



# CVCWA

## Central Valley Clean Water Association

*Representing Over Sixty Wastewater Agencies*

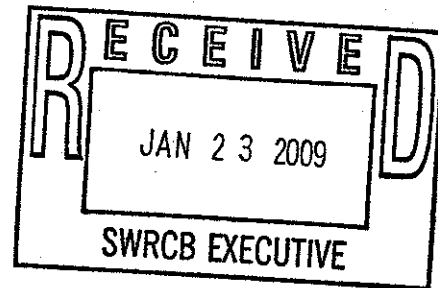
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January 22, 2009

*Sent Via Electronic and U.S. Postal Mail*

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
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Sacramento, CA 95812-0100  
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**Subject: CVCWA Response to Draft State Water Board Order for City of Lodi  
(SWRCB/OCC File A-1886)**

Dear Ms. Townsend:

The Central Valley Clean Water Association (CVCWA) submits the following comments in response to the State Water Resources Control Board's (State Water Board) Proposed Order with respect to In the Matter of Own Motion Review of City of Lodi Waste Discharge Requirements and Master Reclamation Permit (Order No. R5-2007-0113 [NPDES No. CA0079243]) (Proposed Order). More specifically, CVCWA provides comments on the Proposed Order's findings with regard to the application of exemptions from Title 27, and the identification of options for compliance.

CVCWA is a non-profit association whose member agencies own and operate municipal wastewater treatment facilities throughout the Central Valley. CVCWA's member agencies operate under NPDES permits and waste discharge requirements that are developed and adopted by the Regional Water Board in accordance with the requirements of the federal Clean Water Act (CWA) and the Porter-Cologne Water Quality Control Act (Porter-Cologne). These permits and requirements are established consistent with the water quality control plans (Basin Plans) for the Central Valley, the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan), the California Toxics Rule (CTR), the State's *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed*

*Bays, and Estuaries of California (SIP)*, and other applicable plans and policies. The Proposed Order directly affects the Regional Water Board's use of its discretion in permitting actions that apply not only to the City of Lodi, but also to many other CVCWA member agencies. Accordingly, CVCWA has determined that it is in the interest of its membership to review and comment on the Proposed Order. In addition to our comments here, CVCWA supports the positions and responses provided by the City of Lodi on the issues for which CVCWA has not provided a direct response.

In general, CVCWA is concerned with the Proposed Order's determinative finding that the Permit issued by the Regional Water Board violates Title 27 of the California Code of Regulations (hereafter referred to as Title 27). (Proposed Order at p. 7.) In particular, CVCWA is concerned with the Proposed Order's direction to the Regional Water Board, which would require the Regional Water Board to revise the Permit to find that the City's land disposal activities are not exempt from Title 27. (Proposed Order at p. 17.) Based on CVCWA's reading of the Proposed Order, the State Water Board would contend that the information and data in the record is insufficient for the Regional Water Board to find that City's land disposal activities meet the preconditions set forth in Title 27 for application of certain exemptions. (Proposed Order at p. 7; see 27 C.C.R. § 20090(b).) In particular, the Proposed Order finds that there is insufficient information for the Regional Water Board to determine compliance with the Basin Plan. (Proposed Order at p. 7.) In that case, the State Water Board should remand the Permit to the Regional Water Board to provide the City with the opportunity to submit further information for demonstrating compliance with the preconditions in Section 20090 of Title 27. (See In the Matter of the Review on Own Motion of Waste Discharge Requirement for Vacaville's Easterly Wastewater Treatment Plant (Oct. 3, 2002) Order WQO 2002-0015 (Vacaville Order) at pp. 62 63 [where there was insufficient information, the State Water Board determined it necessary to give the City the opportunity to submit information demonstrating compliance].) It is not appropriate to direct the Regional Water Board on remand to otherwise automatically find that the activities in question are not exempt from Title 27. The Proposed Order should be revised accordingly.

Moreover, CVCWA is concerned with the Proposed Order's implication that the City bears the burden of proof on showing that discharges are in compliance with the Basin Plan. (Proposed Order at p. 9.) While it may be proper for the City to provide appropriate information to the Regional Water Board for it to evaluate the potential impacts to groundwater, the City itself cannot make a finding of compliance with the Basin Plan as such a determination is often a moving target. More specifically, a determination of compliance with the Basin Plan is a relative and subjective determination that depends on the interpretation of many narrative water quality objectives. Thus, in most cases, it will be impossible for an agency to actually prove compliance with the Basin Plan as interpreted by the Regional Water Board, and subsequently the State Water Board *post hoc*. Likewise, in many cases it may also be impossible for the Regional Water Board to prove that an agency is *not* in compliance with the Basin Plan considering the complex nature of groundwater hydrology and the relative uncertainties with respect to determination of background quality. The Proposed Order would find that the exemptions in Title 27 are not available unless the discharger has proved compliance with the Basin Plan. Considering the uncertainties associated with "proving compliance," the Proposed Order would in effect nullify the exemptions from Title 27 for wastewater discharges. If that is the State Water Board's intent, the State Water Board should use its quasi-legislative authority to amend Title 27 accordingly. If that is not the State Water Board's intent, the Proposed Order should be revised to reflect the fact that the Regional Water Board's have considerable discretion in determining what constitutes

compliance with the applicable Basin Plan provisions. In this case, CVCWA believes that the Regional Water Board's action was an appropriate use of its discretion and the State Water Board should decline adoption of the Proposed Order on these grounds.

Furthermore, as a practical matter, CVCWA is concerned with the financial burden this statement may impose on many small communities throughout the Central Valley. Based on this statement, cities and wastewater agencies throughout the Central Valley will be required to conduct expensive, time-consuming groundwater studies to prove that they are "in compliance" with Basin Plan requirements for land disposal activities. As stated above, proving "compliance" with the Basin Plan and its many provisions and interpretations is an almost impossible task. If a city or agency cannot prove compliance, the Proposed Order would automatically have the Regional Water Board find that the exemptions in Section 20090 of Title 27 do not apply. This would occur even if there is no evidence of non-compliance. As a result, agencies will be forced to line ponds, or take other expensive actions to upgrade treatment facilities that may not be necessary to protect the environment. In lieu of forcing agencies to prove strict "compliance" with the Basin Plan and its many interpretations, CVCWA suggests that it is more appropriate to evaluate impacts from land disposal activities as they may or may not impact actual beneficial uses of the water in question as compared to requiring compliance with each and every requirement contained in the Basin Plan that may not be practical as applied to the discharge at issue. We recognize that this may require the State Water Board to revise its regulations accordingly; however, CVCWA believes such changes are essential, especially considering the State's renewed focus on water reuse and recycling.

Finally, CVCWA takes issue with the Proposed Order's statements regarding specific activities that the City can undertake to comply with Title 27. (Proposed Order at p. 18.) The Proposed Order implies that the City must line its ponds, adopt more restrictive pretreatment requirements, and/or upgrade its treatment facilities. (Ibid.) Water Code section 13360 specifically prohibits the State Water Board from specifying "the design, location, type of construction, or particular manner in which compliance may be had" in waste discharge requirements or other orders. (Wat. Code, § 13360(a).) Accordingly, these statements must be removed from the Proposed Order as it is inappropriate for the State Water Board to opine on what manner of treatment the City may or may not employ to meet Permit requirements.

CVCWA appreciates the opportunity to provide these comments. In light of the fact that the Regional Water Board's adoption of the Lodi Permit and its relevant provisions at issue in the Proposed Order were a proper use of its discretionary authority, we recommend that the State Water Board decline to adopt the Proposed Order. At the very least, the Proposed Order should be revised to allow the City sufficient time to provide the Regional Water Board with additional evidence and information so that the Regional Water Board can determine if the discharges are consistent with the Basin Plan and therefore within the exemption from Title 27. Finally, the Proposed Order needs to be revised to delete any references to the manner of compliance.

Please feel free to contact me at (530) 268-0651 if you would like to discuss our comments.

Sincerely,

*Debbie Webster*

Debbie Webster  
Executive Officer

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