



## California Sportfishing Protection Alliance

*"An Advocate for Fisheries, Habitat and Water Quality"*

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2 January 2007

Ms. Pamela Creedon, Executive Officer  
Mr. Kenneth Landau, Assistant Executive Officer  
Mr. Loren J. Harlow, Assistant Executive Officer  
Ms. Alexis Phillips-Dowell  
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: Waste Discharge Requirements (NPDES Permit No. CA0078174) for Calmat Co., Walter A. and Elizabeth A. Baun, and Darrell D. and Janet Delevan, Sanger Sand and Gravel Plant, Fresno County

Dear Messrs. Landau, Harlow and Mesdames Creedon and Phillips-Dowell:

The California Sportfishing Protection Alliance and Watershed Enforcers (CSPA) has reviewed the Central Valley Regional Water Quality Control Board's (Regional Board) tentative Waste Discharge Requirements (NPDES Permit No. CA CA0078174 and Cease and Desist Order (Order or Permit) for Calmat Co., Walter A. and Elizabeth A. Baun, and Darrell D. and Janet Delevan, Sanger Sand and gravel Plant, Fresno County (Discharger) and submits the following comments.

CSPA requests status as a designated party for this proceeding. CSPA is a 501(c)(3) public benefit conservation and research organization established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality and fishery resources and their aquatic ecosystems and associated riparian habitats. CSPA has actively promoted the protection of water quality and fisheries throughout California before state and federal agencies, the State Legislature and Congress and regularly participates in administrative and judicial proceedings on behalf of its members to protect, enhance, and restore California's degraded surface and ground waters and associated fisheries. CSPA members reside, boat, fish and recreate in and along waterways throughout the Central Valley, including Fresno County.

- 1. The proposed Permit fails to require compliance with the Federal Clean Water Act and Federal Regulation 40 CFR 125.3(a)(2)(iii)(A)(v)(2) requirements to provide best available treatment technologies.**

The ultimate goal of the Federal Clean Water Act as expressed in Section 101 is the elimination of the discharge of pollutants into navigable waters by 1985. The Act

throughout, places an emphasis on the control and reduction of the discharge of pollutants by point sources as interim goals. Technology based effluent limitations are required by Section 301 of the Act for all point sources. A standard of “best practicable treatment” (BPT) is required by 1977, and a more stringent standard of “best available technology” (BAT) is required by 1983 for industrial point sources.

The facility described in the proposed Permit is a sand and gravel plant. The proposed Permit, Finding II,B, states in part that: “Impounded wastewater discharges through a porous pond levee at Discharge Point 001 to the Kings River, a water of the United States...” A discharge of wastewater by seepage through a pond levee is not best available technology (BAT). In fact there is no technology at all; the discharge is through a failing levee.

The failure of this “system” is evidenced by Special Provision VI.C.2.c and Footnote No. 1 to Monitoring and Reporting Program Table E-2, which require an assessment of whether the estimated flow rates to surface waters is accurate. At this stage they are guessing at the discharge flow rate to surface waters. Certainly, guessing at the discharge flow rate is not BAT.

The proposed Permit, *Special Studies, Technical Reports and Additional Monitoring Requirements, No. 3*, states that: “On 27 February 2001 the Discharger was directed to conduct a receiving water and effluent monitoring study in accordance with the SIP. The Discharger has sampled the effluent and receiving water for most priority pollutants, but has not sampled for asbestos.” From this statement and the complete lack of data, either in the proposed Permit or the Fact Sheet, we can only conclude that the list of constituents not sampled extends far beyond asbestos.

The Discharger does not “treat” the discharged wastewater, the volume of wastewater discharged to surface waters is not accurately measured and there has not been a complete assessment of the quality of the discharge to surface waters and the Discharger has not installed groundwater monitoring wells to determine the impact of this wastewater discharge on groundwater quality. The Discharger does not provide BAT as required by Federal law and regulations.

## **2. The proposed Permit does not comply with the State and Regional Board’s Antidegradation Policy and Federal Regulations (40 CFR 131.12).**

The proposed Permit discusses the Antidegradation Policy in Finding N and in the Fact Sheet. The discussion is essentially limited to stating that the proposed Permit does not allow for an expansion in the discharge flow rate and therefore compliance with the policy is achieved. Of course, the permit does not mention in this section that the Regional Board does not really know the discharge flow rate. The proposed Permit does not discuss the mass of substances discharged to surface waters, their impact on beneficial uses, or whether the Discharger is providing best practicable treatment and control (BPTC) of the discharge. This completely ignores the memorandum from William Attwater (SWRCB Chief Counsel), SWRCB to Regional Board Executive

Officers, “federal Antidegradation Policy,” pp. 2, 18 (Oct. 7, 1987) (“State Antidegradation Guidance”) and the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 (“APU 90-004”) and USEPA Region IX, “Guidance on Implementing the Antidegradation Provisions of 40 CFR 131.12” (3 June 1987) (“Region IX Guidance”), as well as Water Quality Order 86-17 which require that the Regional Board must apply the antidegradation policy whenever it takes an action that will lower water quality. Application of the policy does not depend on whether the action will actually impair beneficial uses. The State Antidegradation Guidance, p. 6, states that actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits. In reissuing the NPDES permit, the Regional Board must conduct an antidegradation analysis.

As is stated above, the proposed Permit, *Special Studies, Technical Reports and Additional Monitoring Requirements, No. 3*, states that: “On 27 February 2001 the Discharger was directed to conduct a receiving water and effluent monitoring study in accordance with the SIP. The Discharger has sampled the effluent and receiving water for most priority pollutants, but has not sampled for asbestos.” From this statement and the complete lack of data, either in the proposed Permit or the Fact Sheet, we can only conclude that the list of constituents not sampled extends far beyond asbestos. In accordance with the Antidegradation Policy, the permit cannot therefore discuss the water quality impacts of the discharge in meeting water quality standards.

The Antidegradation Policy, Resolution 68-16, No. 2, requires dischargers provide best practicable treatment and control (BPTC) of the discharge. For this facility there is no treatment; therefore, it cannot possibly be considered best practicable. For a gravel washing facility, a minimum requirement for treatment would include a properly designed clarifier (based on particle size and settling characteristics), possibly coagulation, and a properly designed discharge pipeline with a flow measuring device. And, there is no control of the discharge; it flows freely through a pond levee where the flow at best is estimated. The Discharger does not provide, and the permit does not require, BPTC. The permit does not comply with the requirements of the Antidegradation Policy, Resolution 68-16, and Federal Regulation 40 CFR 131.12.

**3. Either the Discharger has submitted an incomplete Report of Waste Discharge in accordance with Federal Regulation, 40 CFR 122.21(e), (h) and 124.3 (a)(2), the SIP Section 1.2, and California Water Code, section 13377 or the Fact Sheet is incomplete in accordance with Federal Regulation 40 CFR 124.8 and 124.56.**

The proposed Permit, *Special Studies, Technical Reports and Additional Monitoring Requirements, No. 3*, states that: “On 27 February 2001 the Discharger was directed to conduct a receiving water and effluent monitoring study in accordance with the SIP. The Discharger has sampled the effluent and receiving water for most priority pollutants, but has not sampled for asbestos.” From this statement and the complete lack of data, either in the proposed Permit or the Fact Sheet, we can only conclude that either

the Discharger failed to submit a complete RWD or the Fact Sheet fails to contain sufficient information to determine the basis for the permit conditions.

Federal Regulation, 40 CFR 122.21(e) states in part that: “The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. In accordance with 40 CFR 122.21 (e) and (h) and 124.3 (a)(2) the Regional Board shall not adopt the proposed permit without first a complete application, in this case for industrial or commercial facilities, for which the permit application requirements are extensive. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.”

State Report of Waste Discharge form 200 is required as a part of a complete Report of Waste Discharge. Form 200, part VI states that: “To be approved, your application must include a complete characterization of the discharge.” The Federal Report of Waste Discharge forms also require a significant characterization of a wastewater discharge. Federal Application Form 2A, which is required for completion of a Report of Waste Discharge for municipalities, Section B.6, requires that Dischargers whose flow is greater than 0.1 mgd, must submit sampling data for ammonia, chlorine residual, dissolved oxygen, total kjeldahl nitrogen, nitrate plus nitrite nitrogen, oil and grease, phosphorus and TDS. Federal Application Form 2A, Section D, requires that Discharger’s whose flow is greater than 1.0 mgd, conduct priority pollutant sampling. Federal Regulation, 40 CFR 122.21(g)(7) requires for existing manufacturing, commercial or mining facilities that a significant list of priority pollutants be sampled to characterize the effluent discharge.

