

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

**Response to Written Comments for CalMat Sanger Sand and Gravel Plant
Tentative Waste Discharge Requirements**

At a public hearing scheduled for 21/22 June 2007, the Regional Water Quality Control Board, Central Valley Region, (Regional Water Board) will consider adoption of Tentative Waste Discharge Requirements (TWDRs, NPDES Permit No. CA0078174) for the CalMat Sanger Sand and Gravel Plant. This document contains responses to written comments received from interested parties regarding the TWDRs initially circulated on 30 November 2006, recirculated on 2 January 2007, and subsequently revised and circulated again on 20 March 2007. Written comments from interested parties were required by public notice to be received by the Regional Water Board by 2 January 2007, 2 February 2007, and 24 April 2007 to receive full consideration. Comments were received by the respective deadlines from the following:

1. California Sportfishing Protection Alliance (CSPA), 2 January 2007.
2. CalMat Co. (CalMat, submitted by ENV America), 20 March 2007.
3. CalMat (submitted by ENV America), 24 April 2007.
4. Environmental Law Foundation (ELF), 24 April 2007.

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

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (CSPA) COMMENTS

CSPA – COMMENT No. 1: CSPA states 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. CSPA contends that (1) the discharge of wastewater through a failing pond levee is not BAT and the discharger does not treat its wastewater, (2) the volume of wastewater is not accurately measured, (3) there has not been a complete assessment of the quality of the discharge to surface waters, and (4) the Discharger has not installed groundwater monitoring wells to determine the impact of the discharge on groundwater quality.

RESPONSE: The CalMat discharge to the Kings River, as described in the TWDRs, has been occurring since the 1940's. Federal regulations at 40 CFR 436.30, et seq., include applicable BPT Effluent Limitation Guidelines for discharges from the sand and gravel mining industry. The guideline requires effluent pH to be within the range of 6.0 to 9.0 standard pH units. These limits are included in the TWDRs. As described in Finding A; Fact Sheet Section II, Facility Description, initial paragraph; and Fact Sheet Section II.C.1, C.3., and C.4., the Discharger treats wash water within a 27-acre settling pond and a 17-acre supply pond. The Regional Water Board has recognized this as best practicable treatment and control for this facility in past permits. Treated wash water is not discharged through a "failing levee", but intentionally designed to filter through a 30-foot wide, porous section of the supply pond levee. Wash water flows are based on a water balance provided by the Discharger. The proposed Order requires the Discharger to submit a technical report that evaluates the representative nature of the flows estimated at

Discharge Point 001. If the flow cannot be monitored to provide information representative of the monitored activity, the Discharger will be required to install a flow-metering device (or other acceptable method) to provide information on flow that is representative of the monitored activity.

Provisions Section VI.C.2.c. of the proposed Order was modified to correctly state "The Discharger has sampled the effluent and receiving water for all priority pollutants, but has not sampled for asbestos." The proposed Order includes a time schedule for the Discharger to conduct a study of asbestos' potential effect on surface water quality.

The proposed Order requires the Discharger to submit a work plan, install groundwater monitoring wells, commence groundwater sampling in accordance with the proposed Monitoring and Reporting Program, and evaluate background groundwater quality for any impact the discharge may have on groundwater. The proposed Order includes a reopener to add numeric groundwater limitations, if determined necessary.

CSPA – COMMENT No. 2: CSPA states the proposed Permit does not comply with the State Antidegradation Policy and 40 CFR 131.12. CSPA contends that the permit does not discuss the mass of substances discharged to surface waters or their impact on beneficial uses, or whether the Discharger is providing best practical treatment and control (BPTC) of the discharge.

RESPONSE: The proposed Order describes compliance with the Antidegradation Policy in Finding N. and in Section IV.D.4. of the Fact Sheet. The Order implements Resolution 68-16 consistent with the federal policy, as the Order requires the Discharger to comply with BPT standards consistent with 40 CFR 122.44 and requires more stringent standards necessary to meet State water quality limitations. The proposed Order includes mass-based effluent limitations in accordance with 40 CFR 122.45(f), as described in Section IV.D.1. of the Fact Sheet. The potential impact of substances on beneficial uses, and BPTC, are evaluated in Sections IV.B and IV.C. of the Fact Sheet. The quality of the discharge to surface water is essentially the quality of the groundwater being extracted during the Facility's operations. The TWDR does not authorize an increase of flow, concentration, or mass of pollutants in excess of what was previously authorized by the Regional Water Board as consistent with State and federal antidegradation policies and thus remains consistent with the Antidegradation Policy.

