California Sportfishing Protection Alliance
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22 July 2006

Mr. Robert Schneider, Chairman
Ms. Pamela Creedon, Executive Officer
Mr. Kenneth Landau, Assistant Executive Officer
Mr. Matthew Scroggins
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: 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") submits these supplemental comments on the 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").

CSPA's 3 July 2006 comments noted that 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 Regional Board's Response to Comments states that the federal regulations at 40 CFR § 124.12(c) do not apply to states (see 40 CFR § 123.25) and claims that state regulations at Title 23 California Code of Regulations § 648.4 allow the Regional Water Board to specify the terms for submittal of comments in the hearing notice. In particular, § 648.4(c) states that the presiding officer may refuse to admit the proposed testimony or evidence in the record, and shall refuse to do so where there is a showing of prejudice to any party or the Board. However, the Regional Board has misinterpreted the regulations. While 40 CFR § 123.25 does allow the state to modify certain provisions of the federal regulations, the purpose of allowable modifications under 40 CFR § 123.25(a) is to allow states to **"impose more stringent requirements;"** not weaken them. Emphasis added. Indeed, 40 CFR § 123.25 explains, **"[s]tates need not implement provisions identical to the above listed provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions."** Emphasis

added. Since CCR § 648.4 and the Regional Board's interpretation are less stringent that the applicable federal regulations, they must be revised.

Many members of the public only learn of a proposed NPDES permit or begin to focus on an issue after a meeting agenda is circulated. Others are unable to prepare detailed comments within a thirty-day window because of the press of other business. Early closure of the formal comment period prevents citizens who come late to an issue from submitting in-depth comments; despite the fact that they may have perspective and information crucial to issuance of a legally defensible permit. This is why EPA regulations explicitly mandate that the comment period for NPDES permits remain open until the end of the hearing: to ensure that all pertinent information is considered prior to issuance of a permit. Regardless of arguments concerning the need to allow staff time to analyze and prepare written responses, the Regional Board's policy of disallowing late comments is a blatant, transparent effort to limit citizen involvement. The policy, as applied, is clearly less stringent than the federal regulations and therefore illegal. Responses to late comments can be verbal or, if the comments raise important issues, the hearing can be rescheduled. In any case, citizen comments are allowable at the hearing and the federal regulations at CFR § 124.17 oblige the permitting agency to respond to all significant comments at the time a final permit is actually issued. The Regional Board seems to have lost sight of the fact that the purpose of the regulations is to ensure that the best possible permits, based upon all available information, are issued in order to protect the waters of the state and nation: not to provide convenience or protection to the Regional Board.

CSPA submits these supplemental comments as a courtesy to provide staff a heads-up of an argument we will be orally presenting concerning the illegality of proposed compliance schedules in the tentative Permit.

In reexamining the California Toxics Rule (CTR), we became aware that the CTR imposes a May 2005 Expiration Date for All Compliance Schedules. CTR § (e)(3) states: "[w]here an existing discharger reasonably believes that it will be infeasible to promptly comply with a new or more restrictive [water quality based effluent limitation ("WQBEL")] based on the water quality criteria set forth in this section, the discharger may request approval from the permit issuing authority for a schedule of compliance. 40 C.F.R. 131.38(e)(3). CTR § (e)(5) states: "[i]f the schedule of compliance exceeds one year from the date of permit issuance, reissuance or modification, the schedule shall set forth interim requirements and dates for their achievement. 40 C.F.R. 131.38(e)(5). Thus, a discharger may request that the Regional Board approve a compliance schedule, by which the discharger is allowed to gradually come into compliance with water quality-based effluent limitations for CTR-listed pollutants over a period of time, with interim effluent requirements if the compliance schedule exceeds one year. However, CTR § 131.38(e)(8) states: "[t]he provisions in this paragraph (e), schedules of compliance, shall expire on May 18, 2005. 40 C.F.R. 131.38(e)(8). Therefore, because the CTR provisions allowing for compliance schedules and interim effluent limitations expired on May 18, 2005, it is illegal to issue a permit that contains compliance schedules or interim effluent limitations for Priority Pollutants after that date.

There is no inconsistency between the CTR and the state's Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP). Section 2.1 of the SIP states, "[i]n no case… shall a compliance schedule for [dischargers of CTR-listed pollutants] exceed, from the effective date of this Policy: (a) 10 years to establish and comply with CTR criterion-based effluent limitations." Because the effective date of the SIP was in 2000, the SIP requires that no compliance schedule shall extend past 2010. As explained above, the CTR provides that it is illegal to issue a permit that contains compliance schedules or interim effluent limitations after May 18, 2005, 40 C.F.R. 131.38(e)(8), and that compliance schedules and interim effluent limitations may last no longer than five years, 40 C.F.R. 131.38(e)(6). Thus, the SIP can be interpreted to be consistent with the CTR. The last five-year compliance schedule could begin in 2005 and end in 2010, consistent with the provisions of both the SIP and the CTR. However, the Regional Board staff's application of the SIP to the tentative Permit is inconsistent with the CTR. Pursuant to 40 C.F.R. 131.38(e)(8) of the CTR, no permit containing compliance schedules or interim effluent limitations may be issued after May 18, 2005. Therefore, proposed compliance schedules and interim effluent limitations must be dropped from the Permit.

Thank you for considering these supplemental 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