

Central Valley Regional Water Quality Control Board
5 February 2009 Board Meeting

Response to Comments for the
City of Woodland Water Pollution Control Facility
Tentative Waste Discharge Requirements

The following are Regional Water Quality Control Board, Central Valley Region (Regional Water Board) staff responses to comments submitted by interested parties regarding the tentative Waste Discharge Requirements (NPDES Permit renewal) for the City of Woodland Water Pollution Control Facility (WPCF).

The tentative NPDES Permit renewal was originally issued for public review on 29 August 2008. Public comments regarding the proposed NPDES Permit were required to be submitted to the Regional Water Board office by 5:00 p.m. on 30 September 2008 in order to receive full consideration. Effluent limitations for oil and grease and settleable solids were inadvertently placed in the originally-issued tentative permit. Removal of these effluent limitations required recirculation of the tentative NPDES Permit for public comment. On 10 December 2008, the Regional Water Board re-issued a Notice of Public Hearing and the corrected tentative NPDES Permit with the effluent limitations for oil and grease and settleable solids removed. Public comments on the re-issued tentative Permit were required to be submitted to the Regional Water Board office by 5:00 p.m. on 9 January 2008 in order to receive full consideration.

The Regional Water Board received public comments regarding the originally-issued tentative NPDES Permit from the City of Woodland, the Central Valley Bird Club and the Yolo Audubon Society, the Reclamation District 2035, and the Conaway Preservation Group. Similarly, the Regional Water Board received public comments regarding the re-issued tentative NPDES Permit from the City of Woodland and the California Sportfishing Protection Alliance. The submitted comments were accepted into the record. Part One of the following discussion includes a summary of the public comments received on the originally-issued tentative NPDES Permit, followed by Regional Water Board staff responses. Part Two of the following discussion includes summarized comments and staff responses regarding the re-issued tentative NPDES Permit.

PART ONE: 29 AUGUST 2008 TENTATIVE NPDES PERMIT

CITY OF WOODLAND (DISCHARGER) COMMENTS

Discharger Comment No. 1. Use of Fixed Dissolved Solids as Measure of Salinity.

The Discharger comments that “fixed dissolved solids” is a more accurate measure of salinity than electrical conductivity (EC) or total dissolved solids (TDS). The Discharger recommends that monitoring for fixed dissolved solids be added to the monitoring and reporting requirements in the NPDES permit.

RESPONSE: Regional Water Board staff acknowledges that there are various parameters to measure salinity in wastewater. In its comment, the Discharger did

not propose test methods (approved in 40 CFR Part 136 as required in the Federal regulations) to be used. In addition to the required reporting in the permit, the Discharger may submit monitoring data for fixed dissolved solids with a discussion regarding its representation of the measure of salinity. However, the monitoring requirement for fixed dissolved solids has not been added to the proposed NPDES permit.

Discharger Comment No. 2. Use of Inhibition Concentration – 25 Percent (IC25) Evaluation of Chronic Toxicity. The Discharger comments that IC25 is a more dependable approximation of the no effect level for the receiving water. The Discharger also comments that IC25 is a better indicator to observe an effect in the toxicity test compared to the trigger of >1 TUc (based on an No Observed Effect Concentration, or NOEC). The Discharger requests that the numeric monitoring trigger be modified as follows:

Numeric Monitoring Trigger. *The numeric toxicity monitoring trigger is >1 TUc (where TUc = 100/IC25).*

RESPONSE: The NOEC method is required in NPDES permits to calculate numeric chronic toxic monitoring trigger (1 Toxicity Unit = 100/NOEC) for whole effluent toxicity (WET) testing because the NOEC endpoint represents no toxicity. This is consistent with the Regional Water Board Basin Plan’s narrative toxicity objective and toxicity testing required in the other Regional Water Board’s regulatory programs. The NOEC value is used in WET testing to determine the monitoring trigger for chronic toxicity that determines whether follow-up accelerated monitoring and corresponding toxicity identification and reduction evaluations (TIE/TRE) are necessary. Use of the NOEC value to determine the numerical trigger is more likely to detect toxicity than the point estimate, IC25. This is particularly important for discharges to the Delta and/or tributary to the Delta. Statistical methodologies, including IC25, may be appropriate for the follow-up TIE/TREs because the IC25 provides more precise information regarding the cause of the toxicity. The tentative NPDES permit does not require the use of NOEC value for the follow-up TIE/TRE, and allows the Chronic WET testing results to be expressed using both the NOEC value and the IC25 value.

Discharger Comment No. 3. Description of Treatment and Disposal in the Ponds. The Discharger comments that “a portion of the wastewater is also treated and disposed in the WPCF’s pond system.” The Discharger requests that the use of the pond system for treatment and disposal of wastewater be allowed and explained in greater detail in the proposed NPDES permit and Fact Sheet.

RESPONSE: To improve the description of the use of the treatment and disposal ponds, the tentative NPDES Permit has been modified to clarify that diversion of wastewater to the ponds is not a “bypass” under the NPDES definition.

CENTRAL VALLEY BIRD CLUB AND YOLO AUDUBON SOCIETY COMMENTS

Comment No. 1. The Central Valley Bird Club and Yolo Audubon Society submitted comments expressing concern that the provisions in the proposed NPDES Permit may limit public access to the City of Woodland WPCF's ponds. Both commenters cite the need to monitor migratory and wintering species of birds at the facility and are concerned that language in the proposed NPDES Permit may restrict or eliminate access to the facility.

RESPONSE: The provision of concern is found in Section VI.C.4.b. (Treatment Pond Operating Requirements) of the proposed NPDES Permit. The proposed provision states (bold and italics added to ii):

b. Treatment Pond Operating Requirements.

- i. The treatment facilities shall be designed, constructed, operated, and maintained to prevent inundation or washout due to floods with a 100-year return frequency.
- ii. ***Public contact with wastewater shall be precluded through such means as fences, signs, and other acceptable alternatives.***
- iii. Ponds shall be managed to prevent breeding of mosquitoes. In particular,
 - a) An erosion control program should assure that small coves and irregularities are not created around the perimeter of the water surface.
 - b) Weeds shall be minimized.
 - c) Dead algae, vegetation, and debris shall not accumulate on the water surface.
- iv. Freeboard in the emergency storage ponds shall not be less than two feet (measured vertically to the lowest point of overflow), except if lesser freeboard does not threaten the integrity of the pond, no overflow of the pond occurs, and lesser freeboard is due to direct precipitation or storm water runoff occurring as a result of annual precipitation with greater than a 100-year recurrence interval, or a storm event with an intensity greater than a 25-year, 24-hour storm event.
- v. Ponds shall have sufficient capacity to accommodate allowable wastewater flow and design seasonal precipitation and ancillary inflow

and infiltration during the non-irrigation season. Design seasonal precipitation shall be based on total annual precipitation using a return period of 100 years, distributed monthly in accordance with historical rainfall patterns. Freeboard shall never be less than two feet (measured vertically to the lowest point of overflow).

- vi. Prior to the onset of the rainy season of each year, available pond storage capacity shall at least equal the volume necessary to comply with Land Discharge Specification v.

The proposed operating requirements in the permit do not restrict public access for viewing and recording bird species that utilize the City of Woodland WPCF's ponds. The operational requirement is to safeguard the public by limiting exposure to untreated wastewater, which may be present in the ponds. The wastewater may contain pathogens and other hazardous constituents, therefore the provision provides for prevention of public contact with wastewater. It is the Discharger's discretion on how to comply with the operational requirements for the treatment ponds. If the Discharger determines that the existing control measures in place are adequate to meet the provision requirements, then the provisions in the NPDES Permit do not require changes that may prevent public access.

