



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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6 April 2007

Mr. Karl Longley, Chairman
Ms. Pamela Creedon, Executive Officer
Mr. Kenneth Landau, Assistant Executive Officer
Mr. Dave Carlson, Env. Program Manager, NPDES
Mr. Jim Marshall, Sr. WRCE
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy If Requested

RE: CSPA Comments, Waste Discharge Requirements for City of Tracy Wastewater Treatment Plant, NPDES No. CA0079154

Dear Messrs. Longley, Landau, Carlson, Marshall and Ms. Creedon;

The California Sportfishing Protection Alliance, Watershed Enforcers and San Joaquin Audubon (CSPA) have reviewed the Central Valley Regional Water Quality Control Board's (Regional Board) tentative Waste Discharge Requirements (NPDES No. CA0079154) and Time Schedule Order (Order or Permit) for City of Tracy Wastewater Treatment Plant, San Joaquin County (Discharger) and have the following comments.

CSPA incorporates by reference the four previous comment letters concerning the proposed Order submitted on 27 January 2006, 22 July 2006, 26 July 2006 and 31 July 2006. We also incorporate by reference the comments submitted by the Environmental Law Foundation on 6 April 2007.

- 1. The proposed Permit fails to contain a protective Effluent Limitation for electrical conductivity (EC) in accordance with Federal Regulations 40 CFR 122.44 (d)(1)(i). The Effluent Limitation for EC in the proposed Permit is nonbinding and subject to removal at the whim of the Executive Officer. The Effluent Limitation for EC in the proposed Permit will be eliminated subject to an illegal "pay to pollute" requirement at the discretion of the Executive Officer. The proposed "pay to pollute" requirement establishes an illegal tax (or fee) imposed at the discretion of the Executive Officer beyond the authority of the Regional Board.**

The proposed Permit contains Effluent Limitation No. A(1)(i), which requires that: *"The EC in the discharge shall not exceed a monthly average of 700 umhos/cm*

(April 1 to August 31) and a monthly average of 1,000 umhos/cm (September 1 to March 31), unless:

- a. *The Discharger implements all reasonable steps as agreed by the Executive Officer to obtain alternative, lower salinity water supply sources; and*
- b. *The Discharger develops and implements a salinity source control program as approved by the Executive Officer that will identify and implement measures to reduce salinity in discharges from residential, commercial, industrial and infiltration sources in an effort to meet the interim salinity goal of a maximum 500 umhos/cm electrical conductivity increase over the weighted average electrical conductivity of the City of Tracy's water supply; and*
- c. *When notified by the Executive Officer, the Discharger participates financially in the development of the Central Valley Salinity Management Plan.*

Failure to meet conditions 1) through 3), above, shall result in the final effluent limitation becoming effective."

Federal Regulations 40 CFR 122.44 (d)(1)(i) requires that: "Limitations must control all pollutants or pollutant parameters (either conventional or nonconventional, or toxic pollutants) which the Director 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." The proposed Permit Fact Sheet, Section 3 x salinity, shows the discharge has contained EC concentrations as high as 2410 umhos/cm. This Section of the Fact Sheet also details that the water quality necessary to protect the agricultural and municipal/domestic beneficial uses of the receiving stream are 700 umhos/cm and 900 umhos/cm, respectively. The discharge clearly presents a reasonable potential to exceed the Basin Plan narrative and Chemical Constituents criteria for water quality for EC and in accordance with 40 CFR 122.44 (d)(1)(i) the proposed Permit is required to contain an effluent limitation for EC. There is no provision in 40 CFR 122.44 (d)(1)(i) that allows the Executive Officer to remove or alter the Effluent Limitation in an NPDES permit. The proposed Effluent Limitation for EC which is conditional and subject to revision outside the public process does not comply with the requirements of 40 CFR 122.44 (d)(1)(i).

There is no information that the proposed interim Effluent Limitation for EC of "...a maximum 500 umhos/cm electrical conductivity increase over the weighted average electrical conductivity of the City of Tracy's water supply" is protective of the beneficial uses of the receiving stream and therefore does not meet the requirements of 40 CFR 122.44 (d)(1)(i).

