



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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December 23, 2013

Via Electronically Only

Mr. Matthew Scroggins
Senior Engineer
Regional Water Quality Control Board,
Central Valley Region
1685 "E" Street
Fresno, CA 93706
mscroggins@waterboards.ca.gov

RE: Comments on the Tentative Waste Discharge Requirements Order R5-2014-XXXX, City of Clovis, Clovis Sewage Treatment and Water Reuse Facility, Fresno County

Dear Mr. Marshall:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to submit comments on the tentative Waste Discharge Requirements for the City of Clovis, Clovis Sewage Treatment and Water Reuse Facility (Tentative Order). CVCWA is a non-profit association of public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. We approach these matters with the perspective of balancing environmental and economic interests consistent with state and federal law. In this spirit, we provide the following comments on the Central Valley Regional Water Quality Control Board's (Regional Board) continued practice of making reasonable potential determinations based on "professional judgment."

For non-priority pollutants such as ammonia, pathogens (i.e., total coliform), and pH, the Regional Board has developed a practice of conducting reasonable potential analyses (RPA) and imposing water quality-based effluent limitations (WQBELs) for these constituents relying on “professional judgment.” Specifically, the Regional Board repeats that for non-priority pollutants, it “is not restricted to one particular RPA method. Due to the site-specific conditions of the discharge, the [Regional Board] has used professional judgment in determining the appropriate method for conducting the RPA for this non-priority pollutant constituent.”¹ Although the Regional Board is correct in stating that it is not required to follow the RPA procedure in the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP) for non-priority pollutants, it is required to follow federal law.² These “professional judgment” RPA determinations have strayed too far from what is required under federal regulations and must be revised to analyze the actual “site-specific conditions,” including the monitoring data for the effluent and the receiving water.

The Tentative Order acknowledges the relevant federal regulation governing WQBELs in NPDES permits, 40 C.F.R. § 122.44. Section 122.44 provides that NPDES permits shall include effluent limitations more stringent than promulgated technology-based effluent limitations when necessary to achieve water quality standards.³ “Limitations must control all pollutants . . . which the [permitting agency] determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.”⁴ Reasonable potential determinations are not arbitrary exercises of professional judgment. The Regional Board must refer to the applicable water quality standard/objective, properly characterize the discharge, and evaluate whether the discharge has the reasonable potential to cause or contribute to an exceedance of the standard/objective. Simply stating that the facility treats domestic wastewater and reasonable potential therefore exists is not sufficient.

Moreover, the authorities cited as justification for this approach do not wholly support the Regional Board’s methods. For instance, the Regional Board quotes the United States Environmental Protection Agency’s (USEPA) September 2010 NPDES Permit Writers’ Manual at page 6-30.⁵ This quoted section of the Permit Writer’s Manual explains how a permit writer may conduct an RPA *without* data. For the Clovis Sewage Treatment and Water Reuse Facility (Facility), however, the Regional Board has several years of monitoring data with which to

¹ Tentative Order at pp. F-48, F-51, F-53.

² Wat. Code, § 13377; Cal. Code Regs., tit. 23, § 2235.3 [“Waste discharge requirements for discharge from point sources to navigable waters shall be issued and administered in accordance with the currently applicable federal regulations for the Nation Pollutant Discharge Elimination System (NPDES) program.”].

³ 40 C.F.R. § 122.44(d)(1).

⁴ *Id.* at § 122.44(d)(1)(i).

⁵ Tentative Order at p. F-48.

evaluate the quality of the effluent and the quality of the receiving water, and determine whether the discharge has reasonable potential to exceed the water quality standard/objective. It does not need to resort to professional judgment or qualitative assessments. In quoting this section, the Regional Board omits the next paragraph in the manual, which states “The permit writer should always provide justification for the decision to require WQBELS in the permit fact sheet . . . A thorough rationale is particularly important when the decision to include WQBELS is not based on an analysis of effluent data for the pollutant of concern.”⁶ If the Regional Board continues to invoke “professional judgment” rather than evaluating available effluent data to conduct RPAs, then its rationale must be more thorough than stating untreated domestic wastewater⁷ contains ammonia or pathogens in concentrations that may exceed the narrative objective.⁸

Similarly, the Tentative Order quotes from the USEPA’s Technical Support Document for Water Quality-based Toxics Control (TSD) to support its “professional judgment” approach.⁹ The quoted material, however, is included in the section “Determining the Need for Permit Limits Without Effluent Monitoring Data For A Specific Facility.”¹⁰ The Facility has submitted several years of monitoring data for ammonia, pH, and total coliform; the same logic for relying on qualitative factors to determine the likelihood of an exceedance of a water quality standard does not apply when the Regional Board has actual, facility-specific data to use. Similar to its characterization of the Permit Writers’ Manual, the Regional Board also omits the cautionary language from the TSD. The TSD advised that if the regulatory authority “chooses to impose an effluent limit after conducting an effluent assessment without facility-specific monitoring data, [it] will need to provide adequate justification for the limit in its permit development rationale or in its permit fact sheet.”¹¹ The Regional Board is not conducting an “effluent assessment” when it refers to the characteristics of raw wastewater, which is not being discharged, and it does not provide the required water quality-based justification for the water quality-based effluent limitations for ammonia, pathogens, and pH.

CVCWA respectfully requests that the Regional Board reevaluate its “professional judgment” rationale for imposing WQBELS for ammonia, pathogens, and pH in the Tentative

⁶ USEPA September 2010 NPDES Permit Writers’ Manual at p. 6-30.

⁷ Publicly owned treatment works do not discharge untreated domestic wastewater. The Facility discharges disinfected tertiary-treated effluent. The Regional Board must determine whether the *discharge* has the reasonable potential to cause or contribute to an exceedance of a water quality standard. (40 C.F.R. § 122.44(d)(1).)

⁸ Any finding supporting the Regional Board’s order, such as a finding that discharges are likely to exceed a water quality standard, must be supported by evidence. (See Code Civ. Proc., § 1094.5; *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.)

⁹ E.g., Tentative Order at p. F-48.

¹⁰ TSD at p. 50.

¹¹ TSD at p. 51.

Order. Only if reasonable potential exists is the Regional Board authorized to include a WQBEL in the permit.¹² When properly conducting the RPA required by federal regulations, the Regional Board must refer to the water quality standard first, assess the quality of the effluent being discharged, and then determine whether the discharge has the reasonable potential to cause or contribute to an exceedance of the applicable water quality standard/objective. The Regional Board cannot assume reasonable potential exists, and later refer to the water quality standard to derive the effluent limitation it has presumed is necessary.

We appreciate your consideration of these comments. If you have any questions or if CVCWA can be of further assistance, please contact me at (530) 268-1338 or eeofficer@cvcwa.org.

Sincerely,



Debbie Webster,
Executive Officer

¹² *Divers' Environmental Conservation Organization v. State Water Resources Control Board* (2006) 145 Cal.App.4th 246, 254.