CONAWAY PRESERVATION GROUP AND RECLAMATION DISTRICT (RD) 2035 COMMENTS

Designated Party Status. In a 30 September 2008 letter, RD 2035 and the Conaway Preservation Group, LLC, requested designated party status for the Regional Water Board hearing on this matter. However, the commenters are no longer requesting designated status.

Comment No. 1. Request to Work Collectively with the Cities of Davis and Woodland to Develop a Regional Water Supply and Recycled Water Program. The commenter expresses a desire to work collectively with the cities of Woodland and Davis to develop a regional water supply and recycled water program. The commenter further requests that language be added to the NPDES permit requiring the Discharger to participate in the discussion and evaluation of an integrated water management plan.

RESPONSE: Regional Water Board staff fully supports a regional approach to examining water supply and recycled water. In the proposed NPDES Permit, the Discharger is required to provide updates to the progress of improving the City's potable water supply, to the Regional Water Board in its annual operations report. If the Regional Water Board does not determine that progress towards a progressive integrated water management plan is occurring, the NPDES Permit

may be reopened and additional effluent limitations and/or requirements for electrical conductivity, mercury, boron, selenium, or other constituents of concern may be added. Regional Water Board staff understands the importance of the regional water management effort to the Cities of Davis and Woodland for both water supply and NPDES compliance purposes. Staff believes that the effluent limitations and reporting requirements proposed in the NPDES Permit are sufficient to encourage the Discharger participates in regional water management efforts.

Comment No. 2. Proposed Permit Impairs Existing Beneficial Uses and Violates State and Federal Antidegradation Policies - The commenter states that the proposed NPDES Permit will allow increases in EC, Total Dissolved Solids (TDS), selenium, and boron in discharges to the Tule Canal. The commenter states that this impairment will preclude RD 2035's use of the Tule Canal as a water conveyance for irrigation purposes. In addition, the commenter states the proposed increase in discharge volume violates antidegradation policies.

RESPONSE: Regional Water Board staff reviewed the Antidegradation Analysis in the Discharger's Report of Waste Discharge and included discussion regarding the analysis in the Fact Sheet of the proposed NPDES Permit. The analysis was conducted in accordance with the guidance provided by State Water Board Administrative Procedures Update (APU) 90-004. In combination with the proposed increase in discharge volume, the Discharger completed a significant upgrade to the treatment system that allows the facility to comply with Title 22 treatment requirements and has resulted in the elimination of certain pollutants due to it ceasing use of chlorine for disinfecting purposes. In the NPDES Permit Fact Sheet discussion, it is noted that the projected increases "will not adversely affect existing or probable beneficial uses of Tule Canal, nor will it cause water quality to fall below applicable water quality objectives." As stated in the Fact Sheet, Regional Water Board staff determined:

- iii. **Justification for Allowing Degradation.** Potential degradation identified in the antidegradation analysis due to this Order is justified by the following considerations:
- Implementation of alternatives does not provide important socioeconomic benefit to the people of the region, nor do they provide maximum benefit to the people of the State. The socioeconomic evaluation of alternatives to the proposed project would inhibit socioeconomic growth making it economically infeasible for any new development to occur.
 - The Discharger's planned expansion will continue to produce Title 22 tertiary treated effluent that will result in minimal water quality degradation. The Discharger's planned wastewater treatment

process will meet or exceed the highest statutory and regulatory requirements which meets or exceeds best practical treatment and control (BPTC);

- This Order is fully protective of beneficial use of Tule Canal. The anticipated water quality changes in Tule Canal will not reduce or impair its designated beneficial uses and is consistent with State and federal antidegradation policies;
- No feasible alternatives currently exist to reduce the impacts; and
- The Discharger has fully satisfied the requirements of the intergovernmental coordination and public participation provisions of the State's continuing planning process concurrent with the public participation period of this Order.

The commenter did not provide data or analysis to support the claim that the beneficial uses of the receiving water will not be maintained with an increase in discharge, therefore, no modifications have been made to the proposed NPDES Permit.

Comment No. 5. City of Woodland Has No Legal Authority to Discharge into the Tule Canal. The commenter states that the Tule Canal runs entirely within lands managed by RD 2035 and owned by the Conaway Ranch Group. The commenter states that since the lands adjacent to and underlying the Tule Canal are privately owned, then the Discharger has no legal authority to discharge into the Tule Canal. The commenter also states that the discharge constitutes a trespass and a public and private nuisance.

RESPONSE: The proposed NPDES permitting action is the reissuance of an existing NPDES Permit for the existing discharge from the City of Woodland Wastewater Treatment Plant. Tule Canal is a surface water that is tributary to, and a physical part, of Yolo Bypass, a water of the State and of the United States. The NPDES Permit is not a use entitlement, and does not authorize trespass or violations of other laws.

Regional Water Board staff disagrees that the discharge causes a nuisance, as defined in Water Code section 13050(m). The proposed permit includes restrictions to prevent impacts on beneficial uses (including impacts on public health) or other nuisance conditions resulting from waste discharges. Discharge Prohibition III.C specifically prohibits nuisance that is within the Regional Water Board's jurisdiction to regulate.

PART TWO: 9 JANUARY 2009 TENTATIVE PERMIT

CITY OF WOODLAND (Discharger) COMMENTS

Discharger Comment No. 1. Table 3. Administrative Information.

The Discharger comments that the Permit Adoption Date on Page 1 of the proposed permit should correspond with the date of the proposed adoption, February 6, 2009, not January 5, 2009.

RESPONSE: Upon Regional Water Board adoption of the permit, the actual Permit Adoption Date will be modified to reflect the actual date of adoption.

CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (CSPA) COMMENTS

Designated Party Status. CSPA requested designated party status for the Regional Water Board hearing on this matter. However, CSPA only submitted public comments on the removal of two limitations, oil and grease and settleable solids. Regional Water Board staff does not believe that designated party status is appropriate. The designated party request will be addressed at the hearing. If designated party status is denied, CSPA may comment as an interested person.

CSPA Comment No. 1. Antibacksliding.

CSPA comments that the proposed Permit contains effluent limitations less stringent than the existing permit for settleable solids and oil and grease contrary to the antibacksliding requirements of the Clean Water Act and Federal Regulations, 40 CFR 122.44 (l)(1).

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.

A. Settleable Solids

The existing NPDES permit for this facility contains Effluent Limitations for settleable solids (SS). The most important physical characteristic of wastewater is its total solids content. SS are an approximate measure of the quantity of sludge that will be removed by sedimentation. Low, medium and high strength wastewaters will generally contain 5 ml/l, 10 ml/l and 20 ml/l of SS, respectively. Knowledge of SS parameters is critical for proper wastewater treatment plant design, evaluating sludge quantities, operation and troubleshooting. Excessive SS in the effluent discharge are typically indicative of process upset or overloading of the system. Failure to limit and monitor for SS limits the regulators ability to assess facility operations and determine compliance. Settleable matter is a water quality objective in the Basin Plan. Failure to include an Effluent Limitations for SS threatens to allow violation of the settleable matter receiving water limitation. As such, there is a reasonable potential for settleable solids to exceed the Basin Plan's water quality standard and Effluent Limitations are required in accordance with 40 CFR 122.44. We applaud the operators if indeed they did not violate the SS limitation during the life of the existing permit; this does not however remove the reasonable potential to cause exceedances in the future during system upsets or overloading. The proposed Permit, page F-27, states that removal of the settleable solids limitation is based on improved pretreatment and treatment systems being employed at the facility, however: Industrial Pretreatment is not generally applicable to settleable solids and a connection has not been provided; tertiary treatment will reduce effluent solids rates, settleable solids should not have been an issue except during periods of upset as discussed above. A connection to pretreatment and the addition of filtration at the facility to a reduction in settleable solids rates has not adequately addressed to justify the removal of Effluent Limitations as required under the Federal Antidegradation regulations.