The California Toxics Rule (CTR)(40 CFR 131, Water Quality Standards) contains water quality standards applicable to this wastewater discharge. The final due date for compliance with CTR water quality standards for all wastewater dischargers in California is May 2010. The State’s *Policy for Implementation of Toxics standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP), Section 1.2, requires wastewater dischargers to provide all data and other information requested by the Regional Board before the issuance, reissuance, or modification of a permit to the extent feasible.

Federal Regulation, 40 CFR 122.21(e) states in part that: “The Director shall not issue a permit before receiving a complete application for a permit except for NPDES general permits.

California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary,

thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.” The application for permit renewal is incomplete and in accordance with 40 CFR 122.21(e) the Regional Board should not issue a permit.

Federal Regulation 40 CFR 124.8 and 124.56 requires that a Fact Sheet contain the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Fact Sheet fails to contain a summary of the sampling data sufficient to determine whether the discharge presents a reasonable potential to exceed water quality standards and objectives. The Fact sheet further fails to contain sufficient calculations or other necessary information sufficient to determine the need for effluent limitations to protect the beneficial uses of the receiving stream.

Either the RWD was incomplete and the permit should not be adopted until sufficient information is available to write a fully protective permit or the Fact Sheet does not contain sufficient information to determine if the Regional Board has prepared a protective permit.

**4. The proposed Permit does not contain Effluent Limitations for chronic toxicity and therefore does not comply with Federal regulations, at 40 CFR 122.44 (d)(1)(i)**

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including state narrative criteria for water quality. The SIP, Section 4, Toxicity Control Provisions, Water Quality-Based Toxicity Control, states that: “A chronic toxicity effluent limitation is required in permits for all dischargers that will cause, have a reasonable potential to cause, or contribute to chronic toxicity in receiving waters.” The Water Quality Control Plan (Basin Plan), Water Quality Objectives for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. An effluent limitation for chronic toxicity must be included in the Order.

**5. The proposed Permit contains an Effluent Limitation for acute toxicity that allows mortality that exceeds the Basin Plan water quality objective and does not comply with Federal regulations, at 40 CFR 122.44 (d)(1)(i)**

Federal regulations, at 40 CFR 122.44 (d)(1)(i), require that limitations must control all pollutants or pollutant parameters which the Director determines are or may be discharged at a level which will cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality. The Water Quality Control Plan (Basin Plan), Water Quality Objectives for Toxicity is a narrative criteria which states that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal,

or aquatic life. The proposed Permit contains a discharge limitation that allows 30% mortality (70% survival) of fish species in any given toxicity test.

Allowing 30% mortality in acute toxicity tests allows that same level of mortality in the receiving stream, in violation of federal regulations and contributes to exceedance of the Basin Plan's narrative water quality objective for toxicity. Accordingly, the proposed Permit must be revised to prohibit acute toxicity in accordance with Federal regulations, at 40 CFR 122.44 (d)(1)(i).

**6. The proposed Permit grants a mixing zone for manganese without technical justification contrary to the Basin Plan and allows a discharge at levels that may exceed water quality objectives.**

The proposed Permit, Effluent Limitations 1c, requires that manganese in the discharge shall not exceed the background water quality of the Kings River or 0.05 mg/l, whichever is greater.

The drinking water maximum contaminant level (MCL) for manganese, incorporated into the Basin Plan Chemical Constituents water quality objective by reference, is 0.05 mg/l. If the background water quality in the Kings River is above 0.05 mg/l, the proposed permit will allow a discharge of manganese above the MCL (a Basin Plan water quality objective). The Basin Plan Policy for Application of Water Quality Objectives allows for mixing zones provided that the Discharger has demonstrated that the mixing zone will not adversely impact beneficial uses. The Basin Plan further requires that the mixing zone is limited to a small initial zone of dilution and that the mixing zone will be evaluated using the procedures in the Water Quality Standards Handbook and the Technical Support Document (TSD) for Water Quality Based Toxics Control. The Regional Board did not follow any of the requirements of the Basin Plan in allowing a mixing zone for manganese.

Since the discharge seeps through a levee, and is not discharged through a properly designed diffuser, it is unlikely that there is any analysis that could justify a mixing zone.

California Water Code, section 13377, requires that: "Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance." The proposed Permit does not utilize the requirements of the Basin Plan in approving a mixing zone for manganese and cannot assure protection of beneficial uses. The mixing zone allowance for manganese must be removed from the proposed Permit and an effluent limitation established as an "end of pipe" limitation.

