



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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October 26, 2012

Via Electronic Mail

Kari Holmes
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670
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Re: Comments on the Tentative Waste Discharge Requirements for the City of Tracy's Wastewater Treatment Plant

Dear Ms. Holmes:

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 Tracy's Wastewater Treatment Plant (WWTP). CVCWA is a non-profit organization representing more than 50 publicly owned treatment works (POTWs) throughout the Central Valley in regulatory matters affecting surface water discharge, land application, and water reuse. We approach these matters with a perspective that balances environmental and economic interests consistent with applicable law.

We reviewed the Tentative Order being proposed for adoption by the Central Valley Regional Water Quality Control Board (Central Valley Water Board). For the reasons described below, we respectfully request that you: (1) modify provisions related to priority pollutant reporting and compliance determination to be consistent with the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (2005) (SIP); (2) revise the ammonia findings to reflect full consideration of the SIP's stepwise approach for determining reasonable potential; and (3) remove the use of existing plant performance as a

baseline for determining compliance with the Antidegradation Policy (State Water Resources Control Board (State Water Board) Resolution No. 68-16).

A. The Tentative Order's Provisions Related to Priority Pollutant Reporting and Compliance Determination Should Be Modified to Be Consistent With the SIP

The Tentative Order includes provisions related to reporting and compliance determinations for priority pollutants that are inconsistent with the SIP and may cause confusion regarding to compliance expectations. The following provides a brief overview of the relevant SIP requirements and our suggested revisions.

The SIP states: "Dischargers shall be deemed out of compliance with an effluent limitation, if the concentration of the priority pollutant in the monitoring sample is greater than the effluent limitation and greater than or equal to the RL [reporting level]."¹ The SIP does not define "reporting level," but explains that, subject to certain exceptions, the RL is to be selected from the minimum levels (MLs) in Appendix 4 of the SIP.² When there is more than one ML for a constituent, the SIP requires the Central Valley Water Board to "include as RLs, in the permit, all ML values, and their associated analytical methods, listed in Appendix 4 that are below the calculated effluent limitation."³ "The *discharger* may select any one of those cited analytical methods for compliance determination."⁴ If no ML is below the effluent limitation, the RL becomes the "lowest ML value, and its associated analytical method, listed in Appendix 4."⁵

The exceptions to selecting an RL from the MLs in Appendix 4 of the SIP are when: (1) the constituent is not included in Appendix 4; (2) the permittee agrees to use a test method that is more sensitive than those specified in the federal regulations; (3) the permittee agrees to use an RL that is lower than the MLs in Appendix 4; (4) the permittee demonstrates that the calibration standard matrix is sufficiently different from that used to establish the ML in Appendix 4 and proposes an appropriate ML for their matrix; and (5) the permittee uses a method whose quantification practices are not consistent with the definition of an ML.⁶ Accordingly, the SIP generally requires that the Central Valley Water Board obtain the permittee's agreement before using an ML that is lower or different than any ML in Appendix 4 for the constituent.

¹ SIP, § 2.4.5.1 at p. 26.

² SIP, § 2.4.2 at p. 23.

³ *Ibid.*

⁴ *Ibid*, emphasis added.

⁵ *Ibid.*

⁶ SIP, § 2.4.3 at p. 24.

Under the SIP, permits are to require permittees to report with each sample result the *RL* and laboratory's current method detection level.⁷ Further, the SIP states: "Sample results greater than or equal to the *RL* shall be reported as measured by the laboratory (i.e., the measured chemical concentration in the sample)."⁸

To make the Tentative Order consistent with these provisions of the SIP, and to eliminate any confusion regarding application of the SIP, CVCWA requests that you revise the proposed definition for "reporting level" as follows:

Reporting Level (RL)

RL is the value that the Discharger must report with each sample result for priority pollutants consistent with Sections 2.4.1 and 2.4.4 of the SIP and that is used in determining whether the Discharger has complied with effluent limitations established in this Order. The RL is selected from the MLs listed in Appendix 4 of the SIP in accordance with Section 2.4.2 , or established in accordance with section 2.4.3, of the SIP. If there is more than one ML listed in Appendix 4, or if deviation from the MLs listed in Appendix 4 occurs, the Discharger must agree to the ML selected in order for it to apply. RL is the ML (and its associated analytical method) chosen by the Discharger for reporting and compliance determination from the MLs included in this Order. The MLs included in this Order correspond to approved analytical methods for reporting a sample result that are selected by the Central Valley Water Board either from Appendix 4 of the SIP in accordance with section 2.4.2 of the SIP or established in accordance with section 2.4.3 of the SIP. The ML is based on the proper application of method-based analytical procedures for sample preparation and the absence of any matrix interferences. Other factors may be applied to the ML depending on the specific sample preparation steps employed. For example, the treatment typically applied in cases where there are matrix-effects is to dilute the sample or sample aliquot by a factor of ten. In such cases, this additional factor must be applied to the ML in the computation of the RL.⁹

We also request that you revise the reporting protocol specified in the monitoring and reporting program of the Tentative Order as follows:

3. Reporting Protocols. The Discharger shall report with each sample result the applicable Reporting Level (RL) ~~reported Minimum Level (ML)~~ and the current Method Detection Limit (MDL), as determined by the procedure in 40 CFR Part 136. The

⁷ SIP, § 2.4.1 at p. 23.

⁸ SIP, § 2.4.4 at p. 26, emphasis added.

⁹ See Tentative Order at p. A-5.

Discharger shall report the results of analytical determinations for the presence of chemical constituents in a sample using the following reporting protocols:

a. Sample results greater than or equal to the ~~RL reported ML~~ shall be reported as measured by the laboratory (i.e., the measured chemical concentration in the sample).¹⁰

We request that you revise the “Other Reports” requirement in the Tentative Order as follows:

3. Within 60 days of permit adoption, the Discharger shall submit a report outlining minimum levels, method detection limits, and analytical methods for approval, with a goal to achieve detection levels below applicable water quality criteria. ~~The At a minimum,~~ the Discharger shall comply with the monitoring and reporting requirements for CTR constituents as outlined in section 2.3 and 2.4 of the SIP, respectively. This includes the selection of MLs from the MLs listed in Appendix 4 of the SIP unless the Central Valley Water Board and Discharger agree to deviate from the MLs listed in Appendix 4 in accordance with Section 2.4.3 of the SIP.¹¹

We further request that you revise the “additional study requirements” specified in Attachment I of the Tentative Order as follows:¹²

I. Background. Sections 2.4.1 through 2.4.4 of the SIP provide ~~the minimum~~ standards for analyses and reporting related to compliance determination. (Copies of the SIP may be obtained from the State Water Resources Control Board, or downloaded from <http://www.waterboards.ca.gov/iswp/index.html>). The Discharger is to follow the reporting protocol established in Section 2.4.4 of the SIP and Section II (Monitoring Requirements) below for purposes of compliance determination.

To implement the SIP, effluent and receiving water data are needed for all priority pollutants. Effluent and receiving water pH and hardness are required to evaluate the toxicity of certain priority pollutants (such as heavy metals) where the toxicity of the constituents varies with pH and/or hardness. Section 3 of the SIP prescribes mandatory monitoring of dioxin congeners. In addition to specific requirements of the SIP, the Central Valley Water Board is requiring the following monitoring solely for purposes of effluent and receiving water characterization related to reasonable potential determinations for the next permit renewal:

¹⁰ See Tentative Order at p. E-15.

¹¹ See Tentative Order at p. E-19.

¹² Use of an acronym other than “RL” in Attachment I of the Tentative Order may eliminate potential confusion between the provisions related to “reporting levels” and those related to “reporting limits.”

B. Criterion Quantitation Limit (CQL). The criterion quantitation limits will be equal to ~~or lower than~~ the minimum levels (MLs) in Appendix 4 of the SIP or the detection limits for purposes of reporting (DLRs) below the controlling water quality criterion concentrations summarized in Table I-1 of this Order, or lower upon the Discharger's agreement. In cases where the controlling water quality criteria concentrations are below the detection limits of all approved analytical methods, the best available procedure will be utilized that meets the lowest of the MLs and DLR. Table I-1 contains suggested analytical procedures. The Discharger is not required to use these specific procedures as long as the procedure selected achieves the desired minimum detection level.¹³

B. The Findings Respecting Ammonia, Nitrate + Nitrite and Others Should Be Revised to Reflect Full Consideration of the SIP's Procedure for Determining Reasonable Potential

The Tentative Order's findings for ammonia, nitrate + nitrite and others do not reflect full consideration of the SIP's stepwise procedure at Section 1.3 for determining whether a priority pollutant requires water quality-based effluent limitations (WQBELs). We request that you revise the ammonia findings to address Section 1.3, Step 4¹⁴ of the SIP.

Section 1.3 of the SIP has three triggers for determining that a discharge may cause or have the reasonable potential to cause or contribute to the exceedance of a water quality objective. The first trigger is at Step 4 and compares the maximum observed effluent concentration (MEC) to the water quality objective.¹⁵ "If the MEC is greater than or equal to the [objective], an effluent limitation is required and the analysis for the subject pollutant *is complete*."¹⁶ Under the second trigger (Step 6), if the observed maximum receiving water background concentration exceeds the water quality objective, reasonable potential exists and the analysis is complete.¹⁷ The third trigger, found at Step 7, authorizes: "Review of other information available to determine if a [WQBEL] is required, notwithstanding the above analysis in Steps 1 through 6, to protect beneficial uses."¹⁸

¹³ See Tentative Order at pp. I-1, I-7.

¹⁴ All subsequent uses of "Step" refer to a step in Section 1.3 of the SIP.

¹⁵ SIP, § 1.3 at p. 6; *In the Matter of the Petitions of East Bay Municipal Utility District, et al.*, Order WQO 2002-0012 (July 18, 2002) (EBMUD Order) at p. 26; *In the Matter of the Petitions of Napa Sanitation District, et al.*, Order WQ 2001-16 (Dec. 5, 2001) (Napa Order) at p. 29.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ SIP, § 1.3 at p. 6, emphasis omitted; see EBMUD Order, *supra*, at p. 26; Napa Order, *supra*, at p. 29.

The Tentative Order relies upon the third trigger at Step 7 to find that the permit must include WQBELs for ammonia and other constituents.¹⁹ The “other information” cited in the findings to support the determination consists solely of the “facility type” – i.e., “a POTW that treats domestic wastewater.”²⁰ The Tentative Order does not specifically refer to the second trigger at Step 6.²¹ However, the findings state that the receiving water data have been non-detect and the WWTP discharge is not causing ammonia (or other constituent) exceedances in the receiving water.²² The findings for the results of the reasonable potential analysis do not mention or otherwise address the first trigger at Step 4.²³ In fact, the only reference to the MEC for ammonia in the findings relates to plant performance and attainability, not reasonable potential.²⁴

The Tentative Order’s findings should be revised to address Step 4 and expressly recognize any application of Step 6. As mentioned, a finding of reasonable potential at Step 4 or Step 6 completes the analysis, and consideration of Step 7 is inappropriate. Given the lack of findings, particularly with regard to Step 4, it is unclear whether the use of Step 7 is appropriate. Such a lack of findings runs afoul of the Central Valley Water Board’s duty in establishing permit conditions to “set forth findings to bridge the analytic gap between the raw evidence and the ultimate decision or order.”²⁵ If the use of Step 7 is appropriate (i.e., the MEC is *not* greater than or equal to the water quality objective), the reasonable potential determination should not be based on facility type alone. Rather, the determination should also include evaluation of other factors, such as technology-based effluent limitations, other controls, and compliance history. Moreover, the determination should reflect consideration of the effluent data, including the lack of triggering the need for WQBELs under Step 4 or Step 6. Only in this manner could the findings and any related WQBELs be supported by evidence in the record as required by law.²⁶

¹⁹ Tentative Order at p. F-50, F-59, F-62, F-66, F-69 .

²⁰ *Ibid.*

²¹ *Id.* at p. F-52. No discussion of receiving water quality is given for nitrate and nitrite, pH, temperature and others.

²² *Ibid.*

²³ *Id.* at pp. F-50 to F-52.

²⁴ *Id.* at p. F-53. Discussions vary for other constituents.

²⁵ *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515. This duty serves to “conduce the administrative body to draw legally relevant sub-conclusions supportive of its ultimate decision” and “facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions.” (*Id.* at 516.) Findings must be supported by evidence in the record. (*Id.* at 514-515.)

²⁶ *Ibid.*

C. Use of Recent Treatment Plant Performance Is an Improper Baseline for Determining Consistency with the Antidegradation Policy

The Tentative Order inappropriately uses the existing WWTP performance as a baseline to determine compliance with the Antidegradation Policy respecting bis(2-ethylhexyl) phthalate (Bis-2).²⁷ The Central Valley Water Board may impose increasingly stringent requirements on a permitted discharge by adopting WQBELs.²⁸ However, setting treatment *outcomes* based on antidegradation is beyond the scope of the Central Valley 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., SIP).²⁹ 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.*"³⁰ Appropriately, Finding G does not mention the Antidegradation Policy.³¹

In contrast, antidegradation determinations require consideration of the impact to water quality when compared to the existing permitted condition of that water body.³² Accordingly, calculating WQBELs and preventing antidegradation are two different processes. Using the procedure in the Tentative Order for determining the WQBELs for Bis-2 undercuts the existing water quality planning process and impermissibly amounts to open-ended regulatory authority to dictate outcomes in the permitting process. We request that you revise the Tentative Order to remove the use of existing plant performance as a baseline for determining compliance with the Antidegradation Policy.

²⁷ See Tentative Order at p. F-30.

²⁸ 40 C.F.R. § 122.44(d).

²⁹ See 40 C.F.R. § 122.44(d)(1).

³⁰ Tentative Order at p. 5, emphasis added.

³¹ *Ibid.*

³² Administrative Procedures Update No. 90-004, State Water Board (July 1990) at p. 4.

We appreciate your consideration of our comments and requested revisions. Please do not hesitate to contact me at (530) 268-1338 or eofficer@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)

Steve Bayley, City of Tracy (via Electronic Mail)