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2 February 2009

Mr. Ken Landau, Assistant Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144
klandau@waterboards.ca.gov

VIA: Electronic Submission
Hardcopy if Requested

RE: Uncirculated Redline/Strikeout Late Changes: Renewal Of Waste Discharge Requirements (NPDES No. CA0079464) for San Andreas Sanitary District Wastewater Treatment Plant, Calaveras County

Dear Mr. Landau:

The California Sportfishing Protection Alliance (CSPA) has reviewed the late uncirculated redline/strikeout changes for the proposed Waste Discharge Requirements (NPDES No. CA0079464) for San Andreas Sanitary District Wastewater Treatment Plant (Permit) and submits the following comments. Apparently, the Central Valley Regional Water Quality Control Board (Regional Board) no longer believes it is constrained by explicit regulatory requirements regarding issuance of NPDES permits that are contained in the federal Code of Regulations.

The proposed Permit for San Andreas was properly issued for a 30-day public comment period and scheduled to be considered by the Regional Board on 5 February 2009. We submitted timely written comments regarding the proposed Permit. On 29 January 2009, one week prior to the Board meeting we accessed the Regional Board's web site to determine if a response to our comments had been posted. We noted that a "redline/strikeout" version of the proposed Permit had been posted. We received no notice of the revision to the proposed Permit although we have clearly established ourselves as an interested party. The "redline/strikeout" version of the proposed Permit could not possibly have been posted for a 30-day period prior to the Board meeting, the public hearing for this matter. The "redline/strikeout" version of the proposed Permit was not circulated for public comment. The "redline/strikeout" version of the proposed Permit contains significant and substantial revisions.

The proposed Permit revisions include:

- Relaxation of the Effluent Limitations for bis(2-ethylhexyl)phthalate,
- Revision of the RP analysis for bis(2-ethylhexyl)phthalate, specifically modification to the receiving stream concentration,

- Deletion of the reclamation Specifications,
- Modification of the downstream monitoring point (RSW-002) location,
- More than a page addition to the Mixing Zone discussion in the Fact Sheet, and
- Revision of the RP data set for lead and silver in Attachment G

Federal Regulation 40 CFR 124.8 requires that:

> *(Applicable to State programs, see Sec. Sec. 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).) (a) A fact sheet shall be prepared for every draft permit for a major HWM, UIC, 404, or NPDES facility or activity, for every Class I sludge management facility, for every 404 and NPDES general permit (Sec. Sec. 237.37 and 122.28), for every NPDES draft permit that incorporates a variance or requires an explanation under Sec. 124.56(b), for every draft permit that includes a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), and for every draft permit which the Director finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person. (b) The fact sheet shall include, when applicable: (1) A brief description of the type of facility or activity which is the subject of the draft permit; (2) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged. (3) For a PSD permit, the degree of increment consumption expected to result from operation of the facility or activity. (4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by Sec. 124.9 (for EPA-issued permits); (5) Reasons why any requested variances or alternatives to required standards do or do not appear justified; (6) A description of the procedures for reaching a final decision on the draft permit including: (i) The beginning and ending dates of the comment period under Sec. 124.10 and the address where comments will be received; (ii) Procedures for requesting a hearing and the nature of that hearing; and (iii) Any other procedures by which the public may participate in the final decision. (7) Name and telephone number of a person to contact for additional information. (8) For NPDES permits, provisions satisfying the requirements of Sec. 124.56. (9) Justification for waiver of any application requirements under Sec. 122.21(j) or (q) of this chapter. (Emphasis added)*

The Fact Sheet circulated with the proposed Permit for public comment was made incomplete by the modifications contained in the "redline/strikeout" version. The Fact Sheet was not reissued or circulated for public comment. Therefore, the Fact Sheet as it was presented for public comment does not set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit as required by federal regulation.

Federal Regulation 40 CFR 124.10, *Public Notice of Permit Actions and Public Comment Period* require that:

Scope. (1) The Director shall give public notice that the following actions have occurred: (i) A permit application has been tentatively denied under Sec. 124.6(b); (ii) (Applicable to State programs, see Sec. Sec. 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).) A draft permit has been prepared under Sec. 124.6(d); ... (b) Timing (applicable to State programs, see Sec. Sec. 123.25 (NPDES), 145.11 (UIC), 233.26 (404, and 271.14 (RCRA)). (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under paragraph (a) of this section shall allow at least 30 days for public comment. ... (e) (Applicable to State programs, see Sec. Sec. 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).) In addition to the general public notice described in paragraph (d)(1) of this section, all persons identified in paragraphs (c)(1) (i), (ii), (iii), and (iv) of this section shall be mailed a copy of the fact sheet or statement of basis (for EPA-issued permits), the permit application (if any) and the draft permit (if any). (Emphasis added)

Public notification was not given of the revised ("redline/strikeout") Fact Sheet and 30 days have not been allowed for public comment as required by federal regulation.

Federal Regulation 124.11; *Public comments and requests for public hearings;*

(Applicable to State programs, see Sec. Sec. 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).) During the public comment period provided under Sec. 124.10, any interested person may submit written comments on the draft permit or the permit application for 404 permits when no draft permit is required (see Sec. 233.39) and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in Sec. 124.17. (Emphasis added)

The right to submit written comments has been denied by the failure to properly circulate the revised "redline/strikeout" version of the proposed Permit. Since the right and opportunity to submit written comments was been thwarted by the Regional Board's failure to circulate the revised permit for public comment; such comments cannot be considered in making the final decision and answered as provided in Sec. 124.17.

Federal Regulation 124.13; *Obligation to raise issues and provide information during the public comment period;*

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under Sec. 124.10. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference

materials. Commenters shall make supporting materials not already included in the administrative record available to EPA as directed by the Regional Administrator. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted under Sec. 124.10 to the extent that a commenter who requests additional time demonstrates the need for such time.) (Emphasis added)

The right to submit written comments has been denied by the failure to properly circulate the revised "redline/strikeout" version of the proposed Permit. The right and opportunity to submit written comments was been thwarted by the Regional Board's failure to circulate the significantly revised permit for public comment. We have not requested a comment period longer than 30 days, but insist that a minimum of 30 days be provided to allow us a reasonable opportunity to comply with the requirements of Federal Regulation 124.13 for the significant permit issues contained in the "redline/strikeout" modifications. The option of submitting oral comments during the allotted 3 to 5 minutes in the public hearing would hardly allow us the opportunity to simply read the list of significant changes that have been made to the proposed Permit by the "redline/strikeout" document; let alone discuss our concern with the changes. Oral comments would also prohibit the Regional Board staff from properly making any modification to the permit and answering our comments as provided in Section 124 17. Failure to reissue the proposed Permit including the "redline/strikeout" changes; denies us the ability to fulfill our requirements under federal regulation to "raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period". Failure to reissue the proposed Permit including the "redline/strikeout" changes also denies the Regional Board's consideration of our comments in making their final decision as required by Federal Regulation. Therefore, our specific written comments, which must be included in the record of decision for this order, regarding the "redline/strikeout" version of the proposed Permit are as follows:

The proposed Permit contains an allowance for a mixing zone that does not comply with the requirements of the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP).

A timely comment letter was submitted to the Regional Board addressing the originally issued proposed Permit. Our comment letter includes extensive comments regarding the granting of mixing zones, specifically that it did not appear that there was sufficient information to grant mixing zones, statements regarding complete mixing were at best ambiguous and there did not appear to have been adequate characterization of the receiving stream to confirm any assimilative capacity for mixing.

The Fact Sheet has been significantly revised by the "redline/strikeout" version of the proposed Permit in discussing the mixing zone which has been granted for human health based constituents. The first paragraph modification to page F-22 confirms our original belief that the discharge is "not completely mixed" as is defined by the SIP. This paragraph has also been modified to state that the Discharger's mixing zone study "does not adequately address all of the conditions required by section 1.4.2.2 of the SIP…"

The "redline/strikeout" changes include the statement that: "The mixing zone is as small as practicable…" This statement is unsupported and there does not appear to have been any analysis regarding treatability and "end of pipe" limit feasibility (no mixing zone). The proposed Permit must be modified to discuss why "the mixing zone is as small as practicable".

SIP Section 1.4.2.1 *Dilution Credits* requires that the approach to making a mixing zone determination also depends on whether a discharge is *completely-mixed or *incompletely-mixed with the receiving water. The "redline/strikeout" modifications to the proposed Permit confirm that the discharge is incompletely mixed.

This section of the SIP also allows that for *Completely Mixing Discharges*

> For completely-mixed discharges, as determined by the RWQCB and based on information provided by the discharger, the amount of receiving water available to dilute the effluent shall be determined by calculating the *dilution ratio (i.e., the critical receiving water flow divided by the effluent flow) using the appropriate flows in Table 3. In no case shall the RWQCB grant a dilution credit that is greater than the calculated dilution ratio. The dilution credit may be set equal to the dilution ratio only if the site-specific conditions concerning the discharge and the receiving water do not indicate that a smaller dilution credit is necessary to protect beneficial uses and meet the conditions of this Policy. If, however, dilution ratios that are calculated using the Table 3 parameters are inappropriate for use due to site-specific issues, the mixing zone and dilution credit shall be determined using site-specific information and procedures detailed for incompletely-mixed discharges. (Emphasis added)

The proposed Permit grants a mixing zone although it has been confirmed that the discharge is not completely mixed. The Regional Board has found the Discharger's mixing zone study to be deficient. To compound the matter, the Regional Board does not present any of the critical flows required by SIP Table 3. The Regional Board, absent an adequate mixing zone analysis, estimates a point where complete mixing occurs (outside the allowable defined limitations for complete mixing), then grants the mixing zone regardless.

The SIP requires for *Incompletely-Mixed Discharges:*

> "Dilution credits and mixing zones for incompletely-mixed discharges shall be considered by the RWQCB only after the discharger has completed an independent mixing zone study and demonstrated to the satisfaction of the RWQCB that a dilution credit is appropriate. Mixing zone studies may include, but are not limited to, tracer studies, dye studies, modeling studies, and monitoring upstream and downstream of the discharge that characterize the extent of actual dilution. These studies may be conducted in accordance with the procedures outlined in Appendix 5." (Emphasis added)

The granted mixing zone does not comply with the requirements of the SIP since the mixing zone study completed by the Discharger was found to be deficient.

The SIP further requires that:

"B. The RWQCB shall deny or significantly limit a mixing zone and dilution credit as necessary to protect beneficial uses, meet the conditions of this Policy, or comply with other regulatory requirements. Such situations may exist based upon the quality of the discharge, hydraulics of the water body, or the overall discharge environment (including water column chemistry, organism health, and potential for bioaccumulation). For example, in determining the extent of or whether to allow a mixing zone and dilution credit, the RWQCB shall consider the presence of pollutants in the discharge that are *carcinogenic, *mutagenic, *teratogenic, *persistent, *bioaccumulative, or attractive to aquatic organisms. In another example, the RWQCB also shall consider, if necessary to protect the beneficial uses, the level of flushing in water bodies such as lakes, reservoirs, enclosed bays, estuaries, or other water body types where pollutants may not be readily flushed through the system. In the case of multiple mixing zones, proximity to other outfalls shall be carefully considered to protect the beneficial uses.

If a RWQCB allows a mixing zone and dilution credit, the permit shall specify the method by which the mixing zone was derived, the dilution credit granted, and the point(s) in the receiving water where the applicable criteria/objectives must be met." (Emphasis added)

The receiving stream enters New Hogan Reservoir shortly downstream from the point of discharge. The Regional Board has not considered the downstream beneficial uses and the level of flushing in the reservoir, which is a source of drinking water. Absent an acceptable mixing zone study, absent a complete chemical characterization of the receiving stream and absent the flow criteria specified in SIP Table 3, the Regional Board has not specified an acceptable method for determining a mixing zone allowance. While the Regional Board has specified the point of compliance in the receiving stream, although outside the acceptable bounds for complete mixing, there is no corresponding requirement for sampling of the constituents for which the mixing zone is applicable. It seems readily apparent that the point of specifying a point of compliance is to conduct sampling to confirm that the mixing zone analysis was correct.

In summary the proposed Permit does not comply with the SIP requirements for granting a mixing zone:

- The proposed Permit grants a mixing zone although it has been confirmed that the discharge is not completely mixed. The Regional Board has found the Discharger's mixing zone study to be deficient.
- The Regional Board does not present any of the critical flows required by SIP Table 3.
- The Regional Board, absent an adequate mixing zone analysis, estimates a point where complete mixing occurs (outside the allowable defined limitations for complete mixing), then grants the mixing zone regardless.
- A dilution credit and mixing zones for incompletely-mixed discharges was granted despite the requirement that such shall be considered by the RWQCB only after the discharger has completed an independent mixing zone study.
- The Regional Board has not considered the downstream beneficial uses and the level of flushing in the reservoir, which is a source of drinking water.

- Absent an acceptable mixing zone study, absent a complete chemical characterization of the receiving stream and absent the flow criteria specified in SIP Table 3, the Regional Board has not specified an acceptable method for determining a mixing zone allowance.
- While the Regional Board has specified the point of compliance in the receiving stream, although outside the acceptable bounds for complete mixing, there is no corresponding requirement for sampling of the constituents for which the mixing zone is applicable. It seems readily apparent that the point of specifying a point of compliance is to conduct sampling to confirm that the mixing zone analysis was correct.
- There is no discussion or supporting information for the conclusory statement that "The mixing zone is as small as practicable."

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

Sincerely,

Bill Jennings, Executive Director
California Sportfishing Protection Alliance