CSPA – COMMENT No. 3: CSPA states that either the Discharger has not submitted a complete Report of Waste Discharge in accordance with 40 CFR 122.21(e), (h) [sic] and 124.3 (a)(2), the SIP Section 1.2, and the California Water Code, Section 13377, or the Fact Sheet is incomplete in accordance with 40 CFR 124.8 and 124.56. CSPA contends that the application is incomplete and the Regional Water Board should not issue a permit. CSPA also contends that the Fact Sheet fails to contain a sufficient summary of the sampling data to determine whether the discharge has reasonable potential to exceed water quality standards and

objectives, and that it does not contain calculations or other information sufficient to determine the need for effluent limitations to protect the beneficial uses of the receiving stream.

RESPONSE: Regional Water Board staff determined the application complete in August 2004. The CalMat discharge is a minor discharge. The Fact Sheet contains a sufficient summary of the sampling data and applicable effluent limitations at Sections II. E., II.F., and IV.C. Also, The Fact Sheet contains a summary of the calculations and statistics associated with the effluent constituents with detectable results in Table F-6. A detailed summary of the priority pollutant monitoring data used for the reasonable potential analysis is included as an attachment herein (Table 1). (See also response to CSPA comments No. 1 and No. 2.)

CSPA – COMMENT No. 4: CSPA states the proposed Permit does not contain Effluent Limitations for chronic toxicity and therefore does not comply with 40 CFR 122.44 (d)(1)(i).

RESPONSE: The Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) contains implementation gaps regarding the appropriate form and implementation of chronic toxicity limits. This has resulted in the petitioning of a NPDES permit in the Los Angeles Region¹ that contained numeric chronic toxicity effluent limitations. As a result of this petition, the State Water Board adopted WQO 2003-012 directing its staff to revise the toxicity control provisions in the SIP. The State Water Board state the following in WQO 2003-012, *“In reviewing this petition and receiving comments from numerous interested persons on the propriety of including numeric effluent limitations for chronic toxicity in NPDES permits for publicly-owned treatment works that discharge to inland waters, we have determined that this issue should be considered in a regulatory setting, in order to allow for full public discussion and deliberation. We intend to modify the SIP to specifically address the issue. We anticipate that review will occur within the next year. We therefore decline to make a determination here regarding the propriety of the final numeric effluent limitations for chronic toxicity contained in these permits.”* The process to revise the SIP is currently underway. Proposed changes include clarifying the appropriate form of effluent toxicity limits in NPDES permits and general expansion and standardization of toxicity control implementation related to the NPDES permitting process.

As the toxicity control provisions in the SIP are under revision, it is not appropriate to develop numeric effluent limitations for chronic toxicity. Therefore, the proposed Permit

¹ In the Matter of the Review of Own Motion of Waste Discharge Requirements Order Nos. R4-2002-0121 [NPDES No. CA0054011] and R4-2002-0123 [NPDES NO. CA0055119] and Time Schedule Order Nos. R4-2002-0122 and R4-2002-0124 for Los Coyotes and Long Beach Wastewater Reclamation Plants Issued by the California Regional Water Quality Control Board, Los Angeles Region SWRCB/OCC FILES A-1496 AND 1496(a)

requires that the Discharger meet best management practices for compliance with the Basin Plan's narrative toxicity objective, as allowed under 40 CFR 122.44(k). The proposed Permit requires toxicity reduction evaluation implementation if a pattern of effluent toxicity is observed. This provision requires the Discharger to investigate the causes of, and identify corrective actions to reduce or eliminate effluent toxicity.

CSPA – COMMENT No. 5: CSPA states 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 40 CFR 122.44 (d)(1)(i).

