



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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19 May 2007

Dr. Karl Longley, Chairman
Ms. Pamela Creedon, Executive Officer
Mr. Kenneth Landau, Assistant Executive Officer
Mr. Dave Carlson, Env. Program Manager, NPDES
Mr. James Marshall, Senior WRCE
Ms. Jennifer Watts, Env. Scientist
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 No. CA0004804) for California
Department of Fish and Game Moccasin Creek Fish Hatchery, Tuolumne County

Dear Messrs. Longley, Landau, Carlson, Marshall and Mesdames Creedon and Watts:

The California Sportfishing Protection Alliance and Watershed Enforcers (CSPA) has reviewed the Central Valley Regional Water Quality Control Board's (Regional Board) tentative NPDES permit (Order or Permit) for California Department of Fish and Game Moccasin Creek Fish Hatchery (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 Tuolumne County.

- 1. The proposed Permit is based on an incomplete Report of Waste Discharge (RWD) and in accordance with Federal Regulations 40 CFR 122.21(e) and (h) and 124.3 (a)(2) the State's Policy for Implementation of Toxics standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) and California Water Code Section 13377 the permit should not be issued until the discharge is fully characterized and a protective permit can be written.**

There is no information in the proposed Permit to indicate that the wastewater discharge has been characterized for California Toxics Rule (CTR), National Toxics Rule (NTR), drinking water MCLs and other pollutants which could degrade the beneficial uses of the receiving stream and exceed water quality standards and objectives. The Reasonable Potential Analysis Summary does not contain any discussion of CTR, NTR, drinking water MCLs and other pollutants which would indicate that the Regional Board is basing the proposed Permit on adequate information. For the last several years the Regional Board's NPDES permits have contained a spreadsheet detailing the priority pollutant sampling which has, or has not, been monitored. Absent this spreadsheet, one can only conclude that the required priority pollutant sampling, which is necessary to characterize the discharge, has not been conducted. Failure to include this information in the proposed Permit would also be contrary to Cal EPA's and the State Board policy regarding Environmental Justice. If any sampling was conducted, the absence of data is contrary to precedential Water Quality Order WQO 2004-0013 for the City of Yuba City, "The findings or Fact Sheet should cite the specific data on which it relied in its calculations."

The SIP required the Regional Board's to require dischargers to characterize their discharges for priority pollutants. On 10 September 2001, the Regional Board mailed out a California Water Code Section 13267 letter to dischargers requiring a minimum of quarterly sampling for priority pollutants, pesticides, drinking water constituents, and other pollutants. The Regional Board's 13267 letter cited SIP Section 1.2 as directing the Board to issue the letter requiring sampling sufficient to determine reasonable potential for priority pollutants and to calculate Effluent Limitations. The Regional Board's 13267 letter went beyond requiring sampling for CTR and NTR constituents and required a complete assessment for pesticides, drinking water constituents, temperature, hardness and pH and receiving water flow. There is no indication that any this data was ever received or that it was utilized in preparing the proposed permit.

SIP Section 1.3 requires that the Regional Board conduct a reasonable potential analysis for each priority pollutant to determine if a water quality-based Effluent Limitation is required in the permit. Absent the data, the Regional Board cannot possibly comply with SIP requirement of Section 1.3. There is no analysis or discussion in the proposed Permit which indicates the Regional Board complied with the requirements of SIP Section 1.3. Failure to include this information, if received, would be in violation of Federal Regulation 40 CFR 124.8 (A)(2) which requires Fact Sheets contain an assessment of the wastes being discharged.

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 landfill, 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.” Since the discharge has not been characterized for priority pollutants, the application is not complete.

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.

As the proposed Permit states; 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, or the information utilized to write the proposed Permit is incomplete. Without a complete characterization of the discharge a permit protective of water quality cannot possibly be written. In accordance with the CWC, Federal Regulations and the SIP the proposed Permit can not be adopted.

- 2. The proposed Permit and Fact Sheet are not consistent with the antidegradation provision of Federal Regulations 40 CFR 131.12 and State Water Board Resolution No. 68-16. The proposed Permit cannot be adopted until the Discharger completes an antidegradation analysis and the proposed Permit adequately addresses the Findings of that analysis.**

The proposed Permit Fact Sheet, page F-14, states that fisheries may introduce a variety of pollutants into receiving waters, specifically: TSS, oil and grease, BOD, fecal

coliform, pH, copper, lead, nickel, zinc, ammonia, formalin and phosphorus. With the exception of copper and TSS, none of the identified constituents were characterized as a part of the proposed permit and none of these constituents are addressed in the antidegradation analysis.

The proposed Permit allows the Discharger to discharge oxytetracycline, penicillin G, florfenicol, amoxicillin, trihydrate, erythromycin, Romet-30, MS-222, carbon dioxide gas, sodium bicarbonate, Aqvi-S, PVP, iodine, formalin, hydrogen peroxide, potassium permanganate, copper sulfate, sodium chloride, acetic acid, and chloramines-T. The antidegradation analysis in the proposed Permit does not address a single one of the listed constituents. The antidegradation analysis is literally nonexistent. The brief discussion of antidegradation requirements, in the Findings and Fact Sheet, consist only of skeletal, unsupported, undocumented conclusory statements totally lacking in factual analysis. The information in the Fact Sheet for each of these constituents does not discuss their potential impacts within the receiving stream. Several contain toxic properties at unknown concentrations and are not limited in the permit. The proposed Permit contains numerous statements that there is insufficient information regarding safe levels of these constituents in surface waters, no standards or criteria have been developed, yet the proposed Permit allows the discharge without any restriction. The impacts of antibiotics to aquatic organisms in the receiving stream have not been discussed. The proposed Permit fails to undertake any antidegradation analysis for a discharge of these numerous new pollutants. A proper antidegradation analysis would clearly show that the Regional Board cannot assure that the proposed Permit is protective of the beneficial uses of the receiving stream for the cited constituents. An unprotective permit cannot be adopted in accordance with State Law and Federal Regulations. A complete and proper antidegradation analysis would have to conclude that the discharge should not be allowed and the proposed Permit should not be adopted.

The proposed Permit Fact Sheet discusses the Food and Drug Administration's (FDA) management of many of the above cited constituents. The Fact Sheet then states that the FDA is unlikely to take regulatory action against a discharger if local environmental requirements, including NPDES permit requirements, are met. The FDA allows drug usage and is tasked with assuring that the chemical is safe for the organism on which it is prescribed. The FDA does not regulate water quality. This would assume the NPDES permit contained some requirements for the discharge of these constituents, it does not.

Section 101(a) of the Clean Water Act, the basis for the antidegradation policy, states that the objective of the Act is to "restore and maintain the chemical, biological and physical integrity of the nation's waters." Section 303(d)(4) of the Act carries this further, referring explicitly to the need for states to satisfy the antidegradation regulations at 40 CFR § 131.12 before taking action to lower water quality. These regulations describe the federal antidegradation policy and dictate that states must adopt both a policy at least as stringent as the federal policy as well as implementing procedures. (40 CFR § 131.12(a).)

California's antidegradation policy is composed of both the federal antidegradation policy and the State Board's Resolution 68-16. (State Water Resources Control Board, Water Quality Order 86-17, p. 20 (1986) ("Order 86-17"); Memorandum from William Attwater, SWRCB to Regional Board Executive Officers, "federal Antidegradation Policy," pp. 2, 18 (Oct. 7, 1987) ("State Antidegradation Guidance").) As part of the state policy for water quality control, the antidegradation policy is binding on all of the Regional Boards. (Water Quality Order 86-17, pp. 17-18.) Implementation of the state's antidegradation policy is guided by 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.

The Regional Board must apply the antidegradation policy whenever it takes an action that will lower water quality. (State Antidegradation Guidance, pp. 3, 5, 18, and Region IX Guidance, p. 1.) Application of the policy does not depend on whether the action will actually impair beneficial uses. (State Antidegradation Guidance, p. 6. Actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits and waste discharge requirements, waiver of waste discharge requirements, issuance of variances, relocation of discharges, issuance of cleanup and abatement orders, increases in discharges due to industrial production and/or municipal growth and/or other sources, exceptions from otherwise applicable water quality objectives, etc. (State Antidegradation Guidance, pp. 7-10, Region IX Guidance, pp. 2-3.) Both the state and federal policies apply to point and nonpoint source pollution. (State Antidegradation Guidance p. 6, Region IX Guidance, p. 4.)

The federal antidegradation regulations delineate three tiers of protection for waterbodies. Tier 1, described in 40 CFR § 131.12(a)(1), is the floor for protection of all waters of the United States. (48 Fed. Reg. 51400, 51403 (8 Nov. 1983); Region IX Guidance, pp. 1-2; APU 90-004, pp. 11-12.) It states that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." Uses are "existing" if they were actually attained in the water body on or after November 28, 1975, or if the water quality is suitable to allow the use to occur, regardless of whether the use was actually designated. (40 CFR § 131.3(e).) Tier 1 protections apply even to those waters already impacted by pollution and identified as impaired. In other words, already impaired waters cannot be further impaired.

Tier 2 waters are provided additional protections against unnecessary degradation in places where the levels of water quality are better than necessary to support existing uses. Tier 2 protections strictly prohibit degradation unless the state finds that a degrading activity is: 1) necessary to accommodate important economic or social development in the area, 2) water quality is adequate to protect and maintain existing beneficial uses, and 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved. (40 CFR § 131.12(a)(2).) Cost savings to a discharger alone, absent a demonstration by the project proponent as to how

these savings are “necessary to accommodate important economic or social development in the area,” are not adequate justification for allowing reductions in water quality. (Water Quality Order 86-17, p. 22; State Antidegradation Guidance, p. 13.) If the waterbody passes this test and the degradation is allowed, degradation must not impair existing uses of the waterbody. (48 Fed. Reg. at 51403). Virtually all waterbodies in California may be Tier 2 waters since the state, like most states, applies the antidegradation policy on a parameter-by-parameter basis, rather than on a waterbody basis. (APU 90-004, p. 4). Consequently, a request to discharge a particular chemical to a river, whose level of that chemical was better than the state standards, would trigger a Tier 2 antidegradation review even if the river was already impaired by other chemicals.

Tier 3 of the federal antidegradation policy states “[w]here high quality waters constitute an outstanding national resource, such as waters of national and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water shall be maintained and protected. (40 CFR § 131.12(a)(3).) These Outstanding National Resource Waters (ONRW) are designated either because of their high quality or because they are important for another reason. (48 Fed. Reg. At 51403; State Antidegradation Guidance, p. 15). No degradation of water quality is allowed in these waters other than short-term, temporary changes. (Id.) Accordingly, no new or increased discharges are allowed in either ONRW or tributaries to ONRW that would result in lower water quality in the ONRW. (EPA Handbook, p. 4-10; State Antidegradation Guidance, p. 15.) Existing antidegradation policy already dictates that if a waterbody “should be” an ONRW, or “if it can be argued that the waterbody in question deserves the same treatment {as a formally designated ONRW},” then it must be treated as such, regardless of formal designation. (State Antidegradation Guidance, pp. 15-16; APU 90-004, p. 4.) Thus the Regional Board is required in each antidegradation analysis to consider whether the waterbody at issue should be treated as an ONRW. It should be reiterated that waters cannot be excluded from consideration as an ONRW simply because they are already “impaired” by some constituents. By definition, waters may be “outstanding” not only because of pristine quality, but also because of recreational significance, ecological significance or other reasons. (40 CFR §131.12(a)(3).) Waters need not be “high quality” for every parameter to be an ONRW. (APU 90-004, p. 4) For example, Lake Tahoe is on the 303(d) list due to sediments/siltation and nutrients, and Mono Lake is listed for salinity/TDC/chlorides but both are listed as ONRW.

The State Board’s APU 90-004 specifies guidance to the Regional Boards for implementing the state and federal antidegradation policies and guidance. The guidance establishes a two-tiered process for addressing these policies and sets forth two levels of analysis: a simple analysis and a complete analysis. A simple analysis may be employed where a Regional Board determines that: 1) a reduction in water quality will be spatially localized or limited with respect to the waterbody, e.g. confined to the mixing zone; 2) a reduction in water quality is temporally limited; 3) a proposed action will produce minor effects which will not result in a significant reduction of water quality; and 4) a proposed activity has been approved in a General Plan and has been adequately subjected to the environmental and economic analysis required in an EIR. A complete antidegradation analysis is required if discharges would result in: 1) a substantial increase in mass

emissions of a constituent; or 2) significant mortality, growth impairment, or reproductive impairment of resident species. Regional Boards are advised to apply stricter scrutiny to non-threshold constituents, i.e., carcinogens and other constituents that are deemed to present a risk of source magnitude at all non-zero concentrations. If a Regional Board cannot find that the above determinations can be reached, a complete analysis is required.

Even a minimal antidegradation analysis would require an examination of: 1) existing applicable water quality standards; 2) ambient conditions in receiving waters compared to standards; 3) incremental changes in constituent loading, both concentration and mass; 4) treatability; 5) best practicable treatment and control (BPTC); 6) comparison of the proposed increased loadings relative to other sources; 7) an assessment of the significance of changes in ambient water quality and 8) whether the waterbody was a ONRW. A minimal antidegradation analysis must also analyze whether: 1) such degradation is consistent with the maximum benefit to the people of the state; 2) the activity is necessary to accommodate important economic or social development in the area; 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved; and 4) resulting water quality is adequate to protect and maintain existing beneficial uses. A BPTC technology analysis must be done on an individual constituent basis.

Any antidegradation analysis must comport with implementation requirements in State Board Water Quality Order 86-17, State Antidegradation Guidance, APU 90-004 and Region IX Guidance. The conclusory, unsupported, undocumented statements in the Permit are no substitute for a defensible antidegradation analysis.

The antidegradation review process is especially important in the context of waters protected by Tier 2. See EPA, Office of Water Quality Regulations and Standards, Water Quality Standards Handbook, 2nd ed. Chapter 4 (2nd ed. Aug. 1994). Whenever a person proposes an activity that may degrade a water protected by Tier 2, the antidegradation regulation requires a state to: (1) determine whether the degradation is “necessary to accommodate important economic or social development in the area in which the waters are located”; (2) consider less-degrading alternatives; (3) ensure that the best available pollution control measures are used to limit degradation; and (4) guarantee that, if water quality is lowered, existing uses will be fully protected. 40 CFR § 131.12(a)(2); EPA, Office of Water Quality Regulations and Standards, Water Quality Standards Handbook, 2nd ed. 4-1, 4-7 (2nd ed. Aug. 1994). These activity-specific determinations necessarily require that each activity be considered individually.

For example, the APU 90-004 states:

“Factors that should be considered when determining whether the discharge is necessary to accommodate social or economic development and is consistent with maximum public benefit include: a) past, present, and probably beneficial uses of the water, b) economic and social costs, tangible and intangible, of the proposed discharge compared to benefits.

The economic impacts to be considered are those incurred in order to maintain existing water quality. The financial impact analysis should focus on the ability of the facility to pay for the necessary treatment. The ability to pay depends on the facility's source of funds. In addition to demonstrating a financial impact on the publicly – or privately – owned facility, the analysis must show a significant adverse impact on the community. The long-term and short-term socioeconomic impacts of maintaining existing water quality must be considered. Examples of social and economic parameters that could be affected are employment, housing, community services, income, tax revenues and land value. To accurately assess the impact of the proposed project, the projected baseline socioeconomic profile of the affected community without the project should be compared to the projected profile with the project...EPA's Water Quality Standards Handbook (Chapter 5) provides additional guidance in assessing financial and socioeconomic impacts”

There is nothing resembling an economic or socioeconomic analysis in the Permit. The evaluation contains no comparative costs. As a rule-of-thumb, USEPA recommends that the cost of compliance should not be considered excessive until it consumes more than 2% of disposable household income in the region. This threshold is meant to suggest more of a floor than a ceiling when evaluating economic impact. In the Water Quality Standards Handbook, USEPA interprets the phrase “necessary to accommodate important economic or social development” with the phrase “substantial and widespread economic and social impact.” There is nothing in the Permit resembling an alternatives analysis evaluating less damaging and degrading alternatives. A proper alternatives analysis would cost out various alternatives and compare each of the alternatives' impacts on beneficial uses.

There is nothing in the Permit resembling an analysis that ensures that existing beneficial uses are protected. Nor does the Permit analyze the incremental and cumulative impact of increased loading of non-impairing pollutants on beneficial uses. In fact, there is no information or discussion on the composition and health of the identified beneficial uses. Any reasonably adequate antidegradation analysis must discuss the affected beneficial uses (i.e., numbers and health of the aquatic ecosystem; extent, composition and viability of agricultural production; people depending upon these waters for water supply; extent of recreational activity; etc.) and the probable effect the discharge will have on these uses.

Alternatively, Tier 1 requires that existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected. By definition, any increase in the discharge of impairing pollutants to impaired waterways unreasonably degrades beneficial uses and exceeds applicable water quality standards. Prohibition of additional mass loading of impairing pollutants is a necessary stabilization precursor to any successful effort in bringing an impaired waterbody into compliance.

The State Board has clearly articulated its position on increased mass loading of impairing pollutants. In Order WQ 90-05, the Board directed the San Francisco Regional Board on the appropriate method for establishing mass-based limits that comply with state and federal antidegradation policies. That 1990 order stated “[I]n order to comply with the federal antidegradation policy, the mass loading limits should also be revised, based on mean loading, concurrently with the adoption of revised effluent limits. The [mass] limits should be calculated by multiplying the [previous year’s] annual mean effluent concentration by the [four previous year’s] annual average flow. (Order WQ 90-05, p. 78). USEPA points out, in its 12 November 1999 objection letter to the San Francisco Regional Board concerning Tosco’s Avon refinery, that ‘[a]ny increase in loading of a pollutant to a water body that is impaired because of that pollutant would presumably degrade water quality in violation of the applicable antidegradation policy.’”

NPDES permits must include any more stringent effluent limitation necessary to implement the Regional Board Basin Plan (Water Code 13377). The Tentative Permit fails to properly implement the Basin Plan’s Antidegradation Policy. A proper antidegradation analysis would clearly show that the Regional Board cannot assure that the proposed Permit is protective of the beneficial uses of the receiving stream for the cited constituents. Since many of the cited constituents do not have water quality standards or objectives; the Regional Board should error on the side of water quality and prohibit such discharge until the Discharger can provide evidence that the constituents can be safely discharged.

3. The proposed Permit fails to contain an Effluent Limitation for acute or chronic toxicity which will allow mortality that exceeds the Basin Plan water quality objective and does not comply with the SIP, the CWC and Federal Regulations, at 40 CFR 122.44 (d)(1)(i)

The proposed Permit does not contain effluent Limitations for acute or chronic toxicity. 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 for the Sacramento/ San Joaquin River Basins (Basin Plan), Water Quality Objectives (Page III-8.00) 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. This section of the Basin Plan further states, in part that, compliance with this objective will be determined by analysis of indicator organisms. 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.”

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 must be revised to contain effluent limitations for acute and chronic toxicity.

4. The proposed Permit Monitoring and Reporting Program fails to require receiving water monitoring for temperature contrary to Federal Regulations 40 CFR 122.44.

The proposed Permit contains a Receiving Water Limitation for temperature. The proposed Permit Monitoring and Reporting Program fails to require receiving water monitoring for temperature contrary to Federal Regulations 40 CFR 122.44 which requires monitoring to assure compliance with permit limitations. The proposed Permit must be amended to require upstream, downstream and effluent monitoring for temperature.

5. The proposed Permit fails to contain an Effluent Limitation for Oxytetracycline contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for oxytetracycline. By failing to include Effluent Limitations for oxytetracycline the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

6. The proposed Permit fails to contain an Effluent Limitation for penicillin G contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for penicillin G. By failing to include Effluent Limitations for penicillin G the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

7. The proposed Permit fails to contain an Effluent Limitation for florfenicol contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for florfenicol. By failing to include Effluent Limitations for florfenicol the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

8. The proposed Permit fails to contain an Effluent Limitation for amoxicillin contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for amoxicillin. By failing to include Effluent Limitations for amoxicillin the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

9. The proposed Permit fails to contain an Effluent Limitation for trihydrate contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for trihydrate. By failing to include Effluent Limitations for trihydrate the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the

receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

10. The proposed Permit fails to contain an Effluent Limitation for erythromycin contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for erythromycin. By failing to include Effluent Limitations for erythromycin the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

11. The proposed Permit fails to contain an Effluent Limitation for Romet-30 contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for Romet-30. By failing to include Effluent Limitations for Romet-30 the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that

permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

12. The proposed Permit fails to contain an Effluent Limitation for MS-222 contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for MS-222. By failing to include Effluent Limitations for MS-222 the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

13. The proposed Permit fails to contain an Effluent Limitation for carbon dioxide gas contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for carbon dioxide gas. By failing to include Effluent Limitations for carbon dioxide gas the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

14. The proposed Permit fails to contain an Effluent Limitation for sodium bicarbonate contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for sodium bicarbonate. By failing to include Effluent Limitations for sodium bicarbonate the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

15. The proposed Permit fails to contain an Effluent Limitation for AQUI-S contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for AQUI-S. By failing to include Effluent Limitations for AQUI-S the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

16. The proposed Permit fails to contain an Effluent Limitation for PVP contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for PVP. By failing to include Effluent Limitations for PVP the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

17. The proposed Permit fails to contain an Effluent Limitation for iodine contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for iodine . By failing to include Effluent Limitations for iodine the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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.

18. The proposed Permit fails to contain an Effluent Limitation for hydrogen peroxide contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for hydrogen peroxide. By failing to include Effluent Limitations for hydrogen peroxide the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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.

19. The proposed Permit fails to contain an Effluent Limitation for potassium permanganate contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for potassium permanganate. By failing to include Effluent Limitations for potassium permanganate the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40

CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

20. The proposed Permit fails to contain an Effluent Limitation for acetic acid contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for acetic acid. By failing to include Effluent Limitations for acetic acid the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

21. The proposed Permit fails to contain an Effluent Limitation for chloramines-T contrary to the CWC and Federal Regulations.

The proposed Permit does not contain an Effluent Limitation for chloramines-T. By failing to include Effluent Limitations for chloramines-T the Regional Board cannot ensure protection of beneficial uses of the receiving stream and applicable water quality requirements. 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. Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. A water quality standard for Failure to include an effluent limitation in the proposed permit violates 40 CFR 122.44 and CWC 13377.

22. The proposed Permit fails to include mass based effluent limitations contrary to Federal Regulations and contrary to technical advice.

The proposed Permit Fact Sheet, page F-28, states that: “This Order includes effluent limitations expressed in terms of mass and concentration.” This statement is untrue. Mass limitations are not included for copper or formaldehyde.

Section 5.7.1 of U.S. EPA’s *Technical Support Document for Water Quality Based Toxics Control* (TSD, EPA/505/2-90-001) states with regard to mass-based Effluent Limits:

“Mass-based effluent limits are required by NPDES regulations at 40 CFR 122.45(f). The regulation requires that all pollutants limited in NPDES permits have limits, standards, or prohibitions expressed in terms of mass with three exceptions, including one for pollutants that cannot be expressed appropriately by mass. Examples of such pollutants are pH, temperature, radiation, and whole effluent toxicity. Mass limitations in terms of pounds per day or kilograms per day can be calculated for all chemical-specific toxics such as chlorine or chromium. Mass-based limits should be calculated using concentration limits at critical flows. For example, a permit limit of 10 mg/l of cadmium discharged at an average rate of 1 million gallons per day also would contain a limit of 38 kilograms/day of cadmium.

Mass based limits are particularly important for control of bioconcentratable pollutants. Concentration based limits will not adequately control discharges of these pollutants if the effluent concentrations are below detection levels. For these pollutants, controlling mass loadings to the receiving water is critical for preventing adverse environmental impacts.

However, mass-based effluent limits alone may not assure attainment of water quality standards in waters with low dilution. In these waters, the quantity of effluent discharged has a strong effect on the instream dilution and therefore upon the RWC. At the extreme case of a stream that is 100 percent effluent, it is the effluent concentration rather than the mass discharge that dictates the instream concentration. Therefore, EPA recommends that permit limits on both mass and concentration be

specified for effluents discharging into waters with less than 100 fold dilution to ensure attainment of water quality standards.”

Federal Regulations, 40 CFR 122.45 (f), states the following with regard to mass limitations:

- “(1) all pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:
 - (i) For pH, temperature, radiation or other pollutants which cannot be expressed by mass;
 - (ii) When applicable standards and limitations are expressed in terms of other units of measurement; or
 - (iii) If in establishing permit limitations on a case-by-case basis under 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

- (2) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.”

In addition to the above citations, on June 26th 2006 U.S. EPA, Mr. Douglas Eberhardt, Chief of the CWA Standards and Permits Office, sent a letter to Dave Carlson at the Central Valley Regional Water Quality Control Board strongly recommending that NPDES permit effluent limitations be expressed in terms of mass as well as concentration.

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