

ITEM: 8

SUBJECT: Sterling Caviar LLC, Sacramento County

BOARD ACTION: *Consideration of Negative Declaration, New NPDES Permit, and Cease and Desist Order*

BACKGROUND: Sterling Caviar LLC owns and operates an aquaculture facility that is defined under the NPDES program as a concentrated aquatic animal production facility (CAAP). The facility produces a total annual harvestable weight of 313,000 pounds of white sturgeon (*Acipenser transmontanus*), with a maximum harvestable weight of 800,000 pounds for sale as meat. Wastes generated at the Facility include fish fecal material, unconsumed fish food, nutrients, algae, silt, chemicals and therapeutic agents used to treat fish and control disease. Wastewater from fish production tanks passes through five drum filters to remove particulates and residual ammonia and a fluidized bed system to remove dissolved organics. The treated wastewater is discharged to the Betts-Kismat-Silva Preserve wetlands, within Reclamation District 1000. This area of Reclamation District 1000 is tributary to the Sacramento River, a water of the United States, via the Natomas Cross Canal and Natomas East Main Drainage Canal.

The discharger is not currently regulated under an NPDES permit. The proposed Permit contains an average daily discharge flow limitation of 3.67 mgd and effluent limitations for pH, arsenic, chloride, manganese, nitrate and formaldehyde.

The proposed Cease and Desist Order (CDO) requires compliance with the proposed effluent limitations for arsenic, manganese and nitrate within five years from permit adoption.

The adoption of a new NPDES permit is not exempt from the California Environmental Quality Act (CEQA). Therefore, Regional Water Board staff conducted an initial environmental study to determine the appropriate CEQA document for the adoption of a new NPDES permit. The Discharger's Elverta Facility is an existing sturgeon fish farm that is currently discharging to surface waters without an NPDES permit and is not expanding beyond its previous use. The proposed permit requires the Discharger to meet water quality standards that will protect the beneficial uses of the receiving waters. Consequently, the initial environmental study concluded that the impacts to surface water and groundwater to be less than significant. Staff developed a negative declaration, which was circulated by the State Clearinghouse from 8 January 2007 through 6 February 2007, and no substantive comments were received during the comment period.

ISSUES:

The California Sportfishing Protection Alliance (CSPA) is contesting the proposed Permit. The major issues discussed in the public comments are summarized below:

Compliance Schedules: CSPA contends that the Discharger should be considered a “New Source” and that the compliance schedules for the new or recommencing discharge in the proposed Permit and Cease and Desist Order (CDO) violate the California Toxics Rule (CTR), the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP), and federal regulations.

The Discharger is an existing source that has not previously been permitted. As such, the Discharger does not meet the definition of a “New Discharger” in either the SIP or the CTR and, therefore, is an existing discharger. As defined in the SIP and the CTR, existing dischargers are allowed compliance schedules in certain circumstances.

California Environmental Quality Act (CEQA): CSPA states that the proposed Permit is based on an inadequate CEQA document.

The proposed NPDES permit requires protection of all beneficial uses, therefore an initial study/negative declaration is the appropriate CEQA document for adoption of a new NPDES permit for the Sterling Caviar LLC Facility.

Antidegradation: CSPA states that the proposed Permit contains a flawed Antidegradation Policy analysis for a “new” facility that does not comply with the Regional Water Board’s Antidegradation Policy, the federal Antidegradation regulations, and the Clean Water Act.

As discussed above, the Discharger does not meet the definition of a “New Discharger” in either the SIP or the CTR. The antidegradation analysis for this Facility was sufficient since this permitting action will regulate an existing discharge with new effluent limitations and practices that will improve water quality.

Acute and Chronic Toxicity Requirements: CSPA states that the proposed Permit fails to include both acute and chronic toxicity effluent limitations and does not comply with federal regulations.

Due to the nature of operations at the Facility, its effluent is expected to be very consistent; therefore, the proposed Order uses a chemical-specific approach to control toxicity. As such it is not necessary to include an acute toxicity effluent limitation or require acute or chronic WET testing. This approach is consistent with NPDES permits issued by the Regional Water Board for other aquaculture facilities.

Technology-based Requirements: CSPA states that the proposed Permit does not contain effluent limitations for total suspended solids (TSS) and therefore does not comply with federal regulations. Furthermore, CSPA

states that the Discharger is not providing Best Available Technology (BAT) contrary to federal regulations and the Clean Water Act.

USEPA published Effluent Limitation Guidelines (ELGs) and New Source Performance Standards for the CAAP Point Source Category (40 CFR Part 451). Technology-based requirements in the proposed Order are based on the ELGs and the technology-based requirements contained in the regulation (BPT, BCT, and BAT) are contained in the proposed Order, fulfilling all regulatory requirements with respect to the development and implementation of technology-based requirements.

Oxytetracycline: CSPA states that the proposed Permit does not contain an effluent limitation for oxytetracycline, which violates federal regulations.

No criteria exist to establish defensible numerical water quality-based effluent limitations for oxytetracycline, and the use of non-numerical control mechanisms is expressly allowed in the Title 40 of the Code of Federal Regulations. The requirements in the proposed Order for the control and monitoring of disease controlling drugs, such as oxytetracycline, comply with the regulations and are fully supportive of the Clean Water Act.

Mgmt. Review _____

Legal Review _____

15/16 March 2007

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