

Regional Water Quality Control Board
Central Valley Region
Board Meeting – 21/22 June 2007

Response to Written Comments for Burney Forest Power
Tentative Waste Discharge Requirements

The following are responses to written comments received from interested parties in response to the Tentative Waste Discharge Requirements (NPDES No. CA0082490) for Burney Forest Power issued on 4 May 2007. Written comments from interested parties on the proposed Order were required to be received by the Regional Water Quality Control Board (Regional Water Board) by 7 June 2007 in order to receive full consideration. Comments were received by the due date from the following parties:

1. Burney Forest Power (BFP)

Written comments from the above interested party are summarized below, followed by the response of the Regional Water Board staff.

BURNEY FOREST POWER (BFP) COMMENTS

BFP- COMMENTS #1: Please remove all references to North American Energy Services (NAES.) NAES provides services at the direction of the ownership, and therefore does not believe that it is appropriate to designate NAES as "operator" or "permittee" for environmental regulatory purposes.

RESPONSE:

North American Energy Services is listed as the legal operator for the Burney Forest Power facility on the State of California Form 200 (Report of Waste Discharge) and the General Information Form 1 of the U.S. Environmental Protection Agency. Therefore, North American Energy Services is required to be listed as a Permittee/Discharger on the National Pollutant Discharge Elimination System permit.

BFP- COMMENTS #2: Permittee objects to this complex, costly draft individual permit and asserts it is entitled to authorization under the current Statewide General Storm Water Permit for industrial activities. The scope of this draft permit far exceeds that contemplated by Federal and State storm water rules for the BFP facility.

RESPONSE:

The Regional Water Board has the discretion whether or not to regulate the discharge of storm water from a facility under the General Industrial Storm Water Permit (Order No. 97-03-DWQ, NPDES No. CAS000001) or under an individual permit. Due to the water quality threats associated with log deck runoff and the complexity of the Facility, the Regional Water Board has elected to regulate this Facility with an individual NPDES permit.

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BFP- COMMENTS #3: The storm water rules regulate specific industries for their operation-specific potential impacts upon storm water quality. The draft permit goes far beyond parameters relating to facility operations, and imposes extensive monitoring and effluent limits for parameters (metals, whole effluent toxicity) that are clearly related to regional soil quality.

RESPONSE:

Regional Water Board staff does not agree. Representative water quality data, and promulgated water quality objectives and criteria for pollutant concentrations were used in establishing effluent and receiving water limitations and monitoring.

BFP- COMMENTS #4: The draft permit states that the discharge is storm water and also makes numerous references to the “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California” (Phase 1 of the Inland Surface Waters Plan and the Enclosed Bays and Estuaries Plan)(“SIP”). Finding II.J. concludes, “Requirements of this Order implement the SIP.” Fact Sheet provision III. cites “Applicable Plans, Policies, and Regulations“ . Provision III. E. 1. references the SIP, and states “The requirements within this Order are consistent with the Policy”. However, Footnote #1 on Page #1 of the SIP specifically states, ”This Policy does not apply to regulation of storm water discharges.”

RESPONSE:

The Discharger is correct that the SIP not apply to regulation of storm water discharges. The tentative permit states that SIP provisions for establishment of effluent limitations are not applicable and effluent limitations for priority pollutants have not been established, however receiving water limitations and BMPs have been established to ensure that beneficial uses of the receiving water are protected and water quality standards are not exceeded.

BFP Specific Comments B. Page 9, Findings II.M. Template

The first paragraph of this Finding states “In addition, this Order contains limitations more stringent than the minimum, Federal technology-based requirements that are necessary to meet water quality standards. These limitations are more stringent than required by the CWA.” The second paragraph states “Collectively, this Order’s restrictions on individual pollutants are no more stringent than required to implement technology-based requirements of the CWA and the applicable water quality standards for purposes of the CWA.” These statements are contradictory. Finding II.H concludes “Canyon Creek is not listed

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as a WQLS in the 303(d) list of impaired water bodies.” Permittee asserts that this permit’s restrictions on individual pollutants should be no more stringent than required to implement technology-based requirements.

RESPONSE:

Both technology-based and water quality-based limitations have been implemented in the tentative order, and are required by the Federal Clean Water Act and the California Water Code.

BFP Specific Comments H. Page 13, Provision V.A.11.

Please provide/include averaging procedure this provision refers to.

RESPONSE:

The averaging period is defined in Attachment A – Definitions of the permit.

BFP Specific Comments K. Page 19, Provision VI.A.2.q

The frequency of instrument calibration varies by instrument and analytical method. Please replace "at least yearly" with "the frequency prescribed by the approved analytical method, or, if not prescribed by method, at the frequency recommended by the instrument/device manufacturer.

RESPONSE:

The required instrument calibration frequency is appropriate and consistent with other recently adopted NPDES permits.

BFP Specific Comments Q. Page E-3, Attachment E, V.A.1.

1. Please reduce frequency specified for Acute Toxicity monitoring to twice during the life of the permit. Facility has monitored for acute toxicity under the present permit, with excellent results.

RESPONSE:

The previous Order required acute toxicity to be sampled and analyzed on a semi-annual frequency. During the past five years of acute toxicity testing, the Burney Forest Power discharge has not exhibited acute toxicity at 100% effluent. The previous permit required semi-annual acute toxicity monitoring, but allowed for a reduction in the monitoring frequency upon approval by the Executive Officer. A late revision to provide the same opportunity for review by the Executive Officer is proposed.

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BFP Specific Comments R. Page E-4, Attachment E, V.B.1.

Please reduce frequency specified for Chronic Toxicity monitoring to every other year starting with the second year of the permit. Facility has monitored for chronic toxicity under the present permit, with excellent results. Present permit allowed a reduction in monitoring frequency after two years of acceptable results.

RESPONSE:

The monitoring frequency for chronic toxicity is "Bi-annual" (once every two years), as stated in the Whole Effluent Toxicity Testing Requirements, Section V.B.1, Page E-4. The citation of "annual" in Attachment E, Section V.B.1 is incorrect, and a late revision is proposed to correct to "bi-annually."

BFP Specific Comments U. Page E-8, Attachment E Table E-5

Please remove all monitoring parameters except freeboard from this table. As the Log Deck Recycle Pond and Power Plant Pond are not discharged to the receiving water, the monitoring specified is unnecessary to protect the receiving water.

RESPONSE:

Regional Water Board staff does not concur with removing dissolved oxygen, electrical conductivity, and pH from the monitoring parameter for the Log Deck Recycle Pond and the Power Plant Pond. The required monitoring parameters are no more stringent than the previous permit.

BFP Specific Comments V. Page E-10, Attachment E X.B.3.

Please remove references to calculation of removal efficiencies for BOD and Total Suspended Solids.

RESPONSE:

BFP Specific Comments V has been proposed as a late revision, as the references are only needed for wastewater treatment plants.

BFP Specific Comments X. Page F-7, Attachment F II. C.

Table F-2 does not provide a "summary" of self-monitoring data, and the monitoring data presented are not "representative" of facility effluent. Instead, the data presented represent the single, worst-case results from over 5 years of extensive effluent monitoring. Data in Table F-2 are from single storm water sampling events, generally during or following violent storm events. In no case do they truly represent weekly or monthly "average" results, but rather reflect the results from single grab samples taken for the period. As presented, Section C. grossly mischaracterizes effluent quality from the facility. Please revise to reflect

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that the results presented are "single, worst-case historical results from storm water samples taken during extreme weather conditions".

RESPONSE:

Analytical results shown in Table F-2 currently lists only the highest daily discharge from discharge point SW-001. Comment noted with no change.

BFP Specific Comments Y. Page F-21, Attachment F.V.A.1

Rewrite the last sentence of the paragraph to read, *"This Order contains Receiving Surface Water Limitations based on the Basin Plan numerical and narrative water quality objectives and California/National toxics Rule criteria for biostimulatory substances, cadmium, copper, chemical constituents, color, dissolved oxygen, floating material, iron, lead, oil and grease, pH, salinity and electrical conductivity, sediment, settleable material, silver, suspended material, tastes and odors, temperature, toxicity, turbidity, and zinc."* This change corrects minor typographical errors and eliminates references to radioactivity and pesticides.

RESPONSE:

1. Pesticides and radioactivity objectives are specifically listed in the Basin Plan. Therefore, the Regional Water Board does not concur with removing them from the permit.
2. A late revision to remove the word "for" from the last sentence of the paragraph is proposed.

BFP Specific Comments Z. Page F-24, Attachment F.V.A.1.I.

Please remove this section to eliminate the reference to a receiving water limit for pesticides.

RESPONSE:

Pesticide objectives are specifically listed in the Basin Plan. Therefore, the Regional Water Board does not concur with removing the receiving water limitation from the permit.

BFP Specific Comments AA. Page F-29, Attachment F.VI.C.1

Change to require Acute Toxicity testing to twice during the life of the permit.

RESPONSE:

See response to BFP Specific Comments Q.

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BFP Specific Comments BB. Page F-29, Attachment F.VI.C.2

Change to require Chronic Toxicity testing to every other year with the first required in the second year of the permit.

RESPONSE:

See response for BFP Specific Comments R.

BFP Specific Comments CC. Page F-30, Attachment F.VII.B.1.b.

Modify the last sentence by replacing the word “inorganic” with “criteria or”.

RESPONSE:

A late revision has been proposed to remove the reference to applicable inorganic constituents from the Fact Sheet, Section VII.B.1.b of the permit.

Other minor comments/corrections have been agreed to by Regional Water Board staff and appropriate Late Revisions have been proposed to implement them.