



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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April 20, 2012

Via Electronic Mail

David Kirn
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670
dwkirn@waterboards.ca.gov

Re: Comments on the Tentative Waste Discharge Requirements for the City of Nevada City Wastewater Treatment Facility

Dear Mr. Kirn:

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 Nevada City Wastewater Treatment Facility (Nevada WWTF). 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.

The Tentative Order raises serious concerns involving the application of the state and federal antidegradation policies to deny dilution credit in calculating water quality-based effluent limitations (WQBELs). In this case, the Tentative Order acknowledges that the evidence in the record “supports the calculation of less stringent effluent limitations for dichlorobromomethane [or “DCBM”] based on a dilution ratio of 7.28:1.” (Tentative Order at p. F-50.) However, the Tentative Order goes on to state:

Because effluent limitations may only be as high as is justified under State and federal antidegradation policies, this Order does not allocate all of the available assimilative capacity and establishes performance-based effluent limitations for dichlorobromomethane based on a dilution of 4.1:1. (*Ibid.*)

For the reasons explained below, CVCWA submits that recent treatment plant performance constitutes an improper baseline for interpreting consistency with the antidegradation policies. Further, it is also inappropriate to use the antidegradation policies to truncate effluent limitations and deny calculated dilution credits without first making proper findings. Therefore, we request that you calculate the effluent limitations for DCBM using a dilution ratio of 7.28:1 and revise the Tentative Order accordingly.

A. The Tentative Order's Use of Recent Treatment Plant Performance Is an Improper Baseline for Interpreting Consistency With the Antidegradation Policies

The Central Valley Regional Water Quality Control Board (Regional Water Board) may impose increasingly stringent requirements on a permitted discharge by adopting WQBELs. (40 C.F.R. § 122.44(d).) However, setting treatment *outcomes* based on antidegradation is beyond the scope of the Regional Water Board's authority. WQBELs are based on the effects of a discharge on the immediate receiving waters to provide reasonable protection of beneficial uses while giving due consideration of applicable policies (e.g., *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (2005) or "SIP"). (See 40 C.F.R. § 122.44(d)(1).) In Finding G titled "Water Quality-based Effluent Limitations (WQBELs)," the Tentative Order explains: "Section 301(b) of the CWA and 40 CFR 122.44(d) require that permits include limitations more stringent than applicable federal technology-based requirements *where necessary to achieve applicable water quality standards.*" (Tentative Order at p. 4, emphasis added.) Appropriately, Finding G does not mention the antidegradation policies. (*Ibid.*)

In contrast, antidegradation determinations require consideration of the impact to water quality when compared to the existing permitted condition of that water body. (Administrative Procedures Update No. 90-004, State Water Board (July 1990) at p. 4.) Accordingly, calculating WQBELs and preventing antidegradation are two different processes. Using the procedure in the Tentative Order for determining the WQBELs for DCBM thus undercuts the existing water quality planning process and impermissibly amounts to open-ended regulatory authority to dictate outcomes in the permitting process.

B. The Tentative Order Impermissibly Denies Calculated Dilution Credits and Truncates Effluent Limitations Without Making Requisite Findings

The Tentative Order impermissibly denies the calculated dilution credit ratio of 7.28:1 and truncates the effluent limitations for DCBM without making the findings required by law.

That is, the Tentative Order “must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; *Environmental Protection Information Center v. Cal. Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 516.) This legal requirement “minimize[s] the likelihood that the agency will randomly leap from evidence to conclusions” and is critical to assure interested parties that the decision rendered is reasoned and equitable. (*Topanga, supra*, 11 Cal.3d at 516.) As the California Supreme Court has noted, clear articulation of “the relationships between evidence and findings and between findings and ultimate action” discloses “the analytic route the administrative agency traveled from evidence to action.” (*Id.* at 515.) The Legislature “contemplated that the agency would reveal this route.” (*Ibid.*)

Therefore, when the Regional Water Board determines that truncating calculated WQBELs is appropriate, the findings in the permit must adequately support such determinations. (See also Order WQO 2004-0013, *In the Matter of the Petition of Yuba City* (July 22, 2004) at p. 16 [“[T]here are situations where a more stringent, performance-based effluent limitation may be required pursuant to our anti-degradation policy, but if that is the case, the findings must clearly explain the basis for establishing the more stringent effluent limitations.”].) Mere reference to the antidegradation policies, as was done in the Tentative Order, does not constitute the necessary and adequate support or appropriate findings.

Thank you for considering 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: Pamela Creedon, Central Valley Regional Water Quality Control Board
(Via Electronic Mail: pcreedon@waterboards.ca.gov)

William Falconi, City of Nevada City (Via Electronic Mail: corey.shaver@co.nevada.ca.us)