- 7. The proposed Permit contains an Effluent Limitation for aluminum as acid soluble contrary to Recommended Water Quality Criteria and therefore establishes an unprotective limitation contrary to Federal Regulation 40 CFR 122.44.**

The proposed Permit contains an Effluent Limitation for aluminum as acid soluble. The U.S. EPA current National Recommended Water Quality Criteria contains a footnote for aluminum which requires that: “This value for aluminum is expressed in terms of total recoverable metal in the water column.” Federal Regulations require that effluent limitation be established when the discharge presents a reasonable potential to exceed water quality standards or objectives. There is no information that the acid-soluble limitation will not allow exceedance of the total recoverable criteria, thereby allowing exceedance of the Basin Plan Toxicity water quality objective.

- 8. The proposed Monitoring and Reporting Program does not contain an Effluent sampling point that is representative of the point of discharge contrary to Federal Regulation 122.41(j)(1).**

The proposed Permit Monitoring and Reporting Program Effluent Monitoring Program requires that effluent sampling be conducted inside the supply pond or other discharge point approved by the Executive Officer. The discharge of wastewater is by seepage through the pond levee. It is reasonable that the wastewater is different than the wastewater quality in the pond. There is no knowledge of the components or construction of the levee. There is no evidence that the quality of water inside the pond is the same as the water that has seeped through the levee. Federal Regulation 40 CFR 122.41(j)(1) requires that: “samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permit must be modified to require sampling at the point of discharge into surface water.

- 9. The proposed Monitoring and Reporting Program for Groundwater will not produce useable results.**

The proposed Monitoring and Reporting Program for Groundwater requires that the depth to groundwater, groundwater elevation and the groundwater gradient be measured and calculated in “feet”. In order to provide any useful information the proper unit of measure must be hundredths of a foot (feet/100). Also the depth to groundwater sample type should be a “measurement”, not a “grab”.

- 10. The proposed Permit fails to contain an Effluent Limitation for diesel total petroleum hydrocarbons (TPH-D) despite that there is a reasonable potential for the discharge to exceed water quality objectives in violation of Federal Regulation 40 CFR 122.44 and the California Water Code.**

The proposed Permit Fact Sheet, Site History 4, cites that the soils and groundwater beneath the site contain diesel in concentrations up to 2,040 ug/l. The Discharger extracts groundwater for process water at the facility. The discharge from the

facility has been found to contain diesel concentrations up to 220 ug/l and has had an average concentration of 31 ug/l. The Regional Board has allowed the Discharger to close the remedial system, despite that diesel remains in soil and groundwater. These facts present a reasonable potential for the discharge to contain TPH-D in concentrations above 56 ug/l, which is the recommended toxic water quality objective.

California Water Code, section 13377, requires that: “Notwithstanding any other provision of this division, the state board and the regional boards shall, as required or authorized by the Federal Water Pollution Control Act, as amended, issue waste discharge and dredged or fill material permits which apply and ensure compliance with all applicable provisions of the act and acts amendatory thereof or supplementary, thereto, together with any more stringent effluent standards or limitations necessary to implement water quality control plans, or for the protection of beneficial uses, or to prevent nuisance.”

Federal Regulation, 40 CFR 122.4 (a), (d) and (g) require that no permit may be issued when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA, when imposition of conditions cannot ensure compliance with applicable water quality requirements and for any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the CWA.

In accordance with Federal Regulation 40 CFR 122.44, 122.4 and the CWC the proposed Permit is required to contain an effluent limitation for TPH-D.

**11. The proposed permit contains an inadequate reasonable potential by using incorrect statistical multipliers.**

The permit fails to identify the measured hardness of the receiving water or the effluent. The SIP and CTR require the ambient receiving water hardness be used to determine reasonable potential. 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 proposed Permit Fact Sheet Table 7 contains a list of constituents, yet failed to conduct a statistical reasonable potential analysis.

**12. The proposed Permit identifies the discharge as “minor” without merit or justification.**

The proposed Permit identifies the discharge as a “minor” discharge. However, as has been detailed above the Regional Board does not know the volume or quality of



water being discharged. The Discharger does not accurately measure flow and has not completed the priority pollutant characterization of the discharge. It is ridiculous that the Regional Board concludes that the discharge is minor without any supporting data. To the contrary, the small amount of data available shows the discharge to contain toxic levels of aluminum and TPH-D and levels of manganese that exceed the drinking water MCL.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive, flowing style.

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance