



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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30 September 2009

Mr. Ken Landau, Assistant Executive Officer
Mr. James Pedri, Assistant Executive Officer
Mr. Ron Dykstra, Senior WRCE
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

RE: Revised Renewal of Waste Discharge Requirements (NPDES No. CA0077844) and Rescission of Cease and Desist Order (No. 93-068) for City of Portola Wastewater Treatment Plant, Plumas County

Dear Messrs. Landau, Pedri and Dykstra;

The California Sportfishing Protection Alliance (CSPA) has reviewed the revised proposed renewal of Waste Discharge Requirements (NPDES No. CA0077844) for City of Portola Wastewater Treatment Plant (Permit) and submits the following comments.

CSPA incorporates its 13 May 2009 comments regarding the previous iteration of this draft order as applicable.

The proposed Permit contains an effluent Limitation for percent removal of BOD contrary to Federal Regulations 40 CFR 133.103 (Secondary Treatment Standards) and 40 CFR 122.44 (l)(1) (Antibacksliding) and fails to contain the basis for permit limitations in the Fact Sheet as required by 40 CFR 124.8.

The proposed Permit, page F-6, states that:

"BOD percentage Removal- The discharger has experienced problems meeting the percentage removal effluent limitations for BOD. The 85 percent BOD removal requirement was not met twice in 2004 (although the BOD values are suspect due to the potential laboratory error noted above), three times in 2005 and four times in 2006. For the last two discharge seasons, the Discharger has met the requirement for BOD percentage removal. Removal percentages during months that requirements were not met were generally around 80 percent, and there have been no violations of effluent BOD concentration limitations. The Discharger performed extensive work on their collection system in the late 1990s to reduce infiltration/inflow (I/I) in response to Cease and Desist Order No. 93-068.

In part, the problem of effluent percentage BOD removals is also due to the fact that discharge occurs only during months in which I/I is more likely to dilute the influent, but the discharge consists of wastewater that has been received both during dry (low dilution) and wet (high dilution) months. Another situation that is contributing to the problem is the Discharger's receipt of septage. Septage is very high in BOD and total suspended solids. Although septage is discharged to the Facility, its pollutant contribution has not been taken into account when assessing influent pollutant loads and pollutant removal. This Order requires the Discharger to obtain monthly samples of septage for BOD and TSS analysis, and allows the Discharger to take into account the contribution of septage to the influent BOD and TSS load when calculating percentage removals. The Order also requires that the Discharger perform a study to determine if the amount of septage being accepted may be interfering with the plants performance.”

The proposed Permit states on pages F-12 and F-13 that:

“The treatment works provide significant biological treatment of municipal wastewater.

Recent data gathered by the discharger indicate that the pond system cannot consistently meet effluent limitations required by secondary treatment standards. The 95th percentile effluent values for BOD and TSS using the last two years of data are 55.6 and 103 mg/L, respectively, thus exceeding the effluent values given in 40 CFR 133.102. The data also show that the treatment process results in significant biological treatment in accordance with 40 CFR 133.101(k) (65% BOD removal).”

The proposed Permit further states on pages F-35 that:

“**3. Satisfaction of Anti-Backsliding Requirements.** All effluent limitations in this Order are at least as stringent as the effluent limitations in the previous Order except percentage removal of BOD. 40 CFR 122.44(l)(2)(i)(B)(1) allows a less stringent effluent limitation if information is available which was not available at the time of permit issuance, which would have justified the application of a less stringent effluent limitation at the time of permit issuance. The Discharger has recently supplied data (August 2009) that indicates that they cannot meet 30/30 effluent limitations for BOD and total suspended solids on a year-round basis, as required in 40 CFR 133.102, which is new information. This new information justifies the application of a less stringent effluent limitation in accordance with 40 CFR 133.105. However, the average monthly BOD and total suspended solids effluent limitation for discharge to the Feather River during the allowable discharge period is unchanged from the previous permit and previous versions of this draft permit. The CWA allows revision of effluent limitations only if such revision is subject to and consistent with a State's antidegradation policy. The antibacksliding requirements also prohibit the reissued permits to contain effluent limitations which are less stringent than the current effluent limitation guidelines for that pollutant, or which would cause the receiving water to violate the applicable state water quality standard under Section 303 of the CWA.”

Federal Regulation 40 CFR 124.8 (applicable to State programs) requires preparation of a Fact Sheet which set forth the principal facts and significant factual, legal, methodological and policy questions considered in preparing that draft permit.

- The statement that: “The treatment works provide significant biological treatment of municipal wastewater” has been added to the proposed Permit. There is no basis or supporting documentation that this statement is factual. The methodology and/or data for determining “significant biological treatment” have not been presented.

Generally this type of pond system sees BOD and TSS reductions due to long process detention times and the surface water interactions with the atmosphere providing aeration. It is just as reasonable in this case, based on the information presented, that dilute BOD and TSS levels due to I/I with corresponding high flow rates could reduce the pond cell residence time and not produce “significant biological treatment”. This later case would better explain the request for a reduced percent BOD and TSS removal. The proposed Permit does not contain any information that “significant biological treatment” is being provided.

- The proposed Permit states, as cited above that: “For the last two discharge seasons, the Discharger has met the requirement for BOD percentage removal.” Then the proposed Permit proposes to relax this limit and states that: “The 95th percentile effluent values for BOD and TSS using the last two years of data are 55.6 and 103 mg/L, respectively, thus exceeding the effluent values given in 40 CFR 133.102.”
 - BOD and TSS effluent levels can be elevated and percent removal requirements can be met. The proposed Permit Fact Sheet does not set forth the principal facts and methodologies necessary to calculate percent removal efficiencies. What are the influent BOD and TSS values that correspond to the cited 95th percentile effluent values for BOD and TSS? Removal efficiencies cannot be calculated absent this data.
 - If the proposed Permit is correct that: “For the last two discharge seasons, the Discharger has met the requirement for BOD percentage removal” what data is being used to justify relaxing the limitation for percent removal?
 - The proposed Permit states that the WWTP is subject to significant I/I, which would dilute the influent. The proposed Permit also states that the WWTP receives septage, which would have the opposite effect of raising the influent BOD and TSS. Page F-6 states that septage discharges have not been accounted for in analyzing BOD and TSS levels to calculate removal efficiencies. If this is true, the proposed permit cannot then contain sufficiently accurate information to relax the limitation for BOD and TSS removal efficiencies. Have the impacts of I/I and septage been accounted for in the calculation of BOD and TSS removal efficiencies?

Federal Regulation 40 CFR 133.101 (g) and 133.103 (c) states that minimum secondary treatment standards may be relaxed to “equivalent to secondary standards” if: (1) The BOD and SS effluent concentrations consistently achievable through proper operation and maintenance of the treatment works exceed the minimum level of the effluent quality set forth in 133.102(a) and 133.102(b), (2) a trickling filter or waste stabilization pond is used as the principal process, and (3) the treatment works provide a significant biological treatment of municipal wastewater. There is no information in the proposed Permit or the Fact Sheet to indicate that any elevated BOD and TSS levels were observed during periods of “normal” operations and not during upset.

Federal Regulation 40 CFR 133.103 (d)(3) states that for less concentrated influent wastewater for separate sewers the State Director is authorized to substitute a lower percent removal only if the less concentrated influent is not due to excessive inflow and infiltration (I/I). The facility is not eligible for relaxed percent removal limitations as identified problems are at least in part due to excessive inflow and infiltration (I/I). “In part, the problem of effluent percentage BOD removals is also due to the fact that discharge occurs only during months in which I/I is more likely to dilute the influent...” (Page F-6) This would indicate that “significant biological treatment” is not being provided.