B. Oil and Grease

The proposed Permit is for a domestic wastewater treatment plant. Domestic wastewater treatment plants, by their nature, receive oil and grease in concentrations from home cooking and restaurants that present a reasonable potential to exceed the Basin Plan water quality objective for oil and grease (Basin Plan III-5.00). Confirmation sampling is not necessary to establish that domestic wastewater treatment systems contain oil and grease in concentrations that present a reasonable potential to exceed the water quality objective. It is not unusual for sewerage systems to allow groundwater cleanup systems, such as from leaking underground tanks, to discharge into the sanitary sewer. Groundwater polluted with petroleum hydrocarbons can also infiltrate into the collection system as easily as sewage exfiltrates. The Central Valley Regional

Board has a long established history of including oil and grease limitations in NPDES permits at 15 mg/l as a daily maximum and 10 mg/l as a monthly average, which has established BPTC for POTWs.

The California Water Code (CWC), Section 13377 states in part that: "...the state board or the regional boards shall...issue waste discharge requirements...which apply and ensure compliance with ...water quality control plans, or for the protection of beneficial uses..." Section 122.44(d) of 40 CFR requires that permits include water quality-based effluent limitations (WQBELs) to attain and maintain applicable numeric and narrative water quality criteria to protect the beneficial uses of the receiving water. Where numeric water quality objectives have not been established, 40 CFR §122.44(d) specifies that WQBELs may be established using USEPA criteria guidance under CWA section 304(a), proposed State criteria or a State policy interpreting narrative criteria supplemented with other relevant information, or an indicator parameter. US EPA has interpreted 40 CFR 122.44(d) in Central Tenets of the National Pollutant Discharge Elimination System (NPDES) Permitting Program (Factsheets and Outreach Materials, 08/16/2002) that although States will likely have unique implementation policies there are certain tenets that may not be waived by State procedures. These tenets include that "where the preponderance of evidence clearly indicates the potential to cause or contribute to an exceedance of State water quality standards (even though the data may be sparse or absent) a limit MUST be included in the permit." Failure to include an effluent limitation for oil and grease in the proposed permit violates 40 CFR 122.44 and CWC 13377.

The proposed Permit, page F-27, states that removal of the Oil and Grease effluent limitation is based on improved pretreatment and treatment systems being employed at the facility. The proposed Permit fails to discuss the impacts of removal of the Oil and Grease effluent Limitation will have on the Industrial Pretreatment program. The City of Woodland has developed an Industrial Pretreatment program that has been successful in controlling oil and grease following numerous years of problematic discharges. Industrial discharge rates are regulated by local limits; which in turn are based on NPDES permit effluent Limitations. The removal of an Effluent Limitation takes away the principal defense in justifying a local limit for regulating industries. Therefore removal of the effluent limitation may take away the ability of the City to legally and adequately regulate oil and grease discharges from restaurants; the principal source of oil and grease at Woodland. The basis of Woodland's success in regulating oil and grease discharges into their system will be removed upon removal of the effluent limitation. The preponderance of evidence clearly indicates that removal of the effluent limitation for oil and grease will result in the potential to cause or contribute to an exceedance of the Basin Plan water quality objective for oil and grease. The success of the pretreatment program likely has controlled an excessive oil and grease loadings to the filtration system. Therefore, the statement regarding a connection between tertiary treatment and oil and grease is unsupported. Removal of the effluent limitation for oil and grease will inhibit the ability of the City to continue to adequately control oil and grease discharges into the wastewater system, which may actually threaten to cause plugging of the filters.

A connection to pretreatment and the addition of filtration at the facility to a reduction in oil and grease rates has not adequately addressed to justify the removal of Effluent Limitations as required under the Federal Antidegradation regulations.

