

SUMMARY OF WATER QUALITY ORDER

ORDER NO.	WQ 2008-0006
DATE ADOPTED	July 15, 2008
PETITION TITLE	PETITION OF THE ENVIRONMENTAL LAW FOUNDATION FOR REVIEW OF WASTE DISCHARGE REQUIREMENTS ORDER NO. R5-2007-0064 [NPDES NO. CA0078867] FOR BERRY PETROLEUM COMPANY, POSO CREEK/MCVAN FACILITY
POPULAR NAME [if applicable]	N/A
REGIONAL BOARD	Central Valley Regional Water Quality Control Board
FILE NO[S]	SWRCB/OCC FILE A-1871

PRECEDENTIAL DECISION

The Berry Petroleum Company (Discharger) owns and operates a crude oil recovery facility near Bakersfield. Treated wastewater is discharged to an unnamed ephemeral stream that flows to Poso Creek. The facility has been governed by a succession of NPDES permits since at least 1974. The 1974 permit was amended in 1983 to incorporate an increase in the design capacity of the wastewater treatment system from 0.05 million gallons per day (mgd) to 1.68 mgd. The increase in capacity allowed an operational change to enhanced oil recovery steam flood operations (steam flooding). The 2001 Permit included a maximum effluent flow limitation of 0.42 mgd at the request of Wildcat Energy, the discharger at the time, to reflect reduced production associated with low oil prices.

In 2003 the Discharger began operating the lease, and in order to expand oil production, requested an increased discharge limit of 1.68 mgd. In June 2007, the Central Valley Water Board adopted an NPDES Permit (Permit) authorizing the flow increase and also a relaxation, relative to the 2001 Permit, of three pollutant limitations. The Environmental Law Foundation contends that the Central Valley Water Board failed to properly implement state and federal antidegradation requirements and violated the Clean Water Act's antibacksliding rule by establishing less-stringent pollutant limitations and increasing the flow limit.

The order concludes that the Discharger has been in compliance with the more stringent pollutant limitations and that while various exceptions to the antibacksliding rule exist:

1. There have not been any "material and substantial alterations" or additions to the permitted facility that have occurred *after* permit issuance. The facility alterations to allow steam flooding were made before the more stringent 2001 Permit was issued. Consequently, this antibacksliding exception does not apply.
2. The "technical or legal mistake" exception to the antibacksliding rule applies only to technology-based limitations, and therefore cannot be a basis for relaxing the water quality-based pollutant limitations in the 2001 Permit.

3. The Central Valley Water Board must explain why it is necessary to relax EC, chloride, and boron effluent limitations to accommodate important social and economic development in the discharge area.

With respect to antidegradation requirements, the order concludes that:

1. The Central Valley Water Board must explain why relaxation of effluent limitations for EC, chloride, and boron is consistent with the maximum benefit to the people of the State.

2. The flow increase was probably appropriate. However, the Central Valley Water Board should clarify the basis for its determination that the increase will not adversely affect beneficial uses.