The proposal to: “When notified by the Executive Officer, the Discharger participates financially in the development of the Central Valley Salinity Management Plan” allows a discharger to pay to pollute. There is no legal or technical basis for such a proposal. It is not within the legal or technical realm of the Regional Board and especially the Executive Officer to allow a Discharger to discharge waste above water quality standards provided they pay into an Executive Officer approved fund. Such a proposal does not protect water quality.

The proposal to: “When notified by the Executive Officer, the Discharger participates financially in the development of the Central Valley Salinity Management Plan” is an illegal tax or fee. The Regional Board does not have the authority to create and levee new taxes. Such fees are not addressed in the State Board’s Resolution 2006-0064 that adopted emergency regulations revising fee schedules in accordance with Title 23 of the CCR and are an illegal fee.

The proposal to: “When notified by the Executive Officer, the Discharger participates financially in the development of the Central Valley Salinity Management Plan” could be considered a conflict of interest since the Regional Board or the Executive Officer exploits an official capacity for the financial benefit of the Board.

- 2. The proposed Permit contains a compliance schedule for aluminum based on “a new interpretation of the Basin Plan” as detailed in the Fact Sheet, page F-32 and Finding No. k. The Regional Board fails to provide any explanation or definition of the “new interpretation” of the Basin Plan.**

The simple unsupported claim that there is a “new interpretation” of the Basin Plan is insufficient to claim coverage under State Board Order WQ 2001-06 at pp 53-55. The Regional Board has included compliance schedules for aluminum in enforcement orders for several years. The Regional Board must, at a minimum, define the old interpretation of the Basin Plan with respect to aluminum and how has it changed. The permit must be modified to include the details of the new interpretation or the compliance schedule moved to an enforcement order.

- 3. The proposed Permit, Fact Sheet, pages F-30 and 31, removed two paragraphs discussing reasonable potential utilizing effluent variability and replaced them with a paragraph stating that all “reasonable potential” analyses with conducted in accordance with SIP Section 1.3 contrary to Federal Regulations 40 CFR § 122.44(d)(1)(ii).**

A state policy or regulation does not have primacy over Federal Regulations. Federal Regulations, 40 CFR § 122.44(d)(1)(ii), state “when determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent

toxicity), and where appropriate, the dilution of the effluent in the receiving water.” *Emphasis added.* The Regional Board’s failure to utilize statistical variability results in fewer regulated constituents which would have a reasonable potential to exceed water quality standards utilizing proper, and legal, statistical variability procedures as included in Chapter 3, pages 52-55, of USEPA’s *Technical Support Document for Water Quality-based Toxics Control*. The fact that the SIP illegally ignores the fundamental requirement in the Federal Regulations to use statistical variability does not exempt the Regional Board from its obligation to comply with federal regulations. The Regional Board cites the SIP *Introduction* goal of standardized permitting as requiring the non-statistical analysis of whether a constituent in a discharge presents a reasonable potential to exceed water quality standards. The Regional Board goes to extreme lengths to write permits with as few Effluent Limitations as possible. Since the Regional Board has only recently adopted this approach to permit analysis, we can only assume this is a “new interpretation” of the SIP. Despite the Regional Board’s skewed interpretation, the SIP does not state nor encourage Regional Board to violate the clear requirements of Federal Regulations 40 CFR § 122.44(d)(1)(ii). The failure to conduct a reasonable potential analysis in accordance with Federal Regulation has resulted in the removal of Effluent Limitations for manganese and MTBE. The reasonable potential analyses are flawed and all effluent limitations must be recalculated and permit amended accordingly.

4. Table F-4, *Statistics for Effluent Constituents with detectable Results*, has been removed from the Fact Sheet contrary to the public’s right to know.

The Regional Board staff has removed Table F-4 from the Fact Sheet. Table F-4 contained information regarding the pollutants and their concentrations that have been detected in the discharge. There is no explanation for the removal of Table F-4. The removed information is necessary for the public to make informed decisions regarding the proposed permit. The removal of critical information is contrary to public policy regarding transparency in government. Federal Regulations, 40 CFR 124.8, requires that Fact Sheets contain the basis for the permit conditions. Table F-4 must be reinserted into the Fact Sheet.

Thank you for considering these comments. If you have questions or require clarification, please don’t hesitate to contact us.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance