



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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Via Electronic Mail Only

Daniel Warner
California Regional Water Quality Control Board,
Central Valley Region
364 Knollcrest Drive, Suite 200
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Re: Comments on Renewal of Waste Discharge Requirements (NPDES Permit No. CA0078441) for City of Dunsmuir Wastewater Treatment Plant, Shasta and Siskiyou Counties

Dear Mr. Warner:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to submit these comments on the tentative waste discharge requirements (Tentative Order) for the City of Dunsmuir Wastewater Treatment Plant (WWTP) in Shasta and Siskiyou Counties. CVCWA is a non-profit organization representing more than 50 publicly owned treatment works throughout the Central Valley Region in regulatory matters affecting surface water discharge, land application, and water reuse. We approach these matters with a perspective to balance environmental and economic interests consistent with state and federal law. Upon reviewing the Tentative Order, CVCWA has concerns with respect to several issues. First, CVCWA is concerned with the proposed application (or lack thereof) of appropriate dilution credits. Second, CVCWA is concerned with the reasonable potential analysis statements concerning ammonia. Third, CVCWA is concerned with the inclusion of a Compliance Schedule for a Inflow and Infiltration Reduction Project and Wet Weather Capacity Improvements in the City's NPDES permit. CVCWA's comments and recommendations with respect to these issues are provided herein.

I. Mixing Zones and Dilution Credits

The Tentative Order inappropriately denies dilution credits for certain constituents such as ammonia and chronic toxicity.

A. Ammonia

With respect to ammonia, the Tentative Order properly finds that acute and chronic aquatic-life mixing zones of 50 feet (for each) comply with the state's Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) and the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (Basin Plan). (Tentative Order, pp. F-26 - F-28.) However, the Tentative Order inappropriately denies dilution credits for ammonia "due to current Facility performance and receiving water conditions." (Tentative Order, p. F-26.) According to the Tentative Order, concerns with current facility performance are because the WWTP "does not provide nitrification or otherwise provide for the removal of ammonia." (Tentative Order, p. F-29.) In other words, Central Valley Regional Water Quality Control Board (Central Valley Water Board) staff are proposing that the Central Valley Water Board find that all wastewater treatment facilities within its jurisdictional area build new treatment facilities to remove ammonia. Such a finding is improper for multiple reasons, including that facility type is an improper basis for denying mixing zones and dilution credits; the proposed finding improperly dictates the manner of compliance; and, dictating treatment for ammonia removal and automatic denial of mixing zones and dilution credits is a regulatory determination that should be done pursuant to the Administrative Procedure Act (APA) and not on a "permit-by-permit" basis.

1. Improper Basis for Mixing Zone and Dilution Credit Denial

According to the SIP, a regional board "shall deny or significantly limit a mixing zone and dilution credit as necessary to protect beneficial uses, meet the conditions of this Policy, or comply with other regulatory requirements." (SIP, p. 17.) The SIP goes further to state that "[s]uch situations may exist based on the quality of the discharge, hydraulics of the water body, or the overall discharge environment (including water column chemistry, organism health, and potential for bioaccumulation)." (*Ibid.*) In essence, reasons for denial need to be related to water quality and impacts to the receiving water – not type of facility.

Further, "while regional boards have discretion in allowing mixing zones and dilution credits, they must explain the denial of a mixing zone based on the facts of the discharge." (*In the Matter of the Petition of Yuba City, WQO 2004-0013, p. 10.*) Here, the Central Valley Water Board proposes to deny a mixing zone and dilution credits for ammonia because of the facility-type and because the receiving water "supports a world-renown recreational fishing industry." (Tentative Order, p. F-29.) These reasons are superficial and are not specifically related to the

facts of the discharge. The facts are as follows: the mixing zones (both for acute and chronic aquatic life) comply with the SIP and the Basin Plan; mixing zones are limited to 50 feet long and 17 feet wide; maximum dilution credits of 45:1 and 55:1 for acute and chronic criteria respectively are available; discharges are prohibited during the recreation period of June 15 through September 15; float time through the acute mixing zone is 0.8 minutes (i.e., 48 seconds) as compared to U.S. Environmental Protection Agency's recommended maximum float time of 15 minutes; and, the width of the mixing zone is 17 feet in a water body that is approximately 45 to 60 feet wide. (Tentative Order, pp. F-23 - F-30.) Based on these facts, the granting of acute and chronic mixing zones and dilution credits for ammonia would not affect aquatic life or recreational beneficial uses in the receiving water. Thus, denial of such mixing zones is arbitrary, and unsupported by the information in the record.