RESPONSE: The proposed Order contains several mechanisms to ensure that effluent discharges do not cause acute or chronic toxicity in the receiving water. Receiving water limits proscribe the discharge from causing toxicity in the receiving water. The proposed Order includes effluent limitations for all toxic pollutants with reasonable potential to cause or contribute to an exceedance of water quality objectives in the receiving water. Where appropriate, these limits are developed based on aquatic life toxicity criteria. However, these limits do not address the synergistic effects that can occur in mixtures of pollutants, the synergistic effects that can occur when effluent is mixed with receiving water, or the toxicity of pollutants for which there are no criteria. Therefore, the proposed Order also requires whole effluent chronic toxicity testing, which identifies both acute and chronic effluent toxicity. If this testing shows that the discharge causes, has the reasonable potential to cause, or contributes to an in stream excursion of the water quality objective for toxicity, the proposed Order requires the Discharger to investigate the causes of, and identify corrective actions to eliminate, the toxicity.

The acute limits establish additional thresholds to control acute toxicity in the effluent: survival in one test no less than 70% and a median of no less than 90% survival in three consecutive tests. Some in-test mortality can occur by chance. To account for this, the acute toxicity test acceptability criteria allow ten percent mortality (requires 90% survival) in the control. Thus, the acute limits allow for some test variability, but impose ceilings for exceptional events (i.e., 30% mortality or more), and for repeat events (i.e., median of three events exceeding mortality of 10%).

The proposed Order protects aquatic life beneficial uses by implementing numerous measures to control individual toxic pollutants and whole effluent toxicity. Both the acute limits and receiving water limits are consistent with numerous NPDES permits issued by the Regional Water Board and throughout the State and are appropriate.

CSPA – COMMENT No. 6: CSPA states 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. CSPA contends that the mixing zone

allowance for manganese must be removed from the proposed permit and an effluent limitation established as an “end of pipe” limitation.

RESPONSE: The proposed Order does not allow a mixing zone for manganese. The final effluent limit for manganese is carried over from WDR Order 5-00-007 and must be met at the point of discharge. Manganese has a secondary MCL of 0.05 mg/L. The proposed Order requires concentrations of manganese in effluent to not exceed the natural background quality of the receiving water, or 0.05 mg/L, whichever is greater. The Tulare Lake Basin Plan expressly states that regulation of discharges shall not require water quality improvement over naturally occurring background concentrations. The proposed Order requires the Discharger to evaluate and characterize the natural surface water quality in the Kings River for manganese. Depending on the findings, the Order may be reopened to add or revise effluent limitations for manganese.

CSPA – COMMENT No. 7: CSPA states 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 40 CFR 122.44.

RESPONSE: The proposed Order no longer includes an effluent limitation for aluminum. The proposed Order requires the Discharger to determine the source of aluminum in the discharge and evaluate whether the discharge has a reasonable potential to cause or contribute to an in-stream excursion above the Basin Plan’s narrative toxicity objective. The Discharger is required to identify appropriate criteria to protect the beneficial uses of the Kings River and propose appropriate numerical effluent limits for aluminum if a reasonable potential is found. Depending on the findings, the Order may be reopened to include effluent limitations for aluminum.

CSPA – COMMENT No. 8: CSPA states the proposed Monitoring and Reporting Program does not contain an Effluent sampling point that is representative of the point of discharge contrary to 40 CFR 122.41 (j)(1).

RESPONSE: The specified effluent sampling location is just inside the levee at the point where water flows through the levee and is representative of the water flowing into the receiving water. Nonetheless, the proposed Order requires the Discharger to submit a technical report that evaluates the representative nature of the flows estimated at Discharge Point 001. If the flow cannot be monitored to provide information representative of the monitored activity, the Discharger will be required to install a flow-metering device (or other acceptable method) to provide information on flow that is representative of the monitored activity. The Discharger is also required to evaluate the effectiveness of Discharge Point 001 to provide adequate mixing of the discharge with the Kings River at the point of discharge. The general monitoring provisions of the Monitoring and Reporting

program require samples and measurements to be representative of the volume and nature of the monitored discharge and is consistent with 40 CFR 122.41(j)(1).

CSPA – COMMENT No. 9: CSPA states the proposed Monitoring and Reporting Program for Groundwater will not produce useable results. CSPA states that the Monitoring and Reporting Program for Groundwater requires that depth to groundwater, groundwater elevation, and the groundwater gradient be measured and calculated in “feet” and CSPA notes that the proper unit of measure must be hundredths of a foot. Also, CSPA suggests the depth to groundwater sample type be a “measurement”, not a “grab.”

RESPONSE: Table E-5, Receiving Water Monitoring Requirements, of the Monitoring and Reporting Program was revised to specify sample type for Depth to Groundwater and Groundwater Elevation as “Measured”. For depth to groundwater, groundwater elevation, and gradient, Table E-5 specifies the units of measurement to be in feet and does not imply a required degree of accuracy. Footnote 1 of Table E-5 specifies that groundwater measurements are to be to the nearest one-hundredth of a foot.

CSPA – COMMENT No. 10: CSPA states the proposed Permit fails to contain an Effluent Limitation for total petroleum hydrocarbons as diesel (TPHd) despite a reasonable potential for the discharge to exceed water quality objectives in violation of 40 CFR 122.44 and the California Water Code. CSPA references that the Fact Sheet cites that the soils and groundwater beneath the site contain diesel in concentrations up to 2,040 ug/L. CSPA contends that a reasonable potential exists for the discharge to contain TPHd “in concentrations above 56 ug/L, which is the recommended toxic water quality objective”.

RESPONSE: WDRs Order No. 5-00-007 contained an effluent limit for TPHd because the Discharger was operating a groundwater extraction and treatment system to remediate groundwater impacted by an identified release of diesel. The treated groundwater was blended with the water utilized for Facility operations then routed to the settling and supply ponds prior to discharge. The groundwater treatment system ceased in early 2005 and TPHd has not been detected in the Facility effluent since May 2004. The proposed Order does not continue the internal wastestream limitation for TPHd.

Regarding the diesel impact to groundwater, the Regional Water Board determined that no further action was necessary in December 2006 and closed the case. The Fact Sheet was modified to clarify the summary of recent groundwater monitoring data and now reads: “For groundwater monitoring data from March 2005 through March 2006, the highest concentrations of total petroleum hydrocarbons as diesel (TPHd) were detected in well PZ-1. Well PZ-1 returned the maximum concentration of TPHd of 2,040 ug/L in March 2005; subsequent samples returned lower concentrations and the sample collected March 2006 returned 549 ug/L of TPHd. The remaining monitoring wells reported no detectable

concentrations of TPHd (above laboratory detection limit of 100 ug/L) for the March 2006 sampling event.” As for effluent monitoring and sampling data collected between March 2000 and June 2006, TPHd was detected at a maximum concentration of 220 ug/L and the average TPHd concentration for the data set was 31 ug/L (using one-half the practical quantitation limit for non-detect results).

The proposed Order requires the Discharger to continue sampling the effluent and receiving water, and now includes requirements for monitoring and sampling groundwater for TPHd. It also includes a reopener to include additional requirements or numeric groundwater limitations should monitoring data indicate a reoccurrence of reasonable potential.

For the reasons outlined above, the discharge is not expected to have a reasonable potential to exceed water quality objectives for TPHd nor expected to adversely impact beneficial uses of the receiving waters. Accordingly, the proposed Order does not include an effluent limitation for TPHd.

CSPA – COMMENT No. 11: CSPA states the proposed permit contains an inadequate reasonable potential analysis by using incorrect statistical multipliers. CSPA contends the permit fails to identify the measured hardness of the receiving water or the effluent.

RESPONSE: The SIP is the governing policy in California for implementing the CTR that has been approved by the US EPA. The Regional Water Boards are obligated to comply with the SIP as State Water Board policy. The reasonable potential analysis was conducted in accordance with Section 1.3 of the SIP. Where appropriate to consider or establish water quality-based effluent limitations, a reported receiving water hardness value of 31 mg/L was used. The measured hardness of the receiving water is identified in the Fact Sheet; Sections IV.C.2 b. and IV.C.3.f.

CSPA – COMMENT No. 12: CSPA states the proposed Permit identifies the discharge as “minor” without merit or justification. CSPA contends that the Regional Board does not know the volume or quantity of water being discharged and the Discharger does not accurately measure flow and has not completed the priority pollutant characterization of the discharge.

RESPONSE: The USEPA NPDES Non-Municipal Permit Rating System was utilized to verify the discharge as minor. For discharge flow and priority pollutant characterization, see response to CSPA Comment No.1.

CALMAT CO. (CALMAT) COMMENTS, 20 March 2007

CALMAT – MINOR COMMENTS No. 1 through No.5: The Discharger suggests typographical and factual corrections to the proposed permit.

RESPONSE: Where appropriate, the requested corrections have been made.

CALMAT – SUBSTANTIVE COMMENT No. 1: The Discharger understands that proposed permit will not include an effluent limit for aluminum and will request a study. CalMat states there is no reasonable potential on which to base an aluminum limit.

RESPONSE: The current tentative Order does not include an effluent limit for aluminum. The proposed Order requires the Discharger to determine the source of the aluminum in the discharge and evaluate whether the discharge has a reasonable potential to cause or contribute to an in-stream excursion above the Basin Plan's narrative toxicity objective. The Order includes a reopener provision to include effluent limitations for aluminum.

CALMAT – SUBSTANTIVE COMMENT No. 2: The Discharger accepts the proposed approach for completing the manganese background study but requests that the effluent limit for manganese be expressed as a 30-day average limit due to the limit being based on a drinking water standard.

RESPONSE: As noted above, the manganese limit is carried over from the existing Order. CalMat's discharges have generally complied with the limit. Given this, the limit cannot be reduced and remains consistent with federal Antidegradation regulations. For manganese, the tentative Order requires only monthly monitoring at the discharge point and receiving water. Incorporating a 30-day average effluent limit would require additional monitoring for manganese. Based on the available data for the Facility, additional monitoring requirements for manganese are not appropriate or justified at this time. The tentative Order keeps the proposed effluent limitation and monthly monitoring requirements for manganese. The Order requires the Discharger to conduct a study of manganese and includes a reopener provision to include effluent limitations for manganese.

CALMAT – SUBSTANTIVE COMMENT No. 3: The Discharger requests to select monitoring wells prior to permit issuance in lieu of preparing a monitoring well workplan as required in the proposed Order. If the workplan requirement is retained, the Discharger requests additional time for submittal of the plan and implementation.

RESPONSE: The monitoring well workplan requirement has been retained and the requested revisions to the time schedule have been incorporated in the tentative Order.

CALMAT – SUBSTANTIVE COMMENT No. 4: The Discharger states that annual whole effluent chronic toxicity testing is inappropriate and the requirement should be removed from the Order. CalMat contends that there is no reasonable potential for chronic toxicity and the testing would pose an unreasonable burden and unreasonable costs without benefit.

RESPONSE: Although previous chronic toxicity testing results for the discharge were favorable, continued testing for chronic toxicity is required pursuant to the SIP. The annual testing requirement is consistent with numerous NPDES permits issued by this Regional Water Board, and throughout the State, and are appropriate.

CALMAT – SUBSTANTIVE COMMENT No. 5: The Discharger states that the permit contains receiving water limitations without consideration of whether the discharge has a reasonable potential of containing the identified pollutants. CalMat proposes that the following receiving water limitations be removed: unionized ammonia, bacteria, biostimulatory substances, color, pesticides, radioactivity, salinity, taste and odor, and toxicity. CalMat indicates that the effluent from the gravel washing operations does not contain the identified pollutants.

RESPONSE: The proposed Order includes receiving water limitations based on water quality objectives contained in the Basin Plan and are appropriately a part of the Order, which must implement the Basin Plan. Including the limitations is consistent with numerous NPDES permits issued by this Regional Water Board, and throughout the State. As the discharge has no reasonable potential to cause or contribute to an exceedance of some of these limitations, related effluent limitations have not been included. Salinity is an exception, as explained elsewhere in the proposed Order.

CALMAT – SUBSTANTIVE COMMENT No. 6: The Discharger (in reference to Water Supply Monitoring Requirements of the MRP) does not believe that standard minerals exist in the discharge at levels that threaten maintenance of water quality standards in the receiving water and requests that the monitoring requirement for standard minerals be removed (except for manganese, alkalinity, and hardness).

RESPONSE: The MRP requires annual testing of the water supply (at location SPL-001 and SPL-002) for TDS, EC, and standard minerals. Water supply monitoring is required to evaluate the source of constituents, or potential pollutants, in the discharge. This Order maintains the requirement for annual testing of the source water for standard minerals.

CALMAT – SUBSTANTIVE COMMENT No. 7: The Discharger requests that testing requirements for aluminum be removed from the MRP for discharge monitoring, surface water monitoring, and receiving groundwater monitoring. CalMat indicates that as the Order does not contain an effluent limit for aluminum the discharge and surface water monitoring requirements should be removed. Also, CalMat does not believe aluminum exists in the discharge at levels that threaten maintenance of water quality standards that apply to groundwater. Thus, CalMat requests that the groundwater monitoring requirement for aluminum be removed.

RESPONSE: The Fact Sheet of the Order includes a summary of the available monitoring information with respect to aluminum in the discharge and the receiving water. The currently available information was determined inadequate to demonstrate whether or not aluminum has a reasonable potential to cause, or contribute to, an excursion above an applicable water quality objective. To determine whether aluminum in the discharge has reasonable potential, this Order requires sampling of the effluent and receiving water for aluminum, and requires the Discharger to conduct a study and complete a RPA to determine whether effluent limits are necessary to protect the beneficial uses of the Kings River. Absent the required monitoring data for aluminum, the Discharger would not be able to conduct an adequate study or RPA for aluminum. As the information is essential for evaluating the presence of aluminum in the discharge and receiving waters, the Order maintains the monitoring and testing requirements for aluminum.

CALMAT – SUBSTANTIVE COMMENT No. 8: With respect to the Discharge Point and Receiving Water Monitoring Evaluation special studies requirement, CalMat expects the study to require involvement with other government agencies such as the Department of Fish and Game and Army Corps of Engineers. The Discharger requests language be added to the provision to acknowledge that any schedule proposed for physical modifications may be subject to delays by agencies whose approvals are required for any proposed work or modifications. The Discharger also requests similar modifications to the language requiring the evaluation of discharge flows at the facility.

RESPONSE: The requested modifications have been included in the proposed Order.

CALMAT – SUBSTANTIVE COMMENT No. 9: With respect to the Fact Sheet, *Table F-3. Effluent Violations at Discharge Point 001*, the Discharger requests that the footnote for manganese be removed from the table. CalMat states there was no effluent limit making it a violation for downstream levels to exceed upstream levels if the discharge did not cause the receiving water to exceed 50 ug/L, so any such events would not be violations on that basis and should not be listed. CalMat also contends that monitoring did not show 27 events where there were increases between upstream and downstream receiving water measurements. For the effluent violations noted for TPHd, CalMat finds only two (rather than the three noted)

events for which the limit was exceeded (monitoring conducted July 2003 and May 2004). CalMat requests that the number of TPHd violations be noted as two rather than three. With respect to the Fact Sheet, *Table F-4. Receiving Water Limitations*, and in the last paragraph of Section F, CalMat requests that the reference to dissolved oxygen (DO) be removed. CalMat contends that the monitoring data shows no pattern showing measured DO to be lower downstream than upstream, and has no reason to think the discharge should cause decreased DO. CalMat reports that the meter utilized to collect the DO measurements was replaced in January 2005 and the equipment replacement coincides with decreased variability in the reported measurements.

RESPONSE: Considering the available effluent monitoring data collected between March 2000 and June 2006, manganese exceeded 0.05 mg/L on one occasion and is identified as such in Table F-3. On 27 other occasions during this monitoring period, the concentration of manganese in the effluent exceeded the background receiving water concentration and therefore had the potential to cause an increase of manganese in the receiving water. However, on these 27 occasions, the manganese concentrations for the effluent and receiving water did not exceed 0.05 mg/L. The Order has been modified and the footnote for manganese has been removed from Table F-3. TPHd effluent violations were noted from three monitoring events conducted November 2001, July 2003, and May 2004. Table F-3 correctly indicates three exceedances for TPHd and will remain unchanged. Table F-4 identifies receiving water limitations established by Order No. 5-00-007 that were either exceeded or in which the discharge was noted to potentially cause an exceedance or violation. The appropriate DO objective for the receiving water is 7.0 mg/L. For the monitoring data collected and reported from March 2000 to June 2006, the downstream receiving water location was sampled for DO on 66 occasions. For these 66 results, the downstream receiving water was less than 7.0 mg/L on 46 occasions. However, for these measurements with corresponding upstream data, the associated upstream receiving water DO measurements were also less than 7.0 mg/L for all but one data set. For this one data set, the effluent DO was reported to be 7.5 mg/L. With respect to DO, the requested modifications to the Fact Sheet have been included in the proposed Order.

CALMAT COMMENTS, 24 April 2007

CALMAT – The Discharger requests deleting Section II.G.1. of the Fact Sheet, *Planned Changes*. CalMat contends that a description of the potential facility operation changes are not pertinent to the discharge covered under the NPDES permit renewal and including such information is potentially confusing.

RESPONSE: The intent of identifying planned operational changes at the Facility is to ensure consideration of such facility changes is incorporated in future permit renewals and will aid assessment of potential or existing water quality impacts or impairments attributed

to a material change in the character, location, or volume of discharge, if applicable. Such information also appraises the Regional Water Board of Facility or operational changes which may pertain to elements of the proposed Order. The Order maintains the description of the potential changes at the Facility.

ENVIRONMENTAL LAW FOUNDATION (ELF) COMMENTS

ELF – COMMENT A. ELF cites portions of Antidegradation Policy and provides an interpretation of the requirements to implement the policy. ELF states that the permit must contain findings regarding compliance with federal and State Antidegradation Policies. The introduction also requests the Regional Water Board revise the tentative Order to ensure that no degradation will occur as a result of the discharge.

RESPONSE: The discharge has been occurring essentially as described in the proposed Order since the 1940's. WDRs Order No. 5-00-007 and No. 94-165 appropriately found that any degradation caused by the discharge was consistent with both State and federal Antidegradation Policies. The proposed Order does not authorize any increase in effluent discharge flow, concentration, or mass to either surface water or groundwater than what was previously authorized, and thus the discharge remains consistent with State and federal Antidegradation Policies. With regard to these issues, see also response to CSPA Comment No. 1 and No. 2.

ELF – COMMENT B. ELF states the tentative Order allows groundwater degradation in violation of California's Antidegradation Policy. This comment by ELF includes a reference to regulation of food processing facilities by the Regional Water Board and contends that the proposed Order defers implementation of substantive requirements to protect groundwater. ELF contends that the Regional Water Board "cannot issue the permit without first either finding conclusively that no groundwater degradation will occur or requiring the best practical treatment or control for the discharges".

RESPONSE: ELF takes certain statements in the Fact Sheet out of context and incorrectly concludes that the proposed Order allows degradation of groundwater. The proposed Order does not allow the discharge to degrade groundwater. Groundwater limitations in Section V.B. of the Order require that the discharge not cause groundwater to exceed natural background concentrations. The section of the Fact Sheet quoted by ELF does note that conditions in the ponds can be conducive for conversion of iron and manganese to more soluble forms and may result in increases in groundwater concentrations for these constituents. It may or may not be occurring at this site, and the proposed Order requires the Discharger to investigate the matter and allows the Regional Water Board to reopen the

Order to address the matter should degradation found to be occurring. See also response to CSPA Comment No. 2.

ELF – COMMENT C. ELF states the tentative Order's antidegradation analysis with regard to discharges to the Kings River is confusing and inadequate. Specifically, ELF contends that Section IV.D.4.a. of the Fact Sheet includes unclear language and suggests that the discussion regarding the antidegradation policy fails to determine which protective Tier (reference to EPA guidance on implementation of 40 CFR 131.12) applies to the discharge. ELF also contends that the proposed Order fails to specify the baseline for each pollutant in the discharge against which degradation is to be measured and that there is no demonstration that any prior order was properly found to be consistent with the State's antidegradation policy. ELF also believes that the proposed Order fails to consider or evaluate any alternatives that might lessen or prevent the degradation arising from the discharge. Furthermore, ELF claims that the antidegradation analysis is insufficient because: (1) it fails to take into account cumulative impacts of all previous and proposed actions..., and (2) it fails to take into account the Discharger's compliance history.

RESPONSE: Although not specified in the proposed Order, the receiving water at the location of the discharge is a federal Tier II water. The proposed Order does not allow degradation of the receiving waters over that previously authorized by the Regional Water Board in WDRs Order No. 5-00-007 and determined consistent then with State and federal antidegradation policies. The proposed Order discusses compliance with the antidegradation policy in Finding N. and in Section IV.D.4. of the Fact Sheet. A summary of the Discharger's compliance history, modified as described above, is included in Section II.F. of the Fact Sheet. See also response to CSPA Comment No. 2.