



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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28 August 2009

Mr. Ken Landau, Assistant Executive Officer
Ms. Diana Messina, Supervising WRCE
Ms. Mary Serra, Senior WRCE
Ms. Anne Olson, WRCE
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

VIA: Electronic Submission
Hardcopy if Requested

RE: Tentative Order, Conditional Waiver of Waste Discharge Requirements for Small Food Processors and Small Wineries within the Central Valley Region

Dear Mr. Landau and Mesdames Messina, Serra and Olson:

The California Sportfishing Protection Alliance (CSPA) has reviewed the proposed Conditional Waiver of Waste Discharge Requirements for Small Food Processors and Small Wineries within the Central Valley Region (Waiver) and submits the following comments.

Waivers of Waste Discharge Requirements may be made in accordance with California Water Code § 13269. "Waiver (a)(1) On and after January 1, 2000, the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by the state board or a regional board as to a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest."

The proposed waiver of Waste Discharge Requirements would allow for the discharge of up to 120,000 gallons per year of wastewater from "small food processors" and wineries where the waste has been characterized as follows:

<u>Constituent</u>	<u>Units</u>	<u>Wineries</u>	<u>Food Processors</u>
pH	Std units	2 to 11	5 to 9
BOD	mg/l	300 to 12,000	300 to 2,000
Total Dissolved Solids (TDS)	mg/l	80 to 6,000	400 to 2,300
Total nitrogen	mg/l	1 to 50	1 to 150

At a wastewater flow rate of 120,000 gallons per year the maximum annual loading of the described pollutants to land would be: 12,000 pounds of BOD, 6,000 pounds of TDS and 150 pounds of nitrogen.

1. A pH of 2 is a hazardous waste. Title 22, section 66261.22: Characteristic of Corrosivity. (a) A waste exhibits the characteristic of corrosivity if representative samples of the waste have any of the following properties: (1) it is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the EPA test method for pH or an equivalent test method approved by the Department pursuant to section 66260.21... (b) A waste that exhibits the characteristic of corrosivity specified in subsection (a)(1) or (a)(2) of this section has the EPA Hazardous Waste Number of D002." Hazardous waste may not be discharged to land based on a waiver of Waste Discharge Requirements.
2. TDS levels above 450 mg/l threaten to exceed the agricultural water quality goal and above 500 threaten to exceed the secondary drinking water maximum contaminant level (MCL). MCLs are incorporated into the Central Valley Board's Basin Plan. Levels of TDS up to 6,000 mg/l at a minimum threaten to exceed the MCL and degrade the drinking water beneficial use of groundwater. Such threat is not in compliance with CWC Section 13269 since the water quality control plan (Basin Plan) Chemical Constituents water quality objective for MCLs could be violated.
3. Nitrate levels above 10 mg/l exceed the primary drinking water MCL, which is incorporated into the Central Valley Regional Board's Basin Plan. Levels of nitrate up to 150 mg/l at a minimum threaten to exceed the MCL and degrade the drinking water beneficial use of groundwater. Such threat is not in compliance with CWC Section 13269 since the water quality control plan (Basin Plan) could be violated.
4. The Central Valley Regional Board has under the existing waiver allowed winery wastewater discharges to geological areas of fractured bedrock with very little soil cover. This can be readily observed in the Counties of Amador and Stanislaus. There are other areas along the Valley floor, such as documented around Lodi, where groundwater elevations are very near the ground surface and migration of pollutants to groundwater has been observed. Lake County has significant porous volcanic rock at times with little or no overlying soil allowing immediate migration of pollutants to ground or surface water supplies. The proposed waiver of Waste Discharge Requirements does not contain any requirement for wastewater disposal areas that is protective of groundwater quality. The proposed waiver has no minimum standard for soils in the disposal area or depth to groundwater. The allowances to discharge to areas which allow for immediate or rapid migration of pollutants to groundwater at a minimum threatens the beneficial uses of groundwater quality and exceedance of water quality standards as documented for nitrate and TDS.

A BOD of greater than 300 mg/l is a high strength waste as defined by virtually all Wastewater Engineering Texts. A wastewater with a BOD of 12,000 mg/l is an extremely high strength wastewater. In the cited areas there is no or little means of

reduction of BOD levels prior to migration to groundwater.

5. The waiver allows for the land application of residual solids from wineries. Ms. Joann Kipps, a senior Engineer with the Regional Board's Fresno Office, has written a letter dated 20 July 2009 and posted on the Regional Board's web site at http://www.swrcb.ca.gov/centralvalley/board_decisions/tentative_orders/0908/triennial_review/triennial_review_kipps_com.pdf. This letter details the problems associated with the discharge of stillage wastes from wineries and that the Regional Board's practices are not protective of groundwater quality. We request that this letter be considered prior to adoption of the proposed waiver of Waste Discharge Requirements.
6. The threats to water quality, at a minimum the threats to exceed the MCLs for nitrate and TDS, associated with the proposed waiver would violate the Antidegradation Policy (Resolution 68-16), which is incorporated into the Basin Plan. The Antidegradation Policy prohibits exceedance of water quality standards by wastewater discharges.
7. The waiver discusses monitoring for fixed dissolved solids (FDS), not total dissolved solids. This brings up at least two issues; 1) water quality standards and objectives are listed in terms of total dissolved solids and sampling for fixed will not be capable of determining whether the discharge complies with standards and objectives, 2) volatile dissolved solids can migrate and degrade groundwater quality and contribute to pollution. The proposed sampling for FDS would be a waste of limited Discharger resources since it is useless in determining compliance with water quality standards and objectives.
8. The waiver does not contain any antidegradation analysis and therefore does not comply with the requirements of the State Board's Antidegradation Policy (Resolution 68-16) and California Water Code (CWC) Sections 13146 and 13247. 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. California's antidegradation policy is composed of the State Board's Resolution 68-16. 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. Implementation of the state's antidegradation policy is guided by the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 ("APU 90-004") and Water Quality Order 86-17.

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). 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).

The State Board's APU 90-004 specifies guidance to the Regional Boards for implementing the state policy and guidance. The guidance establishes a two-tiered process for addressing these policies and sets forth two levels of analysis: a simple analysis and a complete analysis. A simple analysis may be employed where a Regional Board determines that: 1) a reduction in water quality will be spatially localized or limited with respect to the waterbody, e.g. confined to the mixing zone; 2) a reduction in water quality is temporally limited; 3) a proposed action will produce minor effects which will not result in a significant reduction of water quality; and 4) a proposed activity has been approved in a General Plan and has been adequately subjected to the environmental and economic analysis required in an EIR. A complete antidegradation analysis is required if discharges would result in: 1) a substantial increase in mass emissions of a constituent; or 2) significant mortality, growth impairment, or reproductive impairment of resident species. Regional Boards are advised to apply stricter scrutiny to non-threshold constituents, i.e., carcinogens and other constituents that are deemed to present a risk of source magnitude at all non-zero concentrations. If a Regional Board cannot find that the above determinations can be reached, a complete analysis is required.

Even a minimal antidegradation analysis would require an examination of: 1) existing applicable water quality standards; 2) ambient conditions in receiving waters compared to standards; 3) incremental changes in constituent loading, both concentration and mass; 4) treatability; 5) best practicable treatment and control (BPTC); 6) comparison of the proposed increased loadings relative to other sources, and; 7) an assessment of the significance of changes in ambient water quality. A minimal antidegradation analysis must also analyze whether: 1) such degradation is consistent with the maximum benefit to the people of the state; 2) the activity is necessary to accommodate important economic or social development in the area; 3) the highest statutory and regulatory requirements and best management practices for pollution control are achieved; and 4) resulting water quality is adequate to protect and maintain existing beneficial uses. A BPTC technology analysis must be done on an individual constituent basis.

Any antidegradation analysis must comport with implementation requirements in State Board Water Quality Order 86-17 and State Antidegradation Guidance, APU 90-004 and Region IX Guidance. There is no antidegradation analysis in the proposed waiver and no indication that any has been undertaken.

9. The Central Valley Water Board acted as lead agency for this project under the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 et seq.), and determined that the adoption of Resolution No. 82-036 would not cause a significant environmental impact and therefore, in accordance with CEQA, approved a Negative Declaration dated 23 December 1981. Since 1981 the regulation and knowledge of

wastewater disposal has undergone significant change. In 1981 there was little groundwater monitoring at waste disposal sites. In 1981 priority pollutant knowledge was minimal, significant standards had not been developed and sampling was scarce. Since 1981 the Central Valley Regional Board has documented groundwater degradation issues at food processing facilities and at wineries. As the above comments address; the proposed discharges to land pose a threat to groundwater quality with low pH, high nitrate, salts (EC, TDS, chloride) and organic loadings. A twenty eight year old negative declaration did not address the potential impacts to groundwater quality and degradation of each of the designated beneficial uses. It is likely that an environmental impact report is required to assess the potential impacts related to the proposed waiver.

10. The required characterization to obtain coverage under the proposed waiver is wholly inadequate. The Findings indicate that pH levels can be low, to hazardous levels, yet sampling for pH is not required. Nitrate levels can be discharged at levels greatly exceeding water quality standards, yet sampling of the liquid wastestream is not required. BOD sampling is not required to assess the organic loading. Ongoing sampling is not required to assure that the original characterization was accurate or to assess the potential impacts to groundwater quality. Any characterization and assessment of the sites and potential to degrade groundwater quality should be made and certified by a registered professional engineer or geologist.

In conclusion the proposed waiver threatens to cause violation of several sections of the Basin Plan and degrade groundwater quality contrary to CWC 13269. The waiver cannot be adopted unless it is revised to eliminate the threat to groundwater quality. The Regional Board should issue individual Waste Discharge Requirements as the cited winery and food processing discharges do not constitute a low threat to water quality.

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