RESPONSE: The existing NPDES permit, Order No. R5-2003-0031-R01, includes average monthly and average daily effluent limitations for settleable solids of 0.1 ml/L and 0.2 ml/L, respectively. Settleable solids have not been detected in the effluent over the term of Order No. R5-2003-0031-R01. The Facility is a tertiary wastewater treatment plant. The regulation of settleable solids is not typically a performance measure of a tertiary treatment system. Settleable solids monitoring data provides information regarding the performance of a secondary system that is dependent on clarification and/or settling to meet technology-based effluent limitations. For tertiary treatment facilities that treat wastewater to a concentration of total suspended solids of less than 10 mg/l and turbidity to Title 22 standards, regulating settleable solids is not necessary. Due to the non-applicability of settleable solids limitations for operational control purposes, and new monitoring data indicating that settleable solids no longer demonstrate reasonable potential to cause or contribute to an exceedance of a water quality objective, the effluent limitations have been removed. The removal of the water quality based effluent limitations for settleable solids is based on new information and the facility upgrade to tertiary treatment, and is consistent with antidegradation requirements of CWA sections 303(d)(4) and 402(o)(2)(A) and (B)(i). The proposed NPDES Permit continues to be protective by including a narrative receiving water limitations for settleable substances.

CSPA also comments that the removal of effluent limitations for oil and grease constitutes backsliding. The existing NPDES Permit, Order No. R5-2003-0031-R01, includes average monthly and average daily effluent limitations for oil and grease of 10 mg/L and 15 mg/L, respectively. Oil and grease has not been detected in the effluent over the term of Order No. R5-2003-0031-R01. Regional Water Board staff does not concur that effluent limitations for oil and grease are necessary simply because the Facility is a wastewater treatment plant. The Discharger is required to obtain regulatory coverage under State Water Board Order No. 2006-0003, a Statewide General WDR for Sanitary Sewer Systems. The Statewide General WDR requires each enrollee to evaluate its service area to determine whether a Fat, Oil, and Grease (FOG) control program is needed. If an enrollee determines that a FOG control program is not needed, the enrollee must provide justification for why it is not needed. If FOG is found to be a problem, the enrollee must prepare and implement a FOG source control program to reduce the amount of these substances discharged to the sanitary sewer system. The Discharger's compliance with the requirements of State Board Order No. 2006-0003 will ensure significant amounts of oil and grease do not enter the Facility. In addition to implementation of the FOG program at the Facility, upgrades of the treatment system to a tertiary level of performance have resulted in the reduction of oil and grease in the Facility's effluent to non-detect levels. Therefore, the proposed NPDES Permit does not include

effluent limitations for oil and grease based on new information and the facility upgrade, consistent with antibacksliding requirements of Clean Water Act sections 303(d)(4) and 402(o)(2)(A) and (B)(i). The proposed permit also contains narrative receiving water limitations for oil and grease and floating materials.

CSPA Comment No. 2. Inadequate Antidegradation Analysis. CSPA states that the proposed Permit contains an inadequate antidegradation analysis that does not comply with the requirements of Section 101(a) of the Clean Water Act, Federal Regulations 40 CFR § 131.12, the State Board's Antidegradation Policy (Resolution 68-16) and California Water Code (CWC) Sections 13146 and 13247.

The antidegradation analysis in the proposed Permit is not simply deficient, it is literally nonexistent. The brief discussion of antidegradation requirements, in the Fact Sheet, consists only of a single skeletal, unsupported, undocumented conclusory statement totally lacking in factual analysis. NPDES permits must include any more stringent effluent limitation necessary to implement the Regional Board Basin Plan (Water Code 13377). The Tentative Permit fails to properly implement the Basin Plan's Antidegradation Policy. As discussed above the removal of Effluent Limitations for oil and grease and settleable solids reasonable threatens to allow for exceedances of the Basin Plan water quality objectives for these constituents. There is no discussion of the beneficial use impact and the proposal for uncontrolled allowances for oil and grease and settleable solids.

CWC Sections 13146 and 13247 require that the Board in carrying out activities which affect water quality shall comply with state policy for water quality control unless otherwise directed by statute, in which case they shall indicate to the State Board in writing their authority for not complying with such policy. The State Board has adopted the Antidegradation Policy (Resolution 68-16), which the Regional Board has incorporated into its Basin Plan. The Regional Board is required by the CWC to comply with the Antidegradation Policy.