2. Tentative Order Attempts to Dictate Manner of Compliance

Next, the Central Valley Water Board's finding with respect to facility-type unlawfully equates to dictating the manner of compliance. Water Code section 13360(a) declares that no regional or state board order can "specify the design, location, type of construction, or particular manner in which compliance may be had . . ." (Wat. Code, § 13360(a).) Although the Tentative Order does not directly mandate ammonia removal, the cumulative affect of denying mixing zones and finding reasonable potential (both based on facility-type) results in the Central Valley Water Board dictating ammonia removal. Further, the Tentative Order specifically states that, "it is reasonable for the Discharger to make practicable efforts towards ammonia reductions at the Facility prior to considering granting a mixing zone for ammonia." (Tentative Order, p. F-29.) Collectively, these findings indicate that it is the Central Valley Water Board's intent to require the City of Dunsmuir to build ammonia removal facilities at its WWTP. Such findings constitute dictating manner of compliance and are unlawful.

3. Regulation/Policy of General Applicability

Based on the language in this Tentative Order and other recent permit determinations, it appears that the Central Valley Water Board is adopting a region-wide, or at least basin-wide, policy with respect to requiring ammonia removal, or, at the very least in its denial of mixing zone and dilution credits for ammonia. Specifically, beginning with its adoption of Order No. R5-2010-0081, the Central Valley Water Board has routinely denied mixing zones and dilution credits for ammonia, even in cases where a mixing zone/dilution study has been provided and where acute and chronic dilution has been granted for other constituents. (See, e.g., City of Rio Vista Order No. R5-2010-0081, Sacramento Regional County Sanitation District Order No. R5-2011-0083, and Tentative Order for City of Mt. Shasta.) Further, the Central Valley Water Board has routinely determined that reasonable potential exists based on facility type. (See, e.g., list permits.)

Such a policy is arguably a regulation that must be adopted pursuant to the applicable provisions of the APA – not on a permit-by-permit basis.¹ Under the APA, a regulation is defined to mean “every rule, regulation, order, or standard of general application . . . adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it or to govern its procedures.” (Gov. Code, § 11342.600.) The Central Valley Water Board’s proposed (and consistent) findings with respect to facility-type, and its consistent practice of denying mixing zone and dilution credits for ammonia are arguably a regulation because they collectively set forth a standard of general application. (See *Tidewater Marine Western, Inc. v. Bradshaw* 14 Cal. 4th 557, 571 [“. . . a rule applies generally so long as it declares how a certain class of cases will be decided.”].)

Further, the Tentative Order’s failure to provide fact-specific reasons for denial of mixing zones and dilution credits for ammonia in this case provide additional evidence that the Central Valley Water Board intends to make this a determination of general application. Accordingly, the Central Valley Water Board must propose such a policy determination as a regulation, and adopt it in accordance with applicable procedures. The Central Valley Water Board is subject to rulemaking provisions under the Water Code, Title 23 of the California Code of Regulations, and certain specified provisions of the Government Code. (See Water Code, § ; 23 CCR, § 649.1; see also Govt. Code § 11353(b).)

4. Ammonia Reasonable Potential Analysis

With respect to ammonia, the Fact Sheet in the Tentative Order states, “Per Section 1.3, Step 7, of the SIP, the facility type may be used as information to aid in determining if a WQBEL is required.” (Tentative Order, p. F-48.) Based on this statement and the effluent data, the Fact Sheet finds that the ammonia discharge has reasonable potential to cause or contribute to an excursion of the applicable water quality criteria. CVCWA has concerns with the inclusion of the quoted statement in context with determining reasonable potential for ammonia. Based on the information in the fact sheet, it appears that there is reasonable potential for ammonia based on step 4 of the SIP. (SIP, p. 6 [MEC greater than or equal to the criteria].) Because reasonable potential exists under step 4, step 7 does not apply. Step 7 of the SIP is the step where reasonable potential may be found based on “other information” to protect beneficial uses notwithstanding the analysis in steps 1 through 6. In other words, step 7 may be used by a regional board if reasonable potential does not exist under the other steps. Thus, its use and reference here is inappropriate.

Further, step 7 states that a regional board may use *other information* to determine if a water quality-based effluent limitation is required. It does not state what the other information may include. However, based on a complete reading of step 7, the other information must be reasonably related to the need for a WQBEL and the need for protecting the beneficial uses. Just

¹ See Gov. Code, § 11353(b)(1); see also Cal. Code Regs., tit. 23, § 649 et seq.

because a facility may discharge ammonia does not automatically mean that the beneficial uses are at risk. To determine risk to beneficial uses, the Central Valley Water Board must evaluate the effluent quality, water quality, water quality criteria, and a number of other factors. It is inappropriate to conclude that a certain type of facility alone creates a risk to beneficial uses. Accordingly, the Tentative Order needs to be revised to remove the references with respect to step 7 of the SIP and the discussion regarding the facility following the statement. Reasonable potential here should be based solely on step 4 and the inclusion of other information is inappropriate.

B. Chronic Toxicity

The Tentative Order proposes that the numeric toxicity monitoring trigger for chronic toxicity be set at >1 TUC. Setting the chronic toxicity monitoring trigger at > 1 TUC fails to include or account for the amount of chronic dilution that is available for this discharge. As discussed previously, the Tentative Order acknowledges that for chronic toxicity there is a maximum available dilution ratio of 55:1. (Tentative Order, p. F-24.) The Tentative Order also finds that the chronic aquatic-life mixing zone of 50 feet complies with the SIP and the Basin Plan. However, without providing any justification, the Tentative Order fails to include any amount of dilution in setting the numeric toxicity monitoring trigger.

CVCWA recommends that the Central Valley Water Board staff work with the City to determine what is an appropriate dilution credit for chronic toxicity, and include the dilution credit in setting the chronic toxicity monitoring trigger.

II. Compliance Schedule for Inflow and Infiltration Reduction Project and Wet Weather Capacity Improvements

The Tentative Order properly acknowledges that the City's operation and maintenance of its collection system is subject to the State Water Board's Statewide General Waste Discharge Requirements (WDRs) for Sanitary Sewer Systems (Order No. 2006-0003-DWQ). (Tentative Order, p. 30.) The Tentative Order also properly acknowledges that the City has applied for and been approved for coverage under Order No. 2006-0003-DWQ. (Id.) However, even though the City's collection system is subject to Order No. 2006-0003-DWQ, the Tentative Order improperly proposes to include a compliance schedule for an Inflow and Infiltration Reduction Project and Wet Weather Capacity improvements.

I&I and wet weather capacity improvements are directly related to the collection system and are subject to requirements under Order No. 2006-0003-DWQ. Specifically, such projects and associated schedules are a required element of the Sewer System Management Plan, which is required under Order No. 2006-0003-DWQ. (See, e.g., Order No. 2006-0003-DWQ Provision 13 (viii), at p. 14 System Evaluation and Capacity Assurance Plan, ["Capacity enhancement Measures: The steps needed to establish a short- and long-term CIP [capital improvement plan]

to address identified hydraulic deficiencies, including prioritization, alternatives analysis, and schedules. The CIP may include increases in pipe size, I/I reduction programs, increases and redundancy in pumping capacity, and storage facilities. The CIP shall include an implementation schedule and shall identify sources of funding.”.) Because the City’s collection system actions and efforts are subject to Order No. 2006-0003-DWQ, it is not necessary, or appropriate, for the same actions to also be part of the City’s NPDES permit for its discharges from the WWTP.

Moreover, inclusion of the compliance schedule for I&I and wet weather improvements here in the Tentative Order may subject the City to unwarranted liability under the Clean Water Act. Should the City fail to meet any of the requirements set forth in the compliance schedule, such failure would constitute an NPDES permit violation and could subject the City to discretionary enforcement under relevant provisions of the Water Code and the Clean Water Act, or subject the City to third party lawsuits under the Clean Water Act’s citizen suit provisions. Accordingly, CVCWA recommends that the compliance schedule provisions for the I&I Reduction Project and Wet Weather Capacity Improvements be removed from the Tentative Order.

CVCWA appreciates your consideration of these comments. Please contact me at (530) 268-1338 or officer@cvcwa.org if I can be of further assistance.

Sincerely,



Debbie Webster,
Executive Officer

cc (via electronic mail):

Pamela Creedon, Central Valley Regional Water Quality Control Board
Brenda Bains, City of Dunsmuir
Ron LaRue, City of Dunsmuir
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