



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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April 21, 2014

Via Electronic Mail Only

Ms. Kathy Harder
Water Resource Control Engineer
Regional Water Quality Control Board,
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
kathleen.harder@waterboards.ca.gov

**RE: Comments on the Tentative Waste Discharge Requirements Order R5-2014-XXXX,
City of Vacaville Easterly Wastewater Treatment Plant, Solano County**

Dear Ms. Harder:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the tentative Waste Discharge Requirements for the City of Vacaville Easterly 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 letter, we provide the following comments regarding (1) the Central Valley Regional Water Quality Control Board's (Regional Water Board) reliance on the antibacksliding exception to remove effluent limitations for trihalomethane (THM) compounds; (2) the discharge prohibition related to bypasses; (3) the mixing zone analysis for nitrate plus nitrite; and (4) inconsistent references to the municipal (MUN) beneficial use.

I. New Information Exception to the Antibacksliding Provision

CVCWA strongly disagrees with the position asserted by Region IX of the U.S. Environmental Protection Agency (EPA) regarding the removal of the effluent limitations for three THM compounds—chlorodibromomethane, chloroform, and dichlorobromomethane—and total THMs. In its comment later dated April 11, 2014, EPA stated that removal of these effluent limitations “appears” to be inconsistent with the federal antibacksliding provision and that performance-based effluent limits are required. This assertion does not comport with the State Water Resource Control Board’s (State Board) longstanding interpretation of the “new information” exception to the antibacksliding provision.¹

Generally, NPDES permits may not be renewed with less stringent effluent limitations than the comparable limitations in the previous permit.² However, under section 402(o)(2)(B)(1) of the Clean Water Act (CWA), effluent limitations may be relaxed or removed if “information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance.”³ This provision is known as the “new information” exception. The State Board has held that the new information exception applies “where new monitoring data indicate that the discharge of a pollutant does not have reasonable potential to cause or contribute to a water quality standards violation.”⁴

The EPA comment asserts that to rely on the new information exception, the record must also support a finding that there has been a decrease of pollutants discharged into the receiving water. This assertion is based on the language in section 402(o)(2)(E) of the CWA, which states: “Subparagraph (B) shall not apply to any revised waste allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters”⁵ However, when evaluating THM compounds in the Tentative Order, the Regional Water Board will not be revising a waste load allocation, and the Regional Water Board will not be implementing an “alternative ground[] for translating water quality standards into effluent limitations.” Rather, the Regional Water Board is evaluating reasonable potential according to the established procedures in the *Water Quality Control Plans for the Sacramento*

¹ See State Board Order WQO 2003-0009, *In the Matter of the Petitions of County Sanitation District No. 2 of Los Angeles and Bill Robinson for Review of Waste Discharge Requirements Order No. R4-2002-0142 [NPDES No. CA0053716] for Whittier Narrows Water Reclamation Plant* (July 16, 2003) (“Whittier Narrows Order”) at p. 9.

² 43 U.S.C. § 1342(o)(1).

³ *Id.* § 1342(o)(2)(B)(i).

⁴ Whittier Narrows Order at p. 9; see also State Board Order 2003-0012, *In the Matter of Review of Own Motion of Waste Discharge Requirements Order Nos. R4-2002-0121 [NPDES No. CA0054011] et al. for Los Coyotes and Long Beach Wastewater Reclamation Plants* (Sept. 16, 2003) at p. 16.

⁵ 43 U.S.C. § 1342(o)(2)(E).

and San Joaquin River Basins (Basin Plan) and the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP).

The EPA comment simply does not explain how this vague qualification to the new information exception—which appears to be more concerned with revised waste load allocations⁶—relates to the Tentative Order or nullifies the established interpretation of the exception by the State Board and the regional water quality control boards. Consistent with the new information exception, effluent limitations may be relaxed or removed in response to monitoring data that show the discharge of a pollutant has no reasonable potential to exceed a state water quality standard. There is no violation of the antibacksliding provision. Performance-based effluent limitations are not necessary under these circumstances.

