Central Valley Clean Water Association
Representing Over Fifty Wastewater Agencies

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Via Electronically Only

Ms. Gayleen Perreira
Senior Engineer
Regional Water Quality Control Board,
Central Valley Region
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RE: Comments on the Tentative Waste Discharge Requirements Order R5-2013-XXXX, City of Yuba City, Wastewater Treatment Facility, Sutter County

Dear Ms. Perreira:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to submit comments on the tentative Waste Discharge Requirements for the City of Yuba City Wastewater Treatment Facility (Tentative Order). CVCWA is a non-profit association of public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. We approach these matters with the perspective of balancing environmental and economic interests consistent with state and federal law. In this spirit, we provide the following comments on the land discharge specifications for the facility's disposal ponds, the definition used for Reporting Level, mixing zone and dilution credits, as well as the language used in the tentative Monitoring and Reporting Program regarding reporting and detection limits.

I. Land Discharge Specification to Disposal Ponds

The Tentative Order includes a Discharge Prohibition that states, "[d]ischarge of waste classified as 'hazardous' as defined in section 2521(a) of Title 23, California Code of Regulations (CCR), or 'designated,' as defined in section 13173 of the [California Water Code], to the disposal ponds is prohibited."[1] The definition of designated waste in the Water Code includes:

> [n]onhazardous waste that consists of, or contains pollutants that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state as contained in the appropriate state water quality control plan.[2]

In other words, the Tentative Order prohibits the discharge of waste to the disposal ponds that would exceed applicable water quality objectives. Such a prohibition is duplicative of the receiving water limitations and creates unnecessary liability for the City of Yuba City.

In section V.B, the Tentative Order prohibits the release of waste constituents from any storage, treatment, or disposal component that causes "the underlying groundwater to contain waste constituents greater than background quality or water quality objectives, whichever is greater."[3] The Tentative Order includes additional receiving water limitations, which state that the discharge cannot cause the exceedance of specified water quality objectives in the Feather River. These receiving water limitations sufficiently protect against discharges from the disposal ponds that would exceed water quality objectives. By including the reference to "designated" waste in section IV.B.2, the Central Valley Regional Water Quality Control Board (Regional Board) has created a repetitive permit provision. The City of Yuba City could be held liable for the violation of the "designated" waste discharge prohibition in addition to the violation of the receiving water limitations. Creating additional liability for publicly-owned treatment works is not good public policy. Accordingly, CVCWA recommends that the Tentative Order be revised to eliminate the reference to designated waste in Discharge Specification IV.B.2.

II. Definition of Reporting Level

The Tentative Order includes a definition for "Reporting Level" (RL) that is inconsistent with the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP), and may cause confusion with respect to identifying appropriate RLs for reporting data under the Monitoring and Reporting Program (MRP). The SIP does not define "reporting level," but it explains that subject to certain exceptions, the Regional Board

[1] Tentative Order at p. 14.

[2] Wat. Code, § 13173(b).

[3] Tentative Order at p. 15.

must require a permittee to select the RL from the MLs in Appendix 4 of the SIP.[4] When there is more than one ML for a constituent, the SIP requires the Regional 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."[5] If no ML is below the effluent limitation, the "lowest ML value, and its associated analytical method, listed in Appendix 4" is used as the RL.[6] The Regional Board may establish an RL that deviates from the MLs listed in Appendix 4 only when an exception provided in section 2.4.3 of the SIP applies.[7]

The definition included in the Tentative Order ignores the procedure developed in the SIP for identifying RLs. Moreover, the proposed definition lacks clarity and direction, leaving the permittee to choose an RL based on unnamed factors and the "proper" application of analytical procedures. To eliminate this confusion and make the Tentative Order consistent with the SIP, CVCWA requests that you revise the proposed definition for "Reporting Level" in Attachment A as follows:

> **Reporting Level (RL)**
> RL is the ML (and its associated analytical method) chosen by the Discharger for reporting and compliance determination. The MLs included in this Order for priority pollutants 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 RL 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 RL 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 in the computation of the RL.~~

III. Approach to Application of Dilution Credits

The Tentative Order includes dilution credits for certain constituents based on those granted in Order No. R5-2007-0134-01 even though under the current Feather River flow regime the amount of available dilution is in fact greater than that previously recognized.[8] CVCWA finds this to be an appropriate determination since it does not impact the City of Yuba City's ability to comply with proposed effluent limitations. However, for three specific constituents

[4] SIP at p. 23.

[5] *Ibid.*

[6] *Ibid.*

[7] SIP at p. 24.

[8] See Tentative Order at pp. F-22 – F-23.

(dichlorobromomethane, manganese, and nitrite), the Tentative Order proposes to restrict dilution credits based on the use of existing facility performance. CVCWA believes that the Regional Board's practice of restricting dilution credits based on existing facility performance is unreasonable and inappropriate, for the reasons described below.

Specifically, the Tentative Order suggests that the requirement in the SIP that mixing zones be as small as practicable is tied directly to current effluent concentrations, and that dilution credits should be denied or truncated based on facility performance.[9] As a policy matter, CVCWA disagrees. First, the term "as small as practicable" as used in the SIP means that the mixing zone should be as small as practicable to protect beneficial uses. The language of the SIP itself as well as State Water Resources Control Board (State Board) precedential orders supports CVCWA's position. For example, with respect to limiting mixing zones, the SIP states that a regional board should deny or limit a mixing zone as necessary "**to protect beneficial uses, meet the conditions of this Policy, or comply with other regulatory requirements**."[10] Further, the SIP defines mixing zone to mean "a limited volume of receiving water that is allocated for mixing with a wastewater discharge where water quality criteria can be exceeded without causing adverse effects to the overall water body."[11] Also, the State Board opined in State Board Order WQO 2002-0012 (EBMUD Order) that "[m]ixing zones are appropriately denied to compensate for uncertainties in the protectiveness of the water quality criteria or uncertainties in the assimilative capacity of the water body."[12] In other words, mixing zones, including their size, are tied directly to protecting beneficial uses. Nothing in the SIP or State Board orders addressing mixing zones suggests or supports the notion that mixing zones should be limited based on facility performance.

Second, after calculating the water quality-based effluent limitation considering available dilution credits, a regional board may establish more stringent, performance-based effluent limitations due to application of state and federal antidegradation policies.[13] In such cases, the regional board's findings must clearly explain the basis for establishing more stringent effluent limitations.[14] Here, the Tentative Order fails to meet this burden and does not clearly explain the basis for more stringent effluent limitations. For example, for dichlorobromomethane, manganese, and nitrite, the Regional Board proposes the following justification for all three constituents: "[h]owever, effluent limitations may only be as high as is justified under State and federal antidegradation policies. Therefore, this Order establishes performance-based effluent

[9] Tentative Order at p. F-24.

[10] SIP at p. 17 (emphasis added).

[11] SIP at Appendix 1-4.

[12] *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. 16.

[13] *In the Matter of the Petition of Yuba City*, Order WQO 2004-0013 at pp. 15-16.

[14] *Ibid*.

limitations for . . . ."[15] Merely referencing antidegradation does not explain the reason or justification as to why a more stringent, performance-based limitation is necessary. This practice is even more troubling here where the current permit includes water quality-based effluent limitations for these three constituents based on the available dilution.

To resolve this issue, CVCWA representatives have been working with Regional Board staff to reach agreement on mixing zone issues and the derivation of effluent limits based on dilution. One approach advocated by CVCWA is to (1) retain the water quality-based effluent limitations from the previous permit (where applicable); (2) include a reporting trigger based on current facility performance plus an appropriate safety factor as agreed upon between the discharger and the Regional Board; and (3) include specific actions that the discharger must take if the trigger is exceeded. By using this approach, dischargers will not be placed in unreasonable jeopardy for failing to meet a performance-based effluent limitation when beneficial uses are protected. It also provides the Regional Board with some assurance that dischargers are not going to arbitrarily increase the concentration of constituents just because assimilative capacity is available. Further, this approach is consistent with state and federal antidegradation requirements in that more protective water quality-based effluent limitations have already been adopted and permitted by the Regional Board, thereby establishing the baseline for antidegradation policy consistency determinations.

Accordingly, CVCWA recommends that the effluent limitations for dichlorobromomethane, manganese, and nitrite from Order No. R5-2007-0134-01 be retained and that triggers based on performance plus a safety factor be included.

IV. Monitoring and Reporting Program

The MRP attached to the Tentative Order includes provisions that are inconsistent with the SIP. For instance, in footnote 7 of Table E-3, the MRP states that if the lowest ML published in Appendix 4 of the SIP is not below the effluent limitation, "the detection limit shall be the lowest ML."[16] This provision is contrary to the language in the SIP. Rather, under section 2.4.2 of the SIP, if no ML value is below the effluent limitation, the SIP provides that the *reporting limit* shall be the lowest ML.[17] This distinction between the RL and a method detection limit (MDL) is essential for reporting data under the protocols in the SIP. Samples that are greater than or equal to the RL must be reported as measured, whereas samples that are less than a laboratory's MDL must be reported as not detected.[18]

[15] Tentative Order at pp. F-49, F-51, F-57.

[16] Tentative Order at p. E-7.

[17] SIP at p. 23 (emphasis added).

[18] SIP at p. 26.

Identification of the appropriate RL is also relevant to compliance determinations. Under section 2.4.5 of the SIP, concentrations of a priority pollutant must be greater than the effluent limitation and greater or equal to the *RL* before a discharger is determined to be out of compliance.[19] Substituting "detection limit" for "reporting limit" frustrates the carefully prescribed procedures for reporting data and determining compliance under the SIP.

Further, the MRP in the Tentative Order assumes that the Regional Board may set RLs less than the MLs listed in Appendix 4 of the SIP under any condition. However, section 2.4.3 of the SIP provides that the Regional Board may deviate from the MLs listed in Appendix 4 only under certain circumstances, including 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.[20] The language in the Tentative Order should be revised to make clear that an RL may only be established at a value less than the MLs listed in Appendix 4 of the SIP, if the value is determined in accordance with section 2.4.3 of the SIP.

To ensure that the MRP in the Tentative Order is consistent with the monitoring and reporting requirements in the SIP, and to eliminate any confusion regarding the SIP's application, CVCWA requests that you revise footnote 7 to Table E-3 as follows:

> [5]For priority pollutant constituents with effluent limitations, detection limits shall be below the effluent limitation. If the lowest minimum level (ML) published in Appendix 4 of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Plan or SIP) is not below the effluent limitation, the ~~detection limit~~ reporting limit shall be the lowest ML, and its associated analytical method, listed in Appendix 4, or a value determined in accordance with Section 2.4.3 of the SIP. For priority pollutant constituents without effluent limitations, the ~~detection~~ reporting limits shall be equal to ~~or less than~~ the lowest ML published in Appendix 4 of the SIP, or a value determined in accordance with Section 2.4.3 of the SIP.

[19] SIP at p. 26.

[20] SIP at p. 24.

We appreciate your consideration of these comments and request that you revise the Tentative Order as suggested above. If you have any questions or if CVCWA can be of further assistance, please contact me at (530) 268-1338 or eofficer@cvcwa.org.

Sincerely,

Debbie Webster

Debbie Webster,
Executive Officer

cc (*via email only*): Pamela Creedon, Central Valley Regional Water Quality Control Board