required public notice and comment and hearing, but such information is not available at this time. Since tertiary treatment is not required by federal law, the settlement agreement requires at least secondary treatment.

Mr. Bruce Keogh on behalf of the Morro Bay/Cayucos Wastewater Treatment Plant submitted comments on October 14, 2008. These comments included a discussion of maintaining consistency with the USEPA's language stating "at least full secondary or tertiary treatment." Staff proposes to maintain language referencing "tertiary treatment"

throughout the Order based on recent Morro Bay City Council decisions as well as USFWS statements. The Discharger also commented on references to water reclamation. The Discharger contends that it is not obligated to comply with water reclamation provisions because it is not currently reclaiming water. Water Board staff agrees and made appropriate changes to reflect that the Discharger is not currently recycling water. The Discharger commented on language regarding collection system requirements explaining that this language is redundant with the statewide general waste discharge requirements for sanitary sewer systems. Water Board staff found that this comment was not subject to public comment, and that the language will remain it is a reference to the statewide requirements and does not conflict with the statewide requirements. The Discharger also commented on specific language in the Cat Litter Outreach Program provision. Water Board staff agrees with the language modifications and made the appropriate changes to this section of the proposed Order. Finally, the Discharger provided a list of typographical errors, other inaccuracies, and discrepancies. Although these comments were not subject to public comments, Water Board staff considered them and made appropriate modification for clarity and consistency throughout the Order.

Mr. Steve Shimek, Executive Director of the Otter Project, submitted written comments on October 13, 2008. These comments included a discussion of the settlement agreement. The written comments also included a discussion of secondary treatment not being adequate enough to protect the sea otter and ocean health. Water Board staff's response is that while not required by the Clean Water Act, the Discharger plans on upgrading the facility to provide tertiary treatment. Finally, the Otter Project commented on the Discharger's conversion schedule timeline and has concerns that the timeline was not "as fast as possible." This issue is not subject to public comment for the purposes of the continued hearing.

Ms. Sarah Corbin, Central California Regional Manager of the Surfrider Foundation, submitted written comments on October 9, 2008. The comments discussed Surfrider Foundation's disagreement with triggered surf-zone sampling. This issue is not subject to public comment for the purposes of the continued hearing.

The National Resources Defense Council, Surfrider Foundation, the Sierra Club, and Defenders of Wildlife submitted written comments on October 14, 2008. These comments included a discussion of the settlement agreement. Their comments also discussed the Discharger's facility upgrade level of treatment and conversion schedule. Water Board staff's response is that the Discharger is required to meet federal secondary standards and will meet these standards once the facility upgrades to provide tertiary treated wastewater. Their comments suggest that Water Board staff intentionally omitted "significant concerns" by the USFWS regarding potential impacts to the sea otter in the vicinity of the discharge. Water Board staff's discussion provides that USFWS explained that the Discharger's upgrade to tertiary treatment "has significant potential to minimize the concerns regarding possible effects on the otter." Water Board staff believes that the intent of the USFWS concurrence letter agrees with the USEPA's determinations finding that continued discharges from the facility will have "no likely adverse affects" on the sea otter if the conservations measures are satisfied

and that the Facility is upgraded to tertiary treatment. The comment letter also explained that the Cat Litter Outreach Program did not include measurable goals for implementation. Water Board staff agrees and made appropriate changes to the Order.

Staff included a provision requiring the Discharger to develop implementation goals for the Cat Litter outreach efforts. Staff will reevaluate the implementation goals annually. Finally, the comment letter discussed the Discharger's conversion schedule not being as "fast as possible." This issue is not subject to public comment as it already was discussed at the May 11, 2006 hearing.

Finally, Dr. Douglas Coats, Program Manager for the Marine Research Specialist, submitted written comments on October 9, 2008. Dr. Coats' comments offered some language modifications to Finding F (Secondary Treatment Standards) to provide clarity reflecting the Discharger's existing effluent characteristics. The Discharger, as part of this permit, would be obligated to meet modified secondary standards in accordance with 40 CFR Part 125.57. Although this issue is not subject to public comment, Water Board staff agreed and made the appropriate changes to Finding F in order to provide clarity. Dr. Coats' comments requested removing Section V.D. (Implementation Provisions for Bacterial Characteristics) as it does not coincide with the triggered bacterial monitoring in the Monitoring and Reporting Program. Although this issue is not subject to public comment, Water Board staff removed this section to provide consistency throughout the Order. Also, the removal of this section is consistent with previous Water Board staff determinations. Dr. Coats offered some language changes for the influent monitoring. Water Board staff did not make any modifications as it is not subject to public comment. The comments also asked for language modifications to the Section V.A. (Chronic Toxicity). According to previous Water Board staff determinations, two sample species to determine the most sensitive species was adequate. Water Board staff made the appropriate changes in order to be consistent with previous Water Board decisions. A majority of Dr. Coats' comments did not pertain to the issues subject to public comment. However, most of the comments provided permit clarity and consistency. Staff modified the proposed permit to coincide with previous Water Board staff determinations.

RECOMMENDATION

Staff recommends issuance of the proposed waste discharge requirements and approval of the revised settlement agreement.

ATTACHMENTS

1. USEPA's Tentative Decision Document
2. Modifications from Order No. R3-2006-0019 to Order No. R3-2008-0065
3. Proposed NPDES Permit Order No. R3-2008-0065
4. Morro Bay/Cayucos Sanitary District Wastewater Treatment Plant Comment Letter
5. Natural Resource Defense Council comment letter
6. Marine Research Specialist comment letter
7. The Otter Project comment letter
8. Surfrider Foundation comment letter

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