CVCWA fully supports the Regional Water Board’s interpretation of the antibacksliding exception and recommends retaining the reasonable potential analyses and conclusions for the THM compounds.

II. Clarification on Discharge Prohibition Related to Bypasses

Discharge Prohibition III.B currently states “The by-pass or overflow of wastes to surface waters is prohibited, except as allowed by Section VI.C.4.c. Compliance Schedules”⁷ We believe this is confusing and should be modified. Although section VI.C.4.c. allows blending during wet weather high flow events until April 30, 2015, this section is included under “Construction, Operation and Maintenance Specifications.” The actual compliance schedule related to the discontinuation of blending is contained in section IV.C.7. CVCWA recommends adding to Discharge Prohibition III.B a reference to the compliance schedule in section VI.C.7 (in addition to the reference to VI.C.4.c.), to clarify that the discharge prohibition does not apply to the City’s blending practice until May 1, 2015.

III. Mixing Zone Analysis for Nitrate plus Nitrite

The Tentative Order finds that a mixing zone is appropriate for nitrate plus nitrite and grants dilution credits.⁸ In the mixing zone analysis in the Fact Sheet, the Tentative Order correctly acknowledges that for non-priority pollutants, the Regional Water Board may allow a mixing zone under the Basin Plan’s *Policy for Application of Water Quality Objectives*. For priority pollutants, the Regional Water Board must follow the SIP’s mixing zone provisions.⁹

⁶ The statutory language refers back to “revised waste load allocations” twice: “except where the cumulative effect of such revised allocations results in . . . and such revised allocations are not the result of . . .” 43 U.S.C. § 1342(o)(2)(E).

⁷ Tentative Order at p. 5.

⁸ *Id.* at pp. F-16 to F-23.

⁹ *Id.* at p. F-17.

Nitrate plus nitrite is not a priority pollutant, yet the mixing zone analysis in the Fact Sheet focuses on compliance with the SIP's procedures.

CVCWA acknowledges that the City may have submitted a mixing zone study for nitrate demonstrating compliance with the SIP's mixing zone requirements. However, the analysis of a mixing zone for nitrate according to the SIP is entirely discretionary. CVCWA respectfully requests that the Regional Water Board add language that clarifies that nitrate plus nitrite is not priority pollutant and the Regional Water Board's use of the SIP to evaluate whether to allow a mixing zone for this constituent is discretionary, not mandatory.

IV. References to MUN Beneficial Use

The Fact Sheet contains inconsistent references to the MUN beneficial use and where it applies. For example, in the reasonable potential analysis for aluminum, the Fact Sheet states that the secondary maximum contaminant level (MCL) for protection of the MUN beneficial use is 200 micrograms/liter ($\mu\text{g/L}$).¹⁰ The MUN use does not apply in Old Alamo Creek.¹¹ This section should be revised to clarify that the Regional Water Board is not evaluating the reasonable potential to exceed a water quality objective that does not apply to the receiving water. Similarly, in the reasonable potential analysis for nitrate plus nitrite, there are multiple references to the MCLs, yet there is no statement that the MCLs apply only to protect the MUN use in New Alamo Creek.¹² CVCWA respectfully requests that Fact Sheet be revised to make clear that the MUN use applies only in New Alamo Creek.

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 ecofficer@cvcwa.org.

Sincerely,



Debbie Webster
Executive Officer

cc (*via email*): Pamela Creedon, Central Valley Regional Water Quality Control Board
Royce Cunningham, City of Vacaville

¹⁰ Tentative Order at p. F-32; see also *id.* at p. F-35 [“This Order implements the Secondary MCL of 200 $\mu\text{g/L}$ as an annual average for the protection of MUN . . .”].

¹¹ *Id.* at p. F-5.

¹² See *id.* at pp. F-45 to F-46.