



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

MICHAEL RIDDELL – CHAIR, CITY OF RIVERBANK
JEFF WILLETT – SECRETARY, CITY OF STOCKTON

STEVE HOGG – VICE CHAIR, CITY OF FRESNO
ED CROUSE – TREASURER, RANCHO MURIETA CSD

April 20, 2012

Via Electronic Mail

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

Re: Comments on the Tentative Waste Discharge Requirements for the Linda County Water District's Wastewater Treatment Plant

Dear Mr. Palmer:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to submit these comments on the tentative waste discharge requirements (Tentative Order) for the Linda County Water District's (District) Wastewater Treatment Plant (WWTP). 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.

For the reasons explained in detail below, CVCWA respectfully requests that you: (1) calculate the effluent limitations for bis (2-ethylhexyl) Phthalate (Bis-2), carbon tetrachloride, dichlorobromomethane (DCBM), manganese, and methyl blue active substances (MBA) using a dilution ratio of 347:1, and, if truncating the effluent limitations is deemed necessary, make the appropriate findings in the Tentative Order; and (2) delete the requirement for the District to perform a chemical additives evaluation and minimization study.

A. The Denial of Dilution for Human-Health Constituents Is Improper and Unsupported By the Findings in the Tentative Order

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 District requested a mixing zone and a dilution credit of 347:1 for human-health constituents. (Tentative Order at p. F-27.) The Tentative Order denies the full extent of the mixing zone, stating that “[e]ffluent limitations may only be as high as is justified under State and federal antidegradation policies.” (*Ibid.*) The Tentative Order further states: “Therefore, in lieu of allowing the full dilution credit of 347, this Order establishes performance-based effluent limitations . . .” (*Ibid.*) The effluent limitations for which such dilution was denied and performance-based effluent limitations set are Bis-2, carbon tetrachloride, DCBM, manganese, and MBA. (*Id* at pp. F-27, F-51 to F-52, F-56, F-58, F-60.)

As 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.

1. 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. 6, 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 Resources Control 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 Bis-2, carbon tetrachloride, DCBM, manganese, and MBA thus undercuts the existing water quality planning

process and impermissibly amounts to open-ended regulatory authority to dictate outcomes in the permitting process.

2. 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 of 347:1 and truncates the effluent limitations for Bis-2, carbon tetrachloride, DCBM, manganese, and MBA 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.

B. The Requirement to Perform a Chemical Additives Evaluation and Minimization Study Is Improper and Should Be Deleted

To maintain a stable biological nitrification/denitrification process following the WWTP's expansion, the District intends to use chemical additives for alkalinity control. (Tentative Order at p. F-107.) Due to concerns that this may increase salinity concentrations, the Tentative Order requires the District to prepare and submit a chemical additives evaluation and minimization study by June 1, 2013. (*Id.* at pp. 30, E-20, F-107.) CVCWA respectfully requests that you remove this study requirement from the Tentative Order.

As demonstrated by the Tentative Order's plain language, the study requirement focuses directly on the District's operations, rather than its compliance with effluent limitations. This focus is inappropriate. For example, in preparing the study, the District is to identify and

quantify the “chemical additives necessary *for the proper operation and treatment*” of the upgraded and expanded WWTP. (Tentative Order at p. 30, emphasis added.) As part of the study, the District must “*evaluate and implement feasible methods for reducing the amount of chemical additives* while still providing treatment adequate to ensure compliance with the effluent limitations contained in [the] Order.” (*Ibid*, emphasis added.) Further, the District must incorporate the results of the study *into the operation and maintenance manual* for the WWTP. (*Ibid*.)

The Regional Water Board established technology-based effluent limitations and WQBELs for the WWTP’s discharge. (Tentative Order at pp. F-22, F-70.) The Regional Water Board has the authority to reopen the permit at any time to establish additional or more stringent effluent limitations as appropriate. (*Id.* at p. 26.) Therefore, it is unnecessary to require the chemical additives evaluation and minimization study.

We appreciate your consideration of our comments on the Tentative Order and requested revisions. If I can be of further assistance, please contact me at (530) 268-1338 or officer@cvcwa.org.

Sincerely,



Debbie Webster,
Executive Officer

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

Doug Lofton – Linda County Water District (via email)