



# CVCWA

## Central Valley Clean Water Association

*Representing Over Fifty Wastewater Agencies*

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February 17, 2014

**Via Electronically Only**

Mr. Joshua Palmer  
Water Resource Control Engineer  
Regional Water Quality Control Board,  
Central Valley Region  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670  
Joshua.Palmer@waterboards.ca.gov

**RE: Comments on the Tentative Waste Discharge Requirements Order R5-2014-XXXX, City of Roseville, Dry Creek Wastewater Treatment Plant, Placer County**

Dear Mr. Palmer:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to submit comments on the tentative Waste Discharge Requirements for the City of Roseville, Dry Creek Wastewater Treatment Plant (Tentative Order). CVCWA is a non-profit association of public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. We approach these matters with the perspective of balancing environmental and economic interests consistent with state and federal law. In this spirit, we provide the following comments regarding the Central Valley Regional Water Quality Control Board's (Regional Board) regulation of the collection system and the reasonable potential analysis for pathogens.

## I. Collection System

The Fact Sheet provides a “Facility Description” that includes the collection system, the treatment system, and the permitted discharge point to Dry Creek.<sup>1</sup> However, by describing the wastewater collection system as part of the Facility, the collection system becomes subject to the NPDES permit. Any discharge from the collection system, such as a sanitary sewer overflow, would result in a violation of the permit’s general discharge prohibition.<sup>2</sup>

It is unnecessary to regulate the collection system under the NPDES permit as the collection system is subject to the requirements of Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order 2006-0003-DWQ (State Board Order 2006-0003-DWQ).<sup>3</sup> State Board Order 2006-0003-DWQ applies to sanitary sewer systems greater than one mile in length that collect and convey untreated or partially treated wastewater to treatment facilities, and requires enrollees to develop sewer system management plans and other measures to prevent sanitary sewer overflows.<sup>4</sup> The Tentative Order acknowledges that the City of Roseville (City) “has applied for and has been approved for coverage under Order 2006-0003-DWQ for operation of its wastewater collection system.”<sup>5</sup>

Sanitary sewer systems pose unique challenges for water quality regulation, and the State Water Resources Control Board has adequately addressed these challenges in State Board Order 2006-0003-DWQ with which the City must comply. The Regional Board does not need to regulate collection systems further in the City’s NPDES permit. To the extent that federal regulations require publicly-owned treatment works to properly operate and maintain all facilities and systems of collection, such requirements are adequately contained in the Standard Provisions.<sup>6</sup> With respect to other provisions, such as Discharge Prohibitions, the inclusion of collection systems in the manner as provided in the Tentative Order may subject the City to duplicative liability for sanitary sewer overflows that may reach waters of the United States. CVCWA understands that such discharges are not authorized and constitute a violation of the Clean Water Act. However, by including collection systems in the Facility Description, and having collections systems subject to the Discharge Prohibitions in the Tentative Order, such discharges become a permit violation as well as an unauthorized discharge.

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<sup>1</sup> Tentative Order at p F.4.

<sup>2</sup> See Tentative Order at p. 4 [“Discharge of wastewater at a location or in a manner different from that described in this Order is prohibited.”].

<sup>3</sup> *Id.* at pp. 16, F-64 to F-65.

<sup>4</sup> State Board Order 2006-0003-DWQ at pp. 2-3, 10-15.

<sup>5</sup> Tentative Order at p. 16.

<sup>6</sup> See Tentative Order, Attachment D, Standard Provision I.D at p. D-1 [“The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order.”].

CVCWA respectfully requests that the Regional Board eliminate any discussion of the collection system in the Facility Description and revise the Tentative Order at page F-4 as follows:

## II. FACILITY DESCRIPTION

The Discharger provides sewerage service for the southeast portion of the City of Roseville, portions of Placer County, and the South Placer Municipal Utilities District and serves a population of approximately 111,000. ~~The Discharger owns and operates portions of the wastewater collection system. Placer County and the South Placer Municipal Utilities District own and operate the remaining portions of the collection system.~~ The current design average dry weather flow capacity of the Facility is 18 MGD.

In addition, CVCWA recommends revising language in the standard Discharge Prohibition to protect municipalities from allegations that sanitary sewer overflows are also violations of NPDES permits. Accordingly, Discharge Prohibition III.A on page 4 of the Tentative Order should be revised as follows:

- A. Discharge of wastewater from the Facility, as the Facility is specifically described in the Fact Sheet in section II.A, at a location or in a manner different from that described in this Order is prohibited.

It is important to note that this proposed language does not mean that discharges from the collection system are allowed, only that this discharge prohibition is specific to wastewater from the Facility as this tentative order only authorizes discharges from the wastewater facility. The Clean Water Act and the State Board's General Order both prohibit discharges from the sanitary sewer collection system. Thus, it is not necessary to include such discharges in this prohibition.

To explain further the distinction intended by using the term "Facility" in the Discharge Prohibition, the following discussion should be added to section IV.A.1 of the Fact Sheet at page F-13:

1. Prohibition III.A. (No discharge or application of waste other than that described in this Order). This prohibition is based on Water Code section 13260 that requires filing of a ROWD before discharges can occur. This prohibition applies specifically to discharges from the wastewater treatment facility and does not apply to the collection system. The collection system is governed by State Water Board Order No. 2006-0003-DWQ and any future revisions thereto. The Discharger submitted a ROWD for the discharges described in this Order; therefore, discharges not described in this Order are prohibited.

This is a reasonable approach that avoids duplicative regulation and unintended lawsuits, and CVCWA respectfully requests that the Regional Board revise the Tentative Order accordingly.

## II. Reasonable Potential Analysis for Pathogens

The Tentative Order includes the conclusion that the possibility of inadequate disinfection creates the potential for pathogens to be discharged, and thus, the discharge has reasonable potential to cause or contribute to an exceedance of the narrative toxicity objective.<sup>7</sup> CVCWA has previously conveyed its concerns to the Regional Board regarding this application of the narrative toxicity objective and the regulation of pathogens as a toxic substance, and will repeat them here.

The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan) provides the following water quality objective for toxicity: “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.”<sup>8</sup> By its terms, the toxicity objective relates to “toxic substances.” Further, by definition, “toxicity” means “any toxic (adverse) effect that a *chemical or physical* agent might produce within a living organism.”<sup>9</sup> Biological organisms such as pathogens are not chemical or physical agents. Biological organisms invade and multiply within hosts, producing effects by biological activity, such as when a virus damages cell membranes and causes cell death. Biological organisms may excrete chemicals that cause toxicity but the organisms themselves are not a “toxic substance.” For example, tetanus poisoning is caused by a neurotoxin excreted by the bacteria *Clostridium tentani*.<sup>10</sup> In that case, the chemical produced by the bacteria is the toxicant, not the bacteria itself.

Further, regulatory agencies do not consider pathogens to be toxic substances. The California Department of Toxic Substances Control (DTSC) has the mission of protecting California’s people and environment from the harmful effects of toxic substances by collecting information on hazardous wastes, restoring contaminated sites, enforcing hazardous waste laws, and encouraging the manufacture of chemically safe products.<sup>11</sup> DTSC’s 2014-2018 Strategic Plan does not mention the regulation of bacteria or pathogens.<sup>12</sup> Similarly, the United States Environmental Protection Agency’s (USEPA) Technical Support Document for Water Quality-Based Toxics Controls (TSD) specifies a chemical-specific approach and a whole effluent approach using acute and chronic toxicity testing for protection of aquatic life. In the TSD, pathogens are not considered as toxicants. Pathogens are not included in USEPA’s list of toxic

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<sup>7</sup> Tentative Order at p. F-42.

<sup>8</sup> Basin Plan at p. III-8.01.

<sup>9</sup> Williams et al., *Principles of Toxicology: Environmental and Industrial Applications* (2d ed. 2000) p. 3, emphasis added.

<sup>10</sup> *Id.* at pp. 415-416.

<sup>11</sup> See generally Health & Saf. Code, §§ 25100-25258.2.

<sup>12</sup> DTSC’s 2014-2018 Strategic Plan is available here: [http://www.dtsc.ca.gov/InformationResources/upload/Strategic\\_Plan\\_2013\\_Web.pdf](http://www.dtsc.ca.gov/InformationResources/upload/Strategic_Plan_2013_Web.pdf).

pollutants designated under section 307(a)(1) of the Clean Water Act.<sup>13</sup> Similarly, pathogens are not included in USEPA's National Toxics Rule<sup>14</sup> or the California Toxics Rule.<sup>15</sup>

Put simply, the regulation of pathogens is not related to toxicity. To determine whether a water quality-based effluent limitation should be imposed for pathogens, the Regional Board should evaluate whether the discharge has the reasonable potential to cause or contribute to an exceedance of the bacteria objective in the Basin Plan.<sup>16</sup> Or, if the Regional Board determines that a more stringent objective should be applied (and the Regional Board has on many occasions), then the Regional Board should adopt limits based on a more stringent objective in compliance with Water Code section 13241 and applicable State Board Orders.

Accordingly, CVCWA requests that the following language from page F-42 of the Fact Sheet be deleted: "Although the Discharger provides disinfection, inadequate or incomplete disinfection creates the potential for pathogens to be discharged and provides the basis for the discharge to have a reasonable potential to cause or contribute to an exceedance of the Basin Plan's narrative toxicity objective."

We appreciate your consideration of these comments. If you have any questions or if CVCWA can be of further assistance, please contact me at (530) 268-1338 or [eofficer@cvcwa.org](mailto:eofficer@cvcwa.org).

Sincerely,



Debbie Webster,  
Executive Officer

cc (via email):

Pamela Creedon, Central Valley Regional Water Quality Control Board  
Ken Glotzbach, City of Roseville

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<sup>13</sup> See 40 C.F.R. § 401.15.

<sup>14</sup> See 40 C.F.R. § 131.36.

<sup>15</sup> See 40 C.F.R. § 131.38

<sup>16</sup> Basin Plan at p. III-3.00. If the Regional Board chooses to implement a site-specific objective in the permit that is more stringent than the objective in the Basin Plan, then it must consider the factors in Water Code section 13241. (State Board Order WQ 95-4, In the Matter of the Petition of City and County of San Francisco, et al. (1994) p. 13.)