Section 101(a) of the Clean Water Act (CWA), the basis for the antidegradation policy, states that the objective of the Act is to "restore and maintain the chemical, biological and physical integrity of the nation's waters." Section 303(d)(4) of the CWA carries this further, referring explicitly to the need for states to satisfy the antidegradation regulations at 40 CFR § 131.12 before taking action to lower water quality. These regulations (40 CFR § 131.12(a)) describe the federal antidegradation policy and dictate that states must adopt both a policy at least as stringent as the federal policy as well as implementing procedures.

California's antidegradation policy is composed of both the federal antidegradation policy and the State Board's Resolution 68-16 (State Water Resources Control Board, Water Quality Order 86-17, p. 20 (1986) ("Order 86-17"); Memorandum from Chief Counsel William Attwater, SWRCB to Regional Board Executive Officers, "federal Antidegradation Policy," pp. 2, 18 (Oct. 7, 1987) ("State Antidegradation Guidance")). As

a state policy, with inclusion in the Water Quality Control Plan (Basin Plan), the antidegradation policy is binding on all of the Regional Boards (Water Quality Order 86-17, pp. 17-18).

The Regional Board must apply the antidegradation policy whenever it takes an action that will lower water quality (State Antidegradation Guidance, pp. 3, 5, 18, and Region IX Guidance, p. 1). Application of the policy does not depend on whether the action will actually impair beneficial uses (State Antidegradation Guidance, p. 6). Actions that trigger use of the antidegradation policy include issuance, re-issuance, and modification of NPDES and Section 404 permits and waste discharge requirements, waiver of waste discharge requirements, issuance of variances, relocation of discharges, issuance of cleanup and abatement orders, increases in discharges due to industrial production and/or municipal growth and/or other sources, exceptions from otherwise applicable water quality objectives, etc. (State Antidegradation Guidance, pp. 7- 10, Region IX Guidance, pp. 2-3). Both the state and federal policies apply to point and nonpoint source pollution (State Antidegradation Guidance p. 6, Region IX Guidance, p. 4).

The proposed permit fails to include any discussion of the impacts of removal of the effluent limitations for oil and grease and settleable solids.

RESPONSE: CSPA comments that the removal of effluent limitations for settleable solids and oil and grease violates antidegradation regulations. As discussed above in the Response to CSPA Comment No. 1, and in the Fact Sheet of the proposed permit, monitoring data over the term of existing Order No. R5-2003-0031-R01 has not detected settleable solids or oil and grease. For settleable solids, treatment plant upgrades to a tertiary level of performance basically ensures that settleable solids will not be discharged at levels that exhibit reasonable potential to cause or contribute to exceedances of water quality objectives. For oil and grease, upgrades of the treatment system to a tertiary level of performance, combined with the Discharger's implementation of a FOG program (as required under State Water Board Order 2006-0003) ensures that oil and grease will not be discharged at levels that exhibit reasonable potential to cause or contribute to exceedances of water quality objectives.

Since the monitoring data representing the quality of the discharge consistently shows that oil and grease is not detected and settleable solids are present at very low concentrations, staff concludes that these constituents are not discharged in amounts that will cause degradation to the receiving water. The recent plant upgrades from secondary treatment to tertiary treatment, and the Discharger's compliance with the statewide collection system order, has improved the quality of the discharge (reduced the concentration and/or presence of settleable solids and oil and grease). There is no reasonable basis to conclude that the discharge will include increased concentrations of these constituents and cause degrade the receiving water. Therefore, with water quality data demonstrating that the current discharge does not cause further degradation of receiving water, the permitted

discharge is consistent with the antidegradation provisions of 40 CFR 131.12 and State Water Board Resolution 68-16. Compliance with the requirements of the proposed NPDES permit will result in the use of best practicable treatment or control of the discharge that eliminates the impact on existing water quality.