California Sportfishing Protection Alliance
"An Advocate for Fisheries, Habitat and Water Quality"
3536 Rainier Avenue, Stockton, CA 95204
Tel: 209-464-5067, Fax: 209-464-1028, E: deltakeep@aol.com

3 July 2006

Mr. Robert Schneider, Chairman
Ms. Pamela Creedon, Executive Officer
Mr. Kenneth Landau, Assistant Executive Officer
Mr. Matt Scroggins
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy to follow

RE: Waste Discharge Requirements (NPDES No. CA0083429) for Chevron Environmental Management Company; CHEVRONTEXACO, Incorporated; and Secor International Incorporated; Purity Oil Sales Superfund Site, Fresno County

Dear Messrs Schneider, Landau, Scroggins and Ms. Creedon;

The California Sportfishing Protection Alliance, Watershed Enforcers and San Joaquin Audubon (hereinafter "CSPA") has reviewed the Central Valley Regional Water Quality Control Board's (hereinafter "Regional Board") tentative NPDES permit (hereinafter "Order" or "Permit") for Chevron Environmental Management Company; CHEVRONTEXACO, Incorporated; and Secor International Incorporated; Purity Oil Sales Superfund Site, Fresno County (hereinafter "Discharger") and submits the following comments.

The Notice of Hearing for this Order states, "Persons wishing to comment on this noticed hearing item must submit testimony, evidence, if any, and/or comments in writing to the Regional Board no later than 21 June 2006. Written evidence or comments submitted after 21 June 2006 will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party." However, federal regulations, 40 CFR § 124.12(c), explicitly require that scheduling a public hearing for an NPDES permit automatically extends the comment period until at least the close of the hearing. The regulations, 40 CFR § 124.17, also oblige the permitting agency to respond to all significant comments at the time a final permit is actually issued.

Because of the press of other matters, CSPA has only recently had the opportunity to review the proposed Order. We apologize for the lateness of these comments but note that more than a month remains before the scheduled hearing date.

1. The effluent and receiving water limitations for toxicity are illegal

The Federal Water Pollution Control Act, Section 101 (a)(3), states that; "it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited." Federal Regulations, 40 CFR 122.44 (d)(i), requires that; "Limitations must control all pollutants or pollutant parameters (either conventional, non-conventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality." The Water Quality Control Plan (Basin Plan) contains a narrative water quality criteria for toxicity, which states, in part: "All waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life."

Final Effluent Limitation 1.b. states that survival of aquatic organisms in 96-hour bioassays of undiluted waste at Monitoring Location M-001 or M-002 shall be not less than: 70% for any one bioassay or 90% for the median for any three or more consecutive bioassays. Nowhere does the Basin Plan allow 30% or 10% mortality (corresponding to 70% to 90% survival) in a wastewater discharge. Since the discharge is to receiving streams there is no assimilative capacity for dilution, and mixing zones for toxicity are not discussed in the permit, it can therefore be concluded that 10% mortality in the discharge directly translates into 10% mortality in the receiving stream which is contrary to Federal regulations. The 10% and/or 30% toxicity in the discharge also directly violates with the permit's Receiving Water Limitation No. 11.

2. The Reasonable Potential Analyses for CTR constituents fail to comport with federal requirements

Federal regulations, 40 CFR § 122.44(d)(1)(ii), state "when determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, **the variability of the pollutant or pollutant parameter in the effluent**, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water." Emphasis added.

Fact Sheet, Table F-2 page F-21: The reasonable potential analyses for CTR constituents fail to consider the statistical variability of data and laboratory analyses as explicitly required by the federal regulations. For example, a multiplier of 1 was used for CTR constituents instead of a required multiplier of 7.4 to account for the small number of samples. The procedures for computing variability are detailed in Chapter 3, pages 52-55, of USEPA's *Technical Support Document For Water Quality-based Toxics Control*. The reasonable potential analyses should be recalculated using appropriate methodology and limits for zinc and selenium should be included in the Permit. The fact that the SIP illegally ignores this fundamental requirement does not exempt the Regional Board from its obligation to consider statistical variability in compliance with federal regulations.

3. The Permit must include a limitation for arsenic

The Fact Sheet, page F-23, states, "Insufficient information is available to determine whether arsenic concentrations in the discharge have reasonable potential to cause or contribute to an in-stream excursion above applicable water quality objectives. There is only one effluent data point available for arsenic. Instead of limitations, additional monitoring has been established in this Order for arsenic." Contrary to the statement that "there is only one effluent data point available…"; Table F-2 above shows two data points for arsenic. The discussion is however mute, since one or two data points is sufficient to determine if a "reasonable potential" exists for a pollutant to exceed a water quality standard. There are numerous other pollutants presented in Table F-2 where Regional Board staff found "reasonable potential" utilizing the same number of data points. Wastewater dischargers should not be rewarded for failing to conduct sufficient sampling.

The analysis conducted by Regional Water Board staff, Fact Sheet Table F-2, shows arsenic concentrations in the discharge has a reasonable potential to exceed a water quality objective, specifically the Basin Plan Chemical Constituents objective requirement that incorporates drinking water maximum contaminant levels (MCLs). Federal Regulations, 40 CFR 122.44 (d)(i), requires an effluent limitation be established in an NPDES permit when it has been determined that there is a reasonable potential that a pollutant will exceed, or contribute to an excursion above a narrative or numeric water quality standard. The projected maximum effluent concentration for arsenic (29.6 μg/l) greatly exceeds the MCL for arsenic (10 μg/l). Failure to include an effluent limitation for arsenic is a direct and intentional circumvention of the federal regulations.

4. Regardless of any future study, the limitations for EC are appropriate and the Discharger is responsible for all pollutants in the effluent

The Permit, Page F-24, states, "To comply with Basin Plan requirements, this Order includes EC, boron, and chloride limitations as maximum daily effluent limitations. The GWTS does not add EC, chloride, or boron. Therefore the effluent EC, chloride, and boron concentrations should be the same as the influent concentrations. This Order assigns EC, chloride, and boron limitations and monitoring to gather information, and may be reopened to reconsider EC, chloride, and boron limitations should future monitoring indicate the need."

The Fact Sheet, Table F-2, prepared by Regional Board staff shows a maximum projected effluent concentration of 6290 μmhos/cm. This concentration clearly exceeds the cited Basin Plan water quality standard of 1,000 μmhos/cm. The analysis conducted by Regional Board staff, Fact Sheet Table F-2, shows the EC concentrations in the discharge have a reasonable potential to exceed a water quality objective. The paragraph states that the wastewater Discharger does not add EC boron or chloride and therefore concludes that a study may be sufficient cause for the permit to be reopened and modified. The wastewater Discharger likely does not add copper, lead or nickel to the discharge, however effluent limitations were properly established. The relevance of whether a wastewater discharger adds specific pollutants to their discharge to surface waters is not

presented, but appears to have no regulatory basis. Federal Regulations, 40 CFR 122.44 (d)(i), require an effluent limitation be established in an NPDES permit when it has been determined that there is a reasonable potential that a pollutant will exceed, or contribute to an excursion above a numeric water quality standard which was appropriately done here. The sentence discussing reopening and modifying the permit should be removed.

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

Sincerely,

Original signed by Bill Jennings
Bill Jennings, Executive Director
California Sportfishing Protection Alliance