Federal Regulation 122.44 (l)(2)(i) requires that renewed, reissued or modified NPDES permits may not contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. Exceptions to the antibacksliding requirements are for material and substantial alterations to the permitted facility; new information is available; technical mistakes were made in the permit; events have occurred over which the permittee has no control, or; the permittee has installed the treatment facilities to meet the limitations, has properly operated the system and the facilities fail to meet the limitations. The proposed Permit does not meet a single antibacksliding requirement of 40 CFR 122.44. The proposed Permit only identifies the Antidegradation Policy as a means for relaxing NPDES Permit limitations (Page F-34) and ignores the exceptions of 40 CFR 122.44.

The cited “new” information to justify backsliding is described on proposed Permit pages F-13 as: “Recent data gathered by the discharger indicate that the pond system cannot consistently meet effluent limitations required by secondary treatment standards.” This recently gathered data would be from Discharger Self Monitoring Reports that are submitted to the Regional Board on a monthly basis for the ongoing wastewater discharge. This is not new information; the Regional Board has been reviewing the Discharger’s Self Monitoring Reports on a monthly basis for years.

Under the Clean Water Act (CWA), point source dischargers are required to obtain federal discharge (NPDES) permits and to comply with water quality based effluent limits (WQBELs) in NPDES permits sufficient to make progress toward the achievement of water quality standards or goals. The antibacksliding and antidegradation rules clearly spell out the interest of Congress in achieving the CWA’s goal of continued progress toward eliminating all pollutant discharges. Congress clearly chose an overriding environmental interest in clean water through discharge reduction, imposition of technological controls, and adoption of a rule against relaxation of limitations once they are established.

Upon permit reissuance, modification, or renewal, a discharger may seek a relaxation of permit limitations. However, according to the CWA, relaxation of a WQBEL is permissible only if the requirements of the antibacksliding rule are met. The antibacksliding regulations prohibit EPA from reissuing NPDES permits containing interim effluent limitations, standards or conditions less stringent than the final limits contained in the previous permit, with limited exceptions. These regulations also prohibit, with some exceptions, the reissuance of permits originally based on best professional judgment (BPJ) to incorporate the effluent guidelines promulgated under CWA §304(b), which would result in limits less stringent than those in the previous BPJ-based permit. Congress statutorily ratified the general prohibition against backsliding by enacting §§402(o) and 303(d)(4) under the 1987 Amendments to the CWA. The amendments preserve present pollution control levels achieved by dischargers by prohibiting the adoption of less stringent effluent limitations than those already contained in their discharge permits, except in certain narrowly defined circumstances.

When attempting to backslide from WQBELs under either the antidegradation rule or an exception to the antibacksliding rule, relaxed permit limits must not result in a violation of applicable water quality standards. The general prohibition against backsliding found in §402(o)(1) of the Act contains several exceptions. Specifically, under §402(o)(2), a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant *if*: (A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation; (B)(i) 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; or (ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B) of this section; (C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy [(e.g., Acts of God)]; (D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or (E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit, and has properly operated and maintained the facilities, but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Even if a discharger can meet either the requirements of the antidegradation rule under §303(d)(4) or one of the statutory exceptions listed in §402(o)(2), there are still limitations as to how far a permit may be allowed to backslide. Section 402(o)(3) acts as a floor to restrict the extent to which BPJ and water quality-based permit limitations may be relaxed under the antibacksliding rule. Under this subsection, even if EPA allows a permit to backslide from its previous permit requirements, EPA may never allow the reissued permit to contain effluent limitations which are less stringent than the current effluent limitation guidelines for that pollutant, or which would cause the receiving waters to violate the applicable state water quality standard adopted under the authority of §303.49.

Federal regulations 40 CFR 122.44 (l)(1) have been adopted to implement the antibacksliding requirements of the CWA:

(l) Reissued permits. (1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under Sec. 122.62.)

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) Exceptions--A permit with respect to which paragraph (l)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(1) 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; or (2) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) Limitations. In no event may a permit with respect to which paragraph (l)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the

implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

Thank you for considering these comments. If you have questions or require clarification, please don't hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Jennings". The signature is written in a cursive style with a large, stylized initial "B".

Bill Jennings, Executive Director
California Sportfishing